

Feedback on the NOPSEMA Consultation in the course of preparing an Environment Plan guideline

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Summary of feedback:

NOPSEMA's [N-04750 GL2086 Consultation in the course of preparing an Environment Plan guideline](#) has been published following careful consideration of stakeholder feedback.

In December 2022, NOPSEMA invited stakeholders to provide feedback on the guideline which had been updated to clarify the requirements for consultation under the Offshore Petroleum and Greenhouse Gas (Environment) Regulations 2009 (the regulations) and in consideration of the [Santos NA Barossa Pty Ltd v Tipakalippa \[2022\] FCAFC 193](#) appeal decision (the appeal decision) given by the Full Federal Court of Australia on 2 December 2022.

On 10 December 2022, NOPSEMA held a stakeholder briefing on the guideline and the questions posed to NOPSEMA during the briefing have been considered as feedback. The guideline was also published for a three-month public comment period and NOPSEMA received 16 comprehensive submissions from industry, government, and environmental NGOs in response.

In response to the feedback received, NOPSEMA has made minor updates to the published guideline to ensure the information provided is clear and consistent with the regulations and case law.

NOPSEMA is progressing a range of activities to address the feedback that was out of the scope of the guideline, regulations, and case law. These activities include hosting additional industry and stakeholder forums in May and June, developing supplementary guidance such as better practice consultation guidance, engaging with stakeholders/relevant persons directly and communicating feedback on policy matters to other relevant Government agencies for consideration.

The Federal Government has announced a three-year review of the regulatory framework and NOPSEMA will share relevant information to support this work.

A summary of the feedback received, how NOPSEMA has considered the feedback and further actions proposed are provided in this document.

NOPSEMA will offer meetings to those who made submissions to discuss feedback and in the interest of transparency, will be seeking permission from those who provided submissions to publish the submissions in full, alongside the feedback summary.

Table: Consultation Guideline Feedback Summary

Feedback Theme	Summary of feedback	Analysis of the feedback	NOPSEMA Response	NOPSEMA Actions
Clarifications on content of the guideline	<ul style="list-style-type: none"> - Clarification on titleholder consideration of relevant persons guidance/advice on consultation - Terminology clarifications (participation versus effort) (must versus should) (decision making versus consultation) - Clarify requirements for consultation - 11A consultation versus ongoing consultation - Clarify content of an EP considered in decision making and including information gathered from consultation in the content of an EP - Update reference to new Interim Commonwealth Government Guidance on First Nations Engagement. 	The feedback relates to clarifications that enhance the existing information communicated in the Guideline, so messaging is clear and consistent with the appeal decision.	For consideration in guideline revision	Update and publish guideline to provide clarification on matters raised in feedback to align with appeal decision.
Communicating consultation obligations to relevant persons	<ul style="list-style-type: none"> - Uncertainty on the requirement for provision of information and communicating to relevant persons the obligation to consult - Communicating consultation obligations and promoting awareness of relevant person's rights 	From this feedback, it does not appear that the titleholder's responsibility to communicate the reasons for consulting with relevant persons is clearly understood. Further, feedback has identified that some relevant persons are unclear of their rights in relation to consultation.		Update guideline to clarify that communicating obligation to consult with relevant persons should include providing a copy of NOPSEMA's Consultation on offshore petroleum environment plans Brochure to the relevant person during consultation
Guidance on consultation methods and approach	<ul style="list-style-type: none"> - Queries on the methodology for identification of relevant persons including identification of first nations groups/individuals, eNGOs, representative bodies and identification based on spatial context of spill risk EMBA - Queries on the provision of information including dialogue, methods for managing no response and dealing with consultation delays - Accounting for the use of appropriate cultural resources in consultation and cultural value impact assessment - Use of fee for service arrangements - Provision of information for multi-phase petroleum activities and the level of detail/information provided to relevant persons. - Retention and provision of consultation records 	This feedback relates to the method adopted for identifying relevant persons and undertaking consultation. This is the responsibility of the titleholder, but good practice guidance could be used to support a common approach to issues. Feedback also provided on how NOPSEMA is supporting relevant person's understanding of their role and 11A consultation processes for EPs.	For consideration in alternative guidance document developed by NOPSEMA.	<p>The published NOPSEMA Consultation on offshore petroleum environment plans Brochure provides guidance to relevant persons on EP consultation.</p> <p>Identify common challenges in relevant persons consultation based on feedback and use as focus for industry good practice workshops.</p> <p>Draft framework for a good practice consultation bulletin based on common challenges. Publish consultation bulletin</p> <p>Support PBCs and representative bodies to develop protocols for how and when they want to be consulted</p>
Regulatory change	<ul style="list-style-type: none"> - Request for regulatory reform for 11A consultation including providing definitions and clarity of consultation requirements. - Consideration for streamlining the public comment and relevant persons consultation process and alignment with consultation requirements of other legislation/regulations 	This feedback relates to regulatory change communicated to the relevant policy agency.	Consideration for regulatory change	Communicate feedback to Department of Industry, Science and Resources (DISR) for consideration in future policy/regulatory review
Other regulatory processes	<ul style="list-style-type: none"> - Implications for the consultation process of projects under the Offshore Electricity Infrastructure Act - Potential reprieve of standing requirements if titleholder is unable to meet title commitments due to consultation delay - Consideration of consultation process in the management of offshore title/acreage 	Feedback relates to regulatory processes administered by other agencies and the Offshore Infrastructure Regulator (OIR)	Consideration for other Agencies	Communicate feedback to DISR, OIR, the Titles Administrator and Department of Climate Change, Energy, the Environment and Water

Feedback Theme	Summary of feedback	Analysis of the feedback	NOPSEMA Response	NOPSEMA Actions
	<ul style="list-style-type: none"> - Consideration of marine spatial planning for effective consultation 			
Regulatory interpretation	<ul style="list-style-type: none"> - Inclusion of various term definitions (e.g. sufficient information, reasonable period/efforts, relevant person, functions, interest and activities, affected by the activity, nature and scale, direct/indirect impacts etc) - Clarify Native Title vs 11A consultation requirements - Identification of international stakeholders based on the EMBA - Provision of an endorsed consultation process - Clarity on provision of resources to inform adequate consultation and enable dialogue - Clarity on the provision of information to parties with communal interest 	<p>This feedback relates to that described in the “Guidance on consultation method and approach” theme but is seeking reinterpretation and prescription on regulation 11A consultation that is not considered in the appeal decision. In addition, it is difficult to prescribe a one size fits all approach to consultation. Could be pursued through policy or regulatory amendments.</p>	For consideration in government policy direction	<p>NOPSEMA will communicate complexity and challenges surrounding relevant persons consultation to Government for consideration in Government Policy or regulatory amendments</p> <p>Communicate feedback to DISR for consideration in future policy/regulatory review</p>
Informed consent	<ul style="list-style-type: none"> - Informed consent in consultation 	<p>This feedback relates to there being uncertainty during consultation whether informed consent is part of environment plan consultation processes. There is also concern that the guideline does not go far enough to require informed consent.</p>	Discuss at next engagement	<p>Informed consent is not mentioned in NOPSEMA's guideline and is not a feature of the current regulatory scheme. Consultation on offshore environment plans Brochure clarifies that consent is not required</p>
Matters beyond consultation guideline content	<ul style="list-style-type: none"> - Concerns related to NOPSEMA resourcing and assessment of EP submissions - Potential for industry groups such as APPEA, to provide industry consultation support and facilitate industry collaboration on cultural studies/engagement - Concerns that fee for service arrangements may hold implications for anti-bribery/corruption legalisation and whether fee for service engagement will be considered 'genuine' 	<p>Feedback relates to matters that would not suit publication through guidance as they are out of scope for the guideline. Feedback more appropriately dealt with through direct engagement.</p>		<p>NOPSEMA will discuss this feedback at the next engagement with the submitter.</p>
Content of consultation guideline prior to publication and statements of concern	<ul style="list-style-type: none"> - Various queries on NOPSEMA processes including aspects of the consultation guideline development, implications on EP assessment timelines, public access to EP documents, OPP consultation, public comment period, NOPSEMA resourcing and potential delay in approval, assessment of cultural values and assessment of acceptable consultation - Various statements of concern regarding; consultation load and consultation fatigue for stakeholders, delay in industry approvals and impact to industry project timelines, impact to current operations/approvals - Various queries on stakeholder identification, two-way dialogue, provision of information, requirement for ongoing consultation, maintaining records of consultation, potential for industry collaboration 	<p>This feedback relates to clarifications and information sought at the industry briefing in December 2022, prior to publication of the consultation guideline and has been addressed in the published guideline.</p> <p>Other feedback relates to statements of concern or commentary regarding 11A consultation, which are noted, but require no further updates to the guideline and can be addressed through the actions implemented above.</p> <p>In addition, some feedback relates to matters that are addressed in other published NOPSEMA guidance or are general comments and require no further action.</p>	Noted - addressed elsewhere or no further action	Promote NOPSEMA’s published guidance materials and revise/update as required