

Authorisations for offshore infrastructure activities

Document No: N-04403-GL2082 A900928

Date: 25/05/2023

1. Purpose

This guideline provides advice regarding activities that may be prohibited unless they are authorised by a licence or are otherwise authorised or required under the *Offshore Electricity Infrastructure Act 2021* (OEI Act).

2. 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**. The guideline provides advice on compliance with the requirements of the OEI Act to ensure that offshore infrastructure activities are appropriately authorised and approved. The role of the Offshore Infrastructure Regulator (OIR) in monitoring and enforcing compliance with the requirements of the OEI Act is also described.

3. Requirements for authorisation under the OEI Act

Section 15 of the OEI Act prohibits unauthorised offshore infrastructure activities in the Commonwealth offshore area.

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

Section 8 Definition of Commonwealth offshore area

Commonwealth offshore area means the following areas, and the seabed and subsoil beneath those areas:

- (a) the territorial sea of Australia;
- (b) the exclusive economic zone;

but does not include the coastal waters of a State or the Northern Territory.

Activities that are proposed within three nautical miles of the coastline and offshore islands (as specified under section 5 of the OEI Act) are likely to 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 of these definitions specify the types of infrastructure regulated under the OEI Act by referring to the primary purpose for which the infrastructure is being deployed. In order 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 to date.

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:*
- (e) that is laid on or beneath the seabed that lies beneath the Commonwealth offshore area; and*
- (f) that is not connected to any place in Australia; and*
- (g) that is not connected to anything else in, or inside the inner limits of, the Commonwealth offshore area.*
- (h) (e) any infrastructure, structure or installation of a kind prescribed by the regulations for*
- (i) the purposes of this paragraph.*

In addition to the above exclusions, section 309 of the OEI Act provides that infrastructure that meets 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 Offshore Electricity Infrastructure Regulations 2022 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.

4. Licence requirements

In order to conduct activities that involve **fixed or tethered infrastructure** that is **offshore renewable energy infrastructure** or **offshore electricity transmission infrastructure** a person must hold an OEI licence and must also comply with the requirements that apply to their licence before they commence their activities.

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.

Regulations providing further detail on requirements for management plans and financial securities are currently under development by the Department of Climate Change, Energy, the Environment and Water (DCCEEW). The OIR will provide further guidance on these requirements as they develop.

5. Activities limited by the purpose of a licence

Where a proponent has determined that an OEI Act licence is required to conduct their proposed activities, they should be aware that 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.

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.

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 in order to conduct activities of this type.

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 when determining the most appropriate licence to apply for.

6. Early stage offshore infrastructure activities

In the early stages of an offshore infrastructure project there are a number of activities that are routinely conducted to gather regional and site-specific information to assess the feasibility of a proposed project such as an offshore wind farm. These early-stage activities may include preliminary desktop studies, environmental and resource monitoring, exploratory surveys, and site investigation works and are intended to provide a proponent with critical information to determine whether a project can feasibly be undertaken in a specific location.

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 authorisation.

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. Activities of this nature will require a licence and other authorisations under the OEI Act.

6.1. Worked examples

The following examples are intended to provide some guidance to proponents in determining whether a proposed activity requires licensing and authorisation under the OEI Act. The examples are not exhaustive and should be read in the context of the specific circumstances provided. 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. Where a proponent is not clear on whether their activity falls within the scope of the section 15 prohibition it is recommended that they discuss their circumstances with the OIR.

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 authorisation 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 authorisation 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 geophysical and geotechnical surveys and investigations. The survey campaign is to be conducted over a 500 square kilometre area between 12 and 35 kilometres from the coastline and will take approximately three months. 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 for their activity under the OEI Act. This is because the survey campaign is proposed to be located 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.

7. 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 under the OEI Act is required.

8. Further information

For declaration of areas for offshore renewable energy infrastructure visit: dcceew.gov.au
or contact offshorerenewables@dcceew.gov.au

For licensing offshore renewable energy projects visit: offshoreregistrar.gov.au
or contact: offshoreelectricity@nopta.gov.au

For regulating offshore infrastructure activities visit: oir.gov.au
or contact: offshorerenewables@oir.gov.au