



Wide Bay Burnett Environment Council
Maryborough, Queensland, 4650
19 February 2024

Senate Environment & Communications Legislation Committee Inquiry:
Protecting the Spirit of Sea Country Bill 2023

Dear Committee Secretariat,

On behalf of the Wide Bay Burnett Environment Council Inc (WBBEC), thank you for the opportunity to make a submission to the Inquiry into the Protecting the Spirit of Sea Country Bill 2023 (the 'Bill').

WBBEC is an apolitical not-for-profit member-based environmental advocacy organisation in the Wide Bay Burnett region of Queensland. Further information about WBBEC and its activities can be found at <https://wbbec.wordpress.com/>.

WBBEC understands the intention of the Bill is to remediate flaws in the existing legislative framework regarding consultations between proponents of offshore development projects and Traditional Owners of the Sea Country to be directly affected by such development projects.

Flaws were identified as a result of Federal Court case *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority (No 2)* [2022] FCA 1121, and the appeal heard by the Full Court of the Federal Court (*Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193).

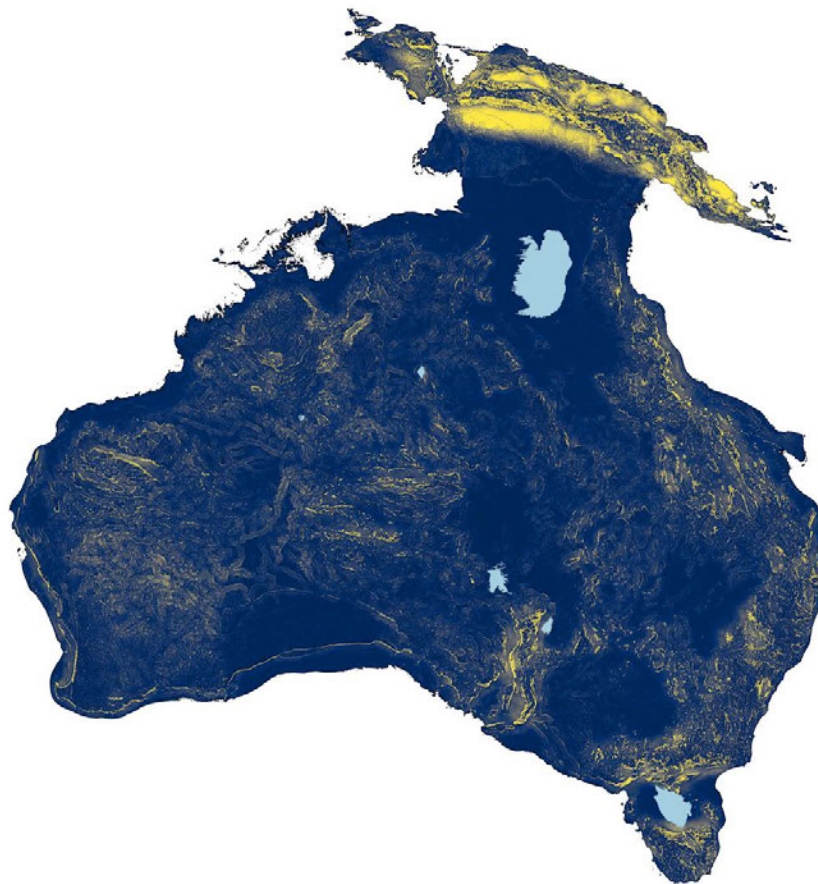
These flaws include

1. the absence of mention Traditional Owners, particularly knowledge holders in First Nations communities from the definition of 'Relevant Person',
2. there is no adequate definition of what constitutes a "consultation process", and
3. underwater and intangible cultural heritage is not identified in offshore project proposals and environment plans, alongside an evaluation of the impacts and risks that this project might pose and any potential alternative options.

Our submission is as follows.

Australia has been occupied by humans for over 50 millennia, which implies that the ancestors of today's Indigenous Australians arrived on the continent of Sahul; mainland Australia, Tasmania and New Guinea were all one land mass known as

Sahul before sea levels rose at the end of the last Ice Age. Bass and Torres Straits and the Arafura Sea were all dry land, although it is understood there were large lakes or inland seas in the middle of what are now the Gulf of Carpentaria and Bass Strait. The following image of Sahul is taken from a 30 April 2021 article on 'The Conversation', "We mapped the 'super-highways' the First Australians used to cross the ancient land" ¹.



People would have settled and lived on land that has since been submerged as sea levels rose after the Last Glacial Maximum, so that the parts of Sahul where people came ashore are now underwater. As sea levels rose, people would have gradually moved to higher ground.

Throughout Australia, Indigenous cultures relied on oral transmission of knowledge at least until European colonists introduced the written word. It is understood, for example, that many Traditional owners of what are now coastal lands have stories of

¹ "We mapped the 'super-highways' the First Australians used to cross the ancient land", by Stefani Crabtree et al, <https://theconversation.com/we-mapped-the-super-highways-the-first-australians-used-to-cross-the-ancient-land-154263> (viewed on 19 February 2021).



migrating in response to rising seas ² - and given the suppression of Indigenous culture that ensued after colonisation, it can be argued that transmission of Indigenous knowledge has continued to be primarily oral.

To the extent that the definition of 'Responsible Person' in relevant legislation does not specifically recognise the importance of oral knowledge transmission or acknowledge the status of traditional knowledge holders, the legislated definition is inadequate, and should be amended as the Bill proposes.

It is understood that the seabed for the Barossa project is between 130 and 350 metres deep, so that the project area was never above sea level, even at the Last Glacial Maximum approximately 22 millennia ago when sea levels were about 120 metres below present. For most of its length, however, the proposed Barossa Gas Export Pipeline, is on much shallower sea bed that was once the lands of the people who are now the Tiwi Islanders.

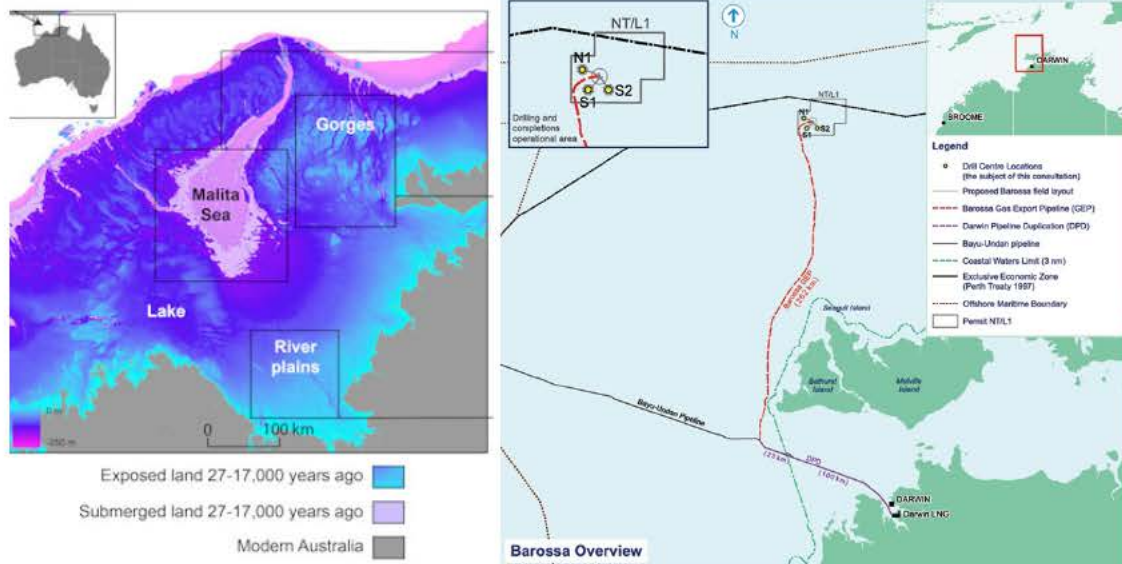
"People once lived in a vast region in north-western Australia – and it had an inland sea", Kasih Norman et al, 'The Conversation', 21 December 2023, <https://theconversation.com/people-once-lived-in-a-vast-region-in-orth-western-australia-and-it-had-an-inland-sea-219505> (viewed on 19 February 2024) includes the following map on the left which illustrates how sea levels have changed in the region of Australia's North-West Shelf; to the right of that map below is a map from Santos's description of the Barossa Project (<https://www.santos.com/barossa/>). Comparison of these maps shows where the Barossa Project Gas Export Pipeline traverses now-submerged lands that were once occupied by the ancestors of today's Tiwi Islanders.

As such, Tiwi Islanders should certainly be consulted – but is the proponent's obligation to consult satisfied by visiting Joe Blow one of whose ancestors happens to be a Tiwi Islander, have a yarn with him over a few beers and ask him if it's sweet to proceed with our Project – or should the proponent engage with the Tiwi Land Council (<https://www.tiwilandcouncil.com/>) and discuss the issue formally in a verifiably documented process?

This Bill makes clear the obligation on project proponents to ensure that consultation takes place with Traditional Owners to obtain free, prior and informed consent before any work commences.

² "People once lived in a vast region in north-western Australia – and it had an inland sea", Kasih Norman et al, 'The Conversation', 21 December 2023, <https://theconversation.com/people-once-lived-in-a-vast-region-in-orth-western-australia-and-it-had-an-inland-sea-219505> (viewed on 19 February 2024)

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In obliging project proponents to seek free, prior and informed consent, the Bill seeks to ensure that Australian legislation conforms to Article 1 of the International Human Rights Covenants, to which Australia is a signatory. That is, the Bill is doing no more than ensuring that entities operating under Australian law adhere to the terms of Covenants with which Australia already agrees.

WBEC recognises the same flaws in Australia's existing legislation as does the Sponsor of the Bill, Senator Cox.

WBEC accordingly concludes that the Bill should be passed as it stands.

Thank you for considering our submission. Should further clarification be required, please contact the writer.

Yours faithfully

David Arthur
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