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**Important Information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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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 SUPPORT OF INTERLOCUTORY APPLICATION TO BE HEARD AS *AMICUS CURIAE*

1 By interlocutory applications dated 13 November 2025, Astrid Puentes Riaño – in her capacity as United Nations **Special Rapporteur** on the human right to a clean, healthy and sustainable environment – has applied to be heard as *amicus curiae* in these proceedings.[1] In particular, she seeks to be heard on the international law context to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) insofar as it is relevant to the proceedings. These submissions explain why the Court should grant the Special Rapporteur leave to be heard.

2 In support of the application, the Special Rapporteur relies on the affidavits of David Burke dated 13 November 2025 and 27 April 2026.[2] The latter of those affidavits annexes the substantive submissions that the Special Rapporteur proposes to rely on should she be granted leave to be heard. This approach is consistent with that which was foreshadowed by counsel for the Special Rapporteur at the first case management hearing on 14 November 2025.

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[1] The applications are alternatively styled as seeking that an order that counsel be heard from. That was drawn from *Hua Wang Bank Berhad v Federal Commissioner of Taxation* (2013) 92 ATR 809, [49]-[50]. However, it is respectfully submitted that the more orthodox approach where an individual or entity seeks to be heard as amicus is that the individual or entity, rather than their counsel, be granted leave to be heard as amicus. The position is different where the Court seeks the assistance of counsel, whether by way of general assistance or as contradictor; in those cases, it makes sense to speak of counsel as the amicus, as the counsel is not representing any person: see, eg, *Australian Securities and Investments Commission v Whitebox Trading Pty Ltd* (2017) 251 FCR 448, [4]; *Raghubir v Nicolopoulos* (2022) 402 ALR 532, [5].
[2] Identical affidavits have been filed in each of the proceedings.

**PRINCIPLES & ILLUSTRATIONS OF THEIR APPLICATION TO U.N. BODIES**

3 The principles governing an application to be heard as *amicus curiae* in this Court were conveniently summarised in ***H**ua **W**ang **B**ank **B**erhad v Federal Commissioner of Taxation*.[3] The Court there quoted from earlier authority to the effect that the clearest example of an amicus curiae is an 'official body' or 'entit[y] acting in the public interest'.[4]

4 The Court in *HWBB* also quoted the guiding principle articulated in ***Roadshow Films** Pty Ltd v iiNet Ltd*:

> The grant of leave for a person to be heard as an amicus curiae is not dependent upon the same conditions in relation to legal interest as the grant of leave to intervene. The Court will need to be satisfied, however, that it will be significantly assisted by the submissions of the amicus and that any costs to the parties or any delay consequent on agreeing to hear the amicus is not disproportionate to the expected assistance.[5]

5 As to the type of assistance that an amicus may afford, it has been recognised that in some cases they can provide 'the benefit of a larger view of the matter before it than the parties are able or willing to offer'.[6]

6 In applying those principles, Australian courts have previously recognised the assistance that can be gained from hearing from a United Nations body or institution. For example, in *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004*,[7] the High Court granted leave to the United Nations High Commissioner for Refugees (**UNHCR**) to be heard as amicus curiae, limited to written submissions.[8] The amicus' contribution in that case related to Australia's obligations under the Convention relating to the Status of Refugees and the extent to which those obligations were given effect to in the *Migration Act 1958* (Cth). In *CPCF v Minister for Immigration and Border Protection*,[9] the High Court again granted the UNHCR leave to be heard as amicus relevantly on issues concerning Australia's international law obligations and their relevance to domestic law, in this instance the *Maritime Powers Act 2013* (Cth).

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[3] (2013) 92 ATR 809, [46]-[52].
[4] *Sharman Networks Ltd v Universal Music Australia Pty Ltd* (2006) 155 FCR 291, [8]-[9] (the Court).
[5] (2011) 248 CLR 37, [4].
[6] *Wurridjal v The Commonwealth* (2009) 237 CLR 309, 312 (French CJ).
[7] (2006) 231 CLR 1.
[8] Justice Kirby would have extended the grant of leave to oral submissions: [77].
[9] (2015) 255 CLR 514.

7 Leaving aside United Nations bodies, there are many examples of this Court and the High Court granting leave to a party to be heard as amicus on the international law context to a particular legal question, including questions of statutory interpretation. In *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs*,[10] the High Court granted leave to Amnesty International Australia to be heard as *amicus curiae*, limited to written submissions,[11] on the topic of Australia's international law obligations with respect to refugees. In ***Maloney*** *v The Queen*,[12] the High Court granted leave to the National Congress of Australia's First Peoples Limited to be heard as *amicus curiae* on the interaction of international obligations with respect to discrimination and the domestic *Racial Discrimination Act 1975* (Cth).

8 It remains to explain how the application of the above principles calls for a grant of leave in the present case.

## APPLICATION OF PRINCIPLES TO THE PRESENT CASE

9 As has been adverted to above, the authorities show that often the strongest candidates to be heard as *amici curiae* are official bodies or entities 'acting in the public interest'.[13] It is respectfully submitted that the Special Rapporteur is so acting. In that regard, the Special Rapporteur refers to the role of special rapporteurs as providing independent expertise without remuneration.[14] The subject matter of the Special Rapporteur's mandate makes clear that she is acting in the public interest.[15]

10 Further, the Special Rapporteur is well positioned to assist the Court on the subject of Australia's international law obligations with respect to the environment. The Special Rapporteur has subject matter expertise and experience in respect of such obligations, which expertise and experience is a necessary condition for being appointed a special rapporteur.[16] The Special Rapporteur has particular expertise in international law as it relates to environmental impacts assessments, having authored a report for the United Nations on the international law framework for environmental, social and human rights

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[10] (2003) 216 CLR 473.
[11] See *Appellant S395-2002, S396-2002 v MIMIA* [2003] HCATrans 640.
[12] (2013) 252 CLR 168.
[13] *Sharman Networks Ltd v Universal Music Australia Pty Ltd* (2006) 155 FCR 291, [8]-[9] (the Court).
[14] Affidavits of David Burke dated 13 November 2025, [3].
[15] Affidavits of David Burke dated 13 November 2025, [10].
[16] Affidavits of David Burke dated 13 November 2025, [3].

impact assessments and the right to a clean, healthy and sustainable environment.[17] The Special Rapporteur's international law expertise extends beyond environmental impacts assessments, and encompasses all aspects of the right to a clean, healthy and sustainable environment, including (most relevantly for present purposes) the international law obligations (including under customary international law) of states parties in response to climate change. The Special Rapporteur's expertise in this regard is reflected in the fact her work was cited by members of the International Court of Justice in its watershed Advisory Opinion on the Obligations of States in respect of Climate Change, given on 23 July 2025.[18]

11 Of course, if Australia's international law obligations were irrelevant to the issues for the Court's determination, then the Court would not be assisted by receiving submissions on them. However, it cannot be said that such obligations are irrelevant. As is outlined in more detail in the proposed substantive submissions,[19] it has long been recognised that: 'The EPBC Act was enacted to implement the provisions of the *Convention on Biological Diversity 1992* and other international environmental agreements into Australian law.'[20] The text and context of the EPBC Act confirms the relevance of international law obligations. It is accepted, however, that the precise international law obligations that are relevant to the interpretation of the EPBC Act, and the extent to which they bear upon the precise interpretative questions raised by the present proceedings, is a matter that may be in contest between the Special Rapporteur and at least some of the parties to these proceedings. However, that is exactly the sort of contest that is likely to assist the Court.

12 In this regard, it is noted that in *Maloney*, the High Court granted leave to an entity to be heard as *amicus curiae* on the issue of whether the absence of consent precluded a law being characterised as a 'special measure' for the purposes of international and domestic discrimination law. In the ultimate, the High Court did not accept that contention, but that did not prevent it granting leave to allow submissions on the point.

13 For those reasons, the Court should conclude that it would be assisted by hearing from the Special Rapporteur. Especially is that so when this topic is not dealt with in detail in

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[17] The report is reproduced at DB-5 of the affidavits of David Burke dated 13 November 2025.
[18] Affidavits of David Burke dated 13 November 2025, [13]. Note, the advisory opinion is wrongly identified in the affidavit as *Advisory Opinion AO-32/25: Climate Emergency and Human Rights* (May 29, 2025).
[19] Affidavits of David Burke dated 27 April 2026, annexure DB-6.
[20] *Minister for the Environment and Heritage v Queensland Conservation Council Inc* (2004) 139 FCR 24, [2].

the applicants' written submissions.[21] In short, the Special Rapporteur 'will make submissions which the Court should have to assist it to reach a correct determination', including submissions on issues 'not fully argued' or not 'fully covered' in the other parties' submissions.[22]

14 Balanced against those matters, it is accepted that the Special Rapporteur's contribution will cause some additional costs to be incurred by the parties (by way of their increased preparation only, as the Special Rapporteur is not seeking any costs[23]). However, even if the Special Rapporteur's applications were refused, the parties would still need to prepare to address the Court on *all* relevant features of the statutory scheme, not just the features of the scheme relied upon by the opposing party. That is because in the field of statutory interpretation the Court is not bound by the parties' positions (so long as it affords them procedural fairness).[24] Accordingly, the Court should conclude that the *additional* costs incurred by reason of the Special Rapporteur being granted leave to be heard would be relatively modest. Further, there would be no delay caused by such a grant of leave, as the hearing date is fixed and would not be affected. If any grant of leave to the Special Rapporteur extended to oral submissions, those oral submissions would be made in an efficient and confined way.

## CONCLUSION

15 For the above reasons, it is respectfully submitted that the Court should grant the application for the Special Rapporteur to be heard as *amicus curiae* in these proceedings.

**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**

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[21] *Levy v Victoria* (1997) 189 CLR 579, 603 (Brennan CJ). See also *Roadshow Films* (2011) 248 CLR 37, [6] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ).
[22] *Roadshow Films* (2011) 248 CLR 37, [6], [7(3)] and [7(5)] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ).
[23] Affidavits of David Burke dated 13 November 2025, [29].
[24] *Coleman v Power* (2004) 220 CLR 1, [243] (Kirby J).