



Australian Government

**Department of Climate Change, Energy,
the Environment and Water**

Offshore Electricity Infrastructure Legislation Amendment Bill 2022

Submission to the Environment and Communications
Legislation Committee

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Background and overview

The *Offshore Electricity Infrastructure Act 2021* (OEI Act), which commenced on 2 June 2022, establishes a legal framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure (OEI) in the Commonwealth offshore area. Under this framework, an eligible person who wishes to undertake OEI activities in the Commonwealth offshore area will need to apply for an appropriate licence in order to do so, and will also be subject to ongoing regulation while they conduct their activities. The framework established in the OEI Act is further outlined in regulations made under the Act, the *Offshore Electricity Infrastructure Regulations 2022* (OEI Regulations).

Following the commencement of the OEI Act, legislative changes have been identified that will need to be made to ensure that the OEI framework can operate as intended. Amongst other things, these necessary changes include:

- ensuring that goods and vessels that travel to or from OEI in the Commonwealth offshore area are appropriately regulated from a customs perspective;
- restoring the possibility of the National Offshore Petroleum Titles Administrator (NOPTA) being appointed as the Offshore Infrastructure Registrar (the Registrar) following a recent Machinery of Government (MoG) change;
- providing for the Minister, rather than the Offshore Infrastructure Regulator (the Regulator), to determine in accordance with regulations acceptable forms of financial security, and to decide when financial security is no longer required or when to accept a reduced amount; and
- clarifying minor technical and administrative issues so that the OEI framework can operate more efficiently and effectively.

The proposed Offshore Electricity Infrastructure Legislation Amendment Bill 2022 (the Bill), if enacted, will make the necessary changes to the *Customs Act 1901* (Customs Act) and the OEI Act.

The Bill passed the House of Representatives on 26 October 2022 and was introduced into the Senate on 27 October 2022. It has been referred to the Environment and Communications Legislation Committee of the Senate for inquiry and report by 17 November 2022. This submission is made for the purposes of that inquiry by the Department of Climate Change, Energy, the Environment and Water (DCCEEW), as the Department with policy responsibility for the OEI Act and OEI Regulations.

The need for the Bill

Offshore wind will play a vital role in Australia's energy transition as we head towards net zero, by providing a strong, reliable, clean energy resource. In particular, the establishment of an offshore wind sector will be crucial for green hydrogen production, which can be used to bring hard-to-abate industries into the clean energy sphere. It will help position Australia as a renewable energy superpower.

The establishment of this new industry represents a significant economic opportunity. It is estimated that an offshore wind industry in Australia will provide between 3,000 - 8,000 jobs annually from

2030¹. Most of these will be in regional areas, which will feel the most pressure from Australia's energy transition away from fossil fuels and towards renewable energy.

The commencement of the OEI Act in June 2022 marked the launch of an OEI industry in Australia. The Government recently completed public consultations on whether a proposed area in the Bass Strait off Gippsland, Victoria is suitable for OEI development. It also announced a pipeline of five further areas to be considered over the coming 18 months. It is expected that the area off Gippsland could be declared by the end of 2022. Once an area is declared suitable, the Minister will invite eligible persons to apply for licences that will permit them to undertake OEI activities in that area.

It is important that the OEI industry is enabled to continue developing and is properly regulated. This is a new industry in Australia, and there will be an ongoing need for adjustments to the legislative framework to ensure the regulatory arrangements remain clear and fit for purpose. If the amendments to the Customs Act and OEI Act proposed in the Bill are delayed, this may have a flow-on effect to the granting of licences under the framework and may generate regulatory uncertainty, and risk slowing the development of an offshore wind industry in Australia.

Outline of the Bill

The operative provisions of the Bill are arranged into two main sections. The provisions in Schedule 1 amend the Customs Act to ensure that OEI in the Commonwealth offshore area is appropriately covered by Australia's customs regime. The provisions in Schedule 2 make administrative changes to the OEI Act to address issues that have arisen or become apparent since the OEI Act commenced, including by restoring the possibility of the NOPTA being appointed as the Registrar following a recent MoG change.

Schedule 1: Customs Act amendments

OEI are not currently considered part of Australia for the purposes of customs legislation. The Bill closes this regulatory gap by ensuring OEI are captured within the border control regime administered by the Australian Border Force (ABF), and that ABF officers have the powers they need to secure Australia's borders.

The Bill extends the operation of the customs regime so that OEI becomes part of Australia for the purposes of the Customs Act and other customs-related legislation. This will allow the ABF to treat OEI on the same basis as it treats existing sea and resource installations for customs purposes. The Bill extends a range of border controls to ensure the ABF can maintain effective customs control over OEI, including:

- a requirement for OEI operators to obtain the approval of the Comptroller-General of Customs to install, or operate, OEI in the Commonwealth offshore area;
- vessel reporting obligations for ships and aircraft travelling to or from OEI, and restrictions on direct journeys to OEI from places outside of Australia; and
- extended powers for ABF officers to board and search OEI and to question persons on board OEI in relation to dutiable, excisable or prohibited goods.

¹ Briggs, C., M. Hemer, P. Howard, R. Langdon, P. Marsh, S. Teske and D. Carrascosa (2021). Offshore Wind Energy in Australia: Blue Economy Cooperative Research Centre, Launceston, TAS. 92p.

The Bill also ensures the Commissioner of the Anti-Dumping Commission can examine goods imported to or present on OEI, for the purposes of anti-dumping and countervailing matters.

The Bill is required to ensure the Government can continue to effectively manage border security risks in Australia's offshore environment. The amendments also achieve regulatory neutrality between renewable and non-renewable energy sectors, by ensuring impartial treatment in the offshore activities of these sectors, regardless of whether they are conducted through an OEI, sea installation or resource installation.

Schedule 2: OEI Act amendments

The appointment of the Registrar

The OEI framework will be overseen by two regulatory bodies: the Registrar and the Regulator. The OEI Act establishes the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) as the Regulator. The identity of the Registrar is not specified in the OEI Act; rather, the Registrar is a person appointed by the Secretary of the Department with policy responsibility for the OEI Act and OEI Regulations, and must be an SES employee of that Department. The OEI Act further provides that the Registrar may be assisted by APS employees from that Department.

When the OEI Act was being developed, it was anticipated that the relevant Secretary would choose to appoint the NOPTA as the Registrar. It was also anticipated that the staff supporting the NOPTA could be made available to support the Registrar. This approach would provide efficiencies by leveraging the existing assets, systems and experience of the NOPTA and its staff, who are already highly familiar with regulating offshore industries and environments.

The MoG changes prompted by a change of government have since removed the possibility of NOPTA being appointed as the Registrar and its staff being engaged in this manner. DCCEEW has become the Department with policy responsibility for the OEI Act and OEI Regulations, while NOPTA is now an SES employee of the Department of Industry, Science and Resources (DISR) and assisted by staff in the NOPTA Branch of DISR.

The Bill removes this legislative inflexibility by allowing the Registrar to be an SES employee of any Department, and to be assisted by APS employees from any Department. This will give the Secretary of DCCEEW the option of appointing the NOPTA as the Registrar, and will allow the Secretary of DISR to make staff in the NOPTA Branch available to assist the Registrar if desired. The Bill also makes minor consequential changes to account for what happens when the Registrar is in a different Department to the Department with policy responsibility for the OEI Act and OEI Regulations (for example, by clarifying that the Secretary of the Department that the Registrar is in will be responsible for the Registrar's Special Account). Because the textual changes are not Department-specific, the Bill is designed to future-proof the office against any further MoG changes that might take place.

Financial security

The OEI Act requires licence holders to provide financial security to the Commonwealth before commencing any OEI projects. This is to ensure that, should a licence holder later run into difficulty and be unable to continue their project, there is a pre-existing financial reserve available to the Government to fund the decommissioning and removal of infrastructure and remediation of the licence area. The Government may also be able to use financial securities to recover unpaid debts or

other expenses incurred in relation to licence holders. In the absence of financial security, taxpayers might end up having to foot the bill for these expenses.

The OEI Act allows certain financial security matters to be prescribed by regulations. These regulations are still under development. Through the regulation development process, the Department identified some inconsistencies in references to the financial security provisions in the OEI Act.

The OEI Act currently provides that the Regulator, under regulations, may administer certain aspects of the financial security regime. This could involve the Regulator:

- determining what forms of financial security are acceptable;
- deciding when financial security is no longer required; and
- deciding whether to accept a reduced amount of financial security.

The Bill amends the OEI Act to allow the Minister, rather than the Regulator, to exercise these powers under regulations. It is more appropriate that the Minister has the power to make these decisions, as the financial security under the OEI Act must be provided to, is held by, and can only be recovered by the Commonwealth. The Regulator, as NOPSEMA, is a corporate Commonwealth entity and is not formally part of the Commonwealth.

It is expected that the Minister would exercise their new powers in consultation with both the Regulator and DCCEE. The Minister would also retain the ability to delegate these powers as necessary.

Other changes

The Bill also makes further minor amendments to the OEI Act, the need for which has only become apparent since the OEI Act commenced. These comprise:

- Providing greater clarity around the extent and reach of the OEI Act, by permitting certain infrastructure, structures or installations to be effectively excluded from the remit of the OEI Act by the making of regulations. This amendment provides flexibility for the future, to ensure that things that don't need to be regulated can be appropriately exempted.
- Confirming the power of the Regulator to assess project designs and publish management plan summaries, as originally anticipated when the OEI Act was being developed. This will ensure there is greater quality and transparency around the design of projects proposed by licence applicants.
- Providing for an activity notification scheme under regulations, to assist the Regulator in managing the conduct of licence holders. Any regulations made under this provision will be developed in consultation with the OEI industry.
- Clarifying that certain fees paid under the regulations can be refunded, as originally anticipated when the OEI Act was being developed. This will bring the treatment of fees into consistency with the treatment of levies under the OEI Act.

Conclusion

The OEI Act commenced in June 2022. The OEI industry it establishes is entirely new in an Australian context, and it has since become apparent that certain changes need to be made to ensure the OEI framework can operate efficiently and effectively.

The Bill will protect Australia's border security by ensuring that OEI activities are appropriately regulated from a customs perspective. It is also necessary to ensure that the OEI licensing scheme can be administered by a Registrar and staff that are highly experienced in offshore industries.

Australia has some of the best wind resources in the world, and there is a significant amount of interest from developers wanting to construct offshore wind farms in Australian waters. Passage of the Bill will clarify the customs status of OEI facilities, allow for the efficient implementation of the licensing scheme established in the OEI Act, and provide further certainty for businesses to invest in projects and establish a new OEI industry in Australia.