

Inspections - Monitoring and securing compliance

Document No: N-02401-PL2179 A1059558

Date: 11/12/2024

1. Background

The Offshore Infrastructure Regulator (OIR) is provided with the functions and powers under the *Offshore Electricity Infrastructure Act 2021* (OEI Act). The OIR is responsible for regulating work health and safety, **infrastructure integrity**¹ and environmental management of **offshore infrastructure activities**² in the **Commonwealth offshore area**³.

The OIR conducts inspections as a primary means to proactively monitor the extent to which persons are compliant with their duties and obligations under the OEI Act and the applied work health and safety provisions.

2. Purpose

The purpose of this policy is to set out principles and approaches that the OIR and its inspectors will apply when planning and conducting inspections under the OEI Act framework.

3. Scope

The policy covers inspections undertaken by OEI inspectors to monitor and secure compliance with the OEI framework.

4. Relevant legislation

The following Commonwealth legislation is relevant to the administration of the OIR's inspection activities:

- *Offshore Electricity Infrastructure Act 2021* (OEI Act)
- Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations)
- *Regulatory Powers (Standard Provisions) Act 2014* (RP Act)
- *Work Health and Safety Act 2011* (Cth) (WHS Act) as applied under the OEI Act
- Work Health and Safety Regulations 2011 (Cth) (WHS Regulations) as applied under the OEI Regulations

¹ See section 8 of the OEI Act

² Ibid

³ Ibid

This document does not cover requirements beyond the scope of the OEI Act framework. The licence holder and persons conducting business and undertakings should be aware of and comply with all other Commonwealth, State and Territory legislative requirements that may apply to their activities.

5. Inspection principles

The OIR will apply the following principles when planning and conducting inspections to monitor and secure compliance of regulated entities:

- Inspections will be within power and not otherwise contrary to the law
- The inspection will be fair and impartial and will provide persons who are the subject of inspections opportunity to give their views and have them considered
- Inspections will be risk based and focus on offshore infrastructure activities with higher risks or targeted to drive greater risk reduction outcomes
- Inspection conclusions will be informed by the facts that are before the OEI inspectors at the time
- The scope, purpose and conclusions of each inspection will be clearly described in written reports and correspondence to the licence holder
- Inspections will not unnecessarily impede the effective and efficient operations of regulated entities.

The OIR maintains a suite of resources, including policies and guidelines, to support procedural fairness in relation to this Inspection policy.

6. Inspection process

OEI inspectors may conduct inspections of licence holders' activities at their offshore premises, related onshore premises, or remotely (i.e. online or via computer).

During an inspection, OEI inspectors may examine infrastructure including relevant structures, equipment and property, offshore renewable energy infrastructure⁴ or offshore electricity transmission infrastructure⁵.

6.1. Inspection planning and conduct

In most cases, the OIR will provide advance notice of inspections to the relevant licence holder through the issue of a letter and an inspection brief to assist with planning. Less frequently, the OIR may undertake short or no-notice inspections without issuing a letter or inspection brief in circumstances that require immediate compliance monitoring.

⁴ See section 10 of the OEI Act

⁵ See section 11 of the OEI Act

OEI inspectors will aim to ensure that the licence holder and any other duty holders subject to inspection are fully aware of the purpose of the inspection by holding an entry meeting with the duty holders and relevant personnel. The purpose of the entry meeting is to inform the duty holders of the scope and objective of the inspection. Before leaving the premises, inspectors will aim to issue an exit brief and hold an exit meeting to discuss the preliminary findings of the inspection. While there is no physical entry for an inspection conducted remotely, the inspectors will still aim to inform the duty holders of the scope and objective of the inspection.

The OEI inspectors will seek to meet with health and safety representatives (HSRs) during all inspections at offshore premises where HSRs have been established and are available. The purpose is to provide HSRs with information about the scope of the inspection and an opportunity to consult with the inspectors.

6.2. Reasonable assistance

The OEI Act and regulations provide OEI inspectors with powers to conduct inspections including powers to require reasonable facilities and assistance from licence holders to effectively exercise their powers, whether the inspection is being carried out onshore or offshore. The OIR considers that reasonable assistance may include, but is not limited to:

- travel to an offshore premises
- provision of workspace and access to systems and personnel
- accommodation and meals during an offshore inspection.

For inspections at offshore premises, the licence holder may be required, by written notice, to nominate a representative to be present at the specified time. In all cases, OEI inspectors will notify the licence holder representative, if present, of their entry to the premises, whether offshore or onshore, and the purpose of the inspection.

6.3. Inspection reporting

As soon as practicable after an inspection, the OEI inspector who led the inspection will give a written report to the OIR. The report must include the conclusions of the inspector and the reasons for those conclusions.

The OIR will initially give a draft report to the licence holder for review to allow for the identification of any errors of fact or omissions in the report. The OIR will consider any feedback received from the licence holder and then give a copy of the final report to the licence holder. The OIR will also provide a letter in which it may give comments that highlight issues such as:

- non-compliance that indicates significant risk
- systemic non-compliance
- failure to take timely or effective action regarding previously identified non-compliance.

6.4. Verifying compliance

The OIR may request that the licence holder provide details of any actions that they propose to take to address the conclusions or otherwise request the licence holder to provide specific details of actions it intends to take to:

- manage any immediate risks
- determine underlying cause(s) of non-compliance
- remedy non-compliance (return to compliance)
- confirm that remedial actions undertaken were effective; and
- prevent the reoccurrence of the non-compliance or the conditions which led to non-compliance.

The OIR may seek to verify the licence holder's progress in implementing actions to address conclusions and associated non-compliance. Verification may include the provision of documents, records, and/or photographs, or may be undertaken by incorporating such verification within the scope of a future inspection.

6.5. Monitoring powers

Powers exercised for the purpose of inspections are set out in both the OEI Act and Part 2 of the RP Act. This creates a framework for monitoring compliance with provisions of relevant legislation, in this case the OEI Act framework.

This legislative framework provides OEI inspectors with entry powers for the purpose of an inspection. Inspectors may enter a premises for an inspection with the consent of the occupier, who in most (but not all) cases where the premises is onshore, will be the licence holder. For inspection of an offshore premises, the occupier of the premises is the licence holder's representative. Depending on circumstances and purpose, on-site inspections may also be carried out under a monitoring warrant.

However, access to offshore premises without consent of the occupier or a monitoring warrant is also available if the OEI inspector believes that because of urgent circumstances it is necessary to enter a premises to exercise their monitoring powers.

In addition to powers of entry, OEI inspectors may:

- search the premises and anything on the premises
- examine or observe activities conducted on the premises
- inspect, examine, take measurements, or conduct tests
- make still or moving images or recordings
- inspect or take extracts from documents
- secure electronic equipment to obtain expert assistance
- ask questions and seek production of documents.

7. Securing compliance

It is the responsibility of the licence holder to maintain compliance with the OEI Act framework at all times. Where non-compliance is detected through inspection, it remains the responsibility of the licence holder to take timely and appropriate action to remedy the non-compliance (to return to compliance) and prevent reoccurrence.

However, where potential non-compliances are not resolved through the process above, it may be necessary for the OIR and/or the OEI inspector to take enforcement action to secure the licence holder's compliance with their duties and obligations under the OEI framework. For example, where there is or may be an immediate or significant threat identified during an inspection, an OEI inspector may issue a notice to a licence holder to secure their immediate compliance. Refer to the OIR's enforcement policy (N-05501-PL2096) for further information about this and other enforcement actions that may be taken.

Licence holders should also be aware that where the OIR identifies a compliance issue relating to a licence holder's environmental management obligations in a management plan, the OIR will cooperate and share relevant information with the Department of Climate Change, Energy, the Environment and Water about inspection outcomes that relate to potential non-compliance with the *Environment Protection and Biodiversity Conservation Act 1999* and associated regulations. Refer to the OIR's Sharing information with Australian agencies policy for further information.

8. Related documents

N-03401-PL2100 – Policy – Investigation

N-05501-PL2096 – Policy – Enforcement

N-17101-PL2102 – Policy – Sharing information with Australian agencies