

Authorisations for offshore infrastructure activities

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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)¹. The OIR is responsible for regulating work health and safety, **infrastructure integrity**² and environmental management of **offshore infrastructure activities**³ in the **Commonwealth offshore area**⁴.

2. Purpose

The purpose of this guideline is to provide advice as to what constitutes regulated offshore infrastructure activities under the OEI Act framework. This guideline seeks to assist licence holders in making a decision about whether operations or works in the Commonwealth offshore area require a management plan approved under the Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations).

3. Scope

This guideline is intended for use by OEI Act licence holders and other stakeholders who are considering conducting activities which may involve the construction, installation, commissioning, operation, maintenance or decommissioning of **offshore renewable energy infrastructure** or **offshore electricity transmission infrastructure** in the Commonwealth offshore area.

This guideline discusses the scope of offshore infrastructure activities or other activities carried out, or to be carried out, in the licence area under a licence or proposed commercial licence, and which must be described in, and authorised by, a management plan.

The guideline provides advice on compliance with the requirements of the OEI Act to ensure that offshore infrastructure activities are appropriately authorised and approved.

¹ See section 177 of the OEI Act

² See section 8 of the OEI Act

³ Ibid

⁴ Ibid

4. Disclaimer

This document is not a legal instrument and does not override or amend the requirements of the OEI Act or OEI Regulations in any way. It is provided to inform stakeholders and does not limit the discretion of the OIR to take any action it considers appropriate under relevant legislation. It reflects the current position of the OIR, which may change from time to time. All changes will be notified publicly.

5. Relevant legislation

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

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

This document does not cover requirements beyond the scope of the OEI Act framework and related legislation listed above. Duty holders should be aware and comply with all other Commonwealth, State and Territory legislative requirements that may apply to their activities.

6. Requirements for authorisation under the OEI Act

Section 15 of the OEI Act prohibits persons from conducting an offshore infrastructure activity unless authorised by a licence or otherwise required by or under the Act. A licence under the OEI Act only authorises activities to be undertaken if there is a management plan for the licence and activities are conducted in accordance with that management plan.

Section 15 Prohibition of unauthorised offshore infrastructure activities in the Commonwealth offshore area

(1) A person contravenes this subsection if:

- (a) the person constructs, installs, commissions, operates, maintains or decommissions fixed or tethered infrastructure; and*
- (b) the fixed or tethered infrastructure is:*
 - (i) offshore renewable energy infrastructure; or*
 - (ii) offshore electricity transmission infrastructure; and*
- (c) the fixed or tethered infrastructure is in the Commonwealth offshore area.*

Exception—licence or other authorisation

(2) Subsection (1) does not apply to conduct that is:

- (a) authorised by a licence; or*
- (b) otherwise authorised or required by or under this Act.*

To determine whether proposed activities are likely to fall within the scope of the prohibition, a number of terms defined under the OEI Act are relevant.

Firstly, to be regulated under the OEI Act a proposed activity must be located in the Commonwealth offshore area.

Activities that are proposed within three nautical miles of the coastline and offshore islands (as specified under section 5 of the OEI Act) will fall within the coastal waters of a State or the Northern Territory. These activities are not regulated under the OEI Act but may require authorisation by relevant State or Northern Territory regulatory authorities.

The next step in determining whether a proposed activity requires authorisation under the OEI Act is to establish whether the activity involves the construction, installation, commissioning, operation, maintenance or decommissioning of **fixed or tethered infrastructure**.

Section 8 Definition of fixed or tethered infrastructure

Fixed or tethered infrastructure means any infrastructure, structure or installation that:

- (a) rests on the seabed; or
- (b) is fixed or connected to the seabed (whether or not the infrastructure, structure or installation is floating); or
- (c) is attached or tethered to any other fixed or tethered infrastructure (including other fixed or tethered infrastructure covered by this paragraph)

but does not include a vessel that is temporarily moored or anchored to the seabed.

If an activity involving fixed or tethered infrastructure is proposed in the Commonwealth offshore area, a proponent must then determine whether the infrastructure is offshore renewable energy infrastructure or offshore electricity transmission infrastructure.

Section 10 Definition of offshore renewable energy infrastructure

- (1) **offshore renewable energy infrastructure** means **fixed or tethered infrastructure** that has the primary purpose of engaging in any of the following activities:
- (a) *exploring for one or more renewable energy resources;*
 - (b) *assessing the feasibility of exploiting a renewable energy resource;*
 - (c) *exploiting a renewable energy resource;*
 - (d) *storing, transmitting or conveying a renewable energy product.*
- (2) *The following are also offshore renewable energy infrastructure:*
- (a) *any infrastructure, structure or installation that would be offshore renewable energy infrastructure except that it is being constructed, installed or decommissioned;*
 - (a) *any infrastructure, structure or installation that would be offshore renewable energy infrastructure except that it has temporarily or accidentally ceased to be fixed or tethered infrastructure.*

Section 11 Definition of offshore electricity transmission infrastructure

- (1) **offshore electricity transmission infrastructure** means **fixed or tethered infrastructure** that has the primary purpose of storing, transmitting or conveying electricity (whether or not the electricity is generated from a renewable energy resource).
- (2) *The following are also offshore electricity transmission infrastructure:*
- (a) *any infrastructure, structure or installation that would be offshore electricity transmission infrastructure except that it is being constructed, installed or decommissioned;*
 - (b) *any infrastructure, structure or installation that would be offshore electricity transmission infrastructure except that it has temporarily or accidentally ceased to be fixed or tethered infrastructure.*

For the avoidance of doubt, a single piece of infrastructure may be both offshore renewable energy infrastructure and offshore electricity transmission infrastructure (see section 12 of the OEI Act).

Both definitions specify the types of infrastructure regulated under the OEI Act by referring to the primary purpose for which the infrastructure is being deployed. To determine whether an activity may fall within the scope of the section 15 prohibition, a proponent will need to establish the primary purpose of the infrastructure, structure or installation they are proposing to deploy in the context of the section 10 and 11 definitions.

There are some types of infrastructure that are explicitly excluded from being regulated under the OEI Act. The OEI Act also enables regulations to specify that certain infrastructure, structures or installations do not

comprise offshore renewable energy infrastructure or offshore electricity transmission infrastructure. However, no regulations have been made to exclude infrastructure from being regulated under the OEI Act.

Exclusions under Sections 10 and 11

(1) *The following are not offshore renewable energy infrastructure or offshore electricity transmission infrastructure:*

- (a) *an infrastructure facility within the meaning of the Offshore Petroleum and Greenhouse Gas Storage Act 2006;*
- (b) *a facility within the meaning of Schedule 3 to that Act;*
- (c) *fixed or tethered infrastructure for the purpose of exploring for minerals (within the meaning of the Offshore Minerals Act 1994) or recovery of minerals (within the meaning of that Act;*
- (d) *a cable:*
 - (i) *that is laid on or beneath the seabed that lies beneath the Commonwealth offshore area; and*
 - (ii) *that is not connected to any place in Australia; and*
 - (iii) *that is not connected to anything else in, or inside the inner limits of, the Commonwealth offshore area.*
- (e) *any infrastructure, structure or installation of a kind prescribed by the regulations for the purposes of this paragraph.*

In addition to the above exclusions, section 309 of the OEI Act provides that infrastructure that meets the definition of offshore renewable energy infrastructure and offshore electricity transmission infrastructure but was installed prior to the OEI Act entering into force is also excluded. Regulation 50 of the OEI Regulations provides that offshore renewable energy infrastructure and offshore electricity transmission infrastructure constructed, installed, commissioned for the purposes of operating, maintaining or repairing (including by replacement) pre-existing infrastructure is to be treated as pre-existing infrastructure.

6.1. Considerations for vessels and vessel-based activities

The OEI Act primarily regulates infrastructure and activities associated with that infrastructure. The object of the OEI Act is to provide an effective regulatory framework for OREI and OETI and is not intended to duplicate other laws to regulate vessels or maritime activities. However, the OEI Act also seeks to regulate workforce safety, including the vessel-based workforce operating at the interface with regulated offshore infrastructure activities, and it is important to understand the distinction between regulation of the workforce and regulation of the vessel. This is discussed further in the OIR's Management plan content guideline.

Vessels operating in support of offshore infrastructure activities are not infrastructure and do not become part of the infrastructure simply because they are conducting work in the nature of an offshore

infrastructure activity. The OEI obligations that apply to infrastructure, such as integrity assurance, inventories, decommissioning and financial security, generally do not apply to vessels except in those few cases where vessels are also infrastructure as set out further below.

Vessels as infrastructure

There may be some circumstances where floating structures being used for offshore infrastructure activities may be concurrently classified as both a vessel and OREI because the vessel is being held on location through a fixed mooring system for long-term station keeping. In this circumstance, the vessel cannot be considered “temporarily” moored or anchored under the exemption specified within the definition of fixed or tethered infrastructure. The Act does not specify how long a vessel can remain on site under this exemption, rather the temporary nature should be determined primarily by the design of the mooring systems and with consideration to the purpose of the activity.

For example:

- a vessel-based anchor system designed for frequent disconnection and relocation would reasonably be considered to be temporarily moored or anchored and therefore be excluded from the definition of OREI
- a vessel that is fixed or tethered by permanent/fixed mooring systems designed for long-term station keeping with minimal need for disconnection is not intended to be “temporarily” moored or anchored and the exemption is unlikely to apply.

These vessels will also become, or cease to be, OREI at different points in their lifecycle. For example, a floating structure will become OREI once it has commenced the installation to a fixed mooring and will cease to be OREI when it returns to a form that it can be moved off location. Any infrastructure that is concurrently classified as a vessel will likely have requirements under maritime laws that will continue to apply.

7. Exercising rights conferred by a licence

Licences granted under the OEI Act allow the licence holder to undertake a range of activities that are related to exploring for and exploiting renewable energy resources and storing, transmitting or conveying a renewable energy products.

For example, section 31 of the OEI Act provides the requirements that must be met for a feasibility licence holder to conduct an offshore infrastructure activity under their licence.

Section 31 Activities authorised by a feasibility licence

- (2) *A feasibility licence authorises the licence holder to construct, install, commission, operate, maintain and decommission offshore renewable energy infrastructure in the licence area, so long as:*
- (a) *there is a management plan for the licence; and*
 - (b) *the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and*
 - (c) *the licence holder is in compliance with sections 117 and 118 (financial security).*
- (3) *The rights conferred on the licence holder by this section are subject to this Act.*

These requirements are similar across all licence types.

The type of activities that can be conducted under an OEI Act licence are limited by the purpose of that licence. For example, section 30 of the OEI Act details the purpose of a feasibility licence to assess the feasibility of an **offshore infrastructure project**⁵ and to apply for a commercial licence.

Section 30 Purpose of a feasibility licence

The purpose of a feasibility licence is to provide for the licence holder to:

- (a) *assess the feasibility of an offshore infrastructure project that the licence holder proposes to carry out in the licence area under a commercial licence (the **proposed commercial offshore infrastructure project** for the feasibility licence); and*
- (b) *apply for a commercial licence in relation to the proposed commercial offshore infrastructure project, if the licence holder chooses to do so.*

The OEI Act authorises the holder of a feasibility licence to construct, install, commission, operate, maintain and decommission offshore renewable energy infrastructure in the licence area provided that the activities align with the purpose of a feasibility licence under section 30.

⁵ See section 8 of the OEI Act

This means that a feasibility licence holder cannot install infrastructure for the purpose of exploiting a renewable energy resource and must first obtain a commercial licence under the OEI Act to conduct commercial activities.

All licence types under the OEI Act have a defined purpose and persons proposing to conduct offshore infrastructure activities should examine these in the context of their proposed activities.

8. Early-stage offshore infrastructure activities

Early-stage activities including preliminary desktop studies, environmental and resource monitoring, exploratory surveys and site investigation works are routinely conducted to gather site-specific information to assess the feasibility of a proposed project such as an offshore wind farm. Although all these activities may be undertaken in support of an offshore infrastructure project, not all these activities require authorisation under the OEI Act, as detailed further in the following sections.

Certain early-stage in-field feasibility activities, such as vessel-based geophysical work, environmental surveys or ecological studies that do not involve fixed or tethered infrastructure, may be conducted without an OEI Act licence or management plan. This is provided that all other requirements that might apply to these activities, including but not limited to the requirements under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) are complied with.

Other types of early-stage activities that involve the deployment, construction, or operation of any infrastructure, structure or installation that is fixed or tethered to the seabed to explore for a renewable energy resource or establish the commercial or technical feasibility of exploiting a renewable energy resource, are likely to fall within the scope of the section 15 prohibition and will require a licence and a management plan.

Licence holders are encouraged to engage with the OIR prior to submitting a management plan where there is uncertainty about whether the proposed operations are within the regulatory scope of the OEI Act and Regulations.

8.1. Worked examples

The following examples are intended to provide some guidance to proponents in determining whether a proposed activity requires a licence and a management plan under the OEI Act. The examples are not exhaustive and should be read in the context of the specific circumstances provided.

It is the responsibility of a proponent to establish whether an OEI licence and management plan, or any other authorisation, is required prior to undertaking such activities and ensure all other requirements are met. A proponent will need to make their own determination on the OEI Act requirements in the context of their specific activity and the circumstances that relate to it. Proponents must determine, on the basis of the full detail of the proposed scope of work and any legal advice where necessary, whether the activities proposed to be conducted are likely to contravene the section 15 prohibition.

Example 1

A proponent wishes to deploy floating LiDAR buoys for the purposes of obtaining wind resource data. The buoys are proposed to be anchored to the seabed for a two-year period in locations between 25 and 40 kilometres from the coastline. The data is needed to inform the commercial and technical aspects of a potential future offshore windfarm.

In this circumstance the proponent will require a licence and management plan for their activity in accordance with the requirements of the OEI Act. This is because the buoys are proposed to be located in the Commonwealth offshore area, are fixed or tethered to the seabed, and are being deployed for the primary purpose of assessing the feasibility of exploiting a renewable energy resource.

Example 2

A proponent proposes to deploy environmental noise loggers for the purposes of monitoring whale vocalisations. The loggers are to be anchored to the seabed for a two-year period in locations between 25 and 40 kilometres from the coastline and will provide data that will assist the proponent in understanding the movements and behavioural patterns of migrating whales. The proponent is gathering this information to inform an assessment of the potential environmental impacts of underwater noise that may be generated from a proposed offshore windfarm project.

In this circumstance the proponent will not require a licence or management plan for their activity under the OEI Act. This is because the noise loggers are being deployed for the primary purpose of obtaining data to inform an environmental impact assessment for the purposes of obtaining an approval under the EPBC Act.

Example 3

A proponent proposes to mobilise a vessel for the purposes of conducting geotechnical surveys and investigations in an area 20 to 40 kilometres off the coast. The proposed campaign involves obtaining samples of the seabed through grab sampling, vibrocoring, drilling of geotechnical boreholes, and conducting cone penetrometer tests. The information obtained from this campaign will allow the proponent to assess the technical feasibility of exploiting a renewable energy resource utilising fixed bottom wind turbines in the location being surveyed.

In this circumstance the proponent will require a licence and management plan for their activity under the OEI Act. This is because the survey campaign will be in the Commonwealth offshore area, the equipment to be utilised will either rest on, penetrate, or be fixed or tethered to the seabed for periods of time throughout the campaign, and the primary purpose of the campaign is to assess the technical feasibility of exploiting a renewable energy resource in the location being surveyed.

Example 4

A proponent proposes to undertake a vessel-based geophysical survey to obtain information about the seabed to inform the technical feasibility of exploiting a renewable energy resource. The survey will be conducted between 20 and 40 kilometres from the coast and no infrastructure will be placed on the seabed at any point during the survey.

In this circumstance the proponent will not require a licence or management plan for their activity under the OEI Act. Although the survey is for the purpose of feasibility assessment, it does not involve the use of any fixed or tethered infrastructure and so authorisation under the OEI Act is not required.

9. Compliance with OEI Act requirements

The OIR has functions under the OEI Act to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their obligations under the Act. This includes the requirement for persons to hold an appropriate licence and authorisations under the OEI Act before

conducting an offshore infrastructure activity. Where the OIR becomes aware that a person may not be in compliance with the section 15 prohibition, the OIR has powers under the OEI Act to investigate and enforce compliance with the requirement and to return the person to compliance.

Persons who are considering conducting activities that may be subject to the section 15 prohibition must ensure that they understand the requirements of the OEI Act that may apply to their activity and to take necessary steps to ensure that they remain in compliance with the OEI Act at all times.

Persons who fail to comply with the section 15 prohibition may be subject to penalties of up to \$666,000 or five years imprisonment.

Proponents may wish to contact the OIR to discuss this guidance in the context of their proposed activities. Given the potential complexity of individual circumstances, proponents may also wish to seek their own legal advice to assist them in determining whether an activity requires licensing and authorisation under the OEI Act.

In addition to requirements under the OEI Act, proponents wishing to undertake activities in the Commonwealth offshore area must ensure that they understand and comply with all other legislative requirements that may apply to their activity. These requirements may apply whether or not a licence and management plan under the OEI Act are required.

10. Monitoring

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

11. Related documents

N-05501-PL2096 – Policy - Enforcement

N-04401-PL2048 – Policy – Assessment

N-04403-GL2084 – Guideline – Management plan content