



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID448/2024

**WARBURTON ENVIRONMENT INC**

Applicant

**DEPARTMENT OF ENERGY ENVIRONMENT AND CLIMATE ACTION**

Respondent

## **ORDER**

**JUDGE:** Justice Horan

**DATE OF ORDER:** 17 March 2025

**WHERE MADE:** Melbourne

### **THE COURT ORDERS THAT:**

#### **Final hearing**

1. Order 1 of the Orders made on 18 October 2024 is vacated.
2. Orders 5 to 19 and 22 of the orders made on 12 February 2025 are vacated.
3. The matter is listed for final hearing commencing on 1 September 2025 at 10.15 am with an estimate of 7 days.

#### **Pleadings**

4. By 4.00 pm on 24 March 2025, the applicant file and serve a Second Further Amended Statement of Claim.
5. By 4.00 pm on 10 April 2025, the respondent file and serve a Further Amended Defence.
6. By 4.00 pm on 17 April 2025, the applicant file any Reply.

#### **Evidence**

7. By 4.00 pm on 5 May 2025, the applicant file and serve any additional affidavits and expert reports on which it relies.
8. By 4.00 pm on 10 June 2025, the respondent file and serve any affidavits and any expert reports on which it relies.



9. By 4.00 pm on 7 July 2025, the applicant file and serve any affidavits and expert reports on which it relies by way of reply.
10. By 4.00 pm on 1 August 2025, the parties shall confer on objections to evidence and:
  - a. produce a table identifying whether or not each objection is opposed and, in respect of any unresolved objections, setting out the basis of opposition to the objection and any response, with a column titled “Result” that should remain empty; and
  - b. send a joint communication to the Associate to Justice Horan providing a copy of the table of objections in Microsoft Word format reflecting the parties’ discussions.

### **Expert conclave and joint expert reports**

11. The experts engaged on behalf of each of the parties whose evidence addresses the same or substantially the same matters (**Experts**) are to confer in an expert conclave (**Expert Conclave**) facilitated by a Registrar on a date to be fixed between 14 and 18 July 2025.
12. By 4.00 pm on 25 July 2025, the Experts are to prepare and serve on the parties’ legal practitioners a joint report (**Joint Expert Report**) recording:
  - a. the substance of all matters upon which they are agreed; and
  - b. the matters on which they are unable to agree and a succinct statement of the position of each expert in relation to each such matter.
13. The Expert Conclave shall be conducted, and the Joint Expert Report prepared, in the absence of the parties and their solicitors and counsel.
14. The applicant is to file the Joint Expert Report on the day it is provided to the parties by the Experts, subject to it being received by 6.00 pm on a business day, otherwise the applicant is to file it by 4.00 pm the following business day.

### **Submissions, Court Book and authorities**

15. By 4.00 pm on 1 August 2025, the applicant file and serve an outline of opening submissions and a list of authorities.
16. By 4.00 pm on 15 August 2025, the respondent file and serve an outline of opening submissions and a list of authorities.
17. By 4.00 pm on 22 August 2025, the applicant file and serve any outline of opening submissions in reply and a list of authorities.
18. By 4.00 pm on 22 August 2025, the applicant file and serve:



- a. an agreed Court Book in electronic form optimised to permit the use of search and annotation functionality and in accordance with Format 2 of the eBooks Practice Note (GPN-eBOOKS); and
- b. a joint bundle of authorities in electronic form optimised to permit the use of search and annotation functionality and in accordance with Format 1 of the eBooks Practice Note (GPN-eBOOKS).

### **Joint Statements and Trial Plan**

19. Counsel briefed to appear at the trial of this proceeding are to confer and jointly prepare a document which succinctly sets out:
  - a. a statement of agreed facts which sets out the factual matters relevant to the proceeding which are agreed between the parties and which are not, for the purposes of this proceeding, to be disputed; and
  - b. the issues of fact and law which are to be determined in the proceeding.
20. By 4.00 pm on 27 August 2025, the applicant file and serve a copy of the document prepared in accordance with paragraph 19 of these orders.
21. Counsel briefed to appear at the trial of this proceeding are to confer and jointly prepare a document (Trial Plan) which sets out:
  - a. the proposed order of lay evidence;
  - b. the proposed order and structure of expert evidence;
  - c. each witness to be called by each party to the proceeding;
  - d. the time allocated to each witness for examination in chief, cross-examination and re-examination;
  - e. the time allocated for opening submissions and closing submissions; and
  - f. any time allocated for other issues or matters which it is proposed should be dealt with during the trial of the proceeding.
22. By 4.00 pm on 27 August 2025, the parties are to send a joint communication to the Associate to Justice Horan providing a copy of the Trial Plan.

### **Other matters**

23. Liberty to apply.
24. Costs reserved.
25. The matter is listed for a case management hearing at 9.30 am on a date to be fixed not before 15 August 2025.



Date orders authenticated: 17 March 2025

*Sia Lagos*  
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.