

5 March 2024

Meghan Quinn PSM  
Secretary  
Department of Industry, Science and Resources  
Industry House, 10 Binara St  
Canberra ACT 2601



Chamber of Commerce  
and Industry WA

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Dear Ms Quinn

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

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia. We are fundamentally committed to using our insights to develop and advocate for public policies that will help realise our vision to make WA the best place to live and do business.

We welcome the opportunity to provide input into clarifying consultation requirements, offering recommendations to streamline and simplify these processes whilst maintaining robust standards. We also welcome the Minister's recent commitment to introduce a legislative amendment to streamline the reform process to support the advancement of critical projects, including gas, carbon capture, and offshore wind initiatives.

### **Background**

In October last year, we launched our Green Web report, which identified \$318 billion dollars of WA investment in the pipeline that is being put at risk as a result of elongated and protracted approvals timeframes. Offshore consultation requirements were identified as a key issue, which emerged following the Federal Court's ruling, last year, into what was considered adequate consultation. This led to an ambiguous notion of "relevant persons" being used as a yardstick for consultation requirements, which now encompasses individuals and communities in a much broader environmental context, even those located thousands of kilometres away from a development site. This broad interpretation, coupled with NOPSEMA's cautious approach, continues to create arduous consultation processes and prolonged approvals timeframes.

The ramifications of these Federal Court rulings for offshore projects cannot be understated. Delays in project approvals have resulted in significant financial implications for businesses, with mounting costs associated with vessels and equipment on standby. The uncertainty surrounding approval timelines has no doubt deterred investment, and created significant delays in critical energy projects, including gas, carbon capture, and offshore wind initiatives.

As project investors continue to navigate these complexities, the need for a legislative fix to create clarity and certainty becomes increasingly apparent. In our Green Web report, we recommended that the Federal Government should legislate changes to Regulation 11A of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, in order to provide clarity and reduce legal ambiguity in relation to consultation requirements.

To this end, there are several key areas that need to be addressed, including:

**Purpose and objective of consultation:** the purpose and objective of consultation should be clearly defined upfront and fully supported by industry and community. This alignment between industry, regulators and community ensures clarity, consistency and transparency over what constitutes adequate consultations for all projects going forward. This would help mitigate the risk of legal challenges and appeals, particularly those on the grounds of "inadequate consultation", which are often used simply to delay or frustrate projects.

**Use of the term 'relevant persons':** the ambiguity surrounding the term "relevant persons" has led to confusion and inefficiencies in consultation processes. As a result, businesses have been compelled to engage with individuals and groups far removed from project sites, contributing to excessive consultation burdens and delays. To address this, a more focused approach to identifying "relevant persons" is needed by centring consultation efforts on those directly impacted by planned activities. By engaging with individuals and communities with demonstrable connections to project impacts, consultation processes would then become more targeted and meaningful.

In addition, it is important that the regulations also establish clear guidelines around self-identification, which would ensure stakeholders can participate in consultations if they can prove direct impact. This approach would strike a balance between inclusivity and efficiency, enabling businesses to allocate resources effectively while ensuring genuine engagement with impacted parties.

**Clearly defined timeframes:** consultation timeframes should also be clearly defined in regulations to prevent open-ended engagements that prolong approval processes and exacerbate uncertainty. Once consultation periods conclude, feedback received should be considered final, providing businesses with certainty regarding engagement outcomes. There may, however, be instances where extensions to consultation deadlines are warranted for legitimate reasons, but that must be subject to the proponent's discretion.

**Engagement via representative bodies:** engagement via representative bodies offers a pragmatic solution to streamline consultation efforts and enhance coordination among stakeholders. By leveraging industry associations and community groups as conduits for broader consultations, businesses can navigate complex stakeholder landscapes more efficiently. This approach aligns with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which emphasises meaningful engagement with affected communities through established channels.

Furthermore, simplifying the consultation process can help manage associated fees and administrative burdens, ensuring equitable participation while minimising resource constraints.

**Minimum requirements and historical consultation:** establishing minimum consultation requirements would also be useful in providing clarity and certainty in consultation processes. This would then act as a “checklist” for proponents to demonstrate adequate consultation. By delineating clear expectations for consultation, including communication channels, frequency, and formats, businesses can navigate engagement activities more effectively. Additionally, recognising past consultation efforts can help minimise fatigue for stakeholders and reduce duplication of efforts, thereby also reducing regulatory burden for proponents, stakeholders and regulators.

### **Concluding remarks**

A legislative change is urgently needed to address the challenges and complexities that face industry in navigating the offshore approvals landscape in Australia. In this submission, we have identified some key areas of focus, which would provide industry with the clarity and certainty they need to advance their projects.

The recommendations provided here are designed to enhance clarity and reduce legal ambiguity, rather than to diminish the consultation process. Proponents within the industry understand that stakeholder expectations around community engagement have increased, and are committed to conducting genuine, robust, and comprehensive consultations, but clarity and certainty is desperately needed, particularly at a time when there is a rise in vexatious claims.

Given the significance of this issue, industry should have the opportunity to provide feedback on the draft legal provisions, which will ensure that what is being proposed, will indeed provide industry with the clarity it needs to move forward.

We appreciate your attention to these pressing matters and welcome the opportunity for further dialogue on how industry can collaboratively work towards a regulatory framework that fosters economic growth and sustainability in Australia.

We consider the regulatory determinations made through this process will likely inform discussions within the Nature Positive reform process. For this reason, it’s critically important this process delivers a robust, but pragmatic, consultation framework.

Should you require further information, please do not hesitate to contact Aaron Morey, Director of Policy via [aaron.morey@cciwa.com](mailto:aaron.morey@cciwa.com).

Sincerely,

Chris Rodwell  
**Chief Executive Officer**