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Important Information

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IN THE FEDERAL COURT OF AUSTRALIA NO. VID 1356/2025
DISTRICT REGISTRY: VICTORIA VID 1357/2025
DIVISION: GENERAL VID 1400/2025

Australian Conservation Foundation Inc Applicant in VID 1356/2025 & 1400/2025

Friends of Australian Rock Art Inc Applicant in VID 1357/2025

and

Minister for Environment and Water First Respondent in all matters

Woodside Energy Ltd Second Respondent in all matters

SUBMISSIONS IN REPLY ON INTERLOCUTORY APPLICATION TO BE HEARD AS *AMICUS CURIAE*[1]

1 The Special Rapporteur files these submissions across all proceedings in reply to those of the Australian Conservation Foundation Inc (**ACF**), Friends of Australian Rock Art Inc (**FARA**), the **Minister** for Environment and Water, and **Woodside** Energy Ltd. The position of those respective parties is as follows.

1.1 The ACF supports the Special Rapporteur's applications in VID1356 and 1400/2025, including as to oral submissions. It submits that the Special Rapporteur's expertise will offer significant assistance to the Court and would result in minimal additional cost that would not be disproportionate to the expected assistance.

1.2 FARA supports the Special Rapporteur's applications in VID1357/2025, including as to oral submissions, which FARA accepts should be deducted from the Applicants' time for oral submissions. It submits that the Special Rapporteur's submission will offer the Court the benefit of a larger view of the matter before it than the parties are in a position to offer.

1.3 The Minister neither consents to nor opposes the Special Rapporteur's applications in any of the proceedings, but submits that oral submissions from the Special Rapporteur are unlikely to be required.

[1] These submissions adopt the abbreviations used in the Special Rapporteur's submissions in chief in support of the application to be heard as *amicus curiae*, dated 27 April 2026, and her proposed substantive submissions, also dated 27 April 2026.

1.4 Woodside opposes the Special Rapporteur's applications in all proceedings and submits in the alternative that any grant of leave should be limited to written submissions.

2 In reply, the Special Rapporteur explains below why, in the first place, there should be a grant of leave and why that grant should extend to the making of confined oral submissions.

LEAVE SHOULD BE GRANTED

Section 527E and the meaning of 'substantial cause'

3 Insofar as the Special Rapporteur's applications relate to the interpretation of s 527E of the EPBC Act and the meaning of 'substantial cause' in VID 1356 and 1400/2025, Woodside submits that the Special Rapporteur's proposed submissions repeat, and are the same as, those of the ACF: Outline of submissions of the second respondent in response to interlocutory application to be heard as *amicus curiae* dated 4 May 2026 (**Woodside's submissions** or **WS**) [8]-[9], [13]. That is incorrect.

4 The submissions of the ACF and the Special Rapporteur may be aligned, but the ACF's submissions on this topic are confined to two paragraphs in 102 pages of submissions,[2] refer only to the Biodiversity Convention and the UNFCCC, and do not explore in any detail the way in which international obligations can inform the interpretation of domestic law. The Special Rapporteur's submissions go considerably further, including by explaining the relevance of Australia's 'due diligence' obligation at international law and its relation to the precautionary principle. The Special Rapporteur also makes submissions concerning the relevance of the Paris Agreement, which is not discussed by the ACF in its submissions and raises potentially difficult questions as to the relevance of post-enactment international obligations (cf WS [13]). Accordingly, there is no merit in Woodside's repetition contention.

5 Further, Woodside's reliance on ***Wurridjal*** *v The Commonwealth*[3] is inapt (WS [9]). In that case, two law professors sought leave to make submissions as *amici curiae* in proceedings in the High Court's original jurisdiction on the question of whether estates in fee simple held by an Aboriginal Land Trust constituted property within the meaning

[2] Applicant's outline of submissions in VID1356 dated 20 April 2026 (**ACF's substantive submissions**) [222]-[223]. The ACF adopts these submissions in VID 1400.
[3] (2009) 237 CLR 309.

of s 51(xxxi) of the *Constitution*. The law professors filed 'a large volume of material' said to be relevant to that question but which was comprised of 'international law instruments and international jurisprudence'.[4] The law professors 'did not show how, having regard to the particular statutory framework' the material was 'of any relevance'.[5] Accordingly, a majority of the Court (Kirby J dissenting) refused leave. Thus, the case involved a basal failure by the proposed *amici* to demonstrate how their submissions were of *any* relevance to the issue before the Court.

6 Woodside's reference to ***Blasket Renewable*** *Investments LLC v Kingdom of Spain*[6] (WS [11]) is also misplaced. That case concerned an application for leave to intervene, not be heard as *amicus*. The European Commission proposed to make submissions limited to two pages, which advanced only two contentions.[7] The first of those contentions 'merely affirm[ed]' the submission made by one of the parties.[8] The second of the proposed submissions concerned matters that the Court held 'do not arise' and thus were 'irrelevant'; further, that submission was again 'no different' to that advanced by one of the parties.[9] There is no analogy with the Special Rapporteur's proposed submissions here.

7 *Blasket* is also distinguishable on its facts in two important respects. First, the party supported by the European Commission was Spain itself – a sovereign state directly bound by and operating under the relevant EU law obligations. Second, as Stewart J observed, even accepting Spain's characterisation of EU law, the determinative question in *Blasket* was its effect on public international law binding Australia, a matter on which the Commission's proposed submissions added nothing to Spain's case. The present proceedings are not equivalent; the Special Rapporteur is uniquely placed to make submissions concerning the body of international law of relevance to the issues in these proceedings.

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[4] *Wurridjal* (2009) 237 CLR 309, 312 (French CJ).
[5] *Wurridjal* (2009) 237 CLR 309, 313 (French CJ).
[6] [2025] FCA 1028.
[7] *Blasket Renewable* [2025] FCA 1028, [352]-[353] (Stewart J). The Commission also sought to make a third submission concerning the *Micula* litigation, which the Court likewise dismissed on the basis that it added nothing beyond Spain's contribution: at [363] (Stewart J).
[8] *Blasket Renewable* [2025] FCA 1028, [361] (Stewart J).
[9] *Blasket Renewable* [2025] FCA 1028, [362] (Stewart J).

8 Woodside's submission that the Special Rapporteur's expertise is irrelevant should also be rejected (WS [10]). While Woodside does not take issue with the Special Rapporteur's expertise (nor could it), it submits that her submissions about the ICJ's Advisory Opinion are not by reference to her expertise (WS [10]). That submission is difficult to understand given the Special Rapporteur's work is cited in the Advisory Opinion and her submissions in this Court on the Advisory Opinion are informed by her deep familiarity with that proceeding and her internationally recognised expertise in its subject matter.

9 That the Special Rapporteur speaks independently of the United Nations rather than on its behalf (see WS [10]) does not diminish the value of the Special Rapporteur's proposed contribution; it is that independence from institutional or diplomatic constraint that equips her to provide the Court with objective specialist analysis.

10 On the Special Rapporteur's expertise, Woodside also submits that it is irrelevant because it is related to human rights (WS [12]). It is correct that the Special Rapporteur's mandate is referable to a human right, but is a human right *to the environment*. Thus, the Special Rapporteur's mandate is centrally concerned with the obligations of States to protect the environment to ensure its enjoyment. This, of course, is also a central concern of the EPBC Act – to preserve the environment 'for the benefit of future generations'.[10] That is not to say that the EPBC Act is concerned with the protection of human rights (it is not) but that the substance of the Special Rapporteur's expertise is directly engaged by the questions the Court must resolve in these proceedings.[11]

Section 137A and the obligation to 'not act inconsistently' with National heritage management principles

11 The submissions the Special Rapporteur seeks to make on this issue are very confined. It is correct that the Special Rapporteur does not seek to make submissions on the separate question on ground 6, however the submissions the Special Rapporteur seeks to make are common to both grounds 6 and 7 such that nothing would be gained by refusing leave on ground 6 'at this point' (cf WS [14]).

12 The Court would benefit from having the Special Rapporteur's submissions on the content of the obligation in s 137A and particularly National heritage management

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[10] EPBC Act s 3A(c). See also s 528.
[11] *Minister for the Environment v Sharma* (2022) 291 FCR 311, [125]-[126] (Allsop CJ).

principles (contra WS [15]). As FARA note in support of the Special Rapporteur's application, there is limited domestic case law on these principles.[12] Thus, it is respectfully submitted that the Court would benefit from the Special Rapporteur's submissions concerning their interpretation, especially in light of their direct parallels with international law principles (in particular, the principle of intergenerational equity). Contrary to Woodside's submission (WS [15]), the Special Rapporteur *does* have expertise bearing upon the principle of intergenerational equity, and has made submissions to the African Court of Human and Peoples' Rights on this principle as recently as 30 March 2026.[13] The Special Rapporteur's earlier report on impact assessments also discusses the relevance of this principle.[14]

Section 134(1) and the power to attach conditions 'necessary or convenient' or 'protecting', 'repairing or mitigating'

13 Again, the Special Rapporteur only proposes limited submissions on this issue. The Court would nevertheless be assisted by those submissions given they are different to the submissions the ACF seeks to make[15] but have been expressly endorsed by the ACF as bearing upon the construction of s 134(1) in at least two ways.[16] Similarly, FARA's submissions on the proper construction of s 134(1) are (understandably) limited to characterising the task required by that section as 'evaluative' and making passing reference to its purpose;[17] FARA otherwise focusses on the facts of this case. In those circumstances, it is contended that the Court would be assisted by having 'a larger view'[18] of the international law context to s 134(1) (contra WS [16]).

'Interference'

14 Woodside complains that granting the application of the Special Rapporteur would require additional work from the parties to consider and, if necessary, respond to the Special Rapporteur's submissions (WS [17]-[21]). That is true, but it is also an inevitable

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[12] Submissions of the applicant in support of leave for the amicus curiae in VID1357/2025 dated 4 May 2026 [2.2].
[13] Affidavits of David Burke dated 27 April 2026 filed in each proceeding pp 37-38.
[14] Affidavits of David Burke dated 13 November 2025 filed in each proceeding pp 103-104.
[15] See the ACF's substantive submissions [193]-[206].
[16] Applicant's submissions in support of interlocutory application dated 13 November 2025 in VID1356/2026 dated 4 May 2026 [12]. The ACF adopts these submissions in VID 1400.
[17] See, eg, Outline of submissions of the applicant in VID1357/2025 dated 13 April 2026 (**FARA's substantive submissions**) [121], [126].
[18] *Wurridjal* (2009) 237 CLR 309, 312 (French CJ).

consequence of any grant of leave to an *amicus curiae*. Especially is that so where here, the gist of Woodside's response to the Special Rapporteur's submissions is already apparent from its submissions opposing leave, namely, that international law has very little relevance (if any) to the interpretative tasks before the Court. That is not a submission that is capable of a great deal of development; in those circumstances, the Court would not infer that Woodside would incur disproportionate costs in responding to any grant of leave to the Special Rapporteur.

15 Woodside otherwise emphasises the fact that these proceedings raise a large number of legal issues and potentially a large body of evidence (WS [18]-[19]). That simply underscores the confined nature of the Special Rapporteur's proposed contribution.

GRANT OF LEAVE SHOULD EXTEND TO CONFINED ORAL SUBMISSIONS

16 FARA has accepted in writing that if the Special Rapporteur is granted leave to be heard orally her time should be taken from what would otherwise have been afforded to the applicants.[19] The ACF has confirmed in correspondence that it takes the same position. This deals with Woodside's concern about the adequacy of time (WS [23]).

Kathleen Foley
Alofipo So'oalo Fleur Ramsay
Julian R Murphy
Laura Schuijers

On behalf of Astrid Puentes Riaño, the United Nations Special Rapporteur for the human right to a clean, healthy and sustainable environment

[19] Submissions of the applicant in support of leave for the amicus curiae in VID1357/2025 dated 4 May 2026 [4].