

Appendix 3:

Principles for effective consultation and engagement¹

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1 Guidelines for engaging with Indigenous communities

1.1 A human rights-based approach to development

- All policies and programs relating to indigenous peoples and communities must be based on the principles of non-discrimination and equality, which recognise the cultural distinctiveness and diversity of indigenous peoples.
- Governments should consider the introduction of constitutional and or legislative provisions recognising indigenous rights.
- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives.
- Such participation shall be based on the principle of free, prior and informed consent, which includes governments and the private sector providing information that is accurate, accessible, and in a language the indigenous peoples can understand.
- Mechanisms should exist for parties to resolve disputes, including access to independent systems of arbitration and conflict resolution.

1.2 Mechanisms for representation and engagement

- Governments and the private sector should establish transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities.

¹ The following guidelines are adapted from Human Rights and Equal Opportunity Commission and United Nations Permanent Forum on Indigenous Issues, *Engaging the Marginalised: Partnerships between indigenous peoples, governments and civil society*, 15 August 2005 (2005), at http://www.humanrights.gov.au/social_justice/conference/engaging_communities/index.html#link2 (viewed 23 November 2009); Australian Human Rights Commission, *Draft guidelines for ensuring income management are compliant with the Racial Discrimination Act* (2009), at http://www.humanrights.gov.au/word/race_discrim/RDA_income_management2009_draft.doc (viewed 23 November 2009); Parshuram Tamang, *An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices*, UN Doc PFII/2004/WS.2/8 (2005), at http://www.un.org/esa/socdev/unpfi/documents/workshop_FPIC_tamang.doc (viewed 23 November 2009); Australian Government, *Best Practice Regulation Handbook* (2007), at <http://www.finance.gov.au/obpr/docs/handbook.pdf> (viewed 23 November 2009).

- Indigenous peoples and communities have the right to choose their representatives and the right to specify the decision-making structures through which they engage with other sectors of society.

1.3 Design, negotiation, implementation, monitoring and evaluation

- Frameworks for engagement should allow for the full and effective participation of indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes.
- Indigenous peoples and communities should be invited to participate in identifying and prioritising objectives, as well as in establishing targets and benchmarks (in the short and long term).
- There should be accurate and appropriate reporting by governments on progress in addressing agreed outcomes, with adequate data collection and disaggregation.
- In engaging with indigenous communities, governments and the private sector should adopt a long-term approach to planning and funding that focuses on achieving sustainable outcomes and which is responsive to the human rights, the changing needs and the aspirations of indigenous communities.

1.4 Capacity-building

- There is a need for governments, the private sector, civil society and international organisations and aid agencies to support efforts to build the capacity of indigenous communities, including in the area of human rights, so that they may participate equally and meaningfully in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them.
- Similarly, there is a need to build the capacity of government officials, the private sector and other non-governmental actors, which includes increasing their knowledge of indigenous peoples and awareness of the human rights-based approach to development so that they are able to effectively engage with indigenous communities.
- This should include campaigns to recruit and then support indigenous people into government, private and non-government sector employment, as well as involve the training in capacity building and cultural awareness for civil servants.
- There is a need for human rights education on a systemic basis and at all levels of society.

2 Principles for consultation

The consultation process should be proportionate to the potential impacts of the proposed measure.

2.1 Initial Considerations

- Enter consultations in good faith and with a view towards establishing or improving **long term working relationships** with Aboriginal communities.
- **Recognise the diversity of Aboriginal and Torres Strait Islander communities.** Be sure not to generalise from understandings gained from one community by applying assumptions about these findings to another community.
- Be mindful that well coordinated consultation processes are **time and resource intensive**.
- Do not assume that communities are familiar with your agency or that they understand your mandate or business.
- Be aware that there may be **misinformation** and / or a lack of understanding of the most basic issues related to your consultation topic.
- Make every effort to understand, acknowledge and **respond sensitively** to the alienation that community members may feel from government and government processes.

2.2 Effective engagement

- **Involve Aboriginal and Torres Strait Islander people at the outset.** Community leaders (for example traditional owners and traditional elders) may be willing to provide input into planning the consultation process. They will also be able to provide you with information regarding community norms and protocols.
- Respectfully **acknowledge** the involvement that participants have had historically in addressing the issue that is being discussed.
- **Identify the best ways to promote community consultation sessions.** This may involve advertisements in local newspapers, written notices on community notice boards or announcements on community radio.
- **Ensure that the conduct of consultations allow affected communities to have control over timeframes.** It is important to respect a community's right to choose the timing and location of consultations. It is also important to adopt a flexible approach to the consultation process. Be mindful that cultural events or religious priorities and family and work responsibilities may impact on the availability of community members.

- **Ensure that all engagement is structured to include all relevant Aboriginal and Torres Strait Islander stakeholders, interests and organisations.** Where proposals will affect Indigenous land, contacting: traditional land owners, the Prescribed Body Corporate (PBC), local branches of Aboriginal Land Councils and the regional Native Title Representative Body (NTRB) is vital.
- **Ensure that the consultations provide for a mechanism to obtain agreement with communities over the process and desired outcome of any proposed measure.** Communities are acutely aware of the issues and possible solutions relating to their particular circumstances and will be pivotal to the success of any proposal.
- **Have a prior understanding of and respect for local dispute resolution and decision-making processes.** Where difficulties arise in relation to reaching agreement between various communities or groups during consultations, do not get involved. However, you may have to request assistance from, or resource, an independent person or body to facilitate resolution of the dispute.
- Consultations must be based on **mutually agreed processes** and utilise **local knowledge** in order to achieve sustainable outcomes in Aboriginal and Torres Strait Islander communities. Provide people with a clear idea of **how their input** will be included in decision-making processes.
- Consider how you will structure your sessions to answer your consultation questions and **maximise the quality of input from participants.**
- Be clear about **likely barriers** to stakeholder participation. You should also consider how you will interact with target groups including young people, older people, people with disabilities, mothers etc.
- Keep consultations **focused, interactive and deliberative.** Creating an environment where people are comfortable with sharing their views may improve the quality of attention and information received from participants.
- **Where you need to consult with large numbers of people, providing for small group engagement is preferable to ensure that all people have an opportunity to give and receive information.** In some cases, communities or groups may demonstrate preferences for separate meetings based on age, gender or elder status.
- **Where possible, ensure that engagement is structured in a way to provide an incremental skills building process for participants.** For example, community members could develop a more comprehensive understanding of community development practices.
- Use various **participatory methods** throughout the consultation process (oral, written, electronic and aided by translators) to maximise participation.
- It is important that government officers check for **participant understanding** periodically during the course of any consultation session.

- If necessary, consultation sessions should be **small and targeted** around specific stakeholder groups to protect privacy and confidentiality.
- The consultation should aim for a **gender balance** in relation to overall participant representation.
- Reach agreement with communities about **how feedback will be provided** after the consultation phase is concluded.
- Identify the best ways to **keep communities informed** about developments regarding the issue/proposal.

2.3 Minimum standard of information and transparency

- Be clear about what **outcome(s)** the proposal seeks to achieve and what **issue(s)** the proposal seeks to address.
- Be clear about the potential and real **risks, costs** and **benefits** of the proposed measure.
- Be clear about what **aspects of the proposed measure** Aboriginal and Torres Strait Islander peoples will be involved in and if there are specific areas of concern.
- **Consultations should be transparent and have clear parameters.** To avoid creating unrealistic community expectations, any aspects of a particular proposal that has already been decided or finalised should be clearly identified and declared. For example, if a decision has been made to continue with a particular activity, the government should clearly explain that they are seeking input on the design and implementation of the policy, rather than the merits of the policy itself.
- **Notice of proposed measure(s) must be given sufficiently in advance of its authorisation in order to give time for the community to reach informed consent or to arrive at considered points of difference.** Adequate resourcing should be provided to communities and specific stakeholder groups to support them in their discussions and decision making, prior to a formal consultation process. It is important to be respectful of Aboriginal and Torres Strait Islander peoples' timeframes to ensure inclusiveness around issues. Timeframes may be subject to cultural ceremonies and law, climatic and geographic conditions.
- **Government officers should provide full information regarding the parameters of the consultation, including what options are being considered as part of the consultation.** It is important that you have clear parameters around your consultation process, for example measuring the benefit and effectiveness of a specific measure. However your consultation process should be sufficiently open-ended so that community members have an opportunity to discuss concerns or propose alternative methods that, in their view, may achieve the same or enhanced outcomes. These views should be formally noted. Participants should have an opportunity to fully communicate their wishes and aspirations as they relate to the future of their communities.

2.4 Implementation, monitoring and evaluation

- Provide **feedback** to communities as agreed at the front end of the process, including how decision-making was influenced by the consultation process.
- Explain to community members the **likely timeframes** for the first phase of implementation.
- Identify how you will **accurately collect** and **record data** during consultations.
- Consider what **specific, time bound and verifiable benchmarks and indicators** you will use to measure progress. Affected communities should have input into developing success measures.
- Notify communities in a timely manner when **outcomes** are announced.
- Consider what measures will be used to evaluate the **quality** and **effectiveness** of the consultation process.
- To ensure that there is **transparency** around the consultation process and that consultation findings correspond to decision making, government agencies may like to appoint an independent observer or request the assistance of the Commonwealth Ombudsman.
- Explain what, if any options, community members have to call for a **review of decision-making**.
- **Government agencies should publish their consultation protocols.** This information should be made available in plain English formats and in summary form. Where consultation was limited in its scope, explanation should be provided as to why a full process was inappropriate / not feasible.
- **Regular monitoring** should be undertaken to ensure that actions taken for the purposes of the legislation are aligned with its core objectives.
- Government agencies should **evaluate** and **continuously improve** their consultation processes.
- Be **approachable, contactable** and meet the **commitments** you make to individuals and organisations throughout the consultation process.
- Remember that consent is NOT valid if it obtained through **coercion** or **manipulation**. Consent cannot be considered valid unless affected communities have been presented with **ALL** of the information relevant to a proposed measure.