



Federal Court of Australia
District Registry: Victoria
Division: General

Raelene Cooper

Applicant

National Offshore Petroleum Safety and Environmental Management Authority and
others named in the Schedule

Respondents

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A. The Important Facts Giving Rise to the Claim

A1. The Seismic Survey EP

1. The Second and Third Respondents (**Woodside**), as titleholders under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**Regulations**), propose to undertake a 3D / baseline 4D marine seismic survey of the Scarborough and Jupiter gas fields (**Seismic Survey**) in the Northern Carnarvon Basin on the Exmouth Plateau.
2. The proposed Seismic Survey is the subject of the Scarborough 4D B1 Marine Seismic Survey Environment Plan (**Seismic EP**).

A2. Decision by NOPSEMA

3. Paragraph 2 of the Applicant's Concise Statement is not in dispute.
4. Paragraph 3 of the Applicant's Concise Statement is disputed. Woodside will refer to, and rely upon the Regulations at the final hearing for their full terms and effect.

Filed on behalf of: Woodside Energy Scarborough Pty Ltd and Woodside Energy (Australia) Pty Ltd, the
Second and Third Respondents

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5. As to paragraph 4 of the Applicant's Concise Statement, Woodside:
- 5.1 does not dispute that the delegate was not reasonably satisfied that the Seismic EP met the criteria set out in Reg 10A(1)(g);
 - 5.2 does not dispute that the Statement of Reasons for the Decision (**Statement of Reasons**) records the matters in paragraphs 4(a) and (b);
 - 5.3 says further that the Statement of Reasons records (relevantly) that:
 - (a) the delegate found that Woodside's process for relevant persons identification has provided for the broad capture of First Nations representative groups by identifying and consulting with all relevant groups along the full extent of the coastline adjacent to the EMBA as relevant persons, including Save Our Songlines (**Identified Traditional Custodian Groups**): at [91]-[92];
 - (b) the delegate accepted that the Seismic EP demonstrated (amongst other things) that:
 - (i) Woodside had provided Identified Traditional Custodian Groups with sufficient information in a readily accessible form and appropriate format to allow them to make an informed assessment of the possible consequences of the activity on their functions, interests or activities: at [93(a)] and [93(b)];
 - (ii) where requested, Woodside adapted its approach to consultation in an appropriate manner to accommodate the provision of culturally restricted or sensitive information: at [93(c)];
 - (iii) Woodside provided the Identified Traditional Custodian Groups with a reasonable period to consider information and provide feedback on how their functions, interests or activities may be affected by the activity: at [93(d)];
 - (c) the delegate accepted that the consultation undertaken by Woodside was comprehensive and had been assessed and implemented where relevant: at [96]-[100].
6. As to paragraph 5 of the Applicant's Concise Statement, Woodside:
- 6.1 says that the delegate decided pursuant to regs. 10(4)(b)(iii) and 10(6)(b) of the Regulations to accept the Seismic EP subject to Conditions 1 to 8;
 - 6.2 says that Condition 1 provides:
 - (i) "Prior to commencement of the activity, the titleholders must 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 confirm whether:

- (A) They are aware of any people, who in accordance with Indigenous tradition, may have spiritual and cultural connections to the environment that may be affected by the activity that have not yet been afforded the opportunity to provide information that may inform the management of the activity.
- (B) There is any information they wish to provide on cultural features and/or heritage values”;

6.3 says that Condition 3 provides that “[t]he method of consultation is informed by the relevant persons being consulted”;

6.4 will refer to, and rely upon, the Conditions at the final hearing for their full terms and effect;

6.5 otherwise disputes the matters in that paragraph.

7. As to paragraph 6 of the Applicant’s Concise Statement, Woodside:

7.1 does not dispute that it gave notice to the First Respondent (**NOPSEMA**) that the activity under the Seismic EP would commence on 10 August 2023;

7.2 otherwise disputes the matters in that paragraph.

A3. Satisfaction of conditions imposed by NOPSEMA

8. In the period 31 July 2023 to 5 September 2023, there was engagement between Woodside and NOPSEMA about Woodside’s compliance with Conditions 1 to 7.

9. By 5 September 2023, Woodside had complied with, or was meeting, each of the Conditions, and Woodside continues to do so.

A4. The Applicant and standing

10. As to paragraphs 7, 8 and 9 of the Applicant’s Concise Statement, Woodside:

10.1 acknowledges that the Applicant has provided it information to the effect of that set out in paragraphs 7, 8 and 9;

10.2 repeats and relies on paragraph 12, 13 and 15 below.

11. As to paragraph 10 of the Applicant’s Concise Statement, Woodside:

11.1 acknowledges that the Applicant has provided it information to the effect of that set out in paragraph 10;

11.2 repeats and relies on paragraph 12 and 13 below;

- (a) says that, based on the information which the Applicant has provided to Woodside to date, the control measures which are in place in the Seismic EP reduce the environmental risks and impacts of the Seismic Survey, including those of a nature described in paragraph 10(a), 10(b) and 10(c) of the Applicant's Concise Statement, to a level that is as low as reasonably practicable and of an acceptable level for the purposes of the Regulations.
12. As to paragraph 11 of the Applicant's Concise Statement, Woodside does not dispute that the Applicant and Save our Songlines are, and each are categorised by Woodside as, a "relevant person" within the meaning of reg. 11A(1)(d) of the Regulations for the purposes of the activity to be carried out under the Seismic EP as set out in table 5-3 (Assessment of relevance) of the Seismic EP.
13. As to paragraph 12 of the Applicant's Concise Statement, Woodside does not dispute that NOPSEMA has accepted Woodside's categorisations of the Applicant and Save our Songlines as a "relevant person" within the meaning of reg. 11A(1)(d) of the Regulations for the purposes of the activity to be carried out under the Seismic EP.
14. As to paragraph 13 of the Applicant's Concise Statement, Woodside:
- 14.1 does not dispute the matters in paragraphs 13(b) and (c);
- 14.2 disputes the matters in paragraphs 13(a) and (d);
- 14.3 repeats and relies on paragraph 15.1 below.
15. As to paragraph 14 of the Applicant's Concise Statement, Woodside:
- 15.1 does not dispute that the Applicant has standing to bring proceedings pursuant to the ADJR Act and the Judiciary Act seeking judicial review of the Decision;
- 15.2 disputes the matters in paragraph 14(b).

B. Nature of the Claims

16. Woodside does not dispute the description of the Applicant's claim in paragraph 15 of the Applicant's Concise Statement (referred to below as **Ground 1**).
17. Woodside does not dispute the description of the Applicant's claim, in the alternative, in paragraph 16 of the Applicant's Concise Statement (referred to below as **Ground 2**) but says further that the remedy sought by Ground 2 is to enforce compliance with the Regulations which is not a public law remedy.

C. Ground of application for judicial review

18. Woodside disputes paragraphs 17 and 18 of the Applicant's Concise Statement and:
- 18.1 repeats paragraph 5 above;

18.2 says further that, if Ground 1 is established, Woodside may contend at the final hearing that the Court should refuse to grant the relief sought by Ground 1 on a discretionary basis by reason of any failure of the Applicant to provide to Woodside, by the time of the final hearing, all information about the effects of the activity the subject to the Seismic EP on her functions, interests or activities that she would wish to provide.

D. Ground of application to restrain

19. Woodside disputes paragraphs 19 and 20 of the Applicant's Concise Statement and:

19.1 repeats paragraph 17 above and says further the Applicant has no standing to restrain an alleged offence under the Regulations;

19.2 refers to paragraphs 8 and 9 above and says further that Woodside has complied with, or is meeting, each of the conditions which have been imposed by NOPSEMA;

19.3 says further that, if Ground 2 is established, Woodside may contend at the final hearing that the Court should refuse to grant the relief sought by Ground 2 on a discretionary basis by reason any failure of the Applicant to provide to Woodside, by the time of the final hearing, all information about the effects of the activity the subject to the Seismic EP on her functions, interests or activities that she would wish to provide.

E. Relief sought from the Court

20. The relief sought in the Originating Application should be refused with costs.

Certificate of Lawyer

I Jeremy Quan-Sing certify to the Court that, in relation to the Concise Statement in Response filed on behalf of the Second and Third Respondents, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 18 September 2023

A handwritten signature in black ink, appearing to read 'J. Quan-Sing', is written above a horizontal line.

Signed by Jeremy Quan-Sing
Lawyer for the Second and Third
Respondents

Schedule

No. VID 647 of 2023

**Federal Court of Australia
District Registry: Victoria
Division: General**

Respondents

Second Respondent: Woodside Energy Scarborough Pty Ltd (ACN 650 177 227)

Third Respondent: Woodside Energy (Australia) Pty Ltd (ACN 006 923 879)

Date: 18 September 2023