



Australian Government
**Department of Industry, Science,
Energy and Resources**

Submission to the Senate Environment and Communications Legislation Committee

Inquiry into the Offshore Electricity Infrastructure Bill
2021 and the Offshore Electricity Infrastructure
(Regulatory Levies) Bill 2021

September 2021

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Overview of the legislation

The Offshore Electricity Infrastructure Bill 2021 (OEI Bill) establishes a regulatory framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure in the Commonwealth offshore area (the OEI framework).

The establishment of an offshore electricity sector in Australia will offer significant benefits including employment, regional development, and a more reliable and affordable electricity network.

The Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021 will allow for the imposition of levies on regulated entities to recover the costs associated with regulation and administration of the OEI framework.

Regulatory certainty for investment

There is increasing interest in utilising Australia's offshore area for electricity transmission and generation. Currently there are estimated to be around 10 developers proposing commercial projects in the Commonwealth offshore area, and a number of other developers considering further opportunities¹. These projects have the potential to create significant investment in Australia, with opportunities for job creation particularly in regional coastal communities and for contributions to Australia's future energy security.

For example, the economic benefits of Marinus Link, a proposed interconnector between Tasmania and the mainland are estimated at \$2.9 billion. This project could create 2,800 direct and indirect jobs in construction². Another example project is Star of the South, a proposed 2 gigawatt offshore wind farm off the coast of Gippsland, Victoria. The estimated economic benefit of this project is expected to be \$10.4 billion with approximately 2,000 direct jobs over its lifetime³.

Investors require a degree of business certainty to pursue large-scale offshore electricity projects such as those above. The Government committed \$4.8 million in the 2020-21 Budget to provide this certainty through the development and operation of a regulatory framework, to enable the emergence of an offshore electricity infrastructure industry in Australia. The proposed Bills will provide industry with the certainty needed for long term investment in offshore electricity infrastructure projects in Commonwealth waters.

A framework for the Australian context

The Department of Industry, Science, Energy and Resources (the department) has been responsible for the design and development of a regulatory framework for Offshore Electricity Infrastructure.

The Winston Churchill Memorial Trust awarded a Fellowship to the Chief Executive Officer of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to investigate leading international practice in regulation of offshore renewable energy generation in 2019⁴. This was in recognition of the need for a regulatory framework for offshore electricity

¹ <https://reneweconomy.com.au/offshore-wind-farm-map-of-australia/>

² <https://www.marinuslink.com.au/>

³ <https://www.starofthesouth.com.au/project-benefits>

⁴ <https://www.churchilltrust.com.au/fellow/stuart-smith-wa-2018/>

infrastructure development in Australia. This resource helped to inform the design concepts for the proposed OEI framework.

A public consultation process was undertaken on the proposed OEI framework design between 3 January and 28 February 2020. In response to this consultation the department received 48 written submissions. In conjunction, public information sessions were held in Perth and Melbourne with approximately 300 people attending, including interested members of the public, industry and state governments. Submissions and feedback received through the consultation process were strongly supportive of the proposed OEI framework. The OEI framework design was then further refined based on this stakeholder feedback.

The department utilised policy experience in offshore resource jurisdictions and worked closely with other Commonwealth agencies to ensure the OEI framework can operate in conjunction with existing regulatory regimes, while avoiding the imposition of unnecessary or duplicative obligations.

As a result of extensive consultation within Government, with industry and the general public, the OEI framework has been specifically designed to regulate offshore electricity infrastructure development in Australia.

Lessons learned from international experience were applied to the Australian context of a federated system with Commonwealth and state and territory governments. Proven approaches for regulating offshore wind were used to also provide for a broader range of evolving technologies for renewable energy generation offshore.

Key Elements of the OEI Bill

Through the OEI Bill, the department has developed a robust framework for granting licences to permit the installation of infrastructure in the Commonwealth offshore area. The principle of shared use of Commonwealth waters underpins all elements of the OEI framework, and promotes co-existence of the new offshore electricity infrastructure industry with other marine users. The OEI framework ensures that environmental impacts and risks are appropriately assessed and managed, and also ensures protection of the offshore workforce and other users in Commonwealth waters.

Where appropriate, the key features of the OEI framework are consistent with the approach for regulating other industries that use offshore infrastructure, such as the offshore petroleum industry. The OEI framework leverages existing arrangements for managing infrastructure in the offshore space and provides for experienced regulators and administrators to provide regulatory oversight as soon as the OEI framework begins operation. This ensures an effective regime and minimises risks of immature Government support for a new industry that is looking to establish in the high hazard offshore area.

A flexible licensing scheme for known and emerging technologies

Engineering and technology advancements are paving the way for new and more efficient offshore electricity infrastructure developments internationally, and interest is growing rapidly in Australia. Most notably for energy generated by offshore wind. The OEI Bill sets out three pathways for licensing to accommodate a range of potential types of developments:

- A commercial pathway, which includes a feasibility licence to allow a licence holder to undertake exploratory and scoping work, and seek a subsequent commercial licence to

develop large scale offshore renewable energy infrastructure (e.g. an offshore wind farm with fixed or floating wind turbines).

- A research and demonstration pathway, which provides a licence for short term projects to trial and test new technologies, or undertake infrastructure-based exploration and research activities, potentially in support of a future commercial project proposal (e.g. demonstration of floating solar generation or tidal generation technology).
- A transmission and infrastructure pathway, which provides a licence to construct and operate offshore electricity transmission infrastructure (e.g. cables connecting an offshore renewable energy generation facility to onshore, or interconnectors between Tasmania and mainland Australia).

The OEI Bill provides the power for future regulations to set out further details of the licensing scheme, such as; how applications can be made, how they will be considered, and how licenses will be granted. It is appropriate that these details are set out in regulations to provide flexibility in the licensing scheme to accommodate the construction of a range of known and emerging technologies, and different scale projects, in this developing industry.

A framework that works alongside existing regulations

The OEI framework is designed to have a small footprint. It is focussed on making sure offshore electricity infrastructure is constructed and managed in a safe and environmentally sensitive way, and in recognition of other existing users of the offshore area. The regime is only switched on at the scale of individual licence areas when each licence is granted. It is designed to operate in conjunction with existing frameworks and applies alongside other layers of regulation that are already in place for the types of activities involved with the production of offshore electricity infrastructure projects. For example, in addition to rules for workplace health and safety under the OEI framework there may be other state government obligations for workplace health and safety that also apply.

The complex nature of the offshore renewable energy generation and transmission projects captured under the OEI framework means there will be a number of different regulatory regimes with which each project may need to align. For example, consider a project for an offshore wind farm: it will require a licence under this OEI framework to construct infrastructure in the Commonwealth offshore area, but will also need to ensure the different component materials are transported to the licence area in line with international and domestic maritime laws, that the transmission cables that run through state waters and onshore meet state government requirements, and that the generation outputs of the project meet obligations under Australia's National Electricity Laws.

Marine users can co-exist in the offshore environment

It is Australian Government policy to manage the marine environment in a way that recognises all users and balances competing interests. There are a number of ways the OEI Bill considers existing users and uses of the marine environment.

Australians have a deep connection with the ocean and existing offshore industries. The OEI Bill guarantees consultation will occur across Government and with communities before any decision is made to declare an area suitable for offshore electricity infrastructure developments. This provides a pathway for the views of offshore users to be taken into account and makes transparent the range of perspectives to be considered when addressing the co-existence of any new offshore electricity infrastructure developments with existing users and industries. Approaches for sharing the Commonwealth offshore area will range from limiting OEI licences in areas recognised for specific

purposes (such as defence activities, environmental protection or Native Title), to requiring strategies for minimising risks to existing users (for example with fisheries, tourism, existing infrastructure or shipping).

The OEI Bill allows the Minister to apply conditions to licences. These conditions may reflect the need to manage co-use, such as imposing additional consultation requirements on licence holders before construction can commence. These conditions can be updated overtime to reflect changing circumstances. For example, a new condition could be applied on an existing licence to consult with native title holders that have been newly recognised in an offshore area.

Furthermore, the OEI Bill requires impacts on existing users of the marine environment that may be occurring under separate legislation to be minimised - for example, fishing activities authorised under the *Fisheries Management Act 1991* or the maintenance of submarine cables regulated under the *Telecommunications Act 1997*. A licence holder is required to demonstrate how they can undertake OEI activities alongside other existing users of the licence area.

Leveraging an experienced offshore Regulator and Registrar

The OEI Bill establishes the Offshore Infrastructure Registrar (the Registrar) and the Offshore Infrastructure Regulator (the Regulator) to administer and regulate the OEI framework. The National Offshore Petroleum Titles Administrator (NOPTA) may be appointed as the Registrar, while the Bill installs NOPSEMA as the Regulator.

NOPTA and NOPSEMA have extensive experience in regulating industries in the high hazard and risky offshore environment, and are best placed to support and regulate the offshore electricity infrastructure sector.

In line with Australian Government cost recovery policy, and mirroring the approach under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, costs associated with the Regulator and Registrar's functions under the OEI Bill are proposed to be recovered through a combination of fees and levies imposed on licence holders. This is consistent with the approach taken in other offshore industries, including the petroleum and greenhouse gas storage industries.

Levies are provided for in the Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021. Regulations will set out the kinds of fees and levies payable, and the amount or method of calculating the amount of fees and levies payable. This will ensure fees and levies are appropriately calibrated to cover the costs for regulating and administering the OEI framework as this new industry develops. The department will undertake consultation on the levies and fees structure to inform the regulations.

Safety of workers provided through the model WHS laws

The protection and safety of the offshore electricity infrastructure workforce is critical. The OEI Bill directly applies the *Work Health and Safety Act 2011*, the model WHS laws, with some modifications so they are fit-for-purpose for the offshore environment. These model WHS laws are an established, nationally agreed standard for managing work health and safety. The OEI Bill provides for direct alignment with the model WHS laws, maximises consistency with the states and territories that have adopted these model laws, and guarantees the OEI Bill will stay aligned with these national standards should they change in the future.

The OEI Bill provides for safety zones and protection zones to be established. This is to assure the safety of offshore workers and other users of the marine environment, as well as protect offshore

electricity infrastructure from damage that may be caused by the actions of other marine users. It is intended that access to, and transit through, OEI licence areas by other marine users would not be restricted any more than is necessary to ensure safety of navigation and operations, and the protection of assets. This is consistent with the principle of shared use of the marine environment.

Ensuring strong environmental protections

Strong protections exist to ensure offshore electricity infrastructure projects will be undertaken in an environmentally responsible way. Environmental approval for offshore electricity infrastructure projects will be sought through existing *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) processes. The EPBC Act is the Australian Government's primary piece of environmental legislation, providing a legal framework to protect and manage 'nationally significant' animals, plants, habitats and heritage places.

Commonwealth marine areas are matters of national environmental significance under the EPBC Act. This means any offshore electricity infrastructure projects that will have, or are likely to have a significant impact on the environment, must be referred to the Minister for the Environment and undergo environmental assessment and approval.

Under the OEI Bill, licence holders are required to demonstrate through their management plans how environmental obligations set under the EPBC Act will be met, as well as any other additional environmental management requirements, such as remediation. The Regulator will monitor compliance with the approvals granted under the EPBC Act and ensure that continuous improvement in environmental management performance is achieved through periodic revision of management plans. This ensures impacts and risks are being managed throughout the life of a project.

Fit-for-purpose risk management for construction and decommissioning

A 'management plan' is the critical tool for providing flexibility for the OEI framework to regulate a range of different types of offshore electricity infrastructure projects. The OEI Bill requires licence holders to develop a management plan in conjunction with the Regulator before they can begin any construction. Management plans set out how a licence holder will deliver on the infrastructure they have a licence for (i.e. the approach for construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure). They cover a variety of project aspects, including engineering specification, work health and safety approaches, how environmental approvals are addressed, and community consultation and how community issues are informing the project. The risks and impacts associated with each project will vary, and so management plans are adaptable and fit-for-purpose to the needs of individual projects and the circumstances of different project locations.

Management plans will have an inbuilt review cycle or can be proactively updated to make sure they are kept current with the evolving stages of a project and the circumstances of the local area. For example, management plans may need to be updated if consultation with communities or other users of the offshore area identifies a new impact that needs to be addressed by the licence holder many years after the initial licence was granted.

Risks to the environment are not only managed by requiring environmental approvals to be sought under the EPBC Act. The OEI Bill also requires licence holders to decommission infrastructure and address environmental remediation both for any incident and at the end of a project's life, to the

Regulator's satisfaction. Licence holders are obliged to provide a schedule of financial securities in their management plan, and have appropriate financial securities in place to cover the cost of decommissioning any licensed infrastructure that is installed throughout the life of the project. This manages risks to the environment and protects the Government from having to pay for the cost of decommissioning and remediation in the event the licence holder is unable or unwilling to do so.

Maintaining social licence is critical for success

The biggest lesson learned by the department, from the experience of Governments around the world who have been regulating offshore wind developments for a number of years, is that these types of projects are only successful if the developers maintain a social licence from the community for the full life of the project. Ongoing consultation with communities is key to maintaining this.

The OEI Bill frontloads Government-led consultation with communities and stakeholders in the early stages of planning for potential projects when assessing areas for 'declaration' and imposing conditions on licence holders. The OEI Bill then compels licence holders to integrate industry-led consultation into the development of project proposals, and when a licence has been granted, over the full life of each project through management plans. In this way, the OEI Bill ensures there are mechanisms for regular consultation with communities and triggers for licence holders to respond to evolving community views in order to maintain their social licence.

Conclusion

The department has developed a robust regulatory framework to enable the development of an offshore electricity sector in Commonwealth waters. The OEI framework covers the lifecycle of projects from exploration to decommissioning and includes measures to ensure co-existence with other industries, the protection of the environment, and the safety of workers.