

# Assessment

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## 1. Background

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

## 2. Purpose

This policy provides a documented, systematic, and consistent approach to the assessment of regulatory applications made to the OIR. This policy is supported by and can be read in conjunction with other OIR policies and guidelines listed in section 9 as updated and published from time to time.

All assessments undertaken by the OIR will adhere to the principles described in this document.

## 3. Scope

This policy applies to the assessment and review of regulatory applications made to the OIR including management plans, design notifications, safety zones, protection zones, diving safety management systems and work health and safety authorisations.

This document is not legally binding and is provided to inform stakeholders as to how the OIR exercises its discretion under relevant legislation. It reflects the current policies of the OIR, which may change from time to time, with all changes being notified publicly.

## 4. Relevant legislation

The following Commonwealth legislation gives direction to the OIR's assessment activities:

- *Offshore Electricity Infrastructure Act 2021* (OEI Act)
- Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations)
- *Work Health and Safety Act 2011* (Cth) (WHS Act) as applied under the OEI Act

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<sup>1</sup> See section 8 of the OEI Act

<sup>2</sup> Ibid

<sup>3</sup> Ibid

- Work Health and Safety Regulations 2011 (Cth) (WHS Regulations) as applied under the OEI Regulations.

Duty holders should be aware of and comply with all other Commonwealth, State and Territory legislative requirements that may apply to their activities.

## 5. Assessment key principles and approach

Assessment decisions are made by the CEO, in accordance with section 179 of the OEI Act. However, the CEO may delegate some or all assessment decisions to senior members of staff.

Each assessment will be co-ordinated by a lead assessor who will be the primary point of contact in relation to the assessment. The lead assessor will be responsible for ensuring that the assessment is conducted in accordance with the OIR's policies and procedures and the following principles:

- the assessment will be based on the information provided
- the assessment process will be conducted in accordance with procedural fairness requirements set out in the relevant legislation
- the assessment process will be undertaken in a timely manner, in accordance with statutory timeframes
- the OIR will undertake assessments as efficiently as possible and carefully consider the need for requests for further written information or for the applicant to amend and resubmit the application
- the OIR will approach the assessment process in a consistent manner
- the OIR will ensure transparency of the assessment process and its regulatory expectations
- the OIR will provide clear communication of assessment decisions.

### 5.1. Basis of assessment

The assessment will be completed based on the documents and information provided with the application and, where required, in response to a request for further information from the OIR. In accordance with good administrative decision-making principles, where the OIR is aware of other information that is considered relevant to the assessment of an application, the applicant will be made aware of this information and be provided with an opportunity to respond where the information has a bearing on decision-making. The OIR will not assess draft or partially completed applications. The OIR will make available the necessary application forms and systems to enable applications to be made in the manner required for assessment.

The OIR will presume the integrity of any document or information given to it for consideration or review as part of an assessment. Supplying false or misleading information to a Commonwealth entity is an offence under the *Criminal Code Act 1995*.

## 5.2. Decision-making and procedural fairness

The OIR will ensure good regulatory practice and apply the following principles<sup>4</sup> to assessment decision-making:

- the decision is within power, and the decision will not be otherwise contrary to law
- the decision is fair and impartial and provides parties affected with sufficient opportunity to give their views and have them considered
- all relevant matters and considerations, including matters of fact or of relevant opinion, are considered in making the decision
- the decision is reasonable, objective and just
- the decision is well founded on evidence and the application of policy with regard to the merits of the particular case
- the decision will be clearly explained and supported by relevant evidence, findings of fact, reasoning and conclusions.

In the event the OIR progresses to refuse an application, the applicant will be afforded an opportunity to make a written submission about a potential refusal decision.

The OIR maintains a suite of resources, including policies and guidelines, to support decision-making consistent with the decision-making principles outlined in this policy. These policies and guidelines reflect the legislative requirements of the OEI Act framework and provide supporting information for all applicants and stakeholders involved in the preparation, administration and assessment of applications made to the OIR.

## 5.3. Timeframes and efficiency

Assessments will be conducted in an efficient and effective manner and assessment decisions will be notified in a timely manner.

## 5.4. Consistent approach to assessments

Each assessment will be carried out in a manner that is consistent with the legislative requirements but also with documented OIR policies, guidelines, and procedures. These documents provide details on:

- the content requirements for applications
- the criteria considered by the OIR and its assessors/or decision makers in the assessment process
- the administrative processes for the lodging of the application and communication of the assessment process outcome.

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<sup>4</sup> Decision-making principles are derived from the Administrative Review Council Best Practice Guides 1-5 [Administrative Review Council publications | Attorney-General's Department \(ag.gov.au\)](#)

Consistency in the assessment method for applications made to the OIR will be achieved by:

- adherence to OIR policies and procedures for all assessments
- the selection of assessors with appropriate expertise and experience
- utilisation of senior representatives of the OIR to review assessment findings and promote consistency of assessment methods irrespective of the type of application or the applicant
- sharing of knowledge and lessons from assessments between assessors.

## 5.5. Transparency

The assessment process will be sufficiently transparent to enable the applicant to understand the basis for a decision.

Where required by the OEI Regulations, the OIR will publish relevant documents to its website to provide information to stakeholders on offshore infrastructure activities.

Where a decision under the OEI Act is a notifiable instrument or legislative instrument, the OIR will ensure compliance with the relevant legislative requirements.

Where consultation with, or advice from, other agencies is necessary in the conduct of the OIR's assessment or review, the OIR may share information contained in applications with other agencies, in accordance with our Sharing Information with Australian Agencies Policy.

When sharing information or otherwise providing for transparency in assessment processes, the OIR will comply with requirements of the *Privacy Act 1988* and our Privacy Policy.

Transparency during the assessment and communication of decisions will be achieved by ensuring:

- all requests for further written information, or opportunities to amend and resubmit applications, will be communicated in writing to the licence holder and specify the information that is required and the manner in which it must be provided. All such requests will specify a reasonable timeframe for the applicant to respond
- the assessment will be carried out in accordance with documented OIR processes related to the specific assessment activity
- following the conclusion of the assessment process, the applicant will be provided with written notification detailing the assessment decision
- where an assessment results in a refusal decision, the OIR will be available to meet with the applicant to clarify the results of its assessment, the conclusions drawn and the reasons for the decision.

## 6. Assessment and review activities

### 6.1. Review of design notifications

The design notification is a formalised early engagement process that enables regulatory review of design and concept selection matters critical to the management of safety, infrastructure integrity and environmental risks of proposed offshore infrastructure projects.

The OIR will respond to the design notification application in the form of a regulatory advice statement which will provide a record of feedback and key concerns, if any, raised by the OIR. The design notification does not authorise any activities and is not a regulatory decision. If a licence holder has given the OIR a design notification, the licence holder must address feedback from the OIR in their subsequent management plan submission which will be assessed by the OIR.

Refer to the Design Notification Guideline for more information on content and requirements for design notifications.

## 6.2. Management plan assessments

The OIR will assess management plans against the content requirements for a management plan as specified in the OEI Regulations. Decisions to approve or refuse to approve a management plan will be based on assessment against the approval criteria for a management plan as specified in the OEI Regulations.

Refer to our Management Plan Content Guideline for more information on requirements for preparing management plans.

## 6.3. Safety and protection zone determinations

In assessing an application to make, vary or revoke a safety zone or a protection zone determination, the OIR will focus on the intent of the zones to minimise the risk of damage to infrastructure and minimise the risk of harm to workers engaged in offshore infrastructure activities and other users of the marine area.

The OIR will also give due consideration to the potential limitations that the determination of a safety zone or protection zone may place on other marine users as well as any expectations or guidance from departments, agencies or authorities with responsibilities in the Commonwealth offshore area.

In general, the following principles will apply to assessment of safety and protection zone applications:

- that access to, and transit by, other marine users should not be restricted any more than is necessary
- that an applicant has consulted any relevant licence holder, government agency, and marine user likely to be directly affected by the application.

Refer to our Safety and Protection Zones Guideline for more information on safety and protection zones.

## 6.4. Work health and safety authorisations

The OIR's assessment of applications for permits and licences for work health and safety (WHS) matters will be undertaken in accordance with the requirements specified in the applied WHS provisions of the OEI Act and OEI Regulations.

Processes established for WHS applications will endeavour to be consistent with equivalent processes implemented by other WHS regulators under the harmonised WHS scheme in Australia.

## 6.5. Diving submissions

The OIR's assessment of diving safety management systems will be in accordance with the criteria contained in the OEI Regulations. The OIR's decisions will be based on an assessment of whether the submission is appropriate for the activities of the diving contractor, and whether it complies with the OEI

Regulations. If the OIR decides to refuse to accept or place conditions on a diving safety management system, the decision and reasons for the refusal or conditions will be communicated in writing.

## 7. Regulatory effort and cost recovery

Assessments will be team-based with each assessment assigned a lead assessor and supported by one or more additional assessors.

Subject matter experts may be involved as part of the assessment team or may provide advice to the team as required for specific technical matters relevant to the application. The decision maker will be required to review assessment findings and have regard to relevant considerations prior to making a decision on the application.

The OEI framework operates on a full cost-recovery basis through application fees, assessment fees and compliance levies. The OIR's assessment and review activities will be supported by efficient processes and will be appropriately resourced to ensure that costs incurred by applicants are reasonable and proportionate to the regulatory effort required to achieve high quality assessment outcomes.

Further information on fees for assessment of applications to the OIR is provided in our Regulatory Fees and Levies Policy.

## 8. Monitoring

This policy is to be reviewed periodically by the OIR. Further reviews will be undertaken as a result of changes to legislation, through feedback elicitation or as a result of accumulated experience.

## 9. Related documents

- N-11300-PL2064 – Policy – Regulatory fees and levies
- N-11300-PL2222 – Policy – Cost recovery
- N-17101-PL2102 – Policy – Sharing information with Australian agencies
- N-02401-PL2179 – Policy – Inspection
- N-03401-PL2100 – Policy – Investigations
- N-05501-PL2096 – Policy – Enforcement
- N-04401-GL2193 – Guideline – Making applications to the OIR
- N-04402-GL2063 – Guideline - Design notifications
- N-04403-GL2084 – Guideline – Management plan content
- N-04403-GL2254 – Guideline – Management plan lifecycle
- N-04405-GL2115 – Guideline – Safety and protection zones
- N-04406-GL2214 – Guideline – Work health and safety authorisations