



Concise Statement

No. VID 647 of 2023

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

RAELENE COOPER

Applicant

**NATIONAL OFFSHORE PETROLEUM SAFETY AND ENVIRONMENTAL MANAGEMENT
AUTHORITY** and others

Respondents

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A. Important facts giving rise to the claim

1. This document adopts the terms defined in the amended originating application filed on 8 September 2023 (**Amended Originating Application**).

The Seismic Survey EP

2. On 31 July 2023 a delegate of the First Respondent decided to accept, subject to conditions, the Seismic Survey EP (the **Decision**).
3. The Environment Regulations require that prior to commencement of any activity as defined under those regulations, the Titleholders consult with persons identified as a "relevant person".¹ The First Respondent may accept an environment plan if reasonably satisfied that the required consultation has occurred and that the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate (the **Reg 10A(1)(g) Criteria**).
4. On 31 July 2023 the delegate of the First Respondent made the Decision in circumstances where the delegate was not reasonably satisfied of the Reg 10A(1)(g) Criteria.² The delegate:

- a. stated that there 'was uncertainty as to whether there is additional information held by First Nations people on the cultural features of the environment,

¹ Environment Regulations, reg 11A.

² Statement of Reasons, [15], [95]-[97]; Affidavit of Jessica Louise Border affirmed 17 August 2023 (**First Border Affidavit**), 1211, 1234-1236.

Filed on behalf of Raelene Cooper, Applicant

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including spiritual and cultural connections to the environment that may be affected by the activity’;³ and

- b. specifically identified Save our Songlines as one such body comprised of, or representing, First Nations people who may have additional information to provide.⁴
5. As a result, the delegate of the First Respondent stated that the Decision was subject to conditions, requiring the Second and Third Respondents (the **Titleholders**) to consult with ‘registered native title bodies corporate, representative Aboriginal / Torres Strait Islander bodies and other persons or organisations identified as a relevant person in relation to First Nations cultural heritage in Tables 5-3 and 5-4 of the EP’ to determine, relevantly, whether ‘[t]here is any information they wish to provide on cultural features and/or heritage values’ (the **Consultation Conditions**).⁵ The Consultation Conditions expressly provided that the consultation ‘must’ occur ‘[p]rior to the commencement of the activity’ and that the ‘method of consultation is [to be] informed by the relevant persons being consulted.’
 6. On or about 31 July 2023,⁶ notwithstanding the absence of satisfaction of the Reg 10A(1)(g) Criteria and the failure to fulfil the Consultation Conditions, the Titleholders gave notice to the First Respondent that the Activity would commence on 10 August 2023.

The Applicant

7. The Applicant is a Mardudhunera woman and a Traditional Custodian of Murujuga (also known as Burrup Peninsula), an area located in the Pilbara region in far north Western Australia that is coastally adjacent to the environment that may be affected by the Activity.
8. The Applicant has traditional, spiritual and cultural connections and interest, functions and activities in relation to the environment that may be affected by the Activity.
9. The Applicant is also a co-founder of Save our Songlines, an unincorporated organisation dedicated to the protection of Murujuga, and its adjacent waters, from damage to Songlines, rock art, health and climate arising from the expansion of industry.
10. The possible consequences of the Activity on the Applicant’s spiritual and cultural connections, and interests, functions and activities include, without limitation:
 - a. cultural and spiritual harm, including but not limited to:
 - i. damage to songlines and dreaming, in particular the Whale Dreaming, which is carried by the Applicant as part of women’s lore;

³ Statement of Reasons, [95]; First Border Affidavit, 1236.

⁴ Statement of Reasons, [94]-[95]; First Border Affidavit, 1236.

⁵ Statement of Reasons, [133]; First Border Affidavit, 1245.

⁶ Regulation 29(1) of the Environment Regulations required the Titleholders to give 10 days notice to NOPSEMA before commencing any Activity.

- ii. loss or fracture of connection of the Mardudhunera women to the songlines and the dreaming as a result of the Activity;
 - iii. harm to the spiritual and physical health and wellbeing of plants and animals, including whales and their songlines, which have particular cultural significance, and their migration, breeding and feeding;
 - iv. physical, mental and spiritual sickness and/or danger for humans, including the Applicant and her family, associated with impact or any harm to plants and animals; and
 - v. consequential impacts of the above on the ability of the Applicant to pass Country, songlines and culture on to family and future generations;
- b. cultural and spiritual repercussions for the Applicant not being able to fulfil her cultural obligations to protect, preserve and promote the environment, animals and plants threatened by the Activity;
- c. potential impacts on marine species and natural environment, relevant to the Applicant's interests, including but not limited to:
- i. chronic mortality to some marine organisms, including zooplankton;
 - ii. behavioural changes (leaving or avoiding the area where the Activity occurs) to turtles, pelagic fish (such as tuna and billfish), sharks, pygmy blue whale and turtles;
 - iii. whales' sonar communications systems, particularly between mothers and calves, from sound and vibrations emitted by the Activity;
 - iv. potential operational discharges associated with presence of ships in the area, including potential impacts to water quality;
 - v. potential impacts on water quality and consequent potential impacts on marine fauna such as whales, dugongs, sharks, rays, and seabirds from risk of unplanned chemical discharges (non-hydrocarbon); and
 - vi. vehicle collision and/or entanglement with marine fauna.

11. The Applicant and Save our Songlines are, and are each recognised by the Titleholders to be, a "relevant person" within the meaning of reg 11A(1)(d) of the Environment Regulations.⁷

12. The Applicant and Save our Songlines are recognised by the First Respondent to be a "relevant person" within the meaning of reg 11A(1)(d) of the Environmental Regulations in the Decision.⁸

13. The Applicant is aggrieved by the Decision because:

⁷ Tables 5-4 and 5-4 at pages 66 an 185-191 of the Seismic Survey EP.

⁸ Paragraphs [91]-[96] of the Statement of Reasons.

- a. she was not consulted as required by reg 11A of the Environment Regulations about the possible consequences of the Activity on her functions, interests and activities;
- b. the First Respondent was not satisfied that the Seismic Survey EP demonstrated that the Titleholders had consulted as required by reg 11A of the Environment Regulations;⁹
- c. the First Respondent purported to approve the Seismic Survey EP in circumstances where the First Respondent was not reasonably satisfied that reg 10A(g)(i) and 10A(g)(ii) had been fulfilled;
- d. alternatively, if the Decision is valid, the Applicant is aggrieved because the Second and Third Respondents have not complied with the requirement in the Acceptance Conditions to consult with her and other First Nations Peoples who are relevant persons for the purposes of the Activity.

The Applicant's Standing

14. For the reasons stated in [7] to [13] the Applicant as a "relevant person" has standing to:
 - a. bring proceedings pursuant to the ADJR Act and the Judiciary Act seeking judicial review of the Decision;
 - b. seek relief in respect of an interference with her public right a person with an immediate, significant and particular interest in:
 - i. being consulted with respect to the Activity, which is her entitlement as a relevant person, as defined by the Environment Regulations, with respect to the Activity, prior to the Acceptance of an environment plan; and
 - ii. restraining the Titleholders from commencing Activity that is not authorised by the Seismic Survey EP.

B. Nature of the claims

15. The Applicant challenges the validity of the Decision of the delegate of the First Respondent to accept the Seismic Survey EP.
16. In the alternative, Applicant also seeks to restrain the Titleholders from undertaking Activity otherwise than in accordance with the Decision, including the Consultation Conditions.

C. Ground of application for judicial review

17. The First Respondent did not have statutory power to make the Decision because the First Respondent was not reasonably satisfied that the Seismic Survey EP demonstrated that the consultation required by reg 11A of the Environment Regulations

⁹ Paragraphs [15], [94]-[97].
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had been carried out, and so was not reasonably satisfied of the criteria in reg 10A(g)(i) and reg 10A(g)(ii).

18. The Applicant refers to and repeats the particulars to “Ground of application for judicial review” of the Amended Originating Application.

D. Ground of application to restrain

19. In the alternative, the commencement of the Activity is not authorised by the Seismic Survey EP, and would be unlawful, because the Decision is subject to express conditions, and in particular the Relevant Conditions, with which the Titleholders have not complied.

20. The Applicant refers to and repeats the particulars to “Ground of application to restrain” of the Amended Originating Application.

E. Relief sought from the Court

21. The Applicant seeks the relief set out in the Amended Originating Application.

Certificate of lawyer

I, Clare Lakewood certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 11 September 2023



Signed by Clare Lakewood

Lawyer for the Applicant

