

**Senate Environment and Communications Legislation Committee
Inquiry into the Protecting the Spirit of Sea Country Bill**

NOPSEMA - Responses to Questions on Notice

1 - In response to two successful judicial reviews that found NOPSEMA had made a legal error in approving Environment Plans despite inadequate consultation, NOPSEMA has revised two sets of regulations around consultation, including the updated guideline released in May this year. Has this guideline made any difference to the consultation processes of companies, and how is this impact being assessed?

Further to NOPSEMA's response at the hearing (*available on page 7 of the official Hansard*), the consultation requirements, as clarified in case law, have grown substantially and are now more complex. There has been a significant increase in consultation undertaken by titleholders, corresponding content in environment plans, and associated assessment and response timeframes. NOPSEMA assessments now take approximately 75% longer on average, while responses from titleholders can take up to 175% longer, predominantly because of the increased consultation undertaken by titleholders.

NOPSEMA engages with titleholders to provide advice on consistency and quality of consultation with relevant persons including First Nations groups. NOPSEMA also engages with relevant persons including First Nations organisations and people to provide information on the broadened consultation requirements, the environmental plan assessment process, and NOPSEMA's role as the independent regulator.

In 2024 NOPSEMA has met with:

- National Native Title Council
- Bardi Jawi Niimidiman Aboriginal Corporation RNTBC
- Eastern Maar Aboriginal Corporation
- Gunaikurnai Land and Waters Aboriginal Corporation
- Gunditj Mirring Aboriginal Corporation
- Murujuga Aboriginal Corporation
- Ngarluma Yindjibarndi Foundation
- Tiwi Land Council
- Sea Country Alliance
- Top End Aboriginal Coastal Alliance
- Attended the Australian Sea Country Conference.

We have also:

- Published a [policy on Managing gender-restricted information](#) and other culturally sensitive or restricted information following a public comment period (20 December 2023).
- Held a Better Practice Forum with titleholders on consultation and cultural heritage (28 September 2023).
- Led an industry briefing to discuss challenges and opportunities to ensure appropriate consultation outcomes (25 August 2023).

- Hosted a National Summit with industry, First Nations representative bodies and government to discuss workable pathways for consultation (22 & 23 June 2023).
- Published an updated [guideline for Consultation in the course of preparing an Environment Plan](#) following a three-month public comment period (12 May 2022).
- Hosted stakeholder briefings to discuss consultation requirements in consideration of the Santos v Tipakalippa decision (15 December 2022).

The Department of Industry Science and Resources is leading a review of consultation requirements as part of the offshore environmental management review. Questions on legislative reviews should be directed to the department.

2. How do you consider that the actions and decisions of the Authority have contributed to this situation, given that you have to follow your own EPBC accredited assessment Program, which requires that you have regard to the indirect consequences of processing the gas that you gave approvals for to be extracted from the seabed?

Please refer to the response to question one or clarify what is meant by 'this situation' so a more specific answer can be provided.

3. NOPSEMA gave approvals for the Northwest Shelf, which is causing nearly 80% of this acid pollution, and has recently given further approvals for the Scarborough gas development which will lead to even higher levels of acid gas emissions. Please can you explain how as the regulator you were satisfied that these indirect consequences were acceptable, when the surface of the Murujuga rock art is already up to 1000 times more acidic than background levels and Woodside is already dumping 25 tonnes a day of acid gas emissions on Murujuga?

Activities on the Burrup Peninsula/Murujuga are not regulated by NOPSEMA.

The Scarborough Offshore Facility and Trunkline (Operations) Environment Plan is currently under assessment.

Under the Program, NOPSEMA must have regard to EPBC Act requirements, including EPBC Act Policy Statement - 'Indirect consequences' of an action: section 527E of the EPBC Act (indirect consequences policy). NOPSEMA considers the policy to determine where indirect consequences may be considered an 'impact' of an activity. This consideration is on a case-by-case basis against the circumstances of the activity in accordance with the criteria set out in the policy.

NOPSEMA's Guideline on Environment Plan decision making can be found here: [Environment plan decision making guideline.pdf \(nopsema.gov.au\)](#)

4. When assessing whether proponents have met their consultation requirements, NOPSEMA requires the full text of engagement between a titleholder and a relevant person as provided in a submission, but this is required to be kept in a confidential and sensitive information part and therefore isn't published with the rest of the

environment plan. Is that correct? And this includes descriptions of any meetings that proponents hold with Traditional Owners. But the companies are responsible for writing up any notes or minutes from these meetings, aren't they?

Regulation 2 of the Offshore Petroleum and Greenhouse Gas Storage (OPGGS) Environment Regulations (see below) requires that the full text of any response by a relevant person to consultation under section 25 must be contained in the sensitive information part of the plan and not anywhere else in the plan.

Regulation 25 – Consultation with relevant authorities, persons and organisations etc – imposes a duty on the titleholder and it is the performance of the titleholder's duty which must be assessed by NOPSEMA for the purposes of making a decision on an environment plan.

Section 24 of the Environment Regulations requires that the environment plan must contain a report on all relevant person consultations under section 25, and that the report must contain:

- A) a summary of each response made by a relevant person; and
- B) an assessment of the merits of any objection or claim about the adverse impact of each activity to which the environment plan relates; and
- C) a statement of the titleholder's response, or proposed response, if any, to each objection or claim; and
- D) a copy of the full text of any response by a relevant person.

5. Other than providing guidelines for companies to interpret and apply how they wish, how does NOPSEMA ensure that adequate information has been provided to respondents in a culturally appropriate manner, so that they can understand the potential impacts of a project on cultural heritage? This is an integral part of the principles of FPIC, so how do you make sure it happens?

Regulation 25 – Consultation with relevant authorities, persons and organisations etc – imposes a duty on the titleholder and it is the performance of the titleholder's duty which must be assessed by NOPSEMA for the purposes of making a decision on an environment plan.

Section 25 of the Environment Regulations requires titleholders to provide relevant persons with sufficient information to allow the relevant person to make an informed assessment of the possible consequences of the activity on the functions, activities, or interests of the relevant person). The regulation also requires titleholders to allow a relevant person a reasonable period for the consultation.

FPIC is not a requirement of the Environment Regulations.

NOPSEMA's Environment Plan Decision-Making Guidelines, and by extension Guidelines for Consultation in the course of preparing an environment plan provides further information on considerations for discharging consultation: [Consultation in the course of preparing an Environment Plan.pdf \(nopsema.gov.au\)](#)

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6. Does NOPSEMA require proponents to submit minutes, notes, and related documents (including briefing materials provided to attendees) as part of their EP application?

Please see response to question 4.

7. How does NOPSEMA address concerns about Traditional Owners being paid by proponents to give their approval to projects that the majority of the community do not support?

Approval is not required by relevant persons under the Environment Regulations.

The purpose of consultation under regulation 25 of the Environment Regulations is to ensure that relevant persons whose functions, interests or activities may be affected are consulted and their input considered in the development of environment plans.

Consultation is designed to ensure relevant persons are identified and given sufficient information and a reasonable period to allow them to make an informed assessment of the possible consequences the proposed petroleum or greenhouse gas activity may have on them.

Regulation 25 is also intended to ensure titleholders consider and adopt appropriate measures in response to the matters raised by relevant persons. These actions in turn inform the management of environmental impacts and risks to which the activity and environment plan relate.

The Environment Regulations do not require or preclude funding to relevant persons to participate in consultation. Funding to facilitate consultation is a matter for each relevant person and the titleholder. This position is consistent with the EPBC Interim Guideline on First Nations Engagement which includes recognition that in some situations support for those being consulted may need to be considered at the discretion of the proponent.

8. So, in its assessment, NOPSEMA is relying on what the proponent states about its engagement, including information provided, and any dissenting views that are expressed. Is that correct?

Regulation 25 imposes a duty on the titleholder, and it is the performance of the titleholder's duty which must be assessed by NOPSEMA for the purposes of making a decision on an environment plan.

Through the assessment process, NOPSEMA may make reasonable enquiries to assist it to evaluate the materials presented in the environment plan and form a view as to whether it is satisfied that the titleholder has discharged its duty to identify and consult with each relevant person.

In addition to the content of the environment plan, NOPSEMA may consider information from other sources as it deems necessary in accordance with NOPSEMA's Environment Plan Assessment Policy and Decision-Making Guidelines.

9. Are there any mechanisms NOPSEMA engages to verify if what the proponent has stated is true?

Through NOPSEMA's environment plan assessment policy the assessment process recognises that NOPSEMA may make reasonable enquiries to assist it to evaluate the materials presented in the environment plan and form a view as to whether it is satisfied that the titleholder has discharged its duty to identify and consult with each relevant person.

In addition to the content of the environment plan, NOPSEMA may consider information from other sources as it deems necessary in accordance with NOPSEMA's Environment Plan Assessment Policy and Decision-Making Guidelines.

Section 32 of the Environment Regulations permits NOPSEMA to request further written information about any matter relating to the contents of an environment plan, or relevant to NOPSEMA determining whether it is reasonably satisfied that the plan meets the environment plan acceptance criteria, from the titleholder.

Inspections are a critical part of NOPSEMA's compliance strategy and are undertaken for a range of reasons, including to monitor duty holder's compliance with relevant legislation, including the commitments they made in their permissioning documents. The OPGGS Act and associated regulations provide NOPSEMA inspectors with powers to conduct inspections, including powers to require reasonable assistance from duty holders, including for the purposes of inspecting consultation records.

Withholding information from an environment plan or misrepresenting information within an environment plan may be in breach of the law and could invalidate an environment plan acceptance.

10. Does NOPSEMA ever directly engage with the relevant Traditional Owners to verify if what the proponent states is true?

Please refer to response to question 9.

- 11. The CEO of MAC gave evidence that the corporation was established by the WA government, not by First Peoples, and that MAC does not have any power to object or refuse proposals due to the No Objections clause in the BMIEA (clause 4.8). Clause 4.8 of the BMIEA states: 'No Objections. On and from the Satisfaction Date, the Contracting Parties agree that the Contracting Parties will not, in their capacity as owners of the Burrup Non-Industrial Land, lodge or cause to be lodged any objection to development proposals intended to occur on land within the Industrial Estate.' What concerns does NOPSEMA in regard to MAC's inability to object to proposals and existing power imbalances?**
- 12. Does NOPSEMA think that the views of all relevant Traditional Owners can be properly represented, and therefore appropriately assessed under NOPSEMA's regulatory framework, when First Nations corporations that proponents are consulting with are subjected to such No Objections clauses?**
- 13. How does NOPSEMA address the challenges that arise from these No Objections clauses and consider this in assessing EP's?**
- 14. A letter signed by six United Nations Human rights rapporteurs was sent to the Australian Government concerning Woodside's activities on Murujuga. It states: "We would like to bring to attention ... a fossil fuel project causing damage to Indigenous sacred art and songlines in Murujuga and a further expansion of fossil fuels contrary to obligations under the Paris Agreement. According to expert advice and traditional knowledge, the sacred songlines and stories contained in petroglyphs and rock art engravings are being damaged by emissions from the Burrup Hub and face total destruction within decades." Are you concerned about NOPSEMA's complicity in these human rights violations that have been highlighted**

by UN Human Rights Rapporteurs, given you gave approvals for the projects they are referring to?

15. The letter also states: “We are concerned about reports that [the Australian Government] is failing to meet its international human rights obligations to protect the human rights of indigenous peoples and communities against the human rights abuses by business enterprises operating in its territory, including those involved in the development of the Burrup Hub. These allegations would have especially serious, long-standing and irreversible effects on the cultural rights of indigenous peoples as they would lead to the loss of cultural elements.” Which human rights have Woodside engaged through your operations on the Burrup Peninsula, and what are you doing to address these violations?

Answer to 11-15:

Activities on the Burrup Peninsula/Murujuga are not regulated by NOPSEMA.

Please refer to previous answers regarding the purpose of consultation, information that NOPSEMA may take into account, and how NOPSEMA assesses environment plans under the Program.

NOPSEMA’s [Regulatory Service Charter](#) outlines avenues for feedback and complaints about NOPSEMA and duty holders. Please refer to NOPSEMA’s [Statements of Reasons under the Administrative Decisions \(Judicial Review\) Act 1977](#). NOPSEMA’s decisions to accept or refuse environment plans are subject to Judicial Review, under the same Act.