

DEPARTMENT OF INDUSTRY, SCIENCE AND RESOURCES

EC22-001166

To: Acting Secretary (For Decision)

UPDATE ON NORTHERN ENDEAVOUR LITIGATION – SETTLEMENT NEGOTIATIONS
CLOSE TO COMPLETION

s 47E(d)

Recommendations:

1. That you **note** the Department is close to concluding settlement negotiations with Castleton Commodities Merchant Asia Co. Pte. Ltd (CCMA), with the parties reaching in principle agreement to the terms of the Deed of Release and Settlement (Settlement Deed).

Noted / Please Discuss

2. That you **agree** to the terms of the settlement consistent with the *Legal Services Directions 2017*.

Agreed / Not Agreed / Please Discuss

3. That you **agree** that the Settlement Deed can be signed by the Head of Oil and Gas Division.

Agreed / Not Agreed / Please Discuss

s 47E(d)

Noted / Please Discuss

5. That you **note** that the current legal proceedings will be discontinued once the Settlement Deed is executed.

s 22

Noted / Please Discuss

Signer

Date: 17/7/2022

Clearing Officer Sent 13 July	s 22	Head of Division, Oil and Gas	s 22
Contact Officer:	s 22	A/g Manager, Policy and Engagement, Northern Endeavour Branch	s 22

s 42, 47E (d)

s 42, 47E (d)

s 42, 47E (d)

s 42, 47E (d)

Archived: Tuesday, 13 December 2022 1:46:03 PM

From: s 22

To: Risk Management

Cc: s 22 Northern Endeavour Policy

Subject: s 47E(d)

[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: Normal

Sensitivity: None

Attachments:

s 47E(d) approval - signed (full).pdf Attachment B s 47E(d)

Risk Assessment for Settlement

Deed.docx;

Hi Team,

Please see the attached s 47E(d) resulting from the Settlement Deed recently negotiated between the Commonwealth and another party, for your information. We consulted with your team (s 22) and Legal Branch on this risk assessment earlier this year.

Kind Regards,

s 22

s 22

Manager Litigation

Oil and Gas Division | Northern Endeavour Branch | Policy & Engagement Team

Ngunnawal Country, 51 Allara Street, (GPO Box 2013), Canberra ACT 2601 Australia

Department of Industry, Science and Resources

s 22 @industry.gov.au

industry.gov.au ABN 74 599 608 295

Supporting economic growth and job creation for all Australians | We are collaborative, innovative, respectful and strive for excellence



Acknowledgement of Country

Our department recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge First Nations Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to their Elders past, present and emerging.



BPB - Northern Endeavour Litigation - CCMA

ISSUE: Northern Endeavour – CCMA v Commonwealth & Ors (NSW Supreme Court)

TALKING POINTS:***What can you tell the committee about this litigation?***

- The Commonwealth of Australia is a party to legal action in the NSW Supreme Court relating to the Northern Endeavour floating production storage and offtake facility.
- A party holding a registered security interest in the facility (Castleton Commodities Merchant Asia Pte. Co. Ltd (CCMA)) commenced the action on 25 November 2020.
- The Commonwealth is the first defendant. The second defendant is Timor Sea Oil & Gas Australia Pty Limited (In Liquidation), which operated the facility prior to being placed into liquidation (on 8 February 2020). The third defendant is Northern Oil & Gas Australia Pty Limited (In Liquidation), the parent company of the second defendant. The companies have filed an appearance and are not taking an active part in the proceedings.
- CCMA and the Commonwealth executed a binding Term Sheet for settlement of the dispute on 29 September 2021 and are negotiating the terms of a deed of release and settlement.

What are the settlement terms?

- The settlement has not yet been completely finalised.
- Making public the content of the agreement could materially impact the rights of a third party and the finalisation process. Discourse may prejudice the court's consideration of the matter.
- I would like to take that question on notice to allow us to notify CCMA about any proposed response.

Where are the proceedings up to?

Contact Name: s 22	
Cleared by: s 22	Clearance Date: 30 March 2022
Witness responding: s 22	

- The litigation remains on foot while the settlement terms are finalised.
- Both CCMA and the Commonwealth filed their evidence in the first half of 2021.
- The parties filed the first tranche of discovery on 17 September 2021.

Key dates

- No hearing date has been set.
- The next directions hearing is scheduled for 4 April 2022.
- The court has ordered the following procedural matters, by 20 May 2022:
 - the parties are to file the remaining tranche of discovery documents;
 - the parties to issue any subpoenas in respect of evidence or documents held by third parties; and
 - CCMA to file and serve its expert evidence in reply.

s 22

- s 22

Matters that should not be disclosed to the Committee

(Note: As this matter is before the Court, the department should not comment on certain matters (beyond what is already in the public domain) – see list set out below).

- As this matter is before the court, it would be not be appropriate to publicly discuss the details of this matter.
- Commenting further on this issue could prejudice the Court's consideration of the matter.

If pressed:

- I'll take that question on notice so that I can seek some advice and come back to you.

Matters which cannot be disclosed

- s 42, 47E(d)

- s 42, 47E(d)

s 22

If asked about costs of litigation/settlement negotiations

- To 28 February 2022, the Commonwealth has **committed** approximately **\$5.15m** (GST inclusive) on the legal proceedings and settlement negotiations.
 - This includes \$4.95m for Clayton Utz and \$0.2m for a litigation and settlement manager.
- Due to the uncertain nature of litigation it is not possible to state the total amount the legal proceedings may cost.
- To 28 February 2022, we have **expensed** approximately **\$4.36m**.

BACKGROUND:

History

s 22

s 22

Litigation and dispute resolution

s 22

s 22

Contact Name: s 22	Contact Number: s 22
Cleared by: s 22	Clearance Date: 31 January 2022
Witness responding: s 22	

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

ISSUE: Northern Endeavour – CCMA v Commonwealth & Ors (NSW Supreme Court)

TALKING POINTS:

What can you tell the committee about this litigation?

- The Commonwealth of Australia is a party to legal action in the NSW Supreme Court relating to the Northern Endeavour floating production storage and offtake facility.
- A party holding a registered security interest in the facility (Castleton Commodities Merchant Asia Pte. Co. Ltd (CCMA)) commenced the action on 25 November 2020.
- The Commonwealth is the first defendant. The second defendant is Timor Sea Oil & Gas Australia Pty Limited (In Liquidation), which operated the facility prior to being placed into liquidation (on 8 February 2020). The third defendant is Northern Oil & Gas Australia Pty Limited (In Liquidation), the parent company of the second defendant. The companies have filed an appearance and are not taking an active part in the proceedings.
- CCMA and the Commonwealth executed binding terms for settlement of the dispute on 29 September 2021 and are negotiating the terms of a deed of release and settlement.

What are the settlement terms?

- The settlement has not yet been completely finalised.
- Making public the content of the agreement could materially impact the rights of a third party and the finalisation process.
- I would like to take that question on notice to allow us to notify CCMA about any proposed response.

Where are the proceedings up to?

- The litigation remains on foot while the settlement terms are finalised.
- Both CCMA and the Commonwealth filed their evidence in the first half of 2021.
- The parties filed the first tranche of discovery on 17 September 2021.

Key dates

- No hearing date has been set.
- The next directions hearing is scheduled for 14 March 2022.
- The court has ordered the following procedural matters, by 20 May 2022:
 - the parties are to file the remaining tranche of discovery documents;
 - the parties to issue any subpoenas in respect of evidence or documents held by third parties; and
 - CCMA to file and serve its expert evidence in reply.

s 22

s 22

s 22***Matters that should not be disclosed to the Committee***

(Note: As this matter is before the Court, the department should not comment on certain matters (beyond what is already in the public domain) – see list set out below).

- As this matter is before the court, it would be not be appropriate to publicly discuss the details of this matter.
- Commenting further on this issue could prejudice the Court's consideration of the matter.

If pressed:

- I'll take that question on notice so that I can seek some advice and come back to you.

Matters which cannot be disclosed

- **s 42, 47E(d)**

s 42, 47E(d)

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22

s 22