

Protecting the Spirit of Sea Country Bill 2023

Submission to the federal Senate Inquiry

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Doctors for the Environment Australia (DEA) is an independent, self-funded, non-government organisation of medical doctors and students in all Australian states and territories.

DEA's work is based on the premise that humans need a future with clean air and water, healthy soils capable of producing nutritious food, a stable climate, and a complex, diverse and interconnected humanity whose needs are met in a sustainable way. We are therefore interested in environmental protection and restoration to promote human health and social stability, and clean energy to reduce the impacts of fossil fuel industries on human health.

Our members work across all specialties in community, hospital, and private practice, including Aboriginal community-controlled health services.

DEA welcomes the opportunity to provide a submission to the Protecting the Spirit of Sea Country Bill 2023 (the Bill). We see the Bill as a positive step in the recognition of First Nations sovereignty of both Land and Sea Country across all the Nations that make up Australia, and their rights to protect Cultural heritage associated with Sea Country. We will discuss below that, although this is a positive step, the Bill must go further if it is to firmly ensure the rights of First Nations communities to protect Country and Culture from both current and future impacts. We also have concerns about how this Bill will interact with the outcome of the review of the Indigenous Cultural Heritage Protection Act currently underway and suggest clear and transparent public discussion in regards to this aspect of the Bill in the future.

Background

The Protecting the Spirit of Sea Country Bill is an amendment to the Offshore Petroleum and Greenhouse Gas Storage Act 2006 and the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009. This amendment moves to include Traditional Owners and knowledge holders in First Nations communities in the definition of 'Relevant Person' and is designed to ensure that First Nations Australians are properly consulted as 'relevant people' in proposals for offshore petroleum developments that have the potential to impact tangible and intangible cultural heritage associated with Sea Country.

Although the necessity to consult First Nations communities about matters involving land environments is more developed, current legislation fails to correctly identify and protect First Nations' custodian rights to engage in decisions that impact marine environments (Sea Country). This amendment is an important immediate step to protect the rights of First Nations communities to protect their cultural heritage impacted on by off-shore development.

First Nations holistic concepts of health and wellbeing

DEA is committed to improving and safeguarding the health and wellbeing of all First Nations Australians. In doing so we recognise the importance of Culture, Country, self-determination, and community empowerment as fundamental determinants of individual and community health and wellbeing (figure 1). We also recognise the negative impacts on community health and wellbeing that occur from developments that result in damage to Country and Culture, one recent example being the (legal) destruction of Juukan Gorge by Rio Tinto and the profound impacts to not only the Puutu Kunti Kurrama and Pinikura communities, but to First Nations people across the Nations of Australia. As such, DEA highlights that meaningful and correct consultation on developments that

impact on both tangible and intangible elements of Country (sea and land) and Culture are essential elements for the health of First Nations communities.¹



Figure 1: Model of social and emotional wellbeing ²

Further, First Nations Australians have thousands of generations of custodianship of lands and seas. This too is integrated into their concepts of health and wellbeing. This connection is so deep through time that it is difficult for non-Indigenous peoples to comprehend. In recognising this, and the interwoven elements of our responsibility to care through regenerative and sustainable management, we also must consider impacts beyond our lifetimes to include those on future generations.³ Such thinking must be brought to considerations of developments that affect First Nations People's Sea Country and Cultural heritage.

United Nations Declaration on the Rights of Indigenous People

The Bill makes reference to the United Nations Declaration on the Rights of Indigenous People (UNDRIP). This reference highlights an international recognition of the importance of protecting the rights of Indigenous people, including that of First Nations Australians. Notably, Australia is a signatory to this Declaration.

DEA recognises that human rights, and the specific rights of First Nations people, are fundamental to the health and wellbeing of First Nations Australians. DEA reinforces the necessity for Australia to abide by this declaration, including the right to maintain and protect cultural heritage.

The UNDRIP refers to the injustice of the colonisation and dispossession of Indigenous people's lands, territories and resources, and their right to maintain and protect their cultural heritage (Article 31).⁴ It also provides standards of consent, namely *free, prior* and *informed*. These words are not specifically defined in the UNDRIP but have been defined by the Australian Human Rights Commission as follows:⁵

- **free** should imply no coercion, intimidation or manipulation.
- **prior** should imply that consent has been sought sufficiently in advance of any authorisation or commencement of activities and that respect is shown for the time requirements of indigenous consultation/consensus processes.
- **informed** should imply that information is provided that covers (at least) the following aspects:
 - the nature, size, pace, reversibility and scope of any proposed project or activity
 - the reason(s) for or purpose(s) of the project and/or activity
 - the duration of the above
 - the locality of areas that will be affected
 - a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle
 - personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
 - procedures that the project may entail.

Given the explicit detail about consent provided by the Australian Human Rights Commission the reference in the Bill to UNDRIP should be to their website^{1*} rather than www.un.org from where it is difficult to locate the UNDRIP. Free, prior and informed consent as outlined in UNDRIP are key concepts in relation to the Protecting the Spirit of Sea Country Bill 2023.

Risks to Sea Country from petroleum development

Sea Country and its care contribute to the health and wellbeing of First Nations Australians, which is the concern of DEA.⁶

DEA would like to take the opportunity to highlight that Sea Country faces profound threats from climate change and ocean acidification which result from increasing levels of carbon dioxide in the atmosphere.⁷ Fossil fuel developments pose unprecedented risks to Sea Country through their contribution to atmospheric carbon dioxide which is changing the chemistry of the ocean. Increasing

^{1*} <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>

acidification affects all ocean life because all living organisms use energy to maintain their internal levels of acid. Ocean acidification reduces the calcium carbonate available for shellfish, corals and other organisms to form shells, and there is already evidence of shells dissolving. This effect is greatest in shallower waters, which are the most important for human societies. Acidification also affects sound frequencies and this interferes with sonar used by whales.⁷ Thus atmospheric carbon dioxide through the burning of fossil fuels will have profound impacts on Sea Country.

Climate change is also heating oceans and Sea Country. Over 93% of the energy trapped by greenhouse gases has heated the ocean rather than the atmosphere. This is contributing to marine heatwaves that have led to mass deaths of key species along vast lengths of Australia's coastline. For example, our giant kelp forests have been devastated, with only 10% remaining. The Great Barrier Reef has suffered mass bleaching four times in seven years and its future appears dire as a direct result of petroleum industries, carbon dioxide emissions and consequent climate change.⁸

Western science explains and can anticipate these impacts of petroleum development, and we reinforce that 'free, prior and informed consent' must entail thorough articulation, communication, and ensured understanding of these risks to First Nations Communities before First Nations Australians can consent to any development. Understanding these risks will assist First Nations communities make informed decisions that can protect their Sea Country, a determinant of their health.⁶

This bill has the potential to improve First Nations Australians' access to the right to free, prior and informed consent in relation to developments that will accelerate carbon dioxide emissions and loss of Sea Country. This, in turn, has the ability to improve determinants of health and wellbeing. DEA recommends that the full impact of the emissions created through any offshore petroleum development be included and articulated to First Nations communities, including their contribution to local air and water quality, and global climate change.

First Nations Peoples and Climate Change

Climate change is recognised as impacting the health and wellbeing of First Nations communities disproportionately. In addition to impacts on their mental, physical, and social health, climate change threatens the basic human rights of First Nations communities. However, First Nations knowledge, and ways of knowing, being, and doing are recognised internationally as being important for the preservation of critical land and sea biodiversity, and in responding to climate change. DEA recognises the centering and elevating of First Nations voices in decision-making on projects that contribute to climate change as an important opportunity to help us all mitigate further emissions, and adapt to climate change.⁹

DEA recommends that this connection is clearly recognised and articulated, and that the importance of involving First Nations peoples in decisions that impact climate change, and their subsequent right to health is included in the Bill amendments.

Greenhouse gas storage

Like offshore petroleum developments, greenhouse gas storage threatens Land and Sea Country, and with it, First Nations people's health.⁶ Carbon capture and storage (CCS), the most widely discussed greenhouse gas storage, is the capturing, transporting and storing of carbon dioxide from the atmosphere, most of which has been released through the burning of fossil fuels.¹⁰ The

Department of Industry, Science and Resources suggests that companies should use greenhouse gas storage to reduce their carbon emissions.¹¹ This is despite the high cost of this process, its proven ineffectiveness, and the moral perversity of encouraging companies to delay necessary and inevitable reduction in carbon emissions.¹¹

DEA notes that the sites where the government is facilitating greenhouse gas storage (figure 2)¹² are on specific areas of Sea Country (figure 3), with no reference to the traditional owners of the Sea Country, or their free, prior and informed consent.

The entire Australian coastline is Sea Country¹³ which highlights the importance of the amendment in providing a last chance opportunity for First Nations Australians to protect their Sea Country.

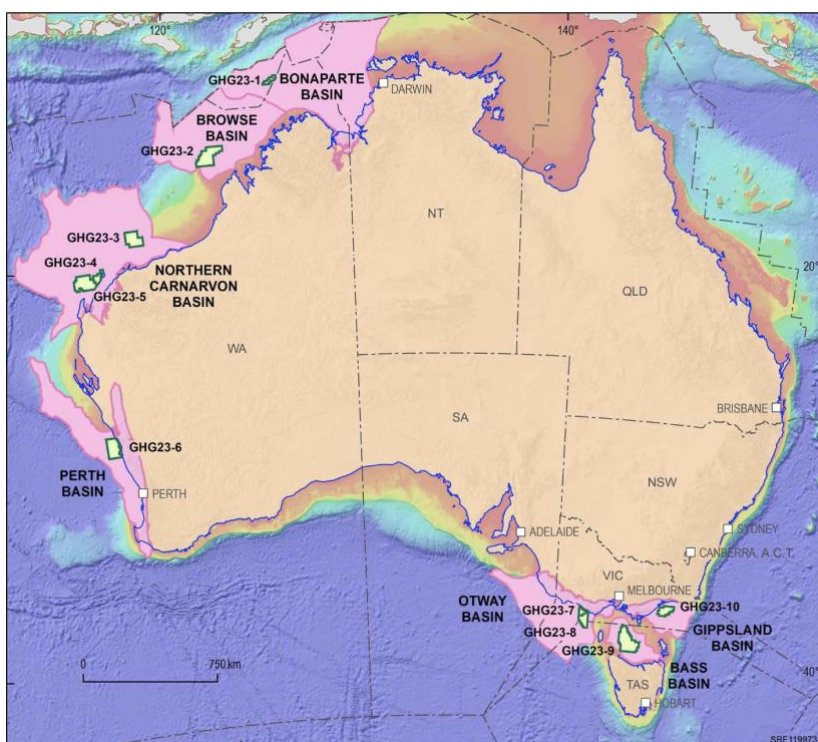


Figure 2: Areas of offshore greenhouse gas storage acreage release areas ¹²



Figure 3: Map of some of the currently recognised Sea Country as part of the Sea Country Indigenous Protected Areas Program from DCCEEW.¹⁴ Note the areas of overlap between figures 2 and 3.

Conclusion

DEA supports this amendment which has potential to improve the opportunity for First Nations to participate in, and help guide, decisions that impact cultural heritage in Sea Country. This, in turn, can assist in minimising the negative impacts on the health and wellbeing of First Nations communities that can occur through the disempowerment and loss of autonomy that comes from developments that proceed without their involvement. However, we recommend that this amendment go further and that it must clearly link back to, and articulate with, the full Indigenous Cultural Heritage Protection Act review currently occurring.

DEA also recognises that this amendment can play a small role in highlighting the threat to human health through climate change, a direct result of fossil fuel combustion. First Nations Australians are at particular risk from the impacts of climate change, and it must further be outlined how this also impacts on Sea Country. DEA highlights that First Nations Australians must be consulted about matters that will worsen this impact. We suggest this is explicitly articulated and that both current and future impacts of Climate change are recognised and clearly explained as part of any consultation process.

Lastly, it is recognised that First Nations ways of knowing and being are vital to international efforts for both mitigation and adaptation to climate change. Centring and elevating First Nations voices in Australia can help guide us all to a healthier future. This Bill could offer an example and opportunity for this concept to be included in Australian legislation, policy, and process.

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