

Investigation

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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**¹ and environmental management of **offshore infrastructure activities**² in the **Commonwealth offshore area**³.

2. Purpose

This policy provides for a documented, systematic, and consistent approach to the OIR's investigation of suspected non-compliances by licence holders and duty holders regulated under the OEI Act framework, including the application of the relevant provisions of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act). This policy is supported by and can be read in conjunction with other OIR policies and guidelines listed in section 7 as updated and published from time to time.

All investigations undertaken by OIR will adhere to the framework that is described in this document.

3. Scope

This policy describes how the OIR will undertake investigation activities under the OEI Act framework and relevant legislation.

This policy provides OIR with a framework for making consistent decisions in relation to investigations and outlines the principles that the OIR follows when conducting an investigation.

This document is not legally binding and is provided to inform on how the OIR exercises its powers 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 is relevant to the administration of the OIR's investigation activities:

- *Offshore Electricity Infrastructure Act 2021* (OEI Act)
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¹ See section 8 of the OEI Act

² Ibid

³ Ibid

- Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations)
- *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
- *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act).

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

5. Investigation principles

The OIR conducts investigations where it has received information that justifies obtaining evidence of non-compliance with the law. The OIR will also consider the following factors in determining how and when an investigation will be conducted:

- severity and scale of potential or actual harm
- seriousness of any potential breach of the law
- known past health and safety, infrastructure integrity or environmental management performance of the licence holder
- practicality of achieving results
- wider relevance of the event, including serious public concern.

6. Investigation objectives

The purpose of conducting an investigation is to gather evidence to determine what regulatory intervention, such as enforcement action, may be appropriate to address any identified non-compliance. OEI inspectors will undertake investigations in order to:

- gather and establish the facts of the incident
- determine whether the licence holder has taken necessary action to prevent escalation of the incident or if an immediate regulatory intervention is required by the OIR to prevent escalation
- detect breaches of legislation for which OIR, or for some environmental obligations the Department of Climate Change, Energy, Environment and Water, is the enforcing authority
- establish whether to take further action, such as enforcement or further investigation
- identify immediate and underlying causes in their report to the OIR.

The OIR will share with industry the lessons from incident investigations that can be applied to help industry reduce the risk of reoccurrence and improve outcomes for future activities.

7. Monitoring and Investigation powers

OEI inspectors will apply monitoring and investigation powers of the OEI Act and related provisions within the Regulatory Powers Act to carry out investigations. The OIR may conduct internal independent reviews to ensure the conduct of investigations are consistent with these powers.

7.1. Monitoring powers

Section 195 of the OEI Act sets out the general powers available to an OEI inspector for monitoring compliance with the provisions of the OEI Act, any of the applied provisions of the WHS Act or WHS Regulations, or an offence provision that relates to the OEI Act or the applied work health and safety provisions.

The framework for this compliance monitoring is provided by Part 2 of the Regulatory Powers Act which includes powers of entry and inspection by an OEI inspector, either under a warrant or by consent of the occupier of the premises. An OEI inspector may be assisted by other people in performing compliance monitoring functions.

The compliance monitoring powers that an OEI inspector may exercise include:

- search the premises and anything on the premises
- examine or observe any activity
- inspect, examine, take measurements, or conduct tests
- take pictures and recordings
- inspect or make copies of documents
- operate electronic equipment and any associated storage devices.

7.2. Investigation powers

Section 196 of the OEI Act sets out the general powers available to an OEI inspector for investigating offence provisions or civil penalty provisions of either the OEI Act or the applied work health and safety provisions.

The framework for these investigation powers is provided by Part 3 of the Regulatory Powers Act which includes powers of entry, search, and seizure by an OEI inspector, either under a warrant or by consent of the occupier of the premises. An OEI inspector may be assisted by other people in performing investigative functions.

The investigation powers that an OEI inspector may exercise include:

- search the premises and anything on the premises for evidential material
- seize evidential material
- inspect, examine, take measurements, or conduct tests on evidential material
- take pictures and recordings of the premises or evidential material
- operate electronic equipment and any associated storage device

- require a person at the premises to answer questions and produce documents.

7.3. Entering offshore premises in urgent circumstances

Sections 198 and 199 of the OEI Act provide an OEI inspector with the power to enter offshore premises without the consent of the occupier or a warrant because of urgent circumstances if the inspector believes it is necessary and reasonable to exercise the monitoring or investigation powers within the meaning of the Regulatory Powers Act.

Some examples of when entry to offshore premises without consent or a warrant due to urgent circumstances may be considered reasonable and necessary include, but are not limited to, the following:

- An incident involving the death, serious injury, or serious illness of a worker.
- A significant environmental incident where impacts are potentially widespread, consequences irreversible, or significant impacts to a matter protected under the *Environment Protection and Biodiversity Conservation Act 1999* may have occurred.
- A major loss of structural integrity or operational capability of the infrastructure.

Where an OEI Inspector determines that entry to an offshore premises due to urgent circumstances is required, the licence holder for the relevant premises will be provided with reasons for that entry.

Any time an OEI inspector exercises the power to enter offshore premises without consent or a warrant in urgent circumstances, the OIR may also make an application for a warrant to support the continued investigation after circumstances are no longer considered urgent.

8. Licence holder duties

The licence holder has certain duties in relation to an investigation carried out by OEI inspectors. The licence holder must provide appropriate transportation to and from an offshore premises for:

- the OEI inspector
- any persons assisting the OEI inspector
- equipment required by the OEI inspector
- anything that the OEI inspector takes possession of.

The licence holder must also provide reasonable accommodation and means of subsistence for the OEI inspector and persons assisting the OEI inspector while at an offshore premises.

The licence holder may also be required to have a representative present at the offshore premises for the purposes of an OIR investigation.

9. Transparency

Under the OEI Act, if the OIR obtains **offshore infrastructure information**⁴ or things in the course of exercising a power, or the performance of a function or duty, the OIR may use that information or those things for the purpose of exercising any power, or performing any function or duty, under the OEI Act⁵.

The OIR may also share information with other agencies listed in the OEI Act who have responsibilities for administering and implementing laws in the Commonwealth offshore area. The OIR may also collaborate with other agencies in relation to compliance monitoring and enforcement actions where it is considered appropriate to do so.

Further information on the OIR's approach to use and sharing of offshore infrastructure information with other entities is set out in the Sharing Information with Australian Agencies policy.

10. 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.

11. Related documents

N-03401-PL2100 – Policy – Inspections

N-05501-PL2096 – Policy – Enforcement

N-17101-PL2102 – Policy – Sharing Information with Australian Agencies

Australian Government Investigation Standard, October 2022

⁴ See section 291 of the OEI Act

⁵ See section 292 of the OEI Act