Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals

Submission of The Australian Workers' Union & The Offshore Alliance

8 March 2024

Introduction

The Australian Workers' Union (AWU) is one of Australia's largest and most diverse unions. We represent around 72,000 workers, including thousands of workers across the gas supply chain. Our members are found in offshore and onshore gas exploration, extraction, processing, facilities maintenance, catering, pipelines, export facilities, household gas network infrastructure and end users in heavy industry, manufacturing and metalliferous mining. These workers' needs and the union's perspective are thus uniquely broad - reflecting what is required of gas to maintain Australia's industries, economy and standard of living.

The Offshore Alliance is an alliance between The Australian Workers' Union and the Maritime Division of the Construction, Forestry and Maritime Employees Union (MUA). The Offshore Alliance is the principal union in offshore oil and gas in Western Australia, with over 3,500 members in exploration, construction, drilling, processing, maintenance, catering, aviation and surveying.

The AWU and Offshore Alliance are acutely aware of the risks arising from uncertainty in Australia's gas market. It is clear gas will play an evolving but critical role in Australia's and our trade partners' energy mix in the medium to long-term. Many common industrial processes relying on gas for high temperature process heat or as a feedstock are difficult to decarbonise. Elsewhere, such as in ironmaking, gas offers a lower emissions alternative to incumbent fuels en route to long-term options such as green hydrogen. Indeed, the Net Zero Australia study projects that Australia's gas use may not peak until the mid-2030s.[1] In the power network, AEMO's draft 2024 Integrated System Plan provides that gas generation capacity in the National Electricity Market will likely increase to 2050.[2] Given gas' complementarily with renewables, and the Commonwealth's commitment to treble the rollout of renewable generation in coming years,[3] such investment is required as soon as possible. Internationally, key trade partners are steadfast as to the importance of continued supply of Australian gas to facilitate their own energy transitions.

Ensuring sufficient supply to meet such demand will thus require continued investment in new gas fields, irrespective of the precise trajectory of the energy transition. But despite common interest in increasing supply – shared by workers, investors, producers, exporters and users – new gas developments have attracted rising acrimony. In particular, activists have sought to make gas the 'new coal' - failing to demonstrate an understanding of the practical need for gas well into the future. Among a suite of tactics intended to delegitimise the sector is litigation on consultation prerequisites to securing regulatory approval for new offshore developments, prescribed in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* and related documentation ('the approvals regime'). High-profile cases have succeeded in complicating and delaying the Scarborough and Barossa developments.

This litigation has had a direct and negative impact on thousands of AWU and Offshore Alliance members who work in the sector, fueling prolonged uncertainty and placing both short and long-term job opportunities at risk. Delays to construction of the Barossa pipeline are just the latest chapter – leaving hundreds of Offshore Alliance members in limbo as the matter played out in court. AWU and Offshore Alliance members rely on new offshore gas developments in numerous ways. Firstly, to provide well-paid union jobs in the surveying, construction, commissioning, operation and decommissioning of such developments. Second, these developments ensure the long-term job security of AWU and Offshore Alliance members in processing gas. For instance, hundreds of Offshore Alliance members are engaged on the Shell Prelude floating LNG facility, where gas extracted from the Crux field will be processed once the

[1] Net Zero Australia (2023), '*Final modelling results*'. Available at: https://www.netzeroaustralia.net.au/wp-content/uploads/2023/04/Net-Zero-Australia-final-results-full-results-pack-19-April-23.pdf

[2] AEMO (2023), '*Draft 2024 Integrated System Plan*', p. 65. Available at: https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/nem-consultations/2023/draft-2024-isp-consultation/draft-2024-isp.pdf?la=en

[3] Minister for Climate Change and Energy (2023), '*Australia supports global renewable and energy efficiency pledge*'. Available at: https://minister.dcceew.gov.au/bowen/media-releases/australia-supports-global-renewable-and-energy-efficiency-pledge-0

area is developed. Third, thousands of AWU members engaged in gas-consuming industries ultimately rely on new developments to continue operating.

Disruption to offshore gas development is a major concern in itself. But the AWU notes the potential for precedents established through such litigation to extend to proposed onshore gas and offshore wind developments.[4] This would expose the energy transition – and tens of thousands of additional workers – to still greater uncertainty.

The delays and uncertainty associated with activist litigation around consultation requirements are ultimately attributable to weaknesses in the approvals regime. The AWU and the Offshore Alliance strongly believe that major infrastructure potentially impinging on community interests, including the interests of Traditional Owners, must undergo thorough and rigorous consultation. We also share the Commonwealth's views that such outreach should be targeted, effective, meaningful and genuine.[5] However, in our submission, litigation ostensibly concerned with defective consultation, but with the overarching objective of disrupting or derailing development entirely, amounts to bad faith action to exploit deficiency in the regime. The impact of the resulting delays on AWU and Offshore Alliance members, and Australia's energy and industrial outlook, is unacceptable and amendments must be made.

The Commonwealth's intent to amend the approvals regime to provide enhanced clarity and certainty around consultation requirements is thus timely. That the regime intends to provide for targeted, effective, meaningful and genuine consultation remains a sound objective. But the Commonwealth can continue to meet this goal, while better serving the interests of workers and the community, through amendments providing greater detail as to how consultation requirements are to be discharged.

The AWU and the Offshore Alliance is pleased to provide commentary addressing discrete issues raised in the Department of Industry, Science and Resources' consultation paper below. For more information on this submission, please contact Zach Duncalfe, AWU Senior National Legal Officer and Offshore Alliance Coordinator, at Zach.Duncalfe@nat.awu.net.au and 0401 830 083.

Definitional issues

Greater definitional clarity around key consultation requirements in the approvals regime is important to delivering greater certainty. The AWU and the Offshore Alliance acknowledges the Commonwealth's intent to afford industry space to tailor consultation processes to the requirements of each development and its stakeholders by avoiding an overly prescriptive approach. But while a level of flexibility is necessary, key definitions can and should be tightened to afford greater certainty without diminishing the legitimacy of consultation or genuine stakeholder rights.

'Relevant persons'

In developing environment plans for offshore developments, titleholders must consult all 'relevant persons' - that is, all persons and organisations whose functions, interests or activities may be affected, construed broadly.[6] This definition creates substantial uncertainty. The breadth of interests that may be impinged by

[4] Corrs Chambers Westgarth (2022), '*Ensuring effective stakeholder consultation following Santos v Tipakalippa*'. Available at: https://www.corrs.com.au/insights/ensuring-effective-stakeholder-consultation-following-santos-v-tipakalippa

[5] Consultation paper, p. 6

[6] NOPSEMA (2023), '*Consultation in the course of preparing an environment* plan'. Available at: https://www.nopsema.gov.au/sites/default/files/documents/Consultation%20in%20the%20course%20of%20preparing%20an%20Environment%20Plan%20guideline.pdf, p. 6

a major energy infrastructure project – at some level of probability, in some manner and at some point – is truly vast.

This requirement is thus defective and its breadth unnecessary. While its scope is uncertain, it appears to mandate a level of consultation that exceeds the interests likely to be directly impinged by a project. The definition should thus be amended for narrower construction.

For example, an amended regime could provide that 'relevant persons' means 'persons and organisations whose interests are likely to be directly affected by construction and or ordinary operations of the project'. It could also afford certainty around requirements to consult with indigenous Land Councils and representative bodies, rather than Traditional Owners individually.

Recommendation: The approvals regime should be amended to prescribe a narrower and more certain definition of 'relevant persons' that must be consulted.

'Reasonable period'

The approvals regime requires developers to provide stakeholders with a 'reasonable period' for consultation. However, this term is not defined in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, and analysis of the requirement in NOPSEMA's guideline on the topic affords titleholders little to no certainty.[7] This exposes future developments to uncertainty around whether a consultation period afforded to any stakeholder is of 'reasonable' duration.

To address this deficiency, the approvals regime should prescribe definite periods, from initial outreach to disengagement, that developers are required to afford stakeholders. In recognition of their differing capacities to engage with and respond to consultation materials, a distinct timeframe should apply to each of a business, a non-government organisation and an individual person.

To ensure the needs of any stakeholders with unique or highly complex requirements can be met under such arrangements, NOPSEMA should be provided with the capacity to mandate extended consultation periods in exceptional circumstances.

Recommendation: The approvals regime should prescribe definite, limited timeframes that developers must afford businesses, NGOs and individuals to engage in a consultation process. NOPSEMA should be empowered to extend these limits in exceptional circumstances.

'Sufficient information'

The approvals regime requires a developer to provide stakeholders with 'sufficient information' to make an informed assessment of the proposal and its potential impact on their interests. This term is also not defined in the approvals regime - exposing new developments to further uncertainty.

What constitutes 'sufficient' information will vary according to the project and stakeholder in question. It follows that a precise definition in the regulation may not be possible. However, NOPSEMA should develop and publish detailed guidelines around what constitutes 'sufficient information' in relation to common proposals and the key stakeholders affected by them.

[7] Ibid., p. 7

Recommendation: NOPSEMA should develop detailed guidelines addressing what constitutes 'sufficient information' in relation to common types of development proposals.

Receipt of additional information

The requirement that a titleholder must act on correspondence from relevant persons received after consultation has ceased and an environmental plan has been submitted to NOPSEMA is patently defective. It makes a consultation process of clear and definite duration impossible.

The approvals regime is, and should remain, sufficiently rigorous as to afford all genuine stakeholders the opportunity for meaningful consultation during the development of an environmental plan. But where a person or entity only corresponds with a titleholder after consultation has ceased, and the developer has discharged its duty to inform all stakeholders and provide a reasonable consultation period, it follows that the stakeholder has failed to afford the matter due regard. The burden of such a failure must fall on that stakeholder rather than the titleholder. Accordingly, this requirement should be scrapped.

Recommendation: The approvals regime should not require a titleholder to act on correspondence from relevant persons received after consultation has ceased and an environmental plan has been submitted.