

8 March 2024

Department of Industry, Science and Resources
Australian Government
EnvironmentalReview@industry.gov.au

Dear Sir/Madam,

CLARIFYING CONSULTATION REQUIREMENTS FOR OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE REGULATORY APPROVALS

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to provide feedback on clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals.

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members are Australian and international asset owners and institutional investors with over \$1 trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in managing ESG investment risk and exercising active ownership to strengthen investment outcomes. Active ownership, including the management of climate related risk, allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage.

ACSI has long recognised that a company's long-term success is intrinsically linked to its ability to engage effectively with the stakeholders it impacts or depends upon. For companies that interact with First Nations people, there are opportunities to shape engagement in a way that is constructive and mutually beneficial. We recognise the investment risk when companies have poor relationships with First Nations people, and continue to advocate for improvements in the standards of company engagement. This includes protection of cultural heritage and adherence to the standards embedded in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the principle of Free, Prior and Informed Consent (FPIC). For a number of years, ACSI has undertaken a program of work with the aim of improving company engagement with First Nations people. Our comments below are informed by this work.

ACSI welcomes the aim of greater clarity and certainty

We are pleased that the Government is undertaking this consultation, with the aim of clarifying the regulations on consultation with people impacted by offshore oil and gas projects. Given the importance of companies engaging constructively with their stakeholders, ACSI encourages robust regulations that require an appropriate standard of consultation. There has been a lot of uncertainty in what is required by the existing regulations, so greater clarity from the Government would be very welcome. ACSI would like to see regulations that are clear and certain in their expectations of companies. At the same time, the regulations should allow enough flexibility for companies to tailor consultation to the needs of the specific person or community being consulted, as discussed in the consultation paper. Clearer standards of engagement with First Nations peoples should also be developed beyond the offshore oil and gas sector, and ACSI strongly encourages the Government to simultaneously advance the broader co-design process for cultural heritage law reform without delay.

Engagement with First Nations People

When companies are engaging with First Nations people, they should follow the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Free, Prior and Informed Consent (FPIC). We welcome the consultation paper's observations that consultation should be done early and should be culturally appropriate for the specific person being consulted. A company should be engaging with First Nations people as early as possible in the design of a project to ensure that feedback (for example about potential impacts on cultural heritage) can be incorporated in the planning stages. Early feedback can help avoid increased costs and time spent at a later stage. We encourage consideration of how this can be made clear in the regulations.

When developing the regulatory requirements, ACSI encourages consideration of the following better practices, to support high standards of consultation. These are drawn from international standards and are also reflected in ACSI's [Policy](#) and [Research Paper on Company Engagement with First Nations People](#):

- **Align with standards:** company policies and practices should be aligned with international standards, as set out in the UN Guiding Principles on Business and Human Rights and the UN Declaration on the Rights of Indigenous Peoples. In particular, a company should obtain free, prior and informed consent from the First Nations people on whose lands a project will operate.
- **Rights-based approach:** companies should adopt a human rights-based approach to engagement with First Nations people, conducting robust due diligence to identify, prevent, mitigate, and account for the human rights risks associated with their operations and supply chains.
- **Assess risk:** when engaging with First Nations people, companies should conduct robust assessments of the relevant risks and impacts both to the company and First Nations people – including their lands, communities and cultural heritage.
- **Cultural heritage management:** as part of the impact assessment process, First Nations people should have the opportunity to define their tangible and intangible cultural heritage and express concerns about impacts on this cultural heritage. Companies and First Nations people should then develop a formal agreement about how cultural heritage should be protected and managed.
- **Develop strong relationships and robust agreements:** companies must engage in good faith and work to build constructive long-term relationships with First Nations people. Companies should negotiate agreements with First Nations people on whose lands they are working, which should cover all phases of operations (including exploration). Agreements should also support impacted communities over the long-term through reasonable benefit-sharing provisions.
- **Allowing time:** ample time should be allowed for consultation and community decision-making throughout the process of engagement.
- **Divergent perspectives:** it is important for companies to be aware of divergent voices among First Nations communities, where these exist. Companies should not interfere in the internal business of First Nations groups, encourage disputes, provide support to dissenting groups, or take any other steps that could inappropriately interfere with group decision-making processes.
- **Cultural translation:** cultural and language translation should go both ways. Companies should ensure that material is translated for First Nations people if necessary (both in terms of language and cultural understanding), and should also ensure that their staff fully understand what is being communicated by First Nations people.
- **Objective information:** companies should provide information objectively, covering both positive and negative potential impacts from a project.
- **Accessibility:** companies should conduct meetings at locations and times that are reasonable and accessible for the people being consulted.

- **Mitigate power imbalances:** there is often a power imbalance between companies and First Nations people, partly because of inequalities in resources when First Nations groups are resource-constrained and under-funded. The negotiation of agreements and management of long-term relationships with companies can impose a significant financial and time burden on First Nations groups. Companies must understand and mitigate power imbalances. This includes ensuring that First Nations groups have access to sound and independent legal advice and representation, as well as technical support if necessary to ensure they are fully informed. Likewise, it includes ensuring that First Nations groups have sufficient time to consider company proposals, especially if they are resource constrained, which can limit their available time.

I trust our comments are of assistance. Please contact me or Romy Faulkner, Senior Analyst - Policy and Advocacy (rfaulkner@acsi.org.au) should you require any further information.

Yours faithfully



Louise Davidson AM
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