

**HUMANE SOCIETY INTERNATIONAL INC**

Applicant

**KYODO SENPAKU KAISHA LTD**

Respondent

**AMENDED STATEMENT OF CLAIM**  
(Order 4, rule 6, Order 11)

1. The applicant is an interested person for the making of the application within the meaning of section 475 of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Particulars**

- (a) The applicant is incorporated in Australia.
  - (b) To the extent that the application relates to conduct – during the 2 years immediately before the conduct the subject of the application:
    - (i) the applicant's objects or purposes included the protection or conservation of, or research into, the environment; and
    - (ii) the applicant engaged in a series of activities related to the protection or conservation of, or research into, the environment.
  - (c) To the extent that the application relates to proposed conduct – during the 2 years immediately before the making of the application:
    - (i) the applicant's objects or purposes included the protection or conservation of, or research into, the environment; and
    - (ii) the applicant engaged in a series of activities related to the protection or conservation of, or research into, the environment.
2. At all times material to the making of this application the respondent has been and is a company incorporated in Japan and capable of being sued.

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AMENDED STATEMENT OF CLAIM  
Filed on behalf of the applicant  
Form 7, O 4, r 6, O 11, O 13, r 3

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3. Section 225 of the *Environment Protection and Biodiversity Conservation Act 1999* established the Australian Whale Sanctuary on 16 July 2000.
4. The Australian Whale Sanctuary comprises, amongst other areas, the waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory.
5. The Antarctic minke whale species (*Balaenoptera bonaerensis*), also commonly known as the "Southern Hemisphere minke whale", is a member of the Order Cetacea (whales, dolphins and porpoises), Sub-order Mysticeti (baleen whales or mysticetes) and Family Balaenopteridae. Each Antarctic minke whale, part of an Antarctic minke whale and any product derived from an Antarctic minke whale is therefore a cetacean for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999*.
6. The respondent has intentionally engaged in a series of activities that have resulted in Antarctic minke whales being killed, taken and interfered with in the Australian Whale Sanctuary, and subsequently intentionally treated and possessed those whales, in contravention of sections 229, 229A, 229B, 229C, 229D and 230 of the *Environment Protection and Biodiversity Conservation Act 1999*.

#### Particulars

- (a) Between or about 25 February 2001 to 20 March 2001, in the order of ~~36~~ 65 Antarctic minke whales were intentionally killed, taken and interfered with by employees or agents of the respondent in the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory between Longitude 130° East to Longitude 136° East and Longitude 142° East to Longitude 160° East.
- (b) Between or about 29 November 2001 to 9 March 2002, in the order of 215 Antarctic minke whales were intentionally killed, taken and interfered with by employees or agents of the respondent in the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory between Longitude 45° East to Longitude 136° East.
- (c) Between or about 21 February 2003 to 8 March 2003, in the order of ~~13~~ 21 Antarctic minke whales were intentionally killed, taken and interfered with by employees or agents of the respondent in the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory between Longitude 130° East to Longitude 136° East and Longitude 142° East to Longitude 160° East.
- (d) Between or about 30 November 2003 to 3 March 2004, in the order of 164 Antarctic minke whales were intentionally killed, taken and interfered with by employees or agents of the respondent in the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline

established under international law of the Australian Antarctic Territory between Longitude 45° East to Longitude 136° East.

- (e) Between or about 25 February 2005 to 8 March 2005, in the order of 20 Antarctic minke whales were intentionally killed, taken and interfered with by employees or agents of the respondent in the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory between Longitude 130° East to Longitude 136° East and Longitude 142° East to Longitude 160° East.
- (f) The whales, and parts and products of the whales, particularised in paragraphs 6(a)–(e) were subsequently intentionally treated and possessed by employees or agents of the respondent and sold as whale products in Japan.
- (g) The conduct particularised in paragraphs 6(a)–(f) was engaged in using 5 vessels owned by the respondent, being the:
- (i) *Nisshin Maru* (7,575 gross tonnage vessel);
  - (ii) *Yushin Maru* (720 gross tonnage vessel);
  - (iii) *Kyo Maru No.1* (812.08 gross tonnage vessel);
  - (iv) *Kyoshin Maru No. 2* (372 gross tonnage vessel);
- and, prior to 2002/2003:
- (v) *Toshi Maru No. 25* (739.92 gross tonnage vessel);
- and, from 2002/2003:
- (vi) *Yushin Maru No. 2* (747 gross tonnage vessel).
7. The conduct set out and particularised in paragraph 6 of this Amended Statement of Claim was ~~purported to be~~ done in accordance with the Japanese Whaling Research Program under Special Permit in the Antarctic (JARPA) issued by the Government of Japan to the respondent under Article VIII of the *International Convention for the Regulation of Whaling (International Whaling Convention) 1946* (“the Special Permit”). This program has been conducted since 1987/1988.
8. The Special Permit is not a recognised foreign authority for the purposes of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980*.
9. The conduct set out and particularised in paragraph 6 of this Statement of Claim was not authorised by any permit or recognised foreign authority for the purposes of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980*.
10. At no time has the respondent been permitted or authorised to kill, take, interfere with, treat or possess Antarctic minke whales in accordance with sections 231, 232 or 238 of the *Environment Protection and Biodiversity Conservation Act 1999*.

11. Unless restrained by the Court, the respondent proposes to ~~continue to~~ intentionally kill, take, interfere with, treat and possess Antarctic minke whales, fin whales and humpback whales in contravention of sections 229, 229A, 229B, 229C, 229D and 230 of the *Environment Protection and Biodiversity Conservation Act 1999* in the future.

#### Particulars

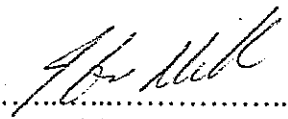
- (a) Between or about late ~~February~~ November 2005 to early March ~~2005~~ 2006, the respondent proposes to intentionally kill, take and interfere with, in the order of ~~13 to 36~~ 300 to 450 Antarctic minke whales in the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory between Longitude ~~142° 45'~~ 142° 45' East to Longitude ~~160° 136'~~ 160° 136' East.
- (b) The respondent proposes to intentionally treat and possess the whales, and parts and products of the whales, particularised in paragraph 11(a), and to sell the parts and products in Japan.
- (c) The respondent proposes to continue activities similar to the conduct set out and particularised in paragraph 6 of this Amended Statement of Claim in subsequent years, with the exception that the number of Antarctic minke whales killed will be approximately doubled.
- (d) In 2005/2006 and 2006/2007 the respondent proposes to intentionally kill, take and interfere with 10 fin whales, a proportion of which will be killed and taken within the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory.
- (e) In 2007/2008 and subsequent years the respondent proposes to intentionally kill, take and interfere with 50 fin whales and 50 humpback whales per year, a proportion of which will be killed and taken within the Australian Whale Sanctuary in waters within 200 international nautical miles seaward of the baseline established under international law of the Australian Antarctic Territory.
- (f) The respondent proposes to intentionally treat and possess the whales, and parts and products of the whales, particularised in paragraph 11(d) and (e), and to sell the parts and products in Japan.
12. The fin whale species (*Balaenoptera physalus*) and the humpback whale species (*Megaptera novaeangliae*) are members of the Order Cetacea (whales, dolphins and porpoises). Sub-order Mysticeti (baleen whales or mysticetes) and Family Balaenopteridae. Each individual, part of, or product derived from a fin whale or humpback whale is therefore a cetacean for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999*.
13. The fin whale species and the humpback whale species are both included in the vulnerable category in the list of threatened species established under section 178 of the *Environment Protection and Biodiversity Conservation Act 1999*.

14. The future killing, injuring and taking of whales particularised in paragraph 11 of this Amended Statement of Claim is proposed to be done in accordance with the Second Phase of the Japanese Whaling Research Program under Special Permit in the Antarctic (JARPA II), issued by the Government of Japan to the respondent under Article VIII of the *International Convention for the Regulation of Whaling (International Whaling Convention) 1946* ("the Second Special Permit").
15. The Second Special Permit is not a recognised foreign authority for the purposes of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980*.
16. The conduct set out and particularised in paragraph 11 of this Amended Statement of Claim is not authorised by any permit or recognised foreign authority for the purposes of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980*.

The applicant claims the relief specified in the application.

This pleading was prepared by Stephen Gageler SC and Chris McGrath of counsel.

Dated: 27 July 2005

  
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Iona Millar (Principal Solicitor)

#### NOTICE OF AMENDMENT

This pleading was amended on 27 July 2005, pursuant to Order 13, rule 3(1) of the Rules.