



Australian Government

Department of Industry,
Science and Resources

Protecting the Spirit of Sea Country Bill 2023

Submission to the Senate Environment and
Communications Legislation Committee

February 2024

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Submission

The Department of Industry, Science and Resources welcomes the opportunity to make a submission to the Senate Environment and Communications Legislation Committee as part of its inquiry into the Protecting the Spirit of Sea Country Bill 2023.

The Bill seeks to enact changes to the following:

- *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act).
- Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009
 - Replaced by the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (Offshore Environment Regulations) from 10 January 2024.
- Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011.

The Australian Government is reviewing the offshore environmental management framework for petroleum and greenhouse gas activities to ensure the regulatory regime is fit-for-purpose. This includes reviewing the consultation provisions under the offshore environmental management framework.

Through the recently published consultation paper: *Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals*, the department is seeking feedback from people, organisations, local communities, Traditional Owners, First Nations communities and offshore resources companies on the consultation process for offshore resources activities in Commonwealth waters. Feedback is also sought on how the consultation process can be clarified to improve outcomes. The consultation forms part of a broader review of Australia's offshore environmental management framework. This feedback will help inform options for the Government to consider when seeking to clarify consultation requirements without diminishing the clear obligation on titleholders to genuinely consult those who may be impacted.

Consultation is an essential step of the regulatory approvals process for offshore resources activities. Consultation allows people and organisations who might be affected by an activity the opportunity to understand what an offshore resources company is seeking to do. It also gives those potentially affected by an offshore resource project the opportunity to have their say and provide information on activities that may impact them to help inform regulatory decision-making.

The Government regulates the environmental management of offshore resources activities in Commonwealth waters primarily under the OPGGS Act and the Offshore Environment Regulations.

Consultation is a key feature of Australia's offshore environmental management framework. It is essential to good decision-making and is mutually beneficial to all parties. The Offshore Environment Regulations require that titleholders undertake genuine consultation at multiple stages over the lifecycle of a project.

Recent court decisions^{1,2} have changed the understanding of consultation requirements in the Offshore Environment Regulations. The decisions have provided some clarity on how titleholders should consult with relevant persons, including with First Nations people or communities. There may be benefit in further clarifying the consultation requirements outlined in the Offshore Environment Regulations. This is based on feedback from community groups and from the offshore resources industry. As the existing regulations are not specific, this can result in variations in the level of consultations between titleholders and the people and organisations who may be impacted by a proposed offshore resources activity.

¹ Full Federal Court of Australia in *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193

² *Cooper v National Offshore Petroleum Safety and Environmental Management Authority* (No 2) [2023] FCA 1158