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Oil and Gas Division  
Department of Industry, Science and Resources  
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Sent via email: [EnvironmentalReview@industry.gov.au](mailto:EnvironmentalReview@industry.gov.au)

To whom it concerns,

## CLARIFYING CONSULTATION REQUIREMENTS FOR OFFSHORE OIL AND GAS STORAGE REGULATORY APPROVALS

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in Western Australia. CME is funded by member companies responsible for 41 per cent of Australia's corporate income tax receipts by value in 2021-22.<sup>1</sup>

In 2022-23, the WA resources sector accounted for 65 per cent of Australia's resources exports,<sup>2</sup> half of Australia's resources capital expenditure<sup>3</sup> and 53 per cent of Australian resources employment.<sup>4</sup>

### Overview

CME welcomes the opportunity to provide feedback to the Department of Industry, Science, and Resources' (DISR) consultation '[Clarifying consultation requirements for offshore oil and gas storage regulatory approvals: consultation paper](#)' (this consultation) and contribute to improvement of consultation procedures for environmental approvals. Timely and effective consultation is important to CME members to ensure that relevant stakeholders are informed about potential activities and their impacts, and to proceed with regulatory approvals. CME members have highlighted that current consultation requirements are producing negative experiences for both titleholders and relevant persons, including consultation fatigue and legal challenges to approvals.

This submission makes a series of recommendations on the consultation process for regulatory approvals based on the feedback from our members. The recommendations made in this submission support a regulatory shift towards consultation requirements that are based on reasonableness, common-sense logic and represent the minimum expectation for environmental approvals. To this end, any changes to regulatory requirements proposed as a result of this consultation should be simple, sensible, and clear.

### The purpose of consultation should be clarified

CME contends that consultation processes for regulatory environmental approvals have a distinct and specific purpose, which is currently not clearly defined by the regulations. The purpose of consultation for environmental approvals is to inform relevant stakeholders of the impacts arising from a titleholder's planned activities, and the measures in place to reduce those impacts. Consultation should also create an opportunity for relevant persons to provide feedback to the titleholder. Consultation for environmental approvals is not the appropriate forum for generally interested parties to raise broad concerns or objections regarding a proposed project or proponent's operations. CME recommends that the purpose and scope of consultation for environmental approvals is more clearly defined, including clarification that:

- Consultation is targeted to specified relevant persons, and is not an open forum for any person to raise general interests.
- Responses to consultation are voluntary and relevant persons are not obliged to respond. Titleholders are responsible for making endeavours to consult and providing an opportunity for response.

<sup>1</sup> Australia-wide operations of companies with direct, equity joint venture or subsidiary interests in WA-based member projects. Commonwealth of Australia, [2021-22 Report of Entity Tax Information](#), Australian Taxation Office, 9 November 2023.

<sup>2</sup> Government of Western Australia, [2022-23 Economic Indicators Resource Data File](#), Department of Energy, Mines, Industry Regulation and Safety (DEMIRS), 9 January 2024. Australian Bureau of Statistics (ABS), [5368 International Trade in Goods](#), Table 32a.

<sup>3</sup> Investment refers to capital expenditure as measured by gross fixed capital formation, current prices. ABS, [5220 Australian National Accounts: State Accounts](#), Table 25. ABS, [5206 Australian National Accounts: National Income, Expenditure and Product](#), Table 34.

<sup>4</sup> ABS, [6291 Labour Force, Australia, Detailed](#), Table 5.

- Regulated requirements on consultation reflect the minimum expectations for consultation, with titleholders free to exceed expectations at their discretion.

Further to this, CME endorses the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which states that consultation and collaboration with indigenous peoples should take place through their own representative institutions.<sup>5</sup> CME recognises that prescribed body corporate groups have broad membership opportunities for individuals, as well as formal governance structures to identify group interests and resolve conflicts. While the ability for individuals to self-identify as a relevant person and provide their own feedback to titleholders should be retained, it is the view of CME that consultation with prescribed body corporate groups will produce more meaningful outcomes than consulting with individuals alone.

## Consultation should be outcome-focussed and risk-based

CME members have observed that ongoing, frequent, and repetitive consultation processes are resulting in consultation fatigue amongst stakeholders. Consultation fatigue occurs when stakeholders are unable or unwilling to participate in consultation processes due to being overwhelmed by a high volume of requests. This results in poor outcomes for both proponents and stakeholders. CME recommends that consultation procedures are refined to a risk-based, outcomes focussed approach to improve the value of consultation and reduce the incidence of consultation fatigue.

An important element of an outcomes-focussed consultation approach is acknowledgement of historical consultations and existing relationships. When considering the history of offshore petroleum proposals and projects in Western Australia, it is apparent that there is a long history of consultation and continuing relationships with relevant persons, including indigenous groups. **CME recommends that any reformed regulations include provisions to acknowledge existing relationships and historical consultations such that ongoing consultation exercises are not unnecessarily repetitive and do not contribute to consultation fatigue.**

Further to this, CME members have raised concerns with the existing requirement to consult on unplanned activities of low probability and high impact, such as oil spills. The current approach of consulting based on Environments that May Be Affected (the EMBA approach) captures vast geographical zones, creating a large cohort of 'relevant persons' in the unlikely and unplanned event of an oil spill. CME contends that the EMBA approach is not fit for the purpose of consulting for regulatory approvals and contributes to noted concerns of consultation fatigue. CME acknowledges that consultation on the impacts of a possible oil spill is important and should take place, but proposes that consultation for regulatory approvals is not a suitable avenue for this process. **CME recommends that a collaborative, government-led consultation approach, supported by expertise from the Australian Maritime Oil Spill Centre (AMOSOC) and resources and shipping sectors, should be developed for the purpose of consultation on unplanned activities. Further to this, CME recommends that the definition of 'relevant persons' is refined to place greater emphasis on those materially affected by and proximal to planned activities.** Focussing consultation efforts on those in close proximity to planned activities ensures that stakeholders have localised expertise, enhancing the decision-making process by considering specific environmental, socio-economic, and cultural factors.

CME understands and accepts that consultation with relevant persons on planned activities is a key responsibility of the titleholder, however, argues that consultation will be most effective when it is proportional to the scale and impact of activities. For example, the consultation requirements for major works, such as installation of permanent infrastructure, are not the same as those for minor projects, such as a small-scale drilling project. Consultation that is proportional to the scale and impact of planned works will reduce the pressure on relevant persons, reduce the risk of consultation fatigue, and better enable relevant persons to identify important impacts and develop feedback.

**CME recommends moving away from the EMBA approach of consultation by redefining 'relevant persons' for the purpose of environmental approvals. An updated definition on relevant persons should be centred around proximity to planned activities, with consultation requirements proportional to the scale and impact of planned activities. CME anticipates that this focused approach will streamline the consultation process, generate more effective, tailored decisions, and reduce consultation fatigue amongst stakeholders.**

## Guidelines should provide certainty on process and timeframes

Existing regulatory requirements for consultation for environmental approvals are uncertain, as evidenced by recent legal challenges for offshore petroleum projects. Regulatory certainty enables proponents to navigate the approvals process with confidence that requirements are met, reducing the risk of future legal challenges.

<sup>5</sup> Article 19 of the [United Nations Declaration on the Rights of indigenous Peoples](#)

Legal challenges disadvantage all parties: they can incur high costs, may take a long time to resolve and can have social consequences for small communities. In addition to clarifying recently set legal precedents within regulations, CME recommends that key elements of consultation are prescribed in regulation to instil confidence in future approvals processes.

Under current regulations, consultation timeframes are protracted by ongoing requests for information and self-identification of relevant persons during late stages of consultation. **To provide certainty surrounding consultation timeframes, CME recommends defining clear stages of consultation with prescribed timeframes for each stage, ensuring sufficient periods are determined in collaboration with relevant stakeholder groups.** Timeframes should be prescribed for:

- Periods for individuals to self-identify as relevant persons, with provisions for late identifiers to participate in ongoing consultation beyond the lodgement of environmental approvals or project approval (depending on the stage at which an individual self-identifies).
- Periods for titleholders to make reasonable endeavours to consult with relevant person and make relevant information available.
- Periods for relevant persons to prepare and submit responses to consultation material.

**Additionally, CME recommends the development of specific and detailed criteria that demonstrate that consultation has been satisfactorily completed, including a consultation checklist on the essential information that must be shared with relevant persons during consultation processes. Such a checklist will ensure relevant persons have the information needed to develop an informed response to consultation, while giving titleholders confidence that their have fulfilled the requirements of their consultation activities.**

### **Guidelines should include provisions for the exchange of culturally sensitive information**

CME is aware that some stakeholders are unable to input to consultation processes for cultural reasons. **CME recommends that regulatory provisions are made for more flexible arrangements for the exchange of culturally sensitive information. Such provisions may enable groups to participate in consultation activities, where current regulations prevent this from happening, for example, regulations should include provisions for feedback from indigenous groups to be heard orally in line with traditional practices.**

### **DISR should transfer learnings and outcomes of this consultation across Government**

Finally, CME suggests that it would be beneficial for DISR to transfer the learnings and outcomes of this consultation to the Nature Positive Taskforce within the Department of Climate Change, Energy, Environment, and Water (DCCEEW).

The Nature Positive Taskforce are currently drafting a National Environmental Standard for Community Participation and Engagement (NES for Consultation) as part of the Nature Positive Reforms of the Environment Protection and Biodiversity Conservation Act (EPBC Act). We note that many of the issues identified with the current Offshore Regulatory Approval consultation process are being embedded in the draft NES for Consultation.

Since some projects will require approval under both the offshore regulatory framework and the EPBC Act, **we recommend that DISR and DCCEEW work together to ensure that consultation requirements are consistent across the regulatory frameworks.** This will reduce duplication across government and provide certainty of process for proponents and stakeholders.

### **Conclusion**

In light of recent legal challenges regarding consultation for environmental approvals, it is an appropriate time to revise and clarify regulated consultation requirements. CME's recommendations within this submission support a shift towards sensible and clearly defined regulated consultation requirements to improve certainty for both titleholders and relevant persons.

If you would like to discuss the matters raised in this submission, or require any further information, please contact Adrienne LaBombard on 0400 912 525 or via email at [A.labombard@cmewa.com](mailto:A.labombard@cmewa.com).

Yours sincerely,



**Rebecca Tomkinson**  
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