

Consultation for Offshore Oil and Gas Projects

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is Australia's independent expert regulator for environmental management for all offshore oil and gas operations (Projects) in coastal waters.

As part of the approval process for offshore oil and gas Projects, all offshore companies (Proponents) must assess and submit an environment plan (Environment Plan) to NOPSEMA on the planned and unplanned risks of the proposed activities (Project Activities), undertaken as part of the Project, on the environment.

This includes the risk to air and water quality, seabed habitat, marine fauna, and socioeconomic and cultural features.



Current at June 2023. Please note, information in this fact sheet is provided by YMAC in good faith on an "as is" basis; it does not constitute any form of legal advice. YMAC believes this information to be accurate and current at the date of publication, however, inadvertent errors can occur and the applicable laws, rules, policies and regulations often change. YMAC will not be liable for any loss or damage whatsoever suffered as a result of reliance upon this information, or through directly or indirectly applying it.



Yamatji Marlpa
ABORIGINAL CORPORATION



Offshore Development Consultation Requirements

Rule 16B of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (WA) (Regulations) states the Environmental Plans must contain a report of all consultations with 'relevant persons'.

Rule 11A of the Regulations states that a relevant person is a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the Environment Plan, or the revision of the Environment Plan.

Following the Federal Court decision of *Santos NA Barossa Pty Ltd v Tipalippa* [2022] FCAFC 193, NOPSEMA now recognises the definition of 'relevant person' includes First Nations Peoples. Consequently, all Environmental Plans presented to NOPSEMA are required to have been subject to consultations with relevant First Nations Peoples.

NOPSEMA has released guidelines titled 'Consultation in the course of preparing an environment plan' (dated 15 December 2022) to provide clarity on the above requirements. However, the guidelines are only a broad policy document and do not provide Proponents, First Nations Peoples or NOPSEMA a *structure* for consultation.

1 Note, for simplicity, YMAC uses the term "PBC" in most publications to refer to both Prescribed Bodies Corporate (PBCs) and Registered Native Title Bodies Corporate (RNTBCs). This is in line with terminology that is regularly used in the native title sector.

YMAC's Consultation Framework

As YMAC provides legal representation to several Prescribed Bodies Corporate (PBCs)¹ that would or could be considered 'relevant persons', we are developing a consultation framework in 2023. This document is intended to outline proposed steps for parties to achieve meaningful consultation consistent with the principle of free, prior and informed consent (FPIC) under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

In providing some clarity and greater understanding of the steps required, YMAC intends that Proponents of offshore developments and relevant PBCs can work meaningfully together to achieve the following common goals:

- Proponents are compliant with the NOPSEMA guidelines for consultation;
- Proponents are able to meet their Environment Plan deadlines;
- Proponents and PBCs are engaged in meaningful consultation about the Environment Plans;
- PBCs receive recognition and contribution for their consultation; and
- PBCs can be confident they have received opportunities to effectively manage and care for Country.

Call and ask to speak to someone from YMAC's Legal Team in our Perth office to find out more.

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