HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	M64/2026
File Title:	Oil Basins Ltd v. Esso Australia Resources Pty Ltd (ACN 091
Registry:	Melbourne
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

M64/2026

BETWEEN:

OIL BASINS LTD
Appellant

ESSO AUSTRALIA RESOURCES PTY LTD (ACN 091 829 819) & ORS
Respondents

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FIRST, SECOND AND THIRD RESPONDENTS' OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

This outline is in a form suitable for publication on the internet.

Part II: Outline of propositions to be advanced in oral argument

Appeal

1. Article 16 of the Model Law is imposed, thus providing *Kompetenz-Kompetenz* power on the arbitral tribunal, by force of s 16 of the IAA, in light of the parties' choice of Melbourne as the place of arbitration: RS [45], [46].

2. The law of the seat is the curial law of the arbitration, including the limited possibilities
20 for judicial intervention. Relevantly, they are arts 16(2), 34(2) and 36: RS [53], [71], [78].

3. On questions of scope of disputes within the arbitral tribunal's jurisdiction, these provisions combine to give the arbitral tribunal the first word, subject to *de novo* review by an Australian court as the last word: RS [34], [53].

4. That power is no mere discretion, as an arbitral tribunal could not properly proceed to an award on the merits without deciding it has jurisdiction to make it: RS [37].

5. The parties' dispute concerning the operation of clause 5(b) of the Settlement Agreement, like their dispute about modification of their agreement under clause 5(c), raises a dispute within the broad and comprehensive terms of clause 19(b), and
30 specifically clause 19(b)(ii): RS [24], [25].

6. The contest between the parties concerning the operation of clause 5(b) in light of clause 6B(f), given the nature of the Producers' claims in the arbitration, is a dispute within the scope of clause 19's comprehensive breadth. Clause 5(b) simply limits a remedy following full examination and determination of the merits of the Producers' claim for arbitral modification of the parties' agreement.

7. Section 16 is not subject to the private agreement of parties who have agreed that the place of an arbitration between them will be Australia. Article 16 is imposed by law given that latter circumstance. It is textually distinguished from other powers or provisions in relation to arbitrations governed by the Model Law, where those provisions expressly invite contrary or different agreement by the parties: RS [45], [46].

8. If it matters, the proper law of the arbitration agreement was correctly held below to be that of Victoria. Whatever the proper law, it is found by application of Australian common law choice-of-law rules. They are subject to the operation of applicable Australian legislation, in this case the IAA: RS [40], [41].

9. New York law, without the Model Law, but with the FAA, has nothing to say in this case. In any event, properly understood, the parties' dealings amount to clear and unmistakable evidence of their intention to be bound by art 16: RS [30], [53], [58]–[62], [75].

Cross-Appeal

10. A party who deliberately ignores an arbitration agreement so as to derive an unjustifiable procedural advantage in a court acts in a manner that misuses the judicial facilities in a way to be characterised as a serious departure from the "norm", so as to require judicial discouragement by a more stringent means than an order for costs on a standard basis: RS [80]–[81].

11. Such a category would advance the evident objects of the IAA and its adoption of the Model Law that the parties are to exhaust the arbitral procedure before resorting to a court: IAA ss 2D(a), (d) and (e) 39(2), read in light of arts 5, 6, 16, 34 and 36 of the Model Law: RS [82], [85].

10 November 2026

Bret Walker
Fifth Floor St James' Hall
(02) 8257 2527
caroline.davoren@stjames.net.au

Gregory Harris
Aickin Chambers
03 9225 7271
greg.harris@vicbar.com.au

SCHEDULE OF PARTIES

OIL BASINS LTD
Appellant

and

ESSO AUSTRALIA RESOURCES PTY LTD (ACN 091 829 819)
First Respondent

WOODSIDE ENERGY (BASS STRAIT) PTY LTD (ACN 004 228 004)
Second Respondent

WOODSIDE ENERGY (NORTH WEST SHELF) PTY LTD (ACN 004 514 489)
Third Respondent

BHP GROUP LTD (ACN 004 028 077)
Fourth Respondent