

s47F

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**Subject:** Info session: Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals [SEC=~~OFFICIAL~~]

**Location:** Microsoft Teams Meeting

**Start:** Tue 20/02/2024 2:00 PM

**End:** Tue 20/02/2024 3:00 PM

**Show Time As:** Tentative

**Recurrence:** (none)

**Meeting Status:** Not yet responded

**Organizer:** ORB First Nations

**Required Attendees:** s47F s47F com.au>, s47F ; s47F s47F  
; s47F ; s47F Weeks, Cliff; s47F  
s47F

~~OFFICIAL~~

Good afternoon

We would like to invite you to participate in a virtual information session on the consultation paper [Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals](#), which was published on the department's website on 12 January 2024. As you may be aware, submissions in response to the paper are due to be [lodged online](#) by 8 March 2024.

We will have people joining from across the country, so will meet virtually, on Tuesday 20 February 2024 from 2:00 pm – 3:00 pm (AEDT) via Teams.

Details below provide a link to allow you to either connect via video or join by phone.

We look forward to hearing your views, answering questions, and summarising next steps.

The department will also hold a public information session for all stakeholders in the week commencing 26 February 2024. You will have received an email inviting you to register interest for that session.

Please do not hesitate to contact me if you would like to discuss, or if you require anything further.

Kind regards

s47F

s47F

**Manager**

First Nations Section | Offshore Resources Branch | Oil and Gas Division  
Ngunnawal Country, Industry House, 10 Binara Street (GPO Box 2013) Canberra ACT 2601 Australia  
Department of Industry, Science and Resources  
P s47F | E s47F [@industry.gov.au](mailto:s47F@industry.gov.au)

[industry.gov.au](http://industry.gov.au) ABN 74 599 608 295

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### Acknowledgement of Country

Our department recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge First Nations Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to Elders past and present.



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## Microsoft Teams [Need help?](#)

### [Join the meeting now](#)

Meeting ID: **s47E(d)**

Passcode: **s47E(d)**

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### Dial-in by phone

**s47E(d)**

<#> Australia, Sydney

[Find a local number](#)

Phone conference ID: **s47E(d)** <#>

### Join on a video conferencing device

Tenant key: **s47E(d)**

Video ID: **s47E(d)**

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For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

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s47F

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**From:** s47F  
**Sent:** Tuesday, 20 February 2024 9:56 AM  
**To:** Weeks, Cliff; s47F  
**Cc:** s47F ; ORB First Nations  
**Subject:** Annotated agenda and slides for SCA meeting tomorrow [SEC=~~OFFICIAL~~]

Hi Cliff and s47F

Please find an annotated agenda [here](#) for the *Info session: Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals* from 2:00 pm – 3:00 pm (AEDT)/11:00 am – 12:00 pm Perth time.

The accompanying slide deck is [here](#).

s47F will operate the slides, per the prompting in the annotated agenda.

Please do not hesitate to contact me if you would like to discuss, or if you require anything further.

Kind regards

s47F

s47F

**Manager**

First Nations Section | Offshore Resources Branch | Oil and Gas Division  
Ngunnawal Country, Industry House, 10 Binara Street (GPO Box 2013) Canberra ACT 2601 Australia  
Department of Industry, Science and Resources  
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Australian Government  
Department of Industry,  
Science and Resources

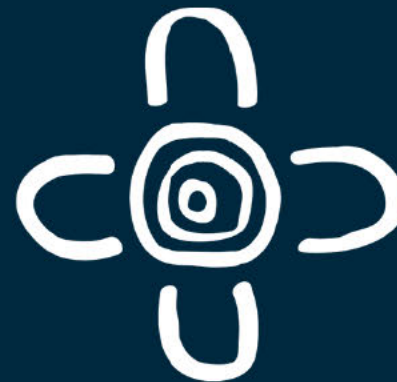
# Info session: Clarifying Consultation Requirements for Offshore Petroleum and Greenhouse Gas Storage Regulatory Approvals

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20 February 2024

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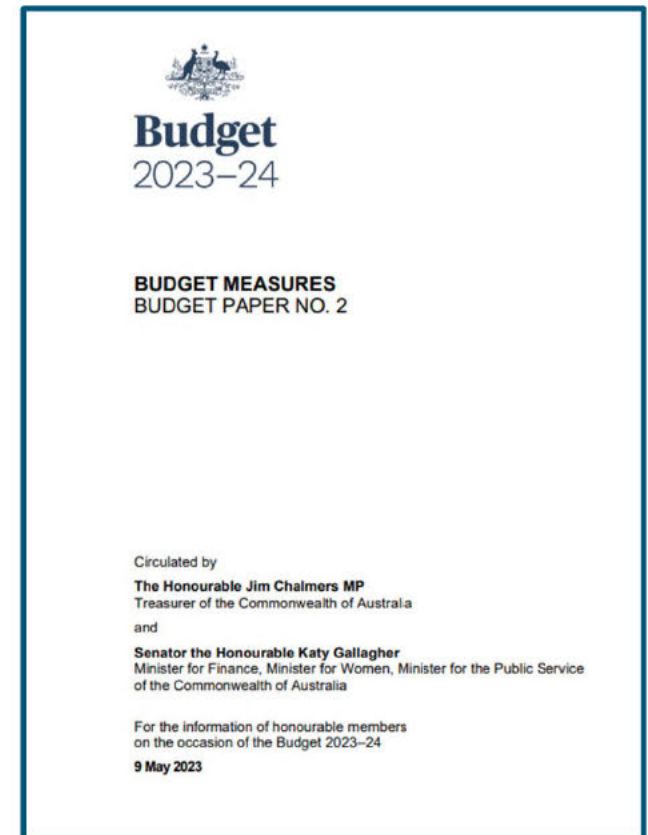
## Acknowledgement of Country

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# Offshore environment management review

## *Working with the Australian Resources Industry on the Pathway to Net Zero*

- *\$12.0 million over 3 years from 2023–24 for a review of the environmental management regime for offshore petroleum and greenhouse gas storage activities to ensure it is fit-for-purpose for a decarbonising economy.*
- ***This will include consultation requirements for offshore projects, including with First Nations peoples.***
- *The review will also examine opportunities to provide regulatory and administrative certainty for offshore carbon capture and storage projects to enable Australian industry to meet net zero targets whilst delivering domestic energy security and regional energy security.*



# Consultation paper – seeking submissions

*Consultation 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 have changed how we understand the consultation requirements in the Offshore Environment Regulations...feedback from stakeholders is that some uncertainty remains.*

Page 3



***Offshore Petroleum and Greenhouse Gas Storage Act 2006***

***The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023***

# Questions/comments

# Contact us

**Cliff Weeks**

**General Manager**

**Offshore Resources Branch**

Phone: s47F

**industry.gov.au**

s47F

**Manager**

**Offshore Strategy Branch**

**Cross Government Policy**

Phone: s47F

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**Manager**

**Offshore Resources Branch**

**First Nations Section**

Phone: s47F

**industry.gov.au**



## Annotated meeting agenda

**Info session: Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals - 20 February 2024**

Item	Item	Lead	Commencing	Action
1.	Welcome	Cliff Weeks (Chair)	2:00 pm (10 minutes)	<p>[Slide 1]</p> <p><u>Welcome</u> the National Sea Country Alliance leadership group (including co-chairs if they are online – s47F and s47F), SCA members and SCA associated members.</p> <p>[Move to slide 2]</p> <p><u>Acknowledgement of country</u></p> <ul style="list-style-type: none"> <li>The department recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge First Nations Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to Elders past and present.</li> </ul> <p><u>Thank</u> participants for making the time to discuss the review of the environmental management regime for offshore petroleum and greenhouse gas storage activities.</p> <p><u>Introduce</u> yourself, the team and s47F Manager, Cross Government Policy in the Offshore Strategy Branch.</p> <p><u>Note</u> the session will be split half and half between providing an overview of the offshore environmental management review and opening to questions and comments from SCA members.</p> <p>[Cliff hands over to s47F]</p>
2.	Environment regulation review	s47F	2:10 pm (20 minutes)	<p>[Move to slide 3]</p> <p>s47F <u>summarises</u> the Budget announcement.</p> <ul style="list-style-type: none"> <li>The Australian Government committed funding over three years for a review of the environmental management regime for offshore petroleum and greenhouse gas storage activities in the 2023-24 Budget context.</li> <li>The funding is committed for activities across four categories of work:</li> </ul>

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Item	Item	Lead	Commencing	Action
				<ul style="list-style-type: none"> <li>o 1) a check to see if changes can be made to existing regulations quickly, focused on making consultation requirements clearer – this is what the department is doing right now,</li> <li>o 2) understanding First Nations views about the system more broadly and if it can be better, running over a 12-month period or so – run by my team, the First Nations Section, Offshore Resources Branch.</li> <li>o 3) a longer-term review with scope to deliver broader reforms as informed by First Nations consultations, plus other stakeholders as appropriate.</li> <li>o 4) impediments to carbon capture and storage and how they might be overcome.</li> </ul> <p>s47F hands over to s47F [move to slide 4]</p> <p>s47F summarises work being undertaken now.</p> <ul style="list-style-type: none"> <li>• In the 2023–24 Budget the Government committed \$12 million over three years from 2023–24 for a review of the environmental management regime for offshore petroleum and greenhouse gas storage activities.</li> <li>• On 12 January 2024, the department released a consultation paper on clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals.</li> <li>• Submissions close on 8 March 2024.</li> <li>• This paper is the first phase of the Offshore Environment Management Review.</li> <li>• The purpose of this first piece of work is to make the consultation requirements clear for all stakeholders.</li> <li>• Consultation is a key feature of Australia's offshore environmental management framework. Australia's existing laws and regulations place a clear requirement on companies that hold petroleum or greenhouse gas storage titles to consult on any proposed offshore resources activities as part of the regulatory approvals process.</li> <li>• Recent court decisions have changed how we understand the consultation requirements in the Offshore Environment Regulations.</li> <li>• Whilst the court decisions provided some clarity on how titleholders should consult, we have received feedback that there is still some uncertainty.</li> <li>• Proper consultation regarding offshore activities is important. Consultation helps proponents and regulators to understand the possible impacts of offshore activities and develop ways to mitigate those impacts.</li> </ul>

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Item	Item	Lead	Commencing	Action
				<ul style="list-style-type: none"> <li>• However, uncertainty is not helpful for anyone, and the Government is committed to addressing this as a priority.</li> <li>• The Government believes there may be benefit in further clarifying the consultation requirements outlined in Australia's current Offshore Environment Regulations.</li> <li>• This is based on feedback from community groups and from the offshore resources industry.</li> <li>• 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.</li> <li>• We are committed to providing clarity and certainty for industry and community stakeholders and to ensure we have regulatory system that works for everybody.</li> <li>• The consultation paper is seeking views from people, organisations, local communities, Traditional Owners, First Nations communities and the offshore resources industry on their experiences with consultation under the current Offshore Environment Regulations.</li> <li>• We also invite ideas and suggestions to improve the clarity of the consultation requirements under the Offshore Environment Regulations without diminishing the clear obligation on titleholders to genuinely consult with persons or organisations who may be impacted by a proposed offshore resources activity.</li> <li>• This feedback will help inform options for the government to consider when seeking to clarify consultation requirements.</li> <li>• This consultation paper is the first opportunity to consider the current consultation requirements for offshore petroleum and greenhouse gas storage activities and identify options to provide clarity and certainty on these arrangements.</li> <li>• Additional public consultation opportunities will be available over the course of the review, including on any proposed regulatory amendments.</li> </ul> <p>s47F hands over to Cliff</p>
3.	Questions and comments	Cliff Weeks	2:30 pm (20 minutes)	<p>[Move to slide 5]</p> <p><u>Invite</u> questions or comments.</p> <p>We will do our best to answer questions in this session, but any questions you have after this session can be sent through to s47F and s47F at the First Nations Section mailbox s47E(d) <a href="mailto:s47E(d)@industry.gov.au">@industry.gov.au</a>.</p> <ul style="list-style-type: none"> <li>• We will pop the email into the chat function now.</li> </ul>

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Item	Item	Lead	Commencing	Action
				<p>s47F adds email address to Teams chat]</p> <p><u>Why do you think it is appropriate to consult like this?</u></p> <ul style="list-style-type: none"> <li>• Government wants to explore if there is value in making some tweaks to existing regulatory settings.</li> <li>• The point of this consultation process is to understand if stakeholders would benefit from minor changes, and if so, which changes.</li> <li>• We want to encourage views so government is able to make informed considerations.</li> <li>• The government will undertake First Nations consultations over the coming 12 months or so, to consider opportunities for broader reform.</li> <li>• The short turnaround would accommodate tweaks to the regulation, depending on advice provided to government by stakeholders.</li> </ul> <p><u>Who did you consult and why?</u></p> <ul style="list-style-type: none"> <li>• On 12 February 2024, the department emailed a broad range of stakeholders to provide a link to the consultation paper.</li> <li>• From a First Nations perspective, we emailed 289 groups primarily Prescribed Bodies Corporate and Land Councils.</li> <li>• We recognise publishing a consultation paper on the department's website isn't enough – people are busy and don't have time to monitor departmental websites.</li> <li>• So we sought to call groups we emailed, using ORIC as a starting point for phone numbers.</li> </ul> <p><u>Will you provide funding for us to engage via these consultations?</u></p> <ul style="list-style-type: none"> <li>• Funding announced in the 2023-24 Budget is allocated against the four categories of work outlined by S 47F earlier, over a three-year period.</li> <li>• Funding requests need to go through a formal, rigorous consideration process, consistent with government expectations and requirements.</li> <li>• The department has not made any funding commitments, beyond the Budget 2023-24 announcement.</li> </ul>

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Item	Item	Lead	Commencing	Action
				<p><u>How many submissions have you received? How many have been from First Nations stakeholders?</u></p> <ul style="list-style-type: none"> <li>• We have received 15 submissions, mostly from individuals.</li> <li>• We expect to publish most on the department's website, after submissions close.</li> </ul> <p><u>Will you support Senator Dorinda Cox's Protecting the Spirit of Sea Country Bill 2023?</u></p> <ul style="list-style-type: none"> <li>• On 9 May 2023, government announced the review of the environmental management regime for offshore petroleum and greenhouse gas storage activities.</li> <li>• Per the Budget announcement, review activities will run over the period from 2023-24 to 2025-26 inclusive.</li> <li>• I am committed to getting views of diverse First Nations groups across the country, to inform review activities.</li> <li>• I am aware that Senator Cox introduced the Bill on 8 August 2023 and that it has been referred to the Environment and Communications Legislation Committee for inquiry.</li> <li>• Given in-train consultations and the importance of the review announced in the Budget, the department made a submission to the inquiry (submissions closed on 19 February 2024).</li> <li>• The nature of the department's submission must remain confidential until the committee has accepted and then published submissions, which usually happens within several weeks of submissions closing.</li> <li>• The committee process is in-train – with public hearings scheduled for 12 April 2024 (Darwin), 6 May 2024 (Karratha) and 7 May 2024 (Perth).</li> </ul> <p><u>How does this fit with the Nature Positive work and the standards that DCCEEW is working on?</u></p> <ul style="list-style-type: none"> <li>• The department will run the review concurrent to DCCEEW developing standards.</li> <li>• The consultation paper sets out the department's review will examine the entire environmental management framework to ensure amongst other things it is consistent with reforms to the national environmental legislation being developed under the government's Nature Positive Plan.</li> <li>• This includes ensuring the Offshore Environment Regulations align with relevant national environmental standards currently under development, including the standard for First Nations engagement and participation in decision-making and the standard for community engagement and consultation.</li> </ul>

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Item	Item	Lead	Commencing	Action
				[Move to slide 6]
4.	Close	Cliff Weeks	2:50 pm (10 minutes)	<u>Thank</u> participants for joining the meeting and the NNTC for forwarding the meeting invite.  <u>Ask</u> s47F to recap any action items arising.  <u>Close</u> meeting

OFFICIAL

Attendees	
1.	s47F
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Attendees (DISR)	
1.	s47F
2.	s47F
3.	Cliff Weeks
4.	s47F
5.	s47F
6.	s47F



s47E(d), s47F, s 47G

Info session: Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals [SEC=~~OFFICIAL~~]

Tuesday, 20 February 2024

2:25 PM

**Meeting Date:** 20/02/2024 2:00 PM

**Location:** Microsoft Teams Meeting

**Link to Outlook Item:** [click here](#)

### Invitation Message

#### Content

<<image001.png>>	Added by <a href="#">ORB First Nations</a>  Attachment from Outlook
<<image002.jpg>>	Added by <a href="#">ORB First Nations</a>  Attachment from Outlook

#### Participants

 [ORB First Nations](#) (Meeting Organizer)

 s47F

 s47F

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 s47F

 [Weeks, Cliff](#)

 s47F

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#### Notes

s47E(d), s47F, s47G

Created with OneNote.



# Clarifying consultation requirements for offshore oil and gas storage regulatory approvals: consultation paper

## Make a submission

Consult hub

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Response received at:  
8 March 2024, 7:33am

Response ID:  
sbm2cb313fa9691ded6f9cd9

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- 1 Do you agree to the Privacy Collection Statement?  
Yes I agree
- 2 Please indicate how and if you want your submission published.  
Public
- 3 Published name  
Top End Aboriginal Coastal Alliance Incorporated
- 4 First name  
Julius
- 5 Last name  
Kernan
- 6 Email  
s47F @gmail.com
- 7 Phone

s47F

- 8 Who are you answering on behalf of?  
Organisation
- 9 Organisation  
Top End Aboriginal Coastal Alliance Incorporated
- 10 What sector best describes you or your organisation?  
First Nations peoples and communities
- 11 What state or territory do you live in?  
Northern Territory
- 12 Postcode  
s47F
- 13 What area best describes where you live?  
Remote area
- 14 What do you think works for offshore consultation processes and should be kept?  
Not answered
- 15 What doesn't work for offshore consultation processes and how could it be changed?  
Not answered
- 16 If you have participated in consultation processes for proposed offshore resources activities:  
Not answered
- 17 What information should titleholders provide to relevant persons so

they:

Not answered

- 18 What examples are there of consultation processes under other regulatory frameworks that you have participated in that have worked more effectively?  
Not answered
- 19 Titleholders should respond to relevant persons on how they have considered the information provided. How is this best done?  
Not answered
- 20 How should titleholders manage sensitive information given to them during consultation?  
Not answered
- 21 How could the consultation process account for verbal consultations?  
Not answered
- 22 How much time should a titleholder reasonably give relevant persons to engage and provide information as part of a consultation process?  
Not answered
- 23 If titleholders and NOPSEMA get information after the consultation is over, how should they consider it during the assessment process?  
Not answered
- 24 What is the best way for titleholders to engage with Traditional Owners who are able to speak for sea country?  
Not answered
- 25 How can titleholders ensure they consult appropriately and effectively with First Nations people to adequately communicate project

information?

Not answered

- 26 How can titleholders make sure First Nations people are able to express their views on a proposed offshore resources activity in line with their preferences?  
Not answered
- 27 What is the best way to manage accessibility of information in the consultation process?  
Not answered
- 28 Is there a benefit to greater coordination among multiple titleholders on certain issues that are common to many proposed offshore activities?  
Not answered
- 29 What can titleholders do to address consultation fatigue?  
Not answered
- 30 What opportunities are there to clarify the process for identifying who a proposed offshore resources activity may affect?  
Not answered
- 31 What type of communication methods and processes should titleholders use to make relevant persons aware of consultation for a proposed offshore resources activity?  
Not answered
- 32 Is it preferable for some relevant persons to be engaged via representative bodies or industry associations, instead of individually?  
Not answered

- 33 Should people and organisations have an opportunity to self-identify as relevant persons?  
Not answered
- 34 How could the Offshore Environment Regulations clarify what is meant by a person or organisation that 'may be affected' by an offshore resources activity?  
Not answered
- 35 When assessing whether consultation has been undertaken that is appropriate for the proposed offshore resources activity, how should NOPSEMA consider the likelihood and consequence of an impact on relevant persons?  
Not answered
- 36 Have you removed any identifying information from your submission?  
Not answered
- 37 Upload 1  
TEACA Submission - final.05785531dfeb5.docx
- 38 Upload 2  
Not answered
- 39 Upload 1  
Not answered
- 40 Upload 2  
Not answered
- 41 Make a general comment  
Not answered

**TOP END ABORIGINAL COASTAL ALLIANCE INCORPORATED**  
teacainc.nt@gmail.com / 2/2 Tsoles Pl, The Narrows NT 0810

**Submission from Top End Aboriginal Coastal Alliance Incorporated to DISR  
Consultation Paper:**

***‘Clarifying consultation requirements for offshore petroleum and greenhouse  
gas storage regulatory approvals’***

*Response submitted online via:*

<https://consult.industry.gov.au/offshore-petroleum-consultation-requirements/submission>

**A. Introductory Remarks**

The Department of Industry, Science and Resources is reviewing the offshore environmental management framework for petroleum and greenhouse gas activities (which includes the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023*) and has sought feedback on the consultation process under this framework. Top End Aboriginal Coastal Alliance Incorporated (TEACA) is pleased to provide the following submission in response.

TEACA is a First Nations (FN) operated and controlled organisation with 100% FN membership which was established by senior FN leaders who represent various sea country areas and coastal estates across the top end of the Northern Territory (the *Top End*). TEACA’s purpose is to represent the interests of, advocate for, and to enhance the capacity of Aboriginal peoples of the Top End to directly engage with Government, industry, and non-government organisations in a culturally appropriate manner in relation to matters that may affect their sea country and coastal estates and other areas. TEACA is a collection of senior FN leaders who have come together and worked cooperatively to identify those FN persons who are recognised by and amongst their clan groups and FN communities as persons with the cultural authority, who can speak for sea country and on behalf of coastal estates. FN persons who have been identified by the TEACA members have formed First Nations Consultative Committees (FNCC) which have begun working directly with the petroleum industry in the Top End to advise on offshore projects in situations where advice is urgently required, and a project is at risk due to FN and Traditional Owner related issues. The FNCC have been invaluable in providing comprehensive and culturally appropriate advice in short timeframes and in a very cost-effective manner which has resulted in the rebuilding and establishment of positive ongoing relationships between FN peoples and industry.

The aim of the Consultation Paper is to obtain responses in relation to two main themes. These are:

1. how can Australia’s Offshore Environment Regulations ensure targeted, effective, meaningful, and genuine consultation occurs, including culturally appropriate consultation with Traditional Owners and First Nations communities?
2. how should titleholders best identify who is a relevant person or organisation for the purposes of consulting on a proposed offshore resources activity?

There are twenty-two questions contained within the Consultation Paper which seek to illicit detailed feedback in response to the two main themes and this submission provides a response to each question. This submission commences by directly addressing the overarching themes followed by



responses to each question, and finally, recommendations and conclusions are included for consideration. Where appropriate, responses to multiple questions have been combined and this is indicated where relevant, below.

## **B. Main Themes**

### **Ensuring targeted and effective consultation**

- *Consultation approaches need to be culturally appropriate*
- *Use proven effective methods of consultation via First Nations Consultative Committees (FNCC) and Top End Aboriginal Coast Alliance Incorporated (TEACA)*

FNCC are First Nations (FN) led committees that are formed upon the advice and guidance of recognised elders and cultural leaders from the various coastal and sea country areas across the top end of the Northern Territory of Australia (Top End). FNCC consist of various First Nations persons who have authority and are recognised culturally as being able to speak for country and make important and binding decisions about matters that affect coastal and sea country areas. These committees have been and continue to be established for the various areas across the Top End and can be established anywhere where there are FN peoples that have connections to country and where consultation for offshore resources activities and other projects is required. FNCC provide advice and guidance to ensure that, from the outset and for the duration of consultations and project life cycles, cultural protocols relevant to the groups and communities being engaged are followed and to ensure that correct and valid FN cultural advice and input is provided. There are different FNCC for each area to reflect the fact that there are differences between groups and regions in relation to cultural requirements and methods for optimal engagement.

In addition to FNCC, TEACA has been established as a FN representative organisation which consists of members from each FNCC as well as the senior recognised elders and cultural leaders from the various coastal and sea country estate areas across the Top End. TEACA members and FNCC have been involved in consultations undertaken by Santos in relation to their Barossa Gas Project and other proposed activities regulated under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (the Offshore Environment Regulations).

The *Mulyurud* Consultative Committee was established on 15 September 2023 to represent the FN peoples of Croker Island and surrounding sea country. On 25 October 2023, the Daly River/ Port Keats FNCC was established to represent FN persons who speak for coastal areas of the Daly River/ Port Keats Aboriginal Land Trust and adjacent sea country. The *Rak Badjalarr* Consultative Committee was established on 15 November 2023 to represent the eight FN clan groups who speak for coastal areas and sea country from the Cox Peninsula near Darwin to the Daly River. Discussions with senior FN persons commenced in December 2023 in relation to the establishment of additional FNCC to represent FN persons whose country is situated in the region from Cape Hotham eastward to encompass the coastal and sea country areas of northern Kakadu National Park and Chambers Bay and separately for the area of the Cobourg Peninsula and other areas located within the Arnhem Land Aboriginal Land Trust and adjacent sea country. During 2024, TEACA proposes to collaborate with senior FN persons to complete the establishment of additional FNCC for these areas.

The utilisation of FNCC and TEACA and the resulting positive achievements in relation to the consultation outcomes for the Barossa Gas Project and other proposed offshore resources activities recognises and demonstrates that respect for indigenous knowledge, cultures and traditional practices contributes to informed consultation and participation of FN peoples, which in turn provides for sustainable and equitable development and proper management of the environment.

### **Identifying relevant persons to consult under the Offshore Environment Regulations**

- *Identification of and working with appropriate organisations - FNCC and TEACA*
- *Engagement with correct persons as identified through FNCC and TEACA*
- *FN persons (represented by FNCC and TEACA) are best placed to identify relevant FN persons*

There is opportunity for titleholders to utilise the FNCC and TEACA for consultation purposes in relation to current and proposed offshore resources projects. These organisations have been purposely created to allow for ease of engagement between titleholders and FN peoples under Australia's offshore environmental management framework. As is evident from the existing example of effective engagement with Santos, FNCC provide certainty to the consultation process and increase efficiencies (in relation to both cost and time savings as the committees provide a single contact point for relevant FN persons) which has huge potential benefits to the offshore resources industry and to Government in assisting in the achievement of regulatory and commercial objectives. By engaging in consultations in good faith with FN persons in relation to offshore resources activities which may affect their coastal and sea country estates, opportunity is created for titleholders to establish and confirm a social licence to operate and achieve leading practice in relation to their engagement with FN persons.

TEACA members are senior persons with cultural authority and knowledge and can advise on matters themselves as FN persons however, they are also able to play a vital role in connecting with other FN persons, groups, and communities to identify relevant FN persons for other coastal and sea country areas for which consultation may be required in relation to offshore resources activities. Through continued conversations and due to the strength of cultural connectivity and relationships between and within FN groups and communities, TEACA members are able to work with relevant FN persons to establish FNCC which can be utilised as a single point of contact for titleholders to refer to for consultative purposes to cover entire coastal and sea country areas.

As this process of identifying FN persons and forming FNCC continues over time, and as the development of offshore projects progresses, more relevant people are engaged, and this ensures that correct and increasingly detailed and complete information is shared and ultimately understood by titleholders and Government. These outcomes are the direct result of allowing FN persons to self-determine the structures and to select the members of their organisations in accordance with their own practices and procedures.<sup>1</sup> Each FNCC is acutely aware (through its membership) of which areas it has the cultural authority to speak for and the extent of an FNCC area is developed by each of the FNCC working with TEACA and other FNCC to agree culturally appropriate boundaries – that is for which area each group has cultural authority, and where this authority stops and where a different

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<sup>1</sup> United Nations Declaration on the Rights of Indigenous Persons (UNDRIP) Article 33.2, adopted by the United Nations General Assembly on Thursday, 13 September 2007.



group must be consulted as having cultural authority, knowledge, and responsibility for a different area.

Due to the close connections between neighbouring FN groups and strength of cultural knowledge within these groups in the Top End (and potentially elsewhere in Australia), the FNCC being engaged for an area will also be able to provide advice on which senior persons should be engaged to commence the discussion with those neighbouring FN groups, allowing the discussion to be initiated in a culturally appropriate manner (i.e. with elders and leaders that have been identified by their neighbours. Counterparts and peers). It is worth noting that there may not be a clear demarcation in boundaries between groups and their neighbours – there may be shared responsibility for certain areas such as dreaming tracks or sites of significance.

Each of the questions included in the consultation paper, has been addressed and a particular focus on FN persons as relevant persons, which includes indigenous persons, clan groups, Traditional Owners, Native Title Holders, communities, and other FN groups. Wherever possible, practical, and real-world examples and outcomes have been included and highlighted.

## **C. Responses to Questions 1-22**

### **Improving engagement with relevant persons**

#### ***1. What do you think works for offshore consultation processes and should be kept?***

Consulting with a wide range of stakeholders should be continued and the concept of relevant persons should remain inclusive and adaptable to reflect new interests or understandings of what can constitute interests, which are relevant to projects. This inclusive approach is important as it allows for the expansion of the concept of interests that are considered. For example, FN persons have intangible interests such as dreaming tracks, song lines, and culturally and spiritually significant attachments to totemic species, places and areas that have major effects on persons, groups and communities and which must be considered and protected during project activities and throughout the life of the project. Such interests differ from what has been traditionally considered as relevant interests such as commercial and recreational access or non-indigenous ownership and use rights. It is imperative that indigenous concepts are understood by the offshore resources industry and Government and that these understandings are reflected practically in environment plans (such as in procedures and actions to be undertaken by titleholders), prior to plans being finalised and approvals provided.

The practice of keeping records of consultations that occur and including resulting information in environment plans should continue and be expanded (there needs to be allowance and requirement for other forms of information, such as verbal information, to be reflected in environment plans – in instances where information cannot be recorded for sensitivity/cultural reasons, but is nonetheless important to the environment plan, this should be noted as such in the plan i.e. the environment plan may require that further discussions/ongoing dialogue, with relevant FN persons are undertaken to confirm matters raised in the environment plan that cannot be recorded and are needed for future reference. Such practices, through ongoing dialogue, may contribute towards strengthened relationships between FN persons and proponents of offshore activities, and over time, may assist in the development and retention of social license for the offshore resources industry.



## ***2. What doesn't work for offshore consultation processes and how could it be changed?***

To understand and respect the differences between the types of 'relevant persons' under the legislation and to assist with more clearly delineating what is meant by relevant persons within each category of relevant person, the legislation needs to reflect the cultural reality that FN groups (sea country estates) are represented by persons who have been given cultural authority to speak on behalf of the group (these people may be referred to as elders or seniors or they may be junior people who have been selected through a traditional cultural process to speak for country or otherwise represent the group). Whilst FN persons have collective and individual rights in relation to country, this does not mean that titleholders must consult with each individual FN person; they are able to consult with those representatives who have been identified as having the authority to speak on behalf of and communicate decisions on behalf of the group.<sup>2</sup> It is important that any engagement should require the full and effective informed consultation and participation of FN persons throughout the lifecycle of a project.

It is important to recognise that FN peoples' connection to country provides them with a unique perspective and understanding of country and that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment by titleholders<sup>3</sup>. FNCC are an efficient, fit-for-purpose, tried and tested and novel solution to ensure that relevant FN people are actively involved in the consultation process and are appropriately consulted. A framework for consulting with FN people could be developed using the learnings from past consultations with FNCC, which resulted in positive outcomes for all parties.

Reference to past consultations with FNCC will also assist in defining terms such as 'sufficient information' and what 'informed assessment' looks like in practice for FN persons. Such consultations can also inform what a timeline looks like for the consultation process undertaken with FN persons which will provide more certainty than the currently undefined 'reasonable period' referred to in section 25 of the Offshore Environment Regulations.

### Regulation

The Offshore Environment Regulations should provide opportunity for FN persons to provide feedback to environmental plans as necessary in all instances and not just when an environment plan relates to seismic and/or exploratory drilling activities. FN persons should be advised of the control measures that titleholders will use to reduce the impacts and risks of the proposed activity to 'as low as reasonably practicable' (ALARP) and an acceptable level and then adequately resourced to allow for comment on the proposed measures, including to suggest additional and/or different measures if such measures will further reduce impacts and risks related to the proposed activity. Due to the unique understanding and inalienable and strong connection that FN peoples have with country, FNs are best placed to advise on particular values and impacts that proposed offshore resources activities

<sup>2</sup> *There is a need to build the capacity of government officials, the private sector, and other non-governmental actors, which includes increasing their knowledge of indigenous peoples and awareness of the human rights-based approach to development so that they are able to effectively engage with indigenous communities.* Australian Human Rights Commission (2009), *Native Title Report*, accessed via [https://humanrights.gov.au/sites/default/files/content/social\\_justice/nt\\_report/ntreport09/pdf/ntr\\_nx3.pdf](https://humanrights.gov.au/sites/default/files/content/social_justice/nt_report/ntreport09/pdf/ntr_nx3.pdf) on 3 March 2024.

<sup>3</sup> UNDRIP (2007), General Principle..

may have on the environment and on country (which transcend physical impacts on the environment). It is essential for titleholders to recognise that FN persons have rights to maintain and strengthen their relationship with country as well as responsibilities to future generations in relation to country.

***3. If you have participated in consultation processes for proposed offshore resources activities:***

TEACA members have participated in numerous consultation processes undertaken by Santos in relation to the Barossa Gas Project and other proposed offshore resources activities, including consultation with FNCC and other consultation formats with larger groups of FN persons. In our experience to date, the most informative and productive consultation events were those undertaken via the FNCC methodology. The following responses to question 3 are based on the experience and observations of TEACA members having participated in these consultation processes.

***• do you feel like you were given enough information?***

Enough information was provided during consultation undertaken with FNCC and via larger group formats. In cases where risks and proposed control measures were the same across different proposed activities, the relevant information was repeated. While this method of communicating information may assist to ensure that a sufficient amount of information was communicated, some consultation participants persons did note and comment on the repetitive nature of the information being provided. This matter did not present any notable issues for FNCC, however in some of the larger group format consultation events, due to the size of the audience, it was difficult to ascertain with confidence if all persons being consulted were able understand why the information was being repeated and the resultant discussion (questions from audience and responses from Santos) did take some time to resolve due to the large numbers of persons involved.

***• was the information provided helpful to understand the activity being proposed and the implications?***

During FNCC consultation events, the information provided by Santos was helpful to enable FNCC members present to understand the nature of the proposed activities and the potential risks and impacts on the environment (and their functions, interests, or activities) associated with those activities. Larger group format consultations run the risk of not everyone being sufficiently cognisant of the nature of the activity and the related implications since it is not possible for every person being consulted to provide confirmation back to the presenter that they have understood the information being provided. It is also probable that, for cultural reasons, some FN persons may not feel comfortable speaking in front of large groups, especially in the case where there may be avoidance relationships between persons present and where audiences are physically separated, and some persons may not be able to hear the presenter or see the images or text being presented. It is also possible that some persons may feel ashamed about admitting that they don't understand what is being communicated to them in front of large numbers of people, and where they may not be familiar with every FN person in the audience. The FNCC format, in contrast saw persons present freely exchange views and engage in meaningful dialogue with each other and the proponent and FNCC members provided feedback which assisted in improving the quality and relevance of the information being presented.



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- ***was information given relevant to the consultation and your functions, activities or interests?***

Given the relevant cultural processes for determining FNCC membership, the information provided during FNCC consultation events was relevant to the functions, activities, or interests of the FNCC members present. Due to the absence of a rigorous FN-led cultural process for determining participation, it is difficult to ascertain if this was also the case in relation to the larger group (i.e. non-FNCC format) consultation events. For this reason, it is possible that some persons who attended non-FNCC consultation events may not have functions, activities or interests relevant to the proposed activity being consulted upon. **4. What information should titleholders provide to relevant persons so they:**

- ***are aware of the purpose of consultation?***
- ***can make an informed assessment of the possible consequences of the activities on their functions, interests, or activities?***

In addition to the existing requirements for information related to environmental management plans and associated processes, the following information should be provided to FN persons so that they are aware of the purpose of any consultation and to allow them to make an informed assessment of the possible consequences of the activities on their functions, interests, or activities:

- exact, or as specific as possible locations of intended works/activities, including all alternative plans for such works/activities (this should be presented in various ways, including visual with maps, to ensure that FN peoples understand the areas being discussed);
- detailed description of intended works/activities;
- when and for how long intended works/activities will occur in all stages of the project;
- how long the project life is and what will happen at the end of the project life to infrastructure and the management of potential environmental impacts related to this;
- who will carry out work/activities and what is their expertise/past experience;
- the purpose of the project and the identity of the project owner as well as those involved in the project and with commercial interests in the project such as Joint-Venture parties;
- past projects that have been undertaken by the proponent/those involved in the project; and
- the identity of all parties that are being consulted about the project (in accordance with any relevant privacy requirements).

If there are requests for additional information of a different type than detailed above, by a FN person, the titleholder should discuss the request with the FNCC and if possible, provide the information. There may be information that doesn't seem relevant to a titleholder, but which may be incredibly relevant to FN persons. For example, a particular method of exploration which potentially affects certain animals may cause distress to FN persons who are culturally connected to a particular animal as a totem or a dreaming, and another exploration method which may have more physical impact on an area yet doesn't have the same effect on an animal may be a preferred option.

Due to the connection that FNs peoples have to country (strong inalienable connection and associated responsibilities for country, including responsibility to care for and protect country and visitors to country and associated dreaming, spiritual and cultural aspects for future generations), there needs to be detailed information provided in relation to proposed offshore resources activities, so that FN peoples can properly understand, assess and advise on the possible consequences of the proposed activities on their functions, interests or activities. The connection and responsibility that

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FN people have to country is much more complex and far reaching than other relevant persons which have limited, short-term distinct recreational or commercial concerns only.<sup>4</sup> The Australian High Court has confirmed that FN people can also have commercial rights in relation to sea country<sup>5</sup>. Importantly however, in addition to these rights, FN people are intrinsically connected to country, and harm and other actions on country can affect entire communities and groups for generations. In *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193 at 39 the Full Court reiterated:

*... Sea country is valued for Indigenous cultural identity and Indigenous people have been sustainably using and managing their sea country, including that within the Arafura Marine Park, for tens of thousands of years. . .*

*... Aboriginal and Torres Strait Islander peoples have a strong ongoing association with the area that extends from the beginning of human settlement in Australia some 50,000 years ago. The close, long-standing relationship between Aboriginal and Torres Strait Islander peoples and the coastal and marine environments of the area is evident in indigenous culture today. The Aboriginal and Torres Strait Islander peoples of the northwest continue to rely on coastal and marine environments and resources for their cultural identity, health and wellbeing, as well as their domestic and commercial economies. . .*

*... while direct use by Aboriginal and Torres Strait Islander peoples [of] deeper offshore waters is limited, many groups continue to have a direct cultural interest in decisions affecting the management of these waters. . . .*

It is a well-recognised principle that FN peoples have the right to maintain and strengthen their distinctive spiritual relationship with traditional territories, waters, and coastal seas.<sup>6</sup>

There are many documented examples of the significance of sea country to spiritual and cultural values of FN peoples such as sites in and around Croker Island and the Cobourg Peninsula region (dangerous places) and other sites connecting coastal features to marine life which have been

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<sup>4</sup> "Aboriginal peoples' relationship to their sea country brought with it a complexity of rights and responsibilities, including the right to access, use, and distribute resources, and the responsibility to manage those resources through time, from generation to generation. Marine environments were managed through a variety of strategies and cultural practices, including: • conduct of ceremonies (songs, dances, story-telling, and other rituals) with the purpose of nurturing the well-being of particular places, species, and habitats • control of entry into marine clan estates by outsiders—restricting resource use to clan members and others who had their permission • seasonal exploitation of particular marine resources, and the opening and closure of seasons according to ecological events, such as the flowering of particular plants or the arrival of a migratory bird • restriction on the harvesting of particular species, based on the age, gender, reproductive condition, health, fat content, and so on, of individual animals • restrictions on resource use and distribution by clan members and others, based on age, gender, initiation status, marital status, and other factors • restrictions on the use of particular animals and plants of totemic significance to individual clans. Each clan usually identified closely with at least one natural element or 'totem'. These were generally animal or plant species, but could also be sea currents, winds, or celestial bodies • prohibition of entry to certain areas on land and sea, often associated with storms or other sources of danger. Entry and/or hunting and fishing in these areas was believed to cause severe storms or other forms of danger, not only to the intruders but also to other people in the region." Baker, R., Davies, J. and Young, E (eds) (2001), *Working on Country: Contemporary Indigenous Management of Australia's Lands and Coastal Regions*, Oxford University Press (Chapter - Management of Sea Country Indigenous Peoples' Use and Management of Australia's Marine Environments, Smyth, D).

<sup>5</sup> In *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia and Ors* [2013] HCA 33, the High Court was unanimous in its finding that FN persons had the right to take fish and other aquatic life for trade or sale, which was supported by the native title right to take for any purpose, and this had not been extinguished by fisheries legislation.

<sup>6</sup> UNDRIP (2007), Article 25



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documented through legal processes such as the Kenbi Land Claim to establish the strong spiritual and cultural connection to coastal lands and sea country. Many FN groups of the Top End also connect sea country to afterlife beliefs (oceans being the resting place of ancestors) meaning that for these groups their connection to sea country is limited only by the extent of the sea itself. As explained in the example above, many groups also have totemic and other cultural and spiritual connections to marine life and any effect on these species (such as whales and turtles which can be impacted upon by titleholder activities) can have a direct and major impact on groups, group members and communities well into the future.<sup>7</sup>

***5. What examples are there of consultation processes under other regulatory frameworks that you have participated in that have worked more effectively?***

***• What aspects of consultation processes have you experienced that you would want to encourage?***

Using FNCC for consultations with FN persons in the Top End and other areas that may be affected by proposed offshore resources activities and where FN persons have connections to country (and where other FNCC could be established) is the optimum way to consult in relation to offshore areas in the Northern Territory (NT) and other areas where FN connections to country exist. Recent examples of consultation with Santos, detailed above illustrate how effective FNCC are for consulting with FN persons in relation to offshore resources projects and associated activities. The FNCC approach should be recognised and implemented as leading practice in the offshore industry.

FNCC are unique in that they have been established by FN persons, for FN persons and are operated and controlled by FN persons. These committees exemplify self-determination at a practical level and due to their connection to communities and groups, they are the best practicable way to keep FN communities and groups fully informed about developments regarding projects and the consultation process (including the outcomes). FNCC are properly representative of FN peoples in relevant areas and this allows for targeted consultation for projects (communicating with FNCC directly, ensures that relevant persons are informed and consulted and significantly reduces the workload, time and costs for titleholders, who without the FNCC, may be required to canvas large numbers of people who may or may not be relevant persons. FNCC also ensure that correct and reliable information is provided to titleholders which can be clarified or expanded upon, so that titleholders can make informed decisions about environmental matters.

Working with FNCC allows for consultations to be focused, interactive and inquiring (which is an effective communication method that is vital to obtaining information from FN peoples as the experts in many matters relating to culture and country) and deliberative. Having a central point of contact allows for adequate notice periods and makes rescheduling consultations and other tasks easy and certain. Time periods can easily be affected by cultural matters such as deaths in a community or group (known as sorry business in the Top End) and often contingency plans need to

<sup>7</sup> The Dhimurru Land Management Aboriginal Corporation, which represents interests of the Yolŋu people in the North Eastern part of the Northern Territory stated in its report, *Dhimurru Sea Country Plan* (2006):

*"The interests of most other users are in preserving and conserving bio-diversity, in making an economic return or enjoying the sea and shores for recreation and pleasure. All of these reasons for valuing sea country are important to us, but for Yolŋu and other Indigenous salt water people, our cultural survival and wellbeing is at stake. We are not just another stakeholder; we are first Australians whose identity and essence is created in, through and with the sea and its creatures."*

be enacted to allow for sorry business and other unforeseen events, which is made easier if there is a central contact point, such as with FNCC, for communicating timeframes and schedules.

#### **Presenting consultation outcomes in an environment plan**

##### ***6. Titleholders should respond to relevant persons on how they have considered the information provided. How is this best done?***

Conducting in-person sessions with FNCC which are suitably facilitated is the optimum way to share information with FN persons for cultural reasons (Australian FN peoples and communities share knowledge and communicate information verbally, through talking and song). Written messages and information are not a traditional method of communication and despite the impact of societal changes and modernisation on FN peoples and their communities, verbal, in-person communication remains the most appropriate method of communication for FN persons and should be utilised by titleholders when responding to FN persons.

FNCC are best situated to facilitate consultation with FN persons in relation to consultation outcomes for offshore resources activities proposed to be undertaken in Northern Territory Offshore Areas governed under the OPGGS Act. During consultation, titleholders should clearly outline how responses have been incorporated into and reflected in the environment plan and how this will be implemented in practice. There should be a detailed explanation provided regarding how the feedback received during consultation will impact upon how the project proceeds and how the feedback will be used to minimise risks and impacts of the proposed activity and how the titleholder will adhere to the principles of ALARP and Ecologically Sustainable Development (ESD). If matters haven't been addressed, or information seemingly hasn't been considered, the titleholder should confirm what has and hasn't been considered and why or why not this is the case. Given the complexity of information being discussed and shared, it is important that these sessions are facilitated appropriately through the presence of other FN persons such as members of TEACA and those persons who assist FN persons from FNCC and/or TEACA to understand technical, legal, and other types of relevant information.

##### ***7. How should titleholders manage sensitive information given to them during consultation?***

If FN persons divulge sensitive information to titleholders during consultation, titleholders should ensure there is confirmation from the FN person/group/community provider about how such information should be managed and shared and whether there are exceptions, cultural protocols or other measures which impact upon the ability to share the information. Where cultural or other sensitive and potentially confidential information is provided by FN persons during consultation, the titleholder should seek clarification and further information as relevant to fully understand the information and why it is sensitive and potentially confidential. There needs to be communication with FNCC about what, if any information that is provided, is sensitive as there may be information communicated that whilst not appearing to a titleholder to be sensitive information, may be such. For example if there are areas within the project area that are culturally significant to either males or females (and this information isn't shared with the opposite sex due to cultural sensitivities and practices), it may be inappropriate to share this information with those of the opposite sex who are not allowed to know the information, irrespective of whether the person is a FN person or an employee or consultant of the titleholder or a contractor or public servant.



If culturally sensitive information is shared with titleholders, it is important that they understand indigenous and cultural intellectual property (ICIP) principles and best practices and follow these protocols.<sup>8</sup> For example, by publishing or sharing such information a titleholder could unknowingly be in breach of ICIP protocols. To ensure that ICIP is protected, titleholders should check with FNCC and TEACA as to the status of any information that is shared and seek guidance, if necessary, from these organisations about how to manage such information.

#### ***8. How could the consultation process account for verbal consultations?***

Any verbal consultations can and should be recorded, which can occur through appropriate facilitation with FNCC. For areas where there is not yet an established FNCC, TEACA can facilitate consultations and record these conversations in a time and cost-effective manner. TEACA can also work with FN persons and establish FNCC which can then be consulted with. When consulting with FNs of the Top End, facilitation via FNCC and/or TEACA is important to ensure that information is clearly communicated in a culturally appropriate manner and that any input from FN persons is understood by titleholders and Government. When conducting verbal consultations information provided must be accurate, accessible, and in plain language<sup>9</sup>.

#### ***9. How much time should a titleholder reasonably give relevant persons to engage and provide information as part of a consultation process?***

If FNCC and/or TEACA are engaged with as part of the consultation process, in most cases 30 days is sufficient time for relevant FN persons to engage and provide information, however up to 60 days should be allowed to enable consultation over large areas or in case of issues related to the short-term availability of FNCC members. One of the major advantages of engaging with FNCC is that these committees are representative of large numbers of FN persons and communities and due to their small size, they are very reflexive and responsive to timelines and various needs. As detailed above, there have already been consultations held with FNCC which have resulted in incredibly positive outcomes and the establishment of relationships between titleholders and FN relevant persons, so FNCC are a very effective way of consulting with FN relevant persons. Consulting with these organisations avoids multiple methods of consultation and multiple consultations with large numbers of FN persons (who may or may not be relevant persons for the purpose of the proposed activity).

FNCC are focused forums which are representative of and bring FN people together to self-determine who has cultural authority to speak and provide information. By recognising and engaging with these forums FN persons are empowered which leads to positive engagement and encourages open and direct dialogue between titleholders and FN relevant persons. This means that fewer consultations are required to reach the relevant and necessary audience, resulting in time and cost savings for

<sup>8</sup> ICIP includes traditional knowledge (including spiritual knowledge), traditional cultural expression, cultural objects, secret and sacred material as well as documentation of Aboriginal peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports, records taken by others, sound recordings and digital databases. Cultural heritage includes both the tangible (objects, artwork, physical items), and intangible (knowledge, storytelling and techniques), Janke. T (1998), *Our Culture: Our Future Report on Australian Indigenous Cultural and Intellectual Property Rights*, accessed via <https://www.terrijanke.com.au/our-culture-our-future> on 3 March 2024.

<sup>9</sup> Adapted from Human Rights and Equal Opportunity Commission and United Nations Permanent Forum on Indigenous Issues (2005), *Engaging the Marginalised: Partnerships between indigenous peoples, governments and civil society*, accessed via [http://www.humanrights.gov.au/social\\_justice/conference/engaging\\_communities/index.html#link2](http://www.humanrights.gov.au/social_justice/conference/engaging_communities/index.html#link2) on 3 March 2024



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titleholders. It also creates opportunity for strong and positive relationships between titleholders and FN persons. For FN persons, such familiarity and positive interactions are incredibly meaningful and means that long-term positive relationships and outcomes are much more likely to occur.

***10. If titleholders and NOPSEMA get information after the consultation is over, how should they consider it during the assessment process?***

If there is information received after consultations have concluded, it will be necessary to examine what the information is that was missed and to uncover why the information was missed and the importance of the information in relation to the proposed activity and associated regulatory requirements. It should be noted that engaging with FNCC and/or TEACA significantly reduces the risk of missed information from FN persons because of how these organisations have been established and how they are operated and controlled and because they have continuous strong connections and communications with FN persons, groups, and communities relevant to the area that may be affected by a proposed offshore resource activity. In the unlikely event that information is missed, these organisations are ideally placed to react quickly to identify what information was missed and to ascertain its importance and relevance and to provide this feedback to titleholders and NOPSEMA. If further discussions need to be had with FN persons or groups, this can be done expediently and cost effectively without much delay to the assessment process.

**Culturally appropriate First Nations consultation**

Due to the related and overlapping nature of the questions included in this section of the paper (Questions 11 through 14 inclusive) as well as Questions 19 and 20, for ease of reading, a single response, addressing the elements in each question has been provided below.

***11. What is the best way for titleholders to engage with Traditional Owners who are able to speak for sea country?***

***12. How can titleholders ensure they consult appropriately and effectively with First Nations people to adequately communicate project information?***

***13. How can titleholders make sure First Nations people are able to express their views on a proposed offshore resources activity in line with their preferences?***

***14. What is the best way to manage accessibility of information in the consultation process?***

• *For example, should relevant persons be supported by the use of qualified, neutral interpreters during consultations, if required?*

***19. Is it preferable for some relevant persons to be engaged via representative bodies or industry associations, instead of individually?***

***20. Should people and organisations have an opportunity to self-identify as relevant persons? If so:***

- *how should offshore resources industry communicate the opportunity to self-identify?*
- *what timeframe should be in place for self-identification?*
- *should there be an appeal process for someone who is excluded or determined to not be a relevant person following self-identification?*

In-person consultation with FNCC (and/or TEACA if required, if there is not an existing FNCC for a particular area), with a view to continued relationship building is essential to obtain optimum consultation outcomes. Senior FN peoples who have cultural authority, knowledge and responsibilities work to actively identify relevant clan and/or language groups and the correct FN peoples of coastal and sea country estates who should be members of each FNCC. Once these members are identified, the FNCC is established. The FNCC consists of empowered local senior FN peoples and others who are identified as proper and necessary participants in the relevant FNCC. FNCC are purposely created for the aim of representing FN peoples who are relevant persons, in consultations and engagement with titleholders of offshore resource projects and they perform all the functions required under the Offshore Environment Regulations. This is a transparent and iterative process where the issue of who should be engaged and participate in a FNCC is an ongoing conversation being undertaken by FN persons and continuous input is received from each FN person that is identified until all persons at the table are satisfied with the composition of the FNCC membership and that it is representative of the group(s) with responsibility for a particular area of sea country and/or coastline. The robustness of this process increases over time as more people participate due to the increased scrutiny of, and input by, increased numbers of participants (cultural knowledge holders).

Conversations about FNCC establishment and development, centres around discussions about the country that the FNCC (through its membership), has cultural authority to speak for and through this process, cultural boundaries of clan groups/language groups are identified. There may be strict boundaries or shared areas. Where there are clear delineations in boundaries, this will mean that a different FNCC is relevant for each area, however where there are shared areas, more than one FNCC may be involved.<sup>10</sup> Due to the close connections between neighbouring groups and strength of cultural knowledge within these groups, it is highly likely that the FNCC being engaged will provide advice on which senior persons should be engaged to commence the discussion with those neighbouring groups allowing the discussion to be initiated in a culturally appropriate manner (i.e. with leaders and senior people being identified by their neighbours, counterparts and peers). TEACA have already commenced discussions with elders and other senior FN persons who have cultural authority to speak for coastal and sea country in areas of the Top End where FNCC have not yet been established with a view towards establishing additional FNCC during 2024.

FNCC have an intrinsic and in-depth understanding of, and respect for local decision-making processes due to their unique nature as truly culturally representative forums. FNCC are best placed to navigate this on behalf of titleholders. They are aware of who the relevant persons are and have a culturally appropriate decision-making process which is fast and final. This overcomes any difficulties that can traditionally arise in relation to obtaining agreed positions on relevant and correct information, from various communities or groups during consultations and results in time and cost savings. The FNCC members have awareness of who is best placed and has permission and authority to speak for country, and this ensures the correct information is provided to the titleholder. FNCC members are also aware of any communication limitations such as language barriers and other

<sup>10</sup> It is well recognised that a person may speak for more than one area and this responsibility is shared with others, see *ibid* 6: “Clan members were owners of their country, they belonged to their country, they were identified with their country, and they were stewards or carers of their country. Individuals retained their clan membership, and country affiliations and responsibilities even when they moved to other areas, for example to marry into a neighbouring clan or language group. The occupants, users, and managers of particular areas of land and sea country were therefore the owners of that particular clan estate, as well as people who had moved into an area and who had clan affiliations and responsibilities elsewhere.”



factors which may affect understanding in those persons who are required to be consulted and can advise on these matters and suggest solutions to overcome these difficulties which may include translating information (which, as exemplified by recent experience with the Barossa Gas Project FNCC consultations, is likely to be able to be done by FNCC or TEACA members themselves) or having titleholders present information in certain ways. Further, FNCC and TEACA can work with titleholders to establish precedents and protocols for engagement (including materials) which can be utilised repeatedly across various areas and multiple consultation events.

FN peoples' rights in relation to sea country are both collective and individual, however this does not mean that every FN person is a person who needs to be consulted individually by the titleholder. Traditionally, FN persons have elders and senior persons who are given responsibility for making decisions about country and in the Top End in particular, this is a well-respected and established practice that representative bodies acknowledge; and it forms the basis of and informs their consultation activities. Under the *Native Title Act 1993 (Cth)* (*Native Title Act*), there are specific provisions for persons from within a group acting as representatives on behalf of a wider group (i.e. the registered native title claimant, the PBC). FNCC are an equivalent representative for the wider group that has been appointed through a relevant FN cultural process. However, it is important to differentiate between native title rights and sea country rights, as they are distinguished at common law.<sup>11</sup> As the 2002 National Oceans Office South-East Regional Marine Plan, Sea Country an Indigenous Perspective, states:

*"The Native Title Act, however, also recognises that the pre-existing and continuing Indigenous law (native title) must be accommodated with all the other laws, agreements and titles that have been established by successive Australian governments since colonisation. The result is that the native title rights so far accepted by Australian courts may not be as comprehensive as the inherited Indigenous rights asserted by Indigenous people themselves. . . . considerable uncertainty remains about the extent that Indigenous rights can be accommodated in contemporary Australian law."*<sup>12</sup>

Given the very few numbers of sea country native title claims which have proceeded to determination, the jurisprudence in this area is relatively undeveloped. As a result, there remains existing uncertainty about how sea country rights native title rights will be reconciled with the common law as FN persons rights are recognised differently by these two legal frameworks.

Given the above, it is erroneous to assume or suggest that native title processes or representative arrangements are fit for purpose in relation to sea country matters without some adjustment and suggesting as such is an uncertain proposition until the Australian courts have finally determined the

<sup>11</sup> Native title in tidal and sea areas can only be of a non-exclusive nature, as exclusive native title is considered inconsistent with other common law rights regarding marine access and navigation. The litigation arising out of the claims of the Yarmirr people (*Commonwealth v Yarmirr* (1999) 101 FCR 171 and *Commonwealth v Yarmirr* (2001) 208 CLR 1) indicates that native title claims to both land and sea will not result in exclusive possession of the sea country portion. Rather, offshore rights will be limited, and their nonpossessory nature emphasised. "The reasoning in *Yarmirr* (2001) appears to import a very strict reading of 'ownership' into a claim for native title over waters. Ownership of sea country (importing the notions of control and exclusivity pertaining to ownership of land) is simply not part of the common law. Rather than working through the difficulty of translating Indigenous water rights, thereby developing a specific water-based common law interest, the High Court rather bluntly dismissed the claim because ownership cannot be affixed to water. This illustrates the attempt to claim a right which is 'awkwardly extracted from Western doctrines which have distinctly different conceptual background'" Gray, A. (2007), *Offshore Native Title: Currents in Sea Claims Jurisprudence*, Australian Indigenous Law Review 11 (2).

<sup>12</sup> National Oceans Office, Commonwealth Government of Australia (2002), *Sea Country – an Indigenous perspective, The South-east Regional Marine Plan Assessment Reports*.



question of the full recognition of native title rights offshore by the common law of Australia.<sup>13</sup> FNCC and TEACA embody the principle of FN persons as the most appropriate persons to identify their communities, elders and leaders (as opposed to relying upon representative bodies, via internal staff and external consultants, to identify relevant persons on behalf of FN persons, which is the statutorily defined role of native title representative bodies set out in the Native Title Act). This direct recognition approach using FNCC and TEACA is consistent with Article 3 and 33 of UNDRIP and reflects and advances the principle of self-determination whilst also embodying the general underlying principle of representatives acting on behalf of native title holders under the Native Title Act and Traditional Owners under the Aboriginal Land Rights (Northern Territory) Act (Cth 1976), (the *Land Rights Act*).<sup>14</sup> Furthermore, the relevance of FNCC for FNs of the Top End extend beyond providing a forum for culturally appropriate consultation (which limits, they also facilitate the maintenance of important FN cultural practices, including in relation to dialogue among FN leaders in relation to matters may affect their interests, functions or activities.

#### First Nations Consultative Committees (FNCC) for leading practice consultation

Further, it should not be assumed that large representative organisations are best placed to identify and assist with consultation and associated issues because these organisations often have little to no experience in offshore projects and associated matters relevant to FN persons engagement. FNCC and TEACA are specific organisations which have been established by FN persons for consultations about offshore resources activities. It is noteworthy that many First Nations persons who are representatives in these larger organisations (such as full and executive council members from various land councils) have performed key roles in establishing FNCC and TEACA because of a gap in the services provided by these larger organisations and the lack of ability for these larger organisations to respond quickly, adequately, and appropriately to offshore matters and due to a long history of not adequately addressing or responding to offshore resources industry and other sea country matters.

The recent decision in *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority (No 2)* [2022] FCA 1121 (*Tipakalippa*) highlighted the failure of such a representative organisation (the Tiwi Land Council) in responding to emails sent by Santos in an attempt to engage with Traditional Owners under the Land Rights Act. The land council did not respond to or engage with Santos in relation to its proposed offshore resources activities, and as such relevant persons were not consulted and were required to resort to bringing a substantial court action against Santos due to this failure on the part of the land council.

<sup>13</sup> Australian Human Rights Commission (2000), *Native Title Report 2000: Chapter 3: Native title and sea rights*, accessed via <https://humanrights.gov.au/our-work/projects/native-title-report-2000-chapter-3-native-title-and-sea-rights> on 5 March 2024.

<sup>14</sup> Article 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Large representative bodies have very limited knowledge relating to the interests of traditional owners in relation to sea country. There is much knowledge that has been accumulated over the time of their operations about land matters, however, there has been little work done, in both the native title and land rights space in relation to sea country. Sea country sits as an elusive and largely ignored area by these organisations. In the Northern Territory there have been no policies developed by any of the land councils in relation to offshore resources activities and potential associated industrial development which occur on sea country, despite exploration activities having taken place for more than 40 years off the Northern Territory coast. Due to the lack of attention paid to sea country matters by various land councils, FN groups have developed and published their own strategies, plans and policies for sea country in the NT. An example of this is the Dhimurru Yolngu Monuk Gapu Wāṇa Sea Country Plan, prepared in 2006 by the Dhimurru Land Management Aboriginal Corporation and the Barni-Wardimantha Awara Yanyuwa Sea Country Plan prepared in 2007 by anthropologist John Bradley and Yanyuwa families on behalf of Yanyuwa Traditional Owners.

As a result, these organisations are not equipped to assist with consultations without substantial lead in time and funding, which would likely be requested. It is important to consider the contrast between these large, slow acting, ill-equipped and inexperienced organisations with FNCC which are fit for purpose, culturally appropriate representative bodies which have already been established and used successfully for consultations with Santos for the Barossa Gas Project and other proposed offshore resources activities, and have proven to be incredibly reflexive, responsive, fast and are cost effective to engage and consult with.

It is essential that FNCC are provided with funding to allow them to be established (in situations where they have not yet been established and are required), to appropriately facilitate consultations and to create a formal recorded repository of knowledge that is informed by the FN persons that they represent. The funding should also extend to TEACA which is a FN persons controlled and operated incorporated association consisting of senior FN persons (and members of FNCC) who represent the various coastal areas in the Top End. Such funding would allow FNCC and/or TEACA, as necessary, to identify the relevant FN persons from each area who are required to be consulted for projects.

Due to the relatively small size of FNCC and TEACA compared with other FN representative entities, and the speed and reactivity with which FNCCs and TEACA can operate, (which has already been evidenced), funding would be effective and substantially lower than current consultations taking place in the native title or land rights space. The speed with which consultations could occur, and final decisions made, would significantly reduce delay costs to projects and costs of funding these committees and TEACA would be much less than the cost of having to fund larger representative organisations to perform the same functions albeit less effectively. Central to the efficiencies gained by consulting with FNCC is that authority for decision making (under customary law) is decentralised, vested in the FN persons of many groups or clan estates – vested in FNCC. Contrast this with representative bodies such as land councils and native title representative bodies, which are often assumed by industry, regulators and third parties to be able to make decisions on behalf of Indigenous people, when, in reality, their role (limited by legislation) is to represent or act on behalf of FN interests, including consulting with their FN persons, not to make decisions.

The differences between FNCC and other representative bodies is further illustrated by comparing consultation which has occurred between Santos and FNCC to date in relation to the Barossa Gas



Project and consultations which occur between land councils and native title parties in relation to native title matters. The consultations between Santos and FNCC occurred within two weeks of Santos notifying FNCC that they wished to meet. Consultations between land councils and native title parties take months to organise and conduct. If agreement making is required, there are multiple meetings required and the process takes many months and sometimes over a year.

### Self-Identification

Connecting with FNCCs and FN persons who have previously been involved in consultations for various areas (such as in relation to the Barossa Gas Project) is essential to ensuring effective communication with FN persons who may wish to self-identify and can include nomination of others as relevant persons. The concept of self-identification and establishing committees at an inter-clan group or sea country estate level (like the FNCC) in relation to sea country environmental management matters is not new in Australia. In 1998 the Sea Forum was established and was the first Traditional Owner led initiative, which involved Traditional Owners self-identifying as relevant persons for consultation (at a sea country estate level), that sought to resolve how Traditional Owners could have management control over their sea country in the Great Barrier Reef.<sup>15</sup>

In addition to the advantages already detailed throughout this submission, self-determination can occur quickly if correct organisations are involved, such as FNCC and TEACA, and if someone is excluded from the consultation process, the issue can be referred to FNCC and TEACA and these organisations can address issues of identity and cultural authority and feed this back to titleholders. These organisations can assist with determining if a FN person is a relevant person and should be included/excluded in consultation in relation to proposed offshore resource activities. Given the way in which FNCC and TEACA are constituted, the likelihood of incorrectly identifying relevant FN persons is very low and if these organisations are involved in consultation procedures from the outset, then the consultation process is very likely to result in greater certainty that the correct FN persons have been meaningfully included in the process and lessen the prospects of adverse consequences (including litigation) resulting.

### Respectful and Effective Engagement and Benefit Sharing

The Critical Minerals Strategy 2023 – 2030 details fundamental aspects of respectful and effective engagement with FN persons in relation to resources projects and we refer to and have added to these below:

- ensuring cultural capability (funding provision for, and formal recognition of FNCC and TEACA and adequately recognising and compensating FN persons as expert cultural advisors in relation to environmental and other matters and working to increase their capacity to assist titleholders, Governments, regulators and other parties in relation to offshore resources activities);
- building and maintaining trust and respect (including respecting and encouraging FN persons and groups to self-identify via FNCC and TEACA and respecting ICIP and UNDRIP principles);

<sup>15</sup> Perrett. L. (2010), *Sea country stewards: a review of traditional owner aspirations for the Great Barrier Reef*, Great Barrier Reef Marine Park Authority, accessed via [https://elibrary.gbrmpa.gov.au/jspui/retrieve/9f271cdb-cf6a-48f7-9f62-cca8eb57acc3/GBRMPA%20Pub\\_Sea%20Country%20Stewards\\_Oct%202010\\_FINAL%20correct%20cover.pdf](https://elibrary.gbrmpa.gov.au/jspui/retrieve/9f271cdb-cf6a-48f7-9f62-cca8eb57acc3/GBRMPA%20Pub_Sea%20Country%20Stewards_Oct%202010_FINAL%20correct%20cover.pdf), 3 March 2024.



- engaging early, often, openly and appropriately (with a commitment to FPIC and using facilitators, and culturally adapted materials and meeting formats and realising that engagement is a two-way, shared process where each party is recognised as bringing relevant expertise and value to the relationship);
- negotiating suitable timeframes and arrangements for managing resources which are recorded, respected, and implemented by all parties; and
- building productive partnerships (that is, ongoing relationship building and sharing in benefits obtained from offshore resources activities by titleholders and providing benefits to FN persons and communities via employment, training and appropriate financial or other consideration in exchange for knowledge sharing and expertise (including ongoing assistance and responsiveness in the case of unplanned events) that has been provided by FN persons).<sup>16</sup>

Additionally, the relative impact that an activity will or may have on a FN group and its members should be considered when determining benefit sharing and the suitability of consultation and other potential engagement measures.

## Coordination

**15. Is there a benefit to greater coordination among multiple titleholders on certain issues that are common to many proposed offshore activities?**

• *For example, would it be useful for a group of titleholders to consult together on activities in a region that are planned to happen in a set time, or should titleholders consult on each specific offshore resources activity individually?*

Experience and current practices inform us of the challenges in relation to industry coordinating activities especially when it comes to the exchange of commercially sensitive information prior to market release and the desire to progress project approvals in a timely manner. FNCC and TEACA provide opportunity for coordination at the point of FN engagement, that is coordination at the local level with an established consultative forum that can be engaged by multiple proponents and potentially by other Industries and government.

**16. What can titleholders do to address consultation fatigue?**

The experience of TEACA members engaging FNCC in relation to offshore resources industry matters to date has revealed much enthusiasm for consultation. Relevantly, no concerns around fatigue were raised by FNCC participants during consultations in relation to the Barossa Gas Project, whereas enthusiasm was expressed by FNCC members as a desire for further consultation and more information. In our view this enthusiasm is likely a result of the empowerment of FNCC members due to the self-determined nature of FNCC and the historical absence of information about offshore resources activities having been provided to these persons and groups. There have been repeated expressions amongst FN persons about the genuine desire for further engagement utilising the FNCC method. If FNCC are adopted as vehicles for consultation in relation to the offshore resources

<sup>16</sup> Department of Industry Science and Resources (Commonwealth Government) (2023), *Critical Minerals Strategy 2023-2030* (Section 3 First nations engagement and benefit sharing), accessed via <https://www.industry.gov.au/publications/critical-minerals-strategy-2023-2030/our-focus-areas/3-first-nations-engagement-and-benefit-sharing> 4 March 2024.



industry as a standard procedure, this enthusiasm will continue and grow amongst FN persons in the NT, who, until now, have had no or very limited involvement with the offshore resources industry.

### **Identifying relevant persons**

The two questions in this section have been addressed in the single response provided below.

***17. What opportunities are there to clarify the process for identifying who a proposed offshore resources activity may affect?***

***18. What type of communication methods and processes should titleholders use to make relevant persons aware of consultation for a proposed offshore resources activity?***

***• Should there be a difference in communication methods for identifying relevant persons who may be directly impacted by a proposed offshore resources activity, as opposed to being indirectly impacted by the proposed activity?***

The development and use of protocols and procedures for consultation in relation to offshore resources activities should be undertaken and these measures (via a framework) should be formally recognised by legislation. The protocols and procedures will detail the process for identifying who may be affected by proposed offshore resources activity. These documents can be referred to in legislation more broadly without the legislation itself having to go into minutiae in this regard. FNCC and TEACA (and other similar organisations located elsewhere in Australia), are relevant organisations who can play a central role in the development of these protocols and procedures along with industry, Government and NOPSEMA. This approach recognises and relies upon FN persons providing cultural expertise and advice in identifying who may be directly and indirectly impacted by activities and what types of impacts should be considered and how such impacts should be considered and communicated to FN persons.

An important aspect of capturing cultural knowledge (which should be included in any protocol or procedure) relates to tangible and intangible cultural heritage. Tangible cultural heritage is addressed in part by legislation and is a familiar concept to industry and government, however, intangible heritage, which consists of nonphysical intellectual wealth, such as folklore, customs, beliefs, traditions, knowledge, and language, is not well captured by existing legislation for offshore areas, there is little understanding about what intangible cultural heritage can encompass in various locations, and there are no clear, established procedures for defining and managing such matters in relation to offshore areas. FNCC members are relevant persons in this regard (and FNCC and TEACA can easily identify relevant persons if necessary on a case by case basis), and they are able to assist and advise industry and government about intangible cultural heritage in relevant areas and what constitutes direct and indirect potential impacts to such heritage (including which FN persons are potentially impacted as a result, how these impacts will likely materialise and what this means for planning, assessment and management purposes). Over time, FNCC and TEACA can assist industry and government to build a comprehensive knowledge base of intangible cultural heritage in various areas, however this will require consultation and time.

These organisations (and their members) are also subject matter experts on how to best communicate information about direct and indirect impacts caused by offshore resources activities, to relevant FN persons, groups, and communities. The most appropriate method for communicating with relevant FN persons will remain the same (it would best be undertaken in person utilising a

combination of verbal and visual communication methods). It needs to be culturally informed via FNCC and/or TEACA and culturally appropriate irrespective of whether the potential audience is directly or indirectly impacted by a proposed activity.

### **Clarification of 'may be affected'**

The two questions in this section have been addressed in the single response provided below.

***21. How could the Offshore Environment Regulations clarify what is meant by a person or organisation that 'may be affected' by an offshore resources activity?***

***22. When assessing whether consultation has been undertaken that is appropriate for the proposed offshore resources activity, how should NOPSEMA consider the likelihood and consequence of an impact on relevant persons?***

The legislation refers to the environment and persons who 'may be affected' by activities however it does not directly address how this is to be determined. When considering whether FN persons will determine whether they or their sea country and/ or coastal estates may be affected by proposed offshore resources activities, little regard will be had to the geographic proximity of the proposed activities to the sea country to which they have an affiliation, connection, and responsibilities. Matters such as spiritual and cultural practices, cultural heritage, and significant places, as well as any totems, dreaming tracks and song lines (which can be tangible or intangible), which may be impacted by the proposed activities will instead be relevant considerations (including any potential impacts from unplanned events such as spills or other accidents). The interests of, and the effects to, FN persons if coastal areas or sea country is damaged or their connection to totems, dreamings, song lines, items, places and sea country is disrupted, can be catastrophic and long lasting or even permanent, and can lead to sickness, shame, and widespread hurt and anger to entire groups and communities.

It is erroneous to assume that FN who's coastal or sea country areas may suffer lower levels of physical impact from activities and unplanned events, will be less affected than other non-Indigenous relevant persons whose activities (such as commercial fishing rights) are more physically affected by the proposed project activities. As stated previously, it is impossible to compare the rights of and potential affects to FN persons in relation to activities which occur on sea country with those of non-Indigenous users of offshore areas.

The legislation should contain requirements for the titleholder to contact the appropriate representative organisations for an area, (FNCC and TEACA in the Northern Territory, and relevant equivalent organisations elsewhere in Australia), to confirm whether and, if so, how the area and the FN persons who have responsibilities to that area may be affected by the proposed activities. The FNCC and/or TEACA, as relevant (in relation to activities occurring in Northern Territory) should also be asked to identify which other FNCC and FN persons may be affected by the proposed activities (including any unplanned events). This recognises and empowers FN persons as experts who are best placed to advise on tangible and intangible matters that titleholders are otherwise unable to comprehend and make appropriate provisions for in management planning, procedures, and practices.

If this process is followed and FN persons are provided with all relevant information about the proposed offshore resources activities, it provides an opportunity for FN persons to understand the



relationship between the proposed activity and their particular connection to coastal areas and sea country that may allow for the resolution in their own minds about any uncertainty or risk of harm that FN relevant persons may otherwise worry about (in the absence of having been adequately consulted).

## **D. Recommendations**

This submission has provided responses to each of the 22 questions against the backdrop of the two main themes and recommendations have been made throughout - these recommendations are summarised below.

The recommendations are based on the following underlying principles and considerations:

- FN persons are best placed to identify relevant FN persons that are required to be consulted for offshore projects - FNCC and TEACA embody the principle of FN persons as the most appropriate persons to identify their communities, elders and leaders;
- FN peoples' rights in relation to sea country are both collective and individual, however this does not mean that every FN person needs to be consulted individually by titleholders – there are elders and senior persons who are given responsibility for making decisions about country and this is a well-respected and established practice in the Top End and in other parts of Australia;
- FN persons have established fit for purpose organisations in the form of FNCC, which allow for direct consultation with relevant FN persons for offshore projects and related issues;
- further FNCC are quickly and easily able to be established (in areas where FNCC may not currently exist), which will occur through advice from neighbouring FNCC (all of whom are TEACA members);
- TEACA was established by FN senior leaders to assist government, industry and non-government organisations in relation to sea country projects and matters and to represent, support and advocate on behalf of FN persons in relation to same (FN persons recognised that they were not being represented by, or advocated for, by existing organisations in relation to sea country matters and that a fit for purpose and novel approach was required to address this gap;
- TEACA and FNCC, whilst directly representative of FN persons are not the same as representative structures established under the Native Title Act, and this is necessary because there is uncertainty about how sea country native title rights will be reconciled with the common law as FN persons rights are recognised differently by these two legal frameworks; and
- consulting on offshore projects via FNCC and TEACA (as directly representative bodies) is consistent with Article 3 and 33 of UNDRIP and reflects and advances the principle of self-determination whilst also embodying the general underlying principle of representatives acting on behalf of native title holders under the Native Title Act and Traditional Owners under the Land Rights Act.

The recommendations are:

1. formal regulatory recognition of the direct representative approach embodied by FNCC and TEACA (and necessarily, FNCC and TEACA);

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2. regulatory recognition of FN persons as expert cultural advisors in relation to environmental and other matters;
3. development and regulatory recognition of a framework for consulting with FN people which incorporates learnings from past consultations with FNCC i.e. culturally appropriate, leading practice and proven methods for consulting with FN persons (such a framework to include a timeline which provides certainty to the 'reasonable period' terminology referred to in section 25 of the Offshore Environment Regulations, and to be developed with FN persons through TEACA and FNCC as required);
4. reform which allows for FN persons to provide feedback to environmental plans as necessary in all instances and not just when an environment plan relates to seismic and/or exploratory drilling activities, and which necessitates titleholders to detail the control measures that will be used to reduce impacts and risks of proposed activities;
5. provision of funding for FNCC and TEACA by government and industry (establishment and operational costs should be borne by government and consultation and other project specific costs should be met by the relevant industry participant); and
6. formal recognition of the requirement to compensate FN persons as expert advisors and working to increase their capacity to assist titleholders, Governments, regulators and other parties in relation to offshore resources activities (and associated funding to be provided by government and industry).

Acknowledging and respecting the abovementioned principles and adopting the recommendations provides certainty for industry when engaging with FN persons in relation to offshore projects and it appropriately recognises FN people's rights in relation to sea country. Further, it respects and implements international principles and Australian government policy.

The TEACA Management Committee invites government (via the Department of Industry Science and Resources) to meet on-country at the earliest opportunity to discuss its reform agenda, including consultation requirements and to meet with its members in person.

TEACA and the FNCC look forward to meeting with government and industry to progress the reform process and implement the recommendations.

Your sincerely

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Julius Kernan

Chairperson, TEACA