

Submission for Clarifying Consultation Requirements for Offshore Oil and Gas Storage Regulatory Approvals

HESTA Submission - March 2024

Background

HESTA welcomes the opportunity to make a submission to this Consultation.

HESTA is an industry superannuation fund dedicated to meeting the specific needs of employees working in the health and community services sector. HESTA manages \$81 billion of assets and has more than one million members and was the first industry super fund to launch a Reconciliation Action Plan (RAP). We take our obligations to advance the ambitions of reconciliation in this country seriously.

HESTA's connection and interest to this Consultation is as an investor seeking to maximise long-term financial outcomes for our members. In this submission we express support for the offshore Environmental Management Review and provide suggestions for the overarching question in the consultation paper: How can Australia's offshore Environment regulations ensure targeted, effective, meaningful, and genuine consultation occurs, including culturally appropriate consultation with Traditional Owners and First Nations communities?

In addition, HESTA would also like to note our support for the submission made to this Consultation by the Australian Council of Superannuation Investors (**ACSI**).

Summary of HESTA Recommendations

Support for Offshore Environment Management Review and Cultural Heritage Reform

1. HESTA is very supportive of the intent of the Government's Offshore Environment Management Review to provide greater certainty of regulatory requirements.
2. The co-design process for cultural heritage law reform announced in November 2022 by Minister Plibersek needs to proceed promptly alongside this review.

Ensuring targeted, effective, meaningful, and genuine consultation

3. Offshore regulations relating to consultation are based on the principles articulated in the UN Declaration on the Rights of Indigenous Peoples (**UNDRIP**).
 - 3.1 Consideration is given to the September 2020 publication of *'Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australian and the Best Practice Standards in Indigenous cultural heritage management and*

legislation' (*Dhawura Ngilan*) as an example of how to embed UNDRIP into legislation and regulation. ¹

- 3.2 The government establish a working group comprising of senior representatives of Traditional Owner groups and industry to apply the UNDRIP Principles to offshore regulatory approvals using *Dhawura Ngilan* as inspiration for the goal of the working group.
- 4 The consideration of adequate resourcing for Traditional Owners and their representatives is at the forefront when considering regulatory changes.
 - 4.1 Adequate Government funding is provided to ensure that Traditional Owners have standing capacity to engage effectively when required will lead to more efficient and effective outcomes for all stakeholders.

Support for the Offshore Environment Management Review

Recommendation 1: Investor support for the Offshore Environment Management Review to provide greater certainty of regulatory requirements.

As long-term investors, we believe that strong and respectful stakeholder relationships are essential to realising long-term company value. The destruction of significant cultural heritage at Juukan Gorge by Rio Tinto; the ACCC's findings against Telstra for unconscionable sales to Indigenous consumers; and the recent court decision to revoke NOPSEMA's environmental approval of Santos' Barossa Project on the basis of inadequate consultation, are some recent examples of the risks and potential value implications for investors when First Peoples rights are not upheld.

In respect to offshore activities, the recent court decision and ensuing uncertainty about what constitutes adequate consultation shows that existing regulations are unclear for both companies and communities. Companies, communities, and investors will benefit from greater clarity and certainty of expectations. Hence, HESTA is very supportive of the Government's Offshore Environment Management Review, for which this consultation paper represents the first step.

Recommendation 2: Co-design process for cultural heritage law reform needs to proceed promptly alongside the Offshore Environment Management Review.

We recognise, however, the interconnected nature of offshore consultation regulations with broader cultural heritage and environmental legislation. Therefore, for this review to deliver the certainty and clarity required, the co-design process for cultural heritage law reform announced in November 2022 by Minister Plibersek needs to proceed promptly alongside this review.

¹ Heritage Chairs of Australia and New Zealand, 'Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation. September 2020' <<https://www.awe.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

Ensuring targeted, effective, meaningful, and genuine consultation with Traditional Owners and First Nations communities

Recommendation 3: Offshore regulations relating to consultation are based on the principles articulated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Targeted, effective, meaningful, and genuine engagement will occur if a company's approach is rooted in the principles articulated in the UNDRIP.

While we encourage and expect that investee companies meet the standards articulated in UNDRIP, we recognise that reliance on individual company application of UNDRIP, without state and federal legislation and regulation that aligns to this standard, will not lead to the universal application of these standards across onshore and offshore projects. Therefore, we believe that to achieve targeted, effective, meaningful, and genuine engagement across all projects, the relevant cultural heritage legislation and regulation, such as that applicable to offshore activities, ought to be based on UNDRIP Principles.

Recommendation 3.1: Consideration is given to the September 2020 publication of *Dhawura Ngilan* as an example of how to embed UNDRIP into legislation and regulation.

Recommendation 3.2 Establishing a working group comprising of senior representatives of Traditional Owner groups and industry to apply the UNDRIP Principles to offshore regulatory approvals using *Dhawura Ngilan* best practice standards as inspiration for the goal of the working group.

A challenge for policymakers is that UNDRIP is not a comprehensive code of model legislation or regulation. Therefore, in developing relevant regulatory requirements, HESTA encourages the consideration of the September 2020 publication of *Dhawura Ngilan*.

The best practice standards lay out how to operationalise the UNDRIP principles into cultural heritage legislation and by extension to regulations. We recognise these standards were written with a very specific area of legislation in mind. However, it is reasonable to believe that, with the right co-design processes, a similar process could be undertaken to assess how to UNDRIP principles could be applied across a broader range of legislation and regulation, including for offshore regulatory approvals. We encourage the government to establish a working group comprising of senior representatives of Traditional Owner groups and industry to achieve this.

Recommendation 4: The consideration of adequate resourcing for Traditional Owners and their representatives is at the forefront when considering regulatory changes.

Recommendation 4.1: Adequate Government funding is provided to ensure that Traditional Owners have standing capacity to engage effectively when required will lead to more efficient and effective outcomes for all stakeholders.

In respect to the recommendation to establish a working group, and to the broader question of how to achieve genuine consultation, considering how to ensure adequate resourcing of Traditional Owners and their representatives to participate in these processes, must be at the forefront.

Ensuring that Traditional Owners have standing capacity to engage effectively when required will lead to more efficient and effective outcomes for all stakeholders. Government funding is crucial to develop the necessary standing capacity.