

To: Department of Industry, Science and Resources

7 March 2024

Clarifying consultation requirements for offshore oil, gas and carbon storage regulatory approvals

We appreciate the opportunity to provide comment on the consultation standards for offshore oil and gas regulatory approvals.

Environment Victoria is the leading not-for-profit environmental advocacy organisation in Victoria. With 40 grassroots member groups and over 200,000 individual supporters, we've been representing Victorian communities on environmental matters for over 50 years. Through advocacy, education and empowerment, Environment Victoria seeks significant and enduring solutions that will safeguard the environment and future wellbeing of all Victorians.

Everyone has a right to be consulted on matters that affect their home, culture and environment.

This includes Traditional Owners and First Nations peoples, environmental groups and concerned citizens. Consultation must be done in a manner that is timely, provides adequate opportunity for people to engage, and supports good decision making. Victorian communities, First Nations and our environment are all directly affected by offshore fossil fuel extraction and carbon storage off the coast of Victoria.

The credibility of this process has been compromised

The Resources Minister introduced the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 into parliament *while this consultation process was still underway*. The Bill includes provisions that would allow proponents to bypass consultation and environmental law, contradicting the Environment Protection and Biodiversity Conservation (EPBC) Act. Schedule 2, part 2 amendments should be removed from the Bill.

This consultation process was commenced in January and allowed only four weeks for submissions before a short extension was granted. The introduction of the Bill, which involves complex legislative mechanisms, part-way through the consultation period made participation in this process more difficult and convoluted. Participation in this consultation had already been made difficult for Traditional Owners and First Nations groups due to the northern wet season.

The irony is not lost on us that we are advocating for genuine consultation in this submission, via a process that the government is clearly not genuine about. Nonetheless, this submission is made in good faith.

Everyone has a right to be consulted on matters that impact them

Past consultations by proponents have not been of genuine intent and have not been conducted in a manner that makes it possible for different groups to engage effectively and meaningfully. Only when companies stop making final investment decisions before full project approvals have been granted will it be apparent that consultation is being done adequately.

Oil, gas and carbon storage projects should not be approved without consulting all of the people whose lives will be affected. This should include local communities, Traditional Owners and First Nations people, environment and climate groups, fishers and tourism operators.

The scope of who may be considered a relevant person must not be narrowed. Furthermore, any First Nations person who has cultural responsibilities toward or connection to affected land and sea Country must be recognised as a relevant person under the Act.

Where a proponent fails to conduct genuine consultation with a relevant person, as determined by NOPSEMA, the applicable environmental plan should not be accepted.

Consultation processes must include appeals pathways and right of reply for any relevant person and must close the loop so that communities and interested groups know how their feedback affected the final outcome.

Prevent barriers to participation in consultation

Independent oversight is needed to rule out tactics used by proponents to dissuade engagement. Consultation must be given sufficient time for stakeholders to organise, process information and prepare their responses. Independent coordination is also required so that consultations are not concurrent, placing an unreasonable burden on stakeholders. Intimidation tactics, such as industry personnel outnumbering community members, must be stamped out by the regulator.

Information provided by proponents must be prepared with the time imposte placed on stakeholders in mind. At the same time, information must be sufficient, clear and transparent so that people understand the impacts and how they will be mitigated or managed.

Environmental plans must consider climate and other risks

Offshore oil, gas and carbon storage projects present significant climate, environmental, cultural and social risks. The stricted levels of scrutiny are warranted. The regulations that provide for project approvals must be strengthened, not weakened.

It is unthinkable that regulations—as already put forward by the Resources Minister—would actively undermine the EPBC Act by locking in the accreditation of projects even if they no longer meet Australia’s environmental standards. Current offshore oil and gas projects are of unprecedented scale and impact and should be subject to the highest level of environmental assessment, yet the government seeks to exempt them.

Projects should be assessed according to their global climate impacts, as well as their effects on state and federal emissions reduction targets. Oil and gas projects place their significant financial, social and environmental burden of reducing emissions onto communities and other sectors.

Free, prior and informed consent (FPIC)

The Australian government has endorsed the United Nations (UN) Declaration on the Rights of Indigenous People which sets a global standard for FPIC. However, Australian law does not currently require project proponents to obtain FPIC.¹

Where First Nations people have leverage to negotiate a strong agreement, such as a right of veto, the opportunities for benefit-sharing are materially improved.² Furthermore, genuine negotiations can provide proponents with certainty. Principles of FPIC should be enshrined in the consultation framework, such that companies are required to provide evidence of FPIC to their project from the Traditional Owners before regulatory approval is granted.

Dr Kat Lucas-Healey
Senior Climate and Energy Advisor
Environment Victoria
k.lucashealey@environmentvictoria.org.au
0404 571 605

¹ 'FPIC in the Australian Context: Now and into the Future', Corrs Chambers Westgarth, accessed 6 February 2024, <https://www.corrs.com.au/insights/fpic-in-the-australian-context-now-and-into-the-future>.

² Brad Riley et al., 'Why Aboriginal People Have Little Say over Energy Projects on Their Land', The Conversation, 10 August 2020, <http://theconversation.com/why-aboriginal-people-have-little-say-over-energy-projects-on-their-land-139119>.