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Senate Standing Committees on Environment and Communications

Protecting the Spirit of Sea Country Bill 2023

Woodside's responses to Questions on Notice taken Monday 26 August 2024

Woodside is a global energy company founded in Australia, providing reliable and affordable energy to help people lead better lives. We have reliably delivered gas to homes and businesses in Australia for decades, supporting the development of local industry and driving economic prosperity. Woodside has operated on Murujuga for 40 years and is proud of the coexistence of our operations with Murujuga's tangible and intangible heritage values, including those underpinning its National Heritage and proposed World Heritage listings.

Woodside has worked and continues to work closely with the Traditional Custodians of Murujuga, the Ngarda Ngarli people. We value our strong relationship with this community. We continue to actively support the efforts of Murujuga Aboriginal Corporation's (**MAC**) (as the authorised cultural representative to speak on behalf of Murujuga Country which consists of five traditional owner and custodian groups, the Ngarluma, Yaburara, Mardudhunera, Yindjibarndi, and Wong-Goo-Tt-Oo), the Western Australian Government and the Australian Government to have the Murujuga Cultural Landscape registered on the World Heritage List. Woodside's approach and record on the protection and management of Aboriginal cultural heritage is set out on our website¹. Woodside also has a publicly accessible fact checker² that addresses, amongst other matters, some of the matters raised during Woodside's appearance at the Committee.

Woodside's responses to Questions on Notice are framed with regards to the Terms of Reference of the Inquiry – namely "To inquire into and report on the Protecting the Spirit of Sea Country Bill 2023" – and having regard to the Bill itself.

Responses to Questions on Notice

- 1. Please provide the relevant documents you have provided to Traditional Owners in relation to this [the Murujuga Rock Art Monitoring Program] and provide any minutes from meetings with them where this information was provided.**

The provision of relevant documents to and within MAC is appropriately a matter for MAC and the WA Government. MAC partners with the WA Government to administer the Murujuga Rock Art Monitoring Program (MRAMP). MAC has access to relevant documents and independent experts responsible for the reporting. Woodside does not interfere in the administration or running of MRAMP, including internal communications.

- 2. In relation to Scarborough—Did you do that for any of them, 1, 2, 3 or 4—for Pluto [take responsibility for identifying the cultural heritage values that Woodside knows, or at least to point the regulator to the Traditional Owners who hold that knowledge]? Have you provided the red kangaroo songline in any of those environment plans? If you have, can you please provide them to the committee.**

¹ <https://www.woodside.com/sustainability/social/first-nations-cultural-heritage-and-engagement/australian-cultural-heritage-management> accessed 17 September 2024.

² Woodside Fact Checker. <https://www.woodside.com/media-centre/woodside-energy-fact-checker>, accessed 17 September 2024.

Yes, Woodside has provided information about the kangaroo songline within relevant Environment Plans (EP).

The Red Kangaroo is also known as the Plains Kangaroo or in Ngarluma language as Marlu and may be referred to by these terms within the EPs. In some instances, it may have been simply reported as a kangaroo songline.

The extent of the detail included in EPs respects Traditional Owner input or advice, while providing the necessary information for the regulator to understand and assess the environment, as defined in regulation 5 (previously reg 4) of the OPGGS(E) Regulations including “(d) the heritage value of places;” and “the social, economic and cultural features” of environmental matters. ([OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE \(ENVIRONMENT\) REGULATIONS 2023 \(F2023L00998\) - REG 5 Definitions \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/dfat/special/OPGGS(E)_REGULATIONS_2023_(F2023L00998)_REG_5_Definitions.html))

EPs specifically referred to in the question:

- Scarborough 4D B1 Marine Seismic Survey Environment Plan (<https://docs.nopsema.gov.au/A1025605>)
 - P.83 – The kangaroo songline is identified through desktop review of literature
- Scarborough Drilling and Completions Environment Plan (<https://docs.nopsema.gov.au/A1024801>)
 - P.82 – The kangaroo songline is identified through desktop review of literature
- Scarborough Seabed Intervention and Trunkline Installation (<https://docs.nopsema.gov.au/A1027151>)
 - P.123 – The kangaroo songline is identified through desktop review of literature
 - P.156 – The relationship between the kangaroo songline and submerged waterholes is noted
 - P.471 – In a broader discussion of songlines, the existence of the Marlu/Plains Kangaroo dreamtime narrative and songline is recognised as existing in offshore waters based on ethnographic survey with Elders conducted in 2020 and from the available public literature.
- WA-61-L and WA-62-L Subsea Infrastructure Installation Environment Plan (<https://docs.nopsema.gov.au/A1027983>)
 - P.89 – The kangaroo songline is identified through desktop review of literature
 - P.112 – The relationship between the kangaroo songline and submerged waterholes is noted
 - P.338 – In a broader discussion of songlines, the existence of the Marlu/Plains Kangaroo dreamtime narrative and songline is recognised as existing in offshore waters based on ethnographic survey with Elders conducted in 2020 and from the available public literature
- WA-34-L Pyxis Drilling and Subsea Installation Environment Plan (<https://docs.nopsema.gov.au/A1036979>)
 - P.129 – The kangaroo songline is identified through desktop review of literature
 - P.152 – The relationship between the kangaroo songline and submerged waterholes is noted
 - P.430 – In a broader discussion of songlines, the existence of the Marlu/Plains Kangaroo dreamtime narrative and songline is recognised as existing in offshore waters based on ethnographic survey with Elders conducted in 2020 and from the available public literature

The projects' interactions with songlines, including the Red Kangaroo Songline, is assessed in section 6.9 of the Scarborough 4D B1 Marine Seismic Survey Environment Plan and WA-34-L Pyxis Drilling and Subsea Installation Environment Plan, and section 6.10 of each other EP.

3. How much have each of you—Woodside, Santos and AEP—spent on marketing and advertising in the last two financial years, including corporate sponsorship?

Noting the Terms of Reference of the Inquiry, Woodside has spent approximately \$1.9million on advertising across traditional media (including newspapers and radio), social media and representation at community events in the last two years. Woodside takes its consultation obligations seriously. This advertising effort assists in informing community members about Woodside's operations and activities both now and in the future. The advertising supports broader regulatory approval processes such as

consultation on Environment Plans and enables individuals or organisations to self-identify as a relevant person, become better informed, and provide feedback on activities.

Woodside's 's responses to questions from Senator Lidia Thorpe received by email on 10 September 2024

1. Can you please explain what free, prior and informed consent looks like in practice to Woodside?

Woodside recognises there is no universal definition of Free Prior and Informed Consent (FPIC). Woodside is therefore guided by Article 32 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) which establishes an obligation on States to “consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources”. Although this is expressly assigned to States, Woodside is guided in the application of these principles through:

- Adherence to our [Anti-Bribery and Corruption Policy](#), including the recognition of Indigenous Elders or representatives authorised to act on behalf of an Indigenous group or community as de facto Government officials.
- Engaging through representative institutions with the cultural authority to represent First Nations communities.
- Being guided by First Nations communities on their preferred methods of consultation, including the format, attendees, cultural protocols, location and timing.
- Providing information through plain-English fact sheets and face-to-face engagements, including at our Roebourne town office and through the establishment of our First Nations Ambassador role.
- Partnering with representative institutions to support their resourcing of and access to credible, independent expert advice.
- Supporting the voices, views and aspirations of First Nations communities and leaders so they are heard and understood within Woodside and factored into decision making processes.

Also refer to Woodside's [First Nations Communities Policy](#).

2. Ms Reynolds stated that Woodside's consultation is underpinned by the 'spirit of FPIC'. FPIC is an important legal concept, defined in international law, it is not a spiritual notion. Woodside is not legally required to adhere to FPIC, and has been found to not even meet NOPSEMA's consultation obligations, which are a much lower standard than FPIC. How are you ensuring that your use of this legal term is accurate and not misleading?

'Spirit' may also be taken to mean 'principle' in this context. For the avoidance of doubt Woodside understands and is guided by the principles of FPIC. Woodside notes though, that UNDRIP and FPIC are not legally binding concepts and could benefit from agreed definition by States - please refer to [Woodside's submission](#) to the Inquiry into the Application of UNDRIP in Australia that was made in 2022.

It is not correct to state that Woodside has been found to not meet NOPSEMA's consultation obligations. The *Cooper v NOPSEMA* decision found that NOPSEMA did not have statutory power to make a decision to accept the EP subject to conditions.

3. Have you engaged with any external human rights experts to assess how your practices align with the principles of FPIC, and what feedback has been provided?

Yes. Feedback has been incorporated as appropriate into Woodside's [First Nations Communities Policy](#) and methodologies that are contained within our EPs have regard to information and feedback that we have received.

4. Since the 2023 Federal Court ruling, how have you reviewed your consultation and consent processes?

Woodside's consultation methodologies are set out in our publicly available consultation documents, which are updated as required to reflect case law and guidance.

5. How did this review process take place and how did it involve First Peoples?

Refer to question 4 response (above). Woodside is guided by First Nations communities on their preferred methods of consultation, including the format, attendees, cultural protocols, location and timing.

6. NOPSEMA have recently updated their regulatory framework around consultation, including a revised guideline on 'consultation in preparing an environment plan'. How has this new guideline changed your consultation processes, and what effect has this had?

Please refer to our response to question 4. Woodside's consultation methodologies are set out in our publicly available consultation documents, which are updated as required to reflect case law and guidance.

7. As part of your Environment Plans, you are required to submit a full text of engagement with stakeholders. In relation to consultation with Traditional Owners, what text is provided as part of lodging your EP's to NOPSEMA for approval?

Woodside submits Environmental Plans in accordance with the OPGGS(E) Regulations.

8. Do you submit full transcripts of meetings that occur, or is it simply someone's notes that are taken?

Subject to guidance from the First Nation groups, meetings may be recorded or minuted and the records are available to attending groups.

9. How do you prove to NOPSEMA and other regulators that you have provided information about potential impacts of projects in a culturally appropriate and accessible manner? Do you submit all of this information as part of your EP?

This information is submitted as part of the EP.

10. Can you please provide the relevant documents you have provided to Murujuga Custodians in relation to this, particularly what is said about impacts on rock art sites and cultural heritage?

This information is included within the publicly available EPs. Please refer to NOPSEMA's [website](#).

11. Can you please also provide any notes or summaries from meetings with them where this information was provided?

Please refer to question 10 response (above).

12. Do you provide any notes or minutes to any Traditional Owners for their review prior to submitting the EP to make sure that the views of Traditional Owners are being accurately reflected?

Yes, subject to the direction of Traditional Owner groups.

13. How do you convey any dissenting views to the projects in your summary texts?

Traditional Owner feedback, objections or claims are summarised within consultation tables in EPs, which is consistent with the OPGGS(E) Regulations.

14. A Woodside representative stated that the bill under inquiry is not consistent with UNDRIP because it would require companies to go beyond just speaking to the corporations directly and ensure that there is engagement with all relevant Traditional Custodians and relevant knowledge holders. You referred to Article 32 of UNDRIP, which asserts that states shall 'consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.' The CEO of MAC gave evidence that the corporation was established by the state 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). Given this evidence, do you accept that MAC does not meet the criteria for being a representative institution established by First Peoples, as outlined in Article 32?

At the Inquiry, Woodside's representative stated, "Guided by the principles in the United Nations Declaration on the Rights of Indigenous Peoples, or UNDRIP, and First Nations groups, it's important in our view to ensure that consultation respects and centres on collective cultural authority of recognised institutions representing traditional owners. The bill's proposal to include a broader reference to traditional owners and knowledge holders as relevant persons appears inconsistent with the principles of UNDRIP."

Woodside's representative also stated, "Article 32 of UNDRIP, Senator, as you know, refers to, particularly with respect to resource development, the role of representative institutions. We think, as a company that has an interest in ensuring that we are clear in the scope of our approach to consultation and engagement, that aligning the way we undertake those activities with the global international instrument that frames, I think, expectations of governments, ultimately developed and delivered through the United Nations initially, is a reasonable basis for us to approach consultation and engagement. That really is the form in which we think about that. In terms of the work that we do in the areas in which we engage, those representative institutions do provide that frame."

It is not Woodside's role to determine who or how First Nation peoples appoint their representative entity. Woodside notes that clause 17 of the BMIEA required the Native Title Parties ('Contracting Parties'), not the State, to establish and incorporate their Approved Body Corporate for and on behalf of their members to carry out the rights and obligations set out within the BMIEA. Therefore, Woodside does not accept that MAC does not meet the criteria for being a representative institution as envisioned in Article 32 of UNDRIP.

- 15. Woodside have relied heavily on your engagement with Murujuga Aboriginal Corporation (MAC) in making your claims about adhering to UNDRIP and FPIC, though we heard how the corporation was established by the state government, not by First Peoples, and that MAC does not have any power to object proposals due to the [BMIEA](#). How is your practice of relying on a state-appointed corporation with no veto rights considered to be consistent with Article 32 of the UNDRIP?**

In addition to the response provided at question 14, Woodside does not interpret Clause 4.8 of the BMIEA to prevent Traditional Custodians of Murujuga Aboriginal Corporation (MAC) from objecting to projects in the Burrup industrial area if they have concerns about heritage impacts.

Woodside understands that MAC's interpretation of Clause 4.8 is that it "does prevent MAC from lodging any objection to development proposals pertaining to land within the Industrial Estate" and "does not prevent MAC and the contracting parties represented by MAC from objecting to the damage, destruction or any deleterious impact to cultural heritage values within a development footprint" (<https://murujuga.org.au/we-all-come-together-for-country/>).

In practice, therefore, MAC is not constrained from raising objections.

- 16. 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.*" Does the consultation process you have described mean that Woodside can continue with your destructive practices, provided you're letting Traditional Owners know what you're doing, even when members of the United Nations Human Rights rapporteurs express such concerns?**

We do not agree with this premise. Please see Woodside's response to the Office of the United Nations High Commissioner for Human Rights ([link](#)).

- 17. 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?**

Please refer to the response at question 16 (above) and to [Woodside's Approach to Human Rights](#) and [First Nations Communities Policy](#).

- 18. In 2023, during a speech at the National Press Club, [Woodside CEO Meg O'Neill admitted](#) that Woodside had previously removed and destroyed sacred Murujuga rock art during the construction of the Burrup Hub mega-project. This was the first instance of Woodside publicly accepting responsibility for the destruction of numerous rock art sites on Murujuga, despite continuing to deny this in other settings, including this inquiry. Woodside has previously been implicated in the destruction of thousands of sacred rock art sites during the construction of earlier phases of the Burrup Hub mega-project, including the Karratha Gas Plant and Pluto LNG processing facility. O'Neill characterised the historical removals as "culturally appropriate at the time." Does the CEO still stand by these comments? If so, who did Woodside ask for permission, and who gave you cultural authority to destroy sacred cultural heritage? By what definition is this culturally appropriate?**

Woodside disputes that it denied any historic impacts to rock art, including in our evidence to this Inquiry. Cultural heritage impacts were managed differently in the 1980s. The Western Australian (WA) Government, through the WA Museum, managed the heritage assessment and site clearances on behalf of the North West Shelf Project during the design and construction of the Karratha Gas Plant (KGP). The Traditional Custodians were not involved in this process - an approach that does not meet today's standards or community expectations.

Based on Woodside's current understanding of this issue, we would not apply this historical approach to cultural heritage management today. No cultural heritage sites have been disturbed or destroyed as a result of the Scarborough and Pluto Train 2 constructions.

- 19. How do you respond to comments that Woodside is misleading the public in suggesting that this was ever culturally appropriate?**

Any assertions that Woodside is misleading the public are serious. We reject the assertion that we are misleading the public in this regard. Refer to question 18 (above) response above.

- 20. According to the National Pollutant Inventory, Woodside's LNG facilities are releasing around 25 tonnes per day of acid gas emissions (a semi-trailer load) over Murujuga. The WA government's own Murujuga rock art Monitoring program annual report from last year states that "...there are no sites on Murujuga where pollution is entirely absent [...] even these remote sites experience high concentrations of pollution under some conditions." These reports show that the rock surface on most monitored sites is 100 to 1000 times more acidic than background levels, and that Woodside's LNG facilities are responsible for nearly 90% of the total acid pollution on Murujuga. Has Woodside provided any of this information to Murujuga Custodians, or are you continuing to tell TO's that the science is inconclusive and more research is needed?**

Woodside has provided data to the Murujuga Rock Art Monitoring Program. MAC partners with the WA Government to administer this Program. MAC has access to the independent experts responsible for the reporting. The communication of these results appropriately to and within MAC is a matter for MAC and MRAMP. Woodside does not interfere in the administration or running of MRAMP, including internal communications.

The results to date from MRAMP reaffirm that further research is needed.

- 21. How much has Woodside spent on marketing and advertising in the last two financial years, including corporate sponsorships?**

Noting the Terms of Reference of the Inquiry, Woodside has spent approximately \$1.9million on advertising across traditional media (including newspapers and radio), social media and representation at community events in the last two years. Woodside takes its consultation obligations seriously. This advertising effort assists in informing community members about Woodside's operations and activities both now and in the future. The advertising supports broader regulatory approval processes such as consultation on Environment Plans and enables individuals or organisations to self-identify as a relevant person, become better informed, and provide feedback on activities.

22. How much do you provide in attendance fees to First Peoples for attending consultation sessions?

Consultation support varies depending on the First Nation representative requirements. Woodside covers reasonable consultation and meeting costs. These costs are benchmarked against service delivery, industry peers and regional cost of living expenditure.

23. How much in total has been provided in attendance fees, and other related fees, to First Peoples on the Burrup Peninsula and surrounding areas for attending consultation sessions, meetings or workshops? Please provide a breakdown of different funding provided through different streams and by financial year.

Financial arrangements are subject to commercial-in-confidence arrangements. Woodside would be willing to release this information subject to consents from First Nation groups.

24. How much funding has Woodside paid MAC and its members since 2018?

Refer to question 23 response (above).

25. Aside from financial payments, what other gifts or assets have been provided to First Peoples on the Burrup Peninsula and surrounding areas over the past 6 years from Woodside, including those provided specifically to MAC?

Woodside is not aware of any gifts or gifted assets that have been provided to Traditional Owners, including MAC, over the past 6 years.

Woodside's relationships and funding arrangements with First Nations groups are governed by processes for commercial agreements, and our Anti-Bribery and Corruption Policy. Provision of assets are also governed in accordance with these frameworks and policies.