

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	4/05/2026 3:16:19 PM AEST
Date Accepted for Filing:	4/05/2026 3:16:21 PM AEST
File Number:	VID1356/2025
File Title:	AUSTRALIAN CONSERVATION FOUNDATION INC. v MINISTER FOR THE ENVIRONMENT AND WATER & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

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No: VID 1356 of 2025

AUSTRALIAN CONSERVATION FOUNDATION INC
Applicant

MINISTER FOR THE ENVIRONMENT AND WATER
First Respondent

WOODSIDE ENERGY LTD (ACN 005 482 986)
Second Respondent

**APPLICANT'S SUBMISSIONS IN SUPPORT OF INTERLOCUTORY APPLICATION
DATED 13 NOVEMBER 2025**

1. The Applicant supports the application of Ms Astrid Puentes Riaño to be heard as *amicus curiae* in these proceedings in her capacity as United Nations **Special Rapporteur** on the human right to a clean, healthy and sustainable environment.
2. The issues advanced by the Applicant in Ground 1 in VID1400/2025 and Grounds 3 and 4 in VID1356/2025 raise for determination the extent to which the objectives and purpose of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), particularly Australia's "international environmental responsibilities", inform the proper construction of sections 527E and 134(1).¹ The Special Rapporteur's expertise regarding State obligations with respect to the environment and, particularly, environmental impact assessments will offer the Court significant assistance in undertaking this task.
3. While the Court's decision to allow an application to intervene as *amicus curiae* in a proceeding is a matter for the Court's ultimate discretion,² there are several instances of Australian Courts relying on the assistance of UN bodies and international institutions as *amicus curiae* to elucidate how Australia's international obligations might inform issues of domestic statutory construction.³ Most recently, the High Court of Australia has sought assistance from several *amici curiae*, including climate scientists and legal experts in international climate law regarding

¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), s 3; *Acts Interpretation Act 1901* (Cth), s 15AA.

² *Hua Wang Bank Berhad v Commissioner of Taxation* [2013] FCAFC 28; 240 FCR 158, [49].

³ *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004* (2006) 231 CLR 1; *CPCF v Minister for Immigration and Border Protection* (2015) 255 CLR 514; *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473; *Maloney v The Queen* (2013) 252 CLR 168.

the proper construction of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* (NSW).⁴ In light of this, the Applicant’s view is that the expertise that the Special Rapporteur offers to the determination of the issues raised before the Court should be “welcomed, not resisted”.⁵

4. The Applicant considers that any costs occasioned by granting leave to the amicus would be minimal, and in any event not “disproportionate to the expected assistance”.⁶
5. Here, there are *three* matters upon which the Applicant relies in its support of the Special Rapporteur’s application.
6. *First*, there is an inherent international dimension to the EPBC Act and the approvals process therein, which warrants careful consideration in the context of the arguments advanced by the Applicant. The Commonwealth’s power to regulate environmental matters has always been closely linked to its obligations under international treaties.⁷ The objects of the EPBC Act expressly include the implementation of Australia’s international environmental responsibilities.⁸ As such, the Act must remain alive to the content of those obligations. This includes those obligations provided for in the *Convention on Biological Diversity (Biodiversity Convention)* and the *Framework Convention on Climate Change*.⁹
7. Any interpretation undertaken by the Court concerning the context, object and purposes of the EPBC Act, particularly with regard to section 527E, will have implications for Australia’s performance of its international environmental responsibilities. In doing so, the Court will, in effect, be exercising what the High Court has characterised as a “*form of international*

⁴ The Union of Concerned Scientists, ‘Proposed submissions of the Union of Concerned Scientists’, Submission in *MACH Energy Australia Pty Ltd v Denman Aberdeen Muswellbrook Scone Healthy Environment Group Inc*, S174/2025, 19 March 2026; The Centre for Climate Engagement and the Sabin Center for Climate Change Law, ‘Submissions of the Centre for Climate Engagement and the Sabin Center for Climate Change Law seeking leave to appear as amici curiae’, Submission in *MACH Energy Australia Pty Ltd v Denman Aberdeen Muswellbrook Scone Healthy Environment Group Inc*, S174/2025, 19 March 2026; Melbourne Climate Futures. ‘Submissions of Melbourne Climate Futures seeking leave to be heard as amicus curiae’, Submission in *MACH Energy Australia Pty Ltd v Denman Aberdeen Muswellbrook Scone Healthy Environment Group Inc*, S174/2025, 19 March 2026.

⁵ *QAAH*, [78].

⁶ *Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37, [4]; *Hua Wang*, [49].

⁷ The history of Commonwealth environmental regulation is closely linked with the treaty implementation aspect of the external affairs power (s 51(xxix) of the *Constitution*). See e.g. *Commonwealth v Tasmania* (1983) 158 CLR 1; *Richardson v Forestry Commission* (1988) 164 CLR 261.

⁸ EPBC Act, s 3(1)(e). See also: *Minister for the Environment v Sharma* [2022] FCAFC 35; 291 FCR 311, [788]; and generally: *Minister for the Environment and Heritage v Queensland Conservation Council Inc* (2004) 139 FCR 24, [2]; *Commonwealth v Tasmania* (1983) 158 CLR 1, on the Commonwealth’s authority to legislate with respect to the environment.

⁹ *Sharma*, [788].

jurisdiction”¹⁰. In these circumstances, the more assistance that the Court can receive in order to ensure that the international functions of the EPBC Act are discharged, the better. ¹¹

8. *Second*, the Special Rapporteur stands to provide a “*useful source of expertise*”¹² to aid the Court in ensuring that the interpretation of section 527E is one that aligns with the achievement of the EPBC Act’s objectives, particularly the “implementation of Australia’s international environmental responsibilities”. The Court’s decision on the correct construction of section 527E will have flow on ramifications for how the Commonwealth government fulfils its international environmental responsibilities. The Special Rapporteur has specialised expertise in advising on the international dimension of the Court’s decision.
9. As the Applicant canvassed in its written submissions filed 20 April 2026 (AS),¹³ the correct construction of section 527E is one which accords with the findings of the International Court of Justice in its *Advisory Opinion on Obligations of States in respect of Climate Change (ICJ Advisory Opinion)*. The ICJ Advisory Opinion clarifies that States, like Australia, have wide ranging obligations “to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions”.¹⁴ In fulfilment of those obligations, States have a responsibility to conduct environmental impact assessments “with respect to particularly significant proposed individual activities contributing to GHG emissions to be undertaken within their jurisdiction or control, on the basis of the best available science.”¹⁵
10. The EPBC Act creates a system of environmental impact assessment. As set out at AS [160] – [175], this system involves identification of actions which will or are likely to have a significant impact on a matter of national environmental significance (‘controlled actions’), and then provides for assessment of those impacts. Taking up the ICJ’s language of “particularly significant proposed individual activities contributing to GHG emissions”, the North West Shelf project will emit 87.89 million tonnes of CO₂-e per year.¹⁶ Most of those will be emitted overseas. Even if the analysis were confined to domestic emissions, the Minister noted that the

¹⁰ *Al-Kateb v Godwin* [2004] HCA 37; 219 CLR 562, [168]; *QAAH*, [78].

¹¹ *QAAH*, [78].

¹² *QAAH*, [80].

¹³ AS, [222]-[223].

¹⁴ International Court of Justice (Advisory Opinion on Obligations of States in respect of Climate Change) [2025] General List No.187 (ICJ AO), [129], [197], [200], [325]-[330] and [316].

¹⁵ ICJ AO, [298].

¹⁶ Reconsideration Reasons at [79], Table 2.

emissions within Australia from this single project represent 4.18% of Australia’s total annual emissions.¹⁷ That is, on any measure, a substantial contribution to Australia’s emissions.¹⁸

11. In circumstances where the proper construction of section 527E is in issue, the context provided by Australia’s international environmental responsibilities is all the more relevant. As noted above, the EPBC Act purports to give effect to a number of treaties. In particular, it draws several of its objects and key elements from the Biodiversity Convention.¹⁹ Under that Convention, States are required to identify and monitor processes that have or are likely to have, significant adverse impacts on biodiversity.²⁰ The ICJ AO highlights that “*irreversible loss of biodiversity*” is one of the consequences of climate change, and further identifies the Biodiversity Convention as part of the “most directly relevant applicable law” regarding the protection of the climate system.²¹ Given that the EPBC Act has been recognised as the “*only domestic environmental protection and assessment mechanism available at federal level in relation to MNES*,”²² it is the only avenue through which Australia can meet its Convention obligations. In the Applicant’s view, the Special Rapporteur’s expertise will provide the Court with significant assistance in determining the interaction between Australia’s obligations under the Biodiversity Convention and the system of impact assessment set out in the EPBC Act.²³ That is also the case for Australia’s other international environmental responsibilities.
12. *Third*, the Special Rapporteur can similarly provide expertise with respect to the proper exercise of power under section 134(1) in at least two respects. First, with respect to guiding the Court as to the nature and content of Australia’s international environmental responsibilities, which must inform the proper construction of the Minister’s task under section 134(1). Secondly, with respect to guiding the Court toward a thorough understanding of the principles of ecologically sustainable development and the precautionary principle, which inform the risk analysis

¹⁷ Using 2022 levels for Australia’s emissions: Reconsideration Reasons at [80].

¹⁸ Whether a project is a “particularly significant individual activity” in terms of its GHG emissions is a very different question to whether an individual action is a “substantial cause” of the physical effects of climate change. But both may require the placing of numbers into context. As to the “substantial cause” question, the applicant’s position in AS [218] – [219] is that simple qualitative analysis is insufficient: context and quantitative analysis is required.

¹⁹ Convention on Biological Diversity [1993] ATS 32 (**Biodiversity Convention**).

²⁰ Biodiversity Convention art 7.

²¹ ICJ AO at [73], [129], and [173].

²² *Environment Council of Central Queensland Inc v Minister for Environment and Water* (2024) 204 FCR 91, [143] (Mortimer CJ).

²³ *QAAH*, [75].

undertaken under section 134(1) and are themselves borne out of and informed by international law.²⁴

13. For these reasons, the Applicant supports the Special Rapporteur's application to be heard as *amicus curiae* in these proceedings. The Applicant's support also extends to any grant of leave that may be made to permit the Special Rapporteur to make confined oral submissions during the hearing of these proceedings.

Dated: 4 May 2026



A SCOTT KC

J UNDERWOOD



H DOUGLAS

²⁴ In determining which conditions to attach to an approval, the Minister must consider the principles of ecologically sustainable development: EPBC Act, s 136(2)(a); *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; 299 FCR 236, [92].