



Offshore Petroleum Factsheet Series:

Exploration Permits: How to get involved as a ‘relevant person’?

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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What is this factsheet about?

This factsheet explains what happens after exploration areas are nominated. It briefly explains the exploration permit process and focuses on what you can do if you’ve been identified as a relevant person and contacted by an exploration company to consult on an environment plan. It also provides information on steps you can take if you believe a ‘relevant person’ was not consulted.

This factsheet also includes an Annexe setting out what is required to be included in an environmental plan. This is useful if you are being consulted as a relevant person.

Outline

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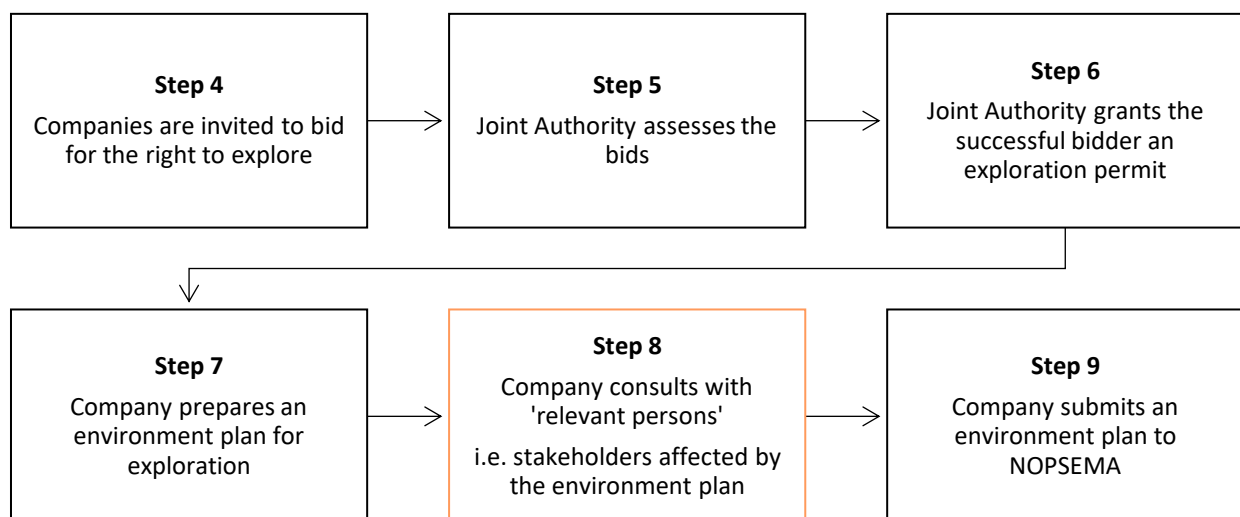
Overview of the Exploration Permit process

A company requires permission (in the form of an exploration permit, or in some cases, a special prospecting authority) and an accepted environment plan before it can explore for petroleum offshore.

A company must identify and consult with relevant persons when preparing an environment plan. If you are identified as a relevant person, you can consider how you'd like to be consulted and will have an opportunity to co-design the consultation process with the company based on this.

If you are not identified as a relevant person, but believe your functions, interests, or activities will be affected by exploration, write to NOPSEMA and the company and assert yourself as a relevant person.

The Figure below sets out the steps that follow an area being nominated for exploration. This factsheet focusses on Step 8, where a company is required to consult with stakeholders or 'relevant persons' on the environment plan.



Relevant persons

During the preparation of an environment plan, the company is required to consult with all stakeholders affected by the environment plan. The purpose of consultation is to ensure the company identifies all potential risks and impacts to the environment and the measures it will take to address these.

Who are 'relevant persons'?

Relevant persons include:¹

- certain Commonwealth and State and Territory government departments,

¹ OPGGS (E) Regulations reg 25

- people, or
- organisations,

whose functions, interests or activities ‘*may be affected*’ by the proposed activity.

What does ‘may be affected’ mean?

When a company prepares an environment plan, it must describe the *environment that may be affected* (**EMBA**) by its activities.² This includes both planned operations and unplanned incidents, such as worst-case petroleum spill. In such cases, the EMBA covers the full extent of the potential spill area, potentially spanning thousands of square kilometres of ocean and coastal environments, well beyond the immediate project location.

Any person or organisation whose ‘*functions, interests or activities*’ fall within this EMBA may be considered a relevant person.

What does ‘functions, interests or activities’ mean?

The meaning of ‘functions, interests, or activities’ is broad and should not be limited to legal rights, such as property rights or financial interests.³ For example, it includes spiritual and cultural connections to the affected area and its marine resources.⁴

Who may be a relevant person?

The law doesn’t define whose functions, interests or activities may be affected, so this is left to the company to decide. In the past, the following people and organisations have been considered to be relevant persons for the sake of consultation:

Group	Examples of functions, interests or activities
First Nations communities	Cultural interests in Country, including Sea Country, based on traditional and spiritual connections. Also recognises Australia’s obligation under international law to consult all First Nations Peoples who may be affected by an activity, including offshore petroleum activities. ⁵
Environmental organisations	Generally, the organisation must have more than a broad interest in the environment and/or offshore petroleum

² OPGGS (E) Regulations reg 21(2)(a)

³ *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193

<<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2022/2022fcafc0193>>

⁴ Ibid.

⁵ Art. 32(2), UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (adopted by Australia on 3 Apr. 2009) Although a company isn’t bound to the same obligations as Australia, as a nation-state, the UNDRIP provides context on what should be required when consulting with First Nations people and communities.

	activities. ⁶ Rather, it should be specifically concerned about the protection of the marine environment that may be impacted, for example specific marine species that may be affected by the project.
Academics	Activities such as marine research or climate change research.
Commercial fisheries	Financial interest in an environment that supports marine life.
Tourism operators (onshore and offshore)	Financial interest in an environment that supports marine life. For example, whale-watching businesses are reliant on whale migration which can be impacted by seismic blasting.
Recreational marine users	Includes recreational fishers and surfers.
Community groups	Coastal communities and residents.
Local government	Coastal local governments have functions to protect and manage coastal areas.

This list should be used as a guide only and should not be considered a complete list of relevant persons.

How will I know if I've been identified as a relevant person?

Companies are responsible for identifying and notifying relevant persons that they may be affected by an environment plan.⁷ You will only be notified of consultation if you are recognised by the company as a relevant person. Notification must be in a form that's readily accessible, for example, letters, emails or phone calls to you or your group.

How can I assert myself as a relevant person?

Companies may also publish notices and factsheets about upcoming consultations on their website, or in newspapers or on radio. Some company websites allow you to subscribe to receive notifications of upcoming consultation opportunities.

⁶ NOPSEMA (2023) 'Consultation on onshore petroleum environment plans: information for the community' <<https://www.nopsema.gov.au/sites/default/files/documents/Consultation%20on%20offshore%20petroleum%20environment%20plans%20brochure.pdf>>

⁷ OPGGS (E) Regulations reg 25

If you become aware that a company is consulting on its environment plan and believe you are a relevant person but *have not* been notified of any consultation opportunities, you can write to the company and NOPSEMA and assert yourself as a relevant person.

You will need to be able to talk about how your functions, interests or activities may be affected by the environment plan.

NB To provide feedback to NOPSEMA you can submit this [form](#), or send an email to feedback@NOPSEMA.gov.au.

I've been identified as a relevant person, how do I effectively engage in consultation?

If you've been identified as a relevant person, the company will have to engage directly with you or your group to co-design the consultation process. Think about how you would like to be consulted, and put this to the company in strong, clear terms.

When co-designing consultation, you should consider:

Purpose of consultation

The purpose of consultation is to give you an opportunity to raise concerns about the potential impacts of the activity, including how the company plans to manage these impacts and any other risks. The purpose of consultation is not to determine whether there is broad public support or opposition to the project.

In other words, consultation is very targeted to particular issues.

Venue and mode

Consultation usually involves meeting with representatives from the company. Consider whether you'd like face-to-face or virtual meetings. If face-to-face is preferred, think about a place that minimises travel and cost for you or your group. Also, consider the timing of these meetings and whether a weekend or weekday is preferable.

Information to be provided

By law, a company is required to give you sufficient information to allow you to assess the impacts of an activity on your function, interests, or activities.⁸

If the company has prepared a draft environment plan at this stage, you should ask to see it. If there is no draft environment plan, you may request information on the location of proposed exploration, exploration methods and timeframes, potential impacts of exploration on the environment and plans to minimise those impacts.

⁸ OPGGS (E) Regulations reg 25(2).

See: **Annexe 1** below for a detailed overview of what a company must include in an environment plan for guidance

Keep track of what information you have requested from the company and whether it has been provided to you.

Timeframe for consultation

By law, a company must give you a reasonable amount of time to consider the information provided during consultation.⁹

Consider whether you will need a single meeting, or multiple meetings to give you time to consider the information before providing feedback. Consider whether you want to ask for time to make a written submission at the end of any meeting. You may also wish to engage an expert such as a lawyer or a scientist to review the information given to you during consultation before you can provide your feedback to the company.

Consulting with First Nations communities

Australia has obligations under the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**). The UNDRIP requires countries to consult and cooperate with First Nations communities and obtain their ‘free and informed consent prior to the approval of any project affecting their lands or territories...’¹⁰

While obligations under UNDRIP don’t strictly apply to the companies undertaking consultation,¹¹ these obligations should inform what NOPSEMA considers to be sufficient consultation, in terms of the information given and time provided for feedback.

Read: The [UNDRIP](#) to find out more about free, prior and informed consent.

Attendance

You should consider whether there are key people that must be in attendance? Is there anyone who shouldn’t attend a particular meeting or should have separate meetings, for example, for cultural reasons?

Conduct of meetings

⁹ OPGGS (E) Regulations reg 25(3).

¹⁰ United Nations Declaration on the Rights of Indigenous People (2007) Art 32.

¹¹ UNDRIP applies to “states” or countries rather than third parties, e.g. oil and gas companies.

A company is already required by law to provide full text records of consultation and attach these to the draft environment plan.¹² However, you can also request an audio-visual recording of the meeting.

Also consider whether you require interpreters or legal representatives to be in the meeting.

This is not a complete list of considerations. There might be other important practices to you or your group that you should consider requesting from the company. If the company refuses to accept a request that is important to you and your group, consider seeking legal advice.

Read: NOPSEMA’s [guideline](#) for consultation on offshore environment plans

What happens next?

Once a company has finished consulting with relevant persons, it will submit an environment plan to NOPSEMA.

Annexe 1

The table below sets out the information an environment plan must include.¹³ Keep this in mind if you have the opportunity to see a draft environment plan during the consultation process.

Section of Environment Plan		What’s included
Environmental assessment	Description of the activities	Proposed exploration activities including seismic surveying and drilling. Also outlines where and when these activities will be conducted.
	Description of the environment that may be affected	Areas that will be explored are referred to in the environment plan as petroleum activity areas (PAA). Environment plans will also include a map or description of the area that may be affected by the worst-case scenario, such as a petroleum spill. This is called the environment that may be affected (EMBA). You’ll want to consider both the PAA and EMBA when giving your feedback as part of the consultation.

¹² OPGGS (E) Regulations reg 24(b).

¹³ OPGGS (E) Regulations pt 4 div 2 ‘Contents of an environment plan’.

	Direct environmental impacts and risks of the activities	<p>Direct impacts to the PAA and the EMBA. The environment plan should consider impacts on the natural environment and on the social, economic, and cultural values of people and their communities.¹⁴ This includes:</p> <ul style="list-style-type: none"> • Climate change and the emission of greenhouse gases through drilling (known as fugitive emissions) and processing. • Sea Country and other marine or terrestrial areas of significance to Aboriginal and Torres Strait Islander peoples. • Marine animals such as the Blue Whale, Southern Right Whale, Dugongs and Whale Sharks. • Critical marine habitat, key migration routes for wildlife and Biologically Important Areas (BIA) • Impacts on key species listed as threatened by the government • Impact of proposed seismic, drilling, production, transport, and decommissioning activities on Marine Park Areas (MPA)
	Indirect environmental impacts and risk of the activities	Indirect impacts include those that fall outside the PAA or EMBA. For example, as exploration is a precursor to production, climate change may be considered an indirect impact.
	Environmental performance standards	How direct and indirect impacts will be managed to a level as low as reasonably practicable (ALARP) and to an acceptable level. This section also outlines how the company will continue to monitor its environmental impacts.
Implementation strategy for the	Consultation with relevant persons	Identifies relevant persons and the company's consultation strategy to give relevant persons <i>sufficient</i> information and

¹⁴ Definition of 'environment' under the OPGGS Act.

environment plan		time to engage in the consultation. Also outlines how relevant persons are identified. This is usually based on whether a person or group's interests, functions and activities fall within the PAA and EMBA.
	Roles and responsibilities	Key roles and responsibilities for company and contractor staff in conducting exploration.
	Oil pollution emergency plan	How a petroleum spill would be managed, including responding to the spill and monitoring its environmental performance.
Other information	Corporate environmental policy	An attached copy or link to the company's corporate environmental policy.
	Consultation report	A report on all consultation with relevant persons, including a summary of each person's claims or objections, and the company's response.

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