

Environmental management regulation for offshore renewables

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

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) administers the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) which is Australia's national environmental law providing for environmental protection and management of species, habitats and places.

2. Purpose

The purpose of this document is to provide an explanation of the interface between frameworks for environmental protection and management under the EPBC Act and regulation of offshore infrastructure activities under the OEI Act. It also outlines some items that licence holders may wish to consider when preparing regulatory documentation.

Licence holders should be aware that the OEI Act and EPBC Act operate independently of one another except where explicit links are provided for in legislation, as discussed further below.

Licence holders should also note that approval under one Act does not constitute or guarantee approval under the other and that the requirements of each legislative framework need to be considered and complied with independently.

3. Disclaimer

This document is not a legal instrument and does not override or amend the requirements of the OEI Act or Offshore Electricity Infrastructure Regulations 2022 (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.

4. Relevant legislation

The following Commonwealth legislation provides the legal framework relevant to the preparation of a management plan:

- *Offshore Electricity Infrastructure Act 2021* (OEI Act)
- Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations)
- *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)

¹ See section 177 of the OEI Act

² See section 8 of the OEI Act

³ Ibid

- Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations).

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

4.1. EPBC Act requirements: Referrals, assessments and decisions

Offshore infrastructure projects⁴ are subject to approval requirements under the EPBC Act administered by DCCEEW.

Licence holders must determine whether the obligation to refer an 'action' for assessment under the EPBC Act applies to their activity. Referred activities determined to be controlled actions may proceed if approved by the Commonwealth Environment Minister or delegate, provided they comply with their EPBC approval conditions and with all other laws including the OEI Act.

Proponents should be aware that even if an activity is not referred or determined not to be a controlled action, there may still be requirements to gain permits and comply with other obligations under the EPBC Act and associated regulations.

To find out more, the DCCEEW website provides guidance in relation to the [referral and environmental assessment processes](#).

4.2. OEI Act requirements: Licences and management plans

If the proposed offshore infrastructure project involves construction, installation, commissioning, operation, maintenance or decommissioning of **offshore renewable energy infrastructure**⁵ (OREI) or **offshore electricity transmission infrastructure**⁶ (OETI) in Commonwealth waters, a licence under the OEI Act and a management plan approved by the OIR is required before that activity can commence.

Further information on these requirements is available on the OIR's website.

5. The interface between the EPBC Act and OEI Act frameworks

The OEI Regulations provide detail on the requirements of section 115(1)(c) of the OEI Act and create a link between the EPBC Act and OEI Act frameworks. This link is established by the requirement for OEI Act management plans to address how the licence holder is to comply with any obligations under the EPBC Act or associated regulations in relation to the activities to be carried out under an OEI licence.

Specifically, an OEI Act management plan must describe any obligations under the EPBC Act and associated regulations (hereafter EPBC Act obligations) that a licence holder has in relation to activities to be carried out under the licence. Section 6 of this document provides further information on EPBC Act obligations.

⁴ See section 8 of the OEI Act

⁵ See section 10 of the OEI Act

⁶ See section 11 of the OEI Act

The OEI Regulations also require a management plan to describe the measures that will be implemented to comply with the EPBC Act obligations. These measures will need to be described in such a way that compliance is able to be monitored and verified.

This framework allows the OIR to monitor the licence holder's performance in implementing the measures set out in an OEI management plan to address EPBC Act obligations.

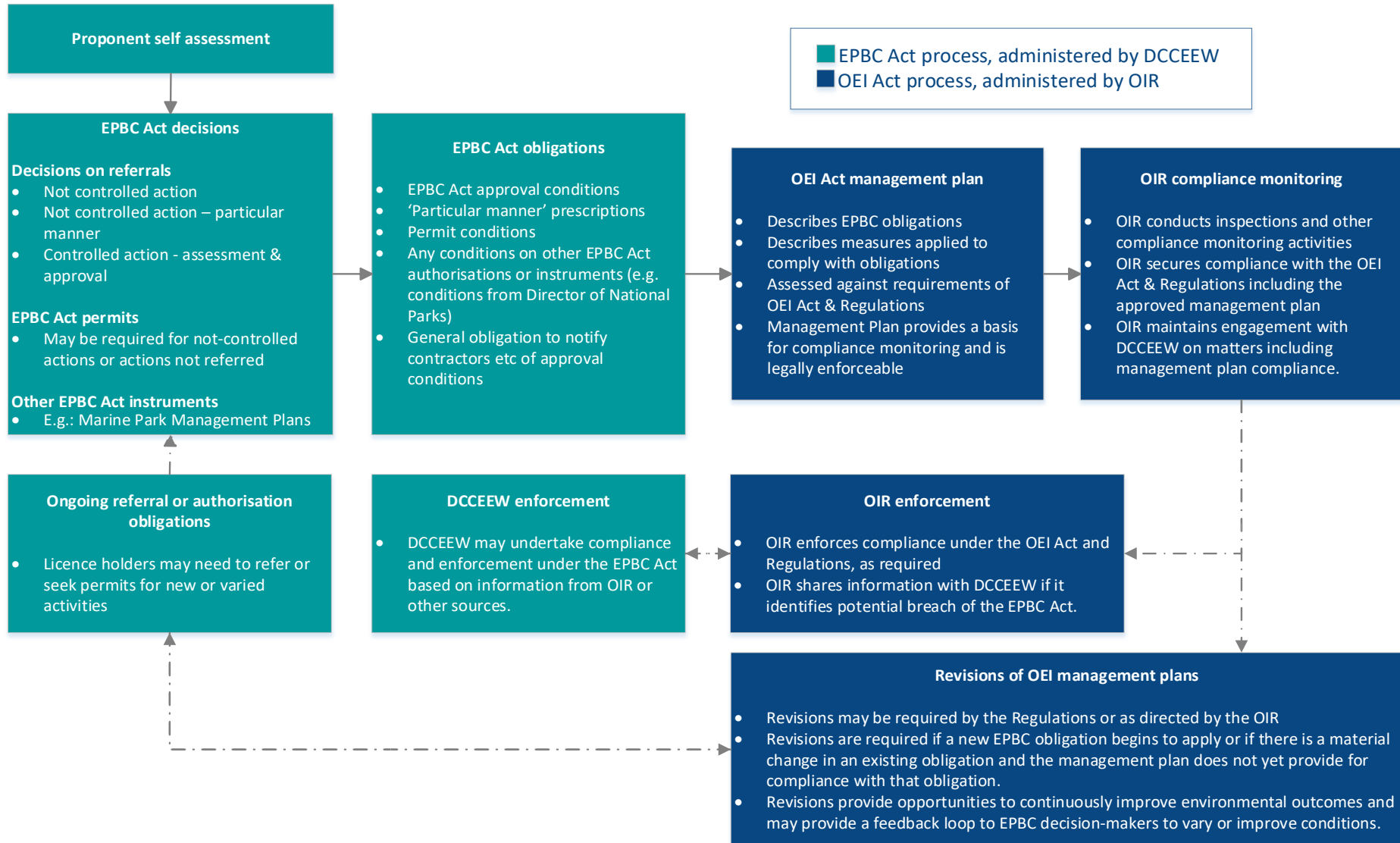
Where the OIR becomes aware of a potential non-compliance with an OEI Act management plan that may also represent a non-compliance with EPBC Act obligations, the OIR will share this information with DCCEEW as the regulator of the EPBC Act. The agencies will then work together to establish an appropriate course of action with respect to encouraging and enforcing compliance with requirements.

The interface arrangement between the EPBC Act and OEI Act supports regulatory oversight by the Australian government through leveraging the on the ground presence and proactive compliance monitoring of the OIR to promote and enforce requirements of the law.

The key framework elements are set out in the scheme below. These form the basis for the structure of the rest of this document.

OEI Act & EPBC Act interface

A coordinated environmental management compliance monitoring framework for offshore renewables



6. What is an EPBC Act obligation?

The term ‘obligation’ is not defined in the OEI Act, or the EPBC Act, but its ordinary meaning is ‘a binding requirement as to action; duty’⁷. The OEI Regulations offer guidance on what an EPBC Act obligation is for the purpose of an OEI Act management plan. In particular, the OEI Regulations indicate that an EPBC Act obligation includes any obligation under conditions attached to an approval or conditions of a permit issued under the EPBC Act.

6.1. EPBC Act approval conditions

It is common practice for conditions to be attached to approvals of controlled actions under Part 9 of the EPBC Act. Examples of these can be found by searching the [EPBC Act public portal](#). An EPBC Act obligation to be addressed in an OEI Act management plan will most commonly entail the obligation to comply with conditions attached to an approval under Part 9 of the EPBC Act. As all commercial-scale offshore wind farm projects will likely be subject to formal assessment and approval under the EPBC Act, the obligation to comply with conditions of approval under Part 9 of the EPBC Act is relevant to OEI Act management plans for those projects.

6.2. Particular manner prescriptions

A decision on some actions referred under the EPBC Act will be that they are not a controlled action for the purposes of a particular provision of Part 3 of the EPBC Act if the action is taken in a particular manner. Where a ‘not controlled action – particular manner’ decision is made under the EPBC Act, there is an obligation on the licence holder not to take the action in a way that is inconsistent with that manner. Such obligations relevant to licence activities must be included in the OEI Act management plan.

6.3. Part 13 permit conditions

Where licence activities are the subject of a listed species and ecological community permit under section 201 of the EPBC Act, the OEI Act management plan must address how the licence holder will comply with conditions attached to the permit.

6.4. Other authorisations

Conditions may also be attached to other types of authorisations under EPBC Act instruments. For example, under marine park management plans the Director of National Parks (DNP) may authorise allowable activities in certain park zones and attach conditions to the authorisation. Compliance with conditions imposed by the DNP is considered an EPBC Act obligation that must be addressed in the OEI Act management plan.

While the Government’s priority areas for offshore wind and OEI Act declared areas do not overlap Australian marine parks, transmission and infrastructure licences (TILs) are not restricted to declared areas. Licence holders are encouraged to engage early with the DNP if they are considering transmission infrastructure within an Australian marine park.

⁷ Macquarie Dictionary, online edition, accessed May 2024.

6.5. General obligations applying to EPBC Act approval holders

EPBC Act approval holders have a general obligation to notify third parties such as contractors that rely on the approval that there is an EPBC Act approval, the approval has conditions attached, and complying with approval conditions is a legal requirement for both the approval-holder and the contractor.

7. Obligations limited to those that are in relation to licence activities

The OEI Act management plan must address EPBC obligations that are in relation to **licence activities**⁸. The licence activities are those activities that are occurring within the licence area and are activities that are authorised by the licence.

The term 'in relation to' is commonly used in legislation and can have broad meaning and scope. In this context, an EPBC obligation in relation to licence activities may require management measures to be implemented to control the impacts arising from the licence activities. Such management measures are undertaken in relation to the licence activities even if those management measures may be conducted outside of the **licence area**⁹ or even outside of the Commonwealth offshore area. For example, if an EPBC Act condition requires:

- the licence holder to report certain things to the Minister for the Environment that are relevant to managing environmental impacts of licence activities, complying with this reporting condition would be an EPBC Act obligation to be addressed in the OEI Act management plan
- an offset activity in State waters that is being conducted to counterbalance the impact of licence activities, that offset would be an obligation in relation to licence activities and must be described in the OEI Act management plan. Importantly, the offset activity is not a **licence activity** but is a management measure to mitigate the impact of the licence activity occurring in the licence area.

An offshore renewable energy project referred under the EPBC Act may include project components that are not licence activities, including activities in other jurisdictions outside scope of the OEI Act. The management plan should be clear about the scope of licence activities to which the management plan applies and clearly identify which EPBC obligations are in relation to managing the impacts of those licence activities that will be authorised by that management plan.

Any other EPBC obligations that are not in relation to the licence activities are beyond the scope of the management plan and should not be described as EPBC obligations in the OEI Act management plan.

8. Describing EPBC Act obligations and measures in management plans

The content of an OEI Act management plan will include a description of any EPBC Act obligations that apply in relation to licence activities. This content should be provided by accurately quoting relevant conditions or general obligations. Paraphrasing conditions should be avoided.

⁸ The Offshore Electricity Infrastructure Regulations 2022 define **licence activity**, in relation to a licence or a proposed commercial licence, as an offshore infrastructure activity or other activity carried out, or to be carried out, in the licence area under the licence or the proposed commercial licence

⁹ See section 8 of the OEI Act

EPBC Act obligations associated with conditions attached to an approval or permit are at the discretion of the decision-maker under the EPBC Act and may look different depending on the approach taken to condition setting. By way of example, broad approaches to condition setting for approvals have previously included outcome-based conditions, prescriptive conditions, administrative conditions such as reporting requirements, or system-based conditions requiring separate environmental management plans to be approved under the EPBC Act for specific aspects of the project.

Once EPBC Act obligations that apply in relation to licence activities have been identified and described, the management plan must describe measures that will be implemented to comply with those obligations. How these measures are to be described will depend on the construct of the obligation that applies.

For example, where an EPBC Act obligation arises from an outcome-based condition it is anticipated that the OEI management plan would need to describe measures in sufficient detail, with supporting evidence and reasoning, to demonstrate how the outcomes will be achieved, monitored and maintained. This approach will necessitate a detailed description in the OEI Act management plan.

If a condition requires a licence holder to prepare an environmental management plan (EMP) under the EPBC Act for approval by the EPBC Act decision-maker, the OEI management plan will need to describe measures to ensure that the plan will be submitted as required and complied with once approved. The OEI management plan does not need to duplicate the content of that EMP and does not need to provide reasoning for its content, which will be approved by the EPBC Act decision-maker.

Any prescriptive or administrative conditions should be similarly simple to address in the management plan with minimal need for supporting evidence or reasoning.

Regardless of the type or construct of the EPBC Act obligations that apply, licence holders are encouraged to describe measures in the OEI management plan considering the 'SMART' (specific, measurable, achievable, relevant and time bound) principles, so that compliance can be more easily demonstrated to OIR.

In all cases, the licence holder should consider whether content regarding EPBC Act obligations needs to be addressed in other parts of the OEI Act management plan. For example, the management system described in a management plan will need to address how the licence holder will implement, monitor, audit and record compliance with relevant EPBC Act obligations. It would also need to provide for the licence holder to identify and manage any non-compliance if activities did not go as planned and put in place measures to achieve compliance and improve performance. It is also likely that the management plan will need to consider EPBC Act obligations for incident notification requirements and in relation to consultation requirements.

When assessing and making approval decisions with respect to OEI management plans, the OIR will consider how licence holders have addressed their EPBC Act obligations against the relevant assessment and decision-making criteria in the OEI Regulations. During assessments, the OIR may also make enquiries with DCCEEW regarding EPBC Act obligations and measures described in the OEI management plan.

Further guidance on preparing a management plan is available on the [OIR website](#).

9. Ongoing authorisation requirements

A licence holder should have appropriate mechanisms in place to ensure that any ongoing requirements in relation to making new EPBC referrals, permit applications or seeking any other authorisations are complied with throughout the life of the project, particularly in relation to new or varied activities.

Where the outcome of an EPBC authorisation process results in new obligations, those obligations may need to be addressed in a revised management plan.

9.1. Referrals

The referral requirement in section 68 of the EPBC Act is ongoing and is not time limited. This means that if a licence holder proposes to make changes to licence activities that they did not originally consider required referral, or which has been the subject of a previous decision under section 75 of the EPBC Act, the referral requirement may be engaged.

In practice a licence holder would decide whether a change to licence activities requires referral following a self-assessment process carried out in accordance with referrals and environmental assessments advice published by DCCEEW.

In this context, licence-holders should include the reference to a self-assessment process and a commitment to make a referral if necessary, as management system elements of the OEI Act management plan.

9.2. Part 13 permit applications

Noting that offences in Part 13 of the EPBC Act concern actions taken in Commonwealth areas, licence holders should seek advice as to the need to apply for a permit under section 200 given their particular circumstances.

10. Compliance monitoring

Once the management plan has been approved, licence holders can expect that the OIR will conduct routine inspections with the purpose of verifying whether the licence holder is complying with the approved management plan.

Compliance inspections and any enforcement action that may arise will be carried out in accordance with the OEI Act and published OIR policies.

The OEI Act provides for the OIR to share offshore infrastructure information with other Commonwealth agencies. Licence holders should note that under this arrangement, the OIR may share compliance information with DCCEEW.

The compliance information may be associated with the OIR's inspections, investigations and enforcement actions or incident notifications to the OIR. A key purpose of information sharing with DCCEEW will be to allow that agency to determine whether to take its own compliance action under the EPBC Act.

11. 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.

12. Related documents

N- 04401-PL2048 – Policy – Assessment

N-02401-PL2179 – Policy – Inspection

N-03401-PL2100 – Policy – Investigations

N-05501-PL2096 – Policy - Enforcement

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

N-04403-GL2082 – Guideline – Authorisations for offshore infrastructure activities

N-04402-GL2084 – Guideline – Management Plan content