

# Work health and safety under the OEI Act framework

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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>.

The OEI Act framework has a strong focus on the protection of the workforce and addresses workplace health and safety through modified application the *Work Health and Safety Act 2011* (WHS Act) and the Work Health and Safety Regulations 2011 (WHS Regulations) (described collectively as the applied work health and safety provisions).

The OEI Act and Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations) amend some existing provisions and include a number of additional provisions to address the specific nature of **offshore infrastructure projects**<sup>4</sup>.

## 2. Purpose

The purpose of this document is to provide licence holders and other persons conducting a business or undertaking (PCBUs), workers and workforce representatives with information about the applied work health and safety provisions under the OEI Act framework.

## 3. Scope

This document is relevant to licence holders and other PCBUs, workers and other duty holders who may have work health and safety obligations under the OEI Act framework including the applied work health and safety provisions.

## 4. Disclaimer

This document is not a legal instrument and does not override or amend the requirements of the OEI Act or the OEI Regulations. 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 and provides the legal framework to manage work health and safety for offshore infrastructure projects:

- *Offshore Electricity Infrastructure Act 2021* (OEI Act)

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

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

- Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations)
- *Work Health and Safety Act 2011* (WHS Act) as applied under the OEI Act
- Work Health and Safety Regulations 2011 (WHS Regulations) as applied under the OEI Regulations
- *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act).

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

## 6. Work health and safety under the OEI framework

The OEI Act and OEI Regulations enable licence holders to undertake offshore infrastructure activities in the Commonwealth offshore area.

Chapter 6 Part 1 of the OEI Act applies the WHS Act with some modifications to ensure the OEI Act framework is fit for purpose for hazardous and high risk remote offshore worksites. Application of the WHS Act, provides consistency with other harmonised WHS laws and the automatic application of any future amendments to the WHS Act unless specifically excluded.

Section 226 of the OEI Act applies the WHS provisions to ‘work in the nature of offshore infrastructure activities’ meaning that the WHS provisions apply to interactions between **licence activities**<sup>5</sup> and the workforce. Therefore, where there are workers on vessels, offshore renewable energy infrastructure or offshore electricity transmission infrastructure that are conducting licence activities, the applied WHS provisions will apply to those workers.

Part 7 of the OEI Regulations apply the WHS Regulations with some modifications to ensure the WHS Regulations can operate appropriately in the OEI context. Further detail and guidance on the specifics of modifications made by the OEI Act and Regulations is provided at **Appendix A** to this guideline.

While undertaking licence activities persons on vessels will have duties under both maritime legislation and the applied WHS provisions of the OEI Act and Regulations.

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<sup>5</sup> See regulation 4 of the OEI Regulations



*Figure 1. WHS under the OEI Act framework*

## 6.1. Codes of practice

The OEI Regulations prescribe codes of practice in relation to work health and safety matters. Such codes are approved under the WHS Act by the responsible Commonwealth Minister. The codes prescribed under the OEI Regulations are taken to be an approved code of practice for the purpose of the OEI Act and are available at [legislation.gov.au](http://legislation.gov.au). Approved codes of practice are admissible as evidence in court and can assist the court to determine what is considered reasonably practicable in any particular circumstance. Licence holders should ensure they have understood which codes are applicable to the regulated offshore activities being undertaken and consider these codes in determining how to manage hazards and risks associated with their projects.<sup>6</sup>

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<sup>6</sup> See Clause 28 of Schedule 1 to the OEI Regulations

## 6.2. Regulated offshore activities

### OEI Act Section 228

*regulated offshore activities* means any of the following carried out in the Commonwealth offshore area:

- (a) work in the nature of offshore infrastructure activities (within the meaning of the Offshore Electricity Infrastructure Act 2021)
- (b) any other work carried out, or purportedly carried out, under a licence in force under the Offshore Electricity Infrastructure Act 2021, and
- (c) any other work carried out, or purportedly carried out, in accordance with a requirement under the Offshore Electricity Infrastructure Act 2021 or regulations made for the purposes of that Act.

The OEI Act provides clarification on application of the WHS provisions to regulated offshore activities and work in the Commonwealth offshore area. Importantly, the OEI Act states that the applied work health and safety provisions do not apply in relation to work carried out on, or from, a vehicle, vessel, aircraft or other mobile structure either:

- before it arrives at a site, where it is to be used for regulated offshore activities, and any activities necessary to make it operational at the site have begun; or
- after regulated offshore activities cease, and the vehicle, vessel, aircraft or other mobile structure is returned to a form in which it can be moved to another place.<sup>7</sup>

Section 230 of the OEI Act provides clarity that vessel is only subject to the applied WHS provisions when the vessel 'is at the site where it will be used and activities necessary to make it operational at the site have begun.' For the purposes of this definition, it should be noted that the term 'site' is not synonymous with worksite under the WHS Act. Rather, in this context the 'site' is taken to be licence area.

Examples of the types of activities regulated under the OEI Act framework is provided in **Table 1** below. Further information on the definitions and concepts relating to the applied work health and safety provisions is contained in Appendix A. Further information about the considerations for vessels and vessel-based activities is also contained in our Authorisations for offshore infrastructure activities guideline.

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<sup>7</sup> See section 230 (9B) of the OEI Act

**Table 1 – Examples of regulated offshore activities**

Application	Type of activity
✓	A vessel anchored in the licence area which is preparing to conduct work on offshore infrastructure
✓	A vessel installing a wind turbine foundation or wind turbine components
✓	Workers laying transmission cables on the sea floor in preparation for connection to the offshore substation
✓	A worker who is on a wind turbine conducting maintenance work
✓	A crane operator working on a vessel which is installing the turbine foundation
✗	A vessel travelling through the licence area on a journey for its own purposes
✗	A vessel which has finished the installation of a wind turbine, has weighed anchor and is preparing to return to port
✗	A vessel travelling over transmission cables which have been installed on the seabed
✗	A helicopter and passengers flying to a wind turbine to conduct maintenance
✗	A crane operator who is working on a vessel and is loading supplies for the operation of the vessel <sup>8 9</sup>
✗	Loading of wind turbine components onto an installation vessel in port
✗	A vessel conducting maintenance activities on a transmission cable in state waters

## 7. Work health and safety duties

### 7.1. Duties of person conducting business or undertaking

#### 7.1.1. Primary duty of care

The applied work health and safety provisions require all PCBUs to ensure, so far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged by the person
- workers whose activities in carrying out the work are influenced or directed by the person.

This primary duty of care requires licence holders to ensure so far as is reasonably practicable risks to health and safety are eliminated. If this is not reasonably practicable, risks must be minimised so far as is reasonably practicable.

<sup>8</sup> See sections 226-231 of the OEI Act

<sup>9</sup> See section 12A (2) of the WHS Act

Other PCBUs also owe a duty of care to people who may be at risk from work carried out by the business or undertaking.<sup>10</sup>

### 7.1.2. Primary duties of a PCBU in relation to other parties

Under the primary duty of care, a PCBU must ensure, so far as is reasonably practicable:

- the provision and maintenance of a work environment that is without risk to health and safety
- the provision and maintenance of plant, structures and systems of work that are safe and do not pose health risks (for example provision of sufficient lifting equipment)
- the safe use, handling storage and transport of plant, structures, and substances (for example, turbine components and cables)
- the provision of adequate facilities for the welfare of workers at work (for example, access to appropriate accommodation facilities while working offshore)
- the provision of information, instruction and training or supervision of workers needed for them to work without risk to their health and safety and that of others around them
- that the health of workers and the conditions of the workplace are monitored to prevent injury or illness arising out of the conduct of the business or undertaking
- the maintenance of any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.<sup>11</sup>

## 7.2. OEI requirements for PCBUs

The OEI Act provides further duties in relation to PCBUs and states that the WHS Act applies to a person in relation to a workplace in the Commonwealth offshore area, whether or not the person is in the Commonwealth offshore area.

For example, an officer of a company may hold work health and safety duties in relation to an offshore workplace regardless of whether they are at that workplace or at an onshore premises such as an office or a control centre.<sup>12</sup>

In all cases the OEI Act licence holder will be a PCBU and as such the primary duty of care under section 19 of the WHS Act will apply in relation to all workers who are carrying out work in any capacity for the licence holder as represented in **Figure 2**.

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<sup>10</sup> See section 19 of the WHS Act

<sup>11</sup> See section 19 of the WHS Act

<sup>12</sup> See section 232 of the OEI Act

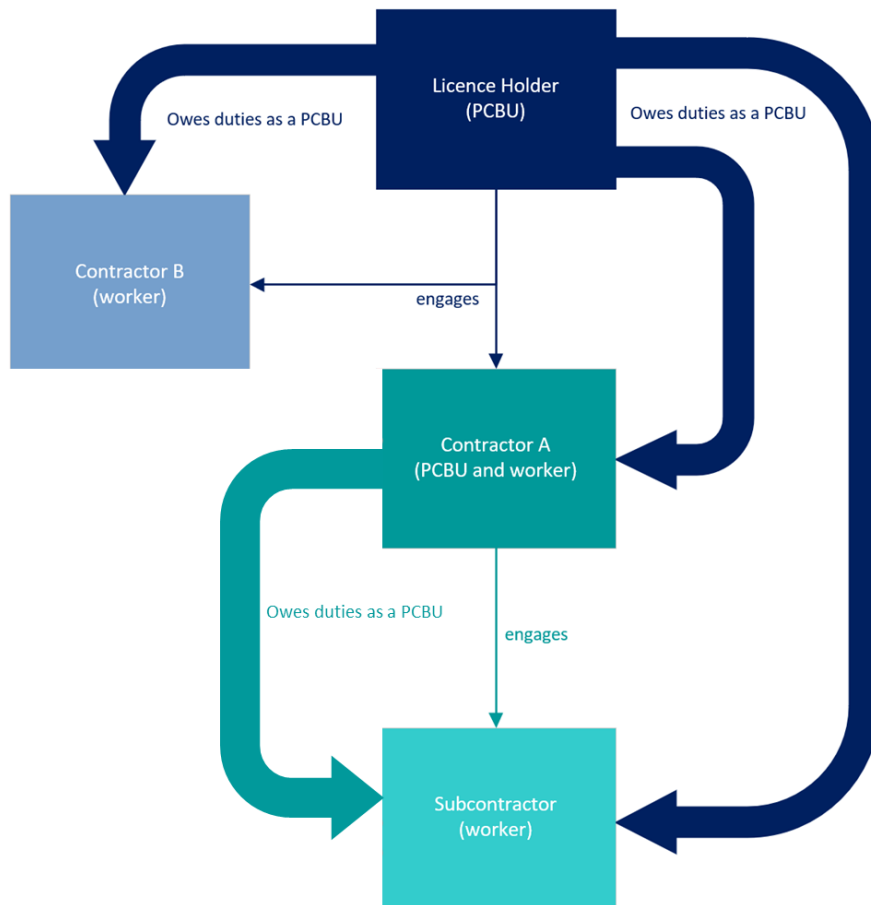


Figure 2. OEI licence holders as PCBUs

### 7.3. Duties of PCBUs with management or control of workplaces

A PCBU with management or control of a workplace must ensure, as far as is reasonably practicable, that the workplace and anything arising from the workplace does not put at risk the health and safety of any person.<sup>13</sup>

### 7.4. Duty of PCBU with management control of fixtures, fittings or plant at a workplace

A PCBU with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings, and plant do not put at risk the health and safety of any person.

<sup>13</sup> See section 20 of the WHS Act

A PCBU that installs, erects, or commissions plant or structures must ensure all workplace activity relating to the plant or structure including its decommissioning or dismantling is, so far as is reasonably practicable, without risk to health and safety.<sup>14</sup>

Further duties of other PCBUs are defined in **Table 2** below.<sup>15</sup>

*Table 2 – Further duties of PCBUs*

Duty holder	Duty to health and safety in the workplace	Duty to test	Duty to provide information
<b>Designers of plant, structures, or substances</b>	A PCBU who is a designer of plant, substances or structures that are to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling or construction, storage, dismantling, and disposal is designed, so far as is reasonably practicable, to be without risks to health or safety when used for its intended purposes.	Designers of the plant, structure or substance must carry out tests and examinations sufficient to ensure that when used for its intended purpose the plant, structure or substance meets work health and safety requirements.	Adequate information must be given to those for whom the plant, structure or substance was designed about its intended purpose, test results and any conditions necessary to ensure that it is safe and without risks to health or safety, when used for its intended purpose. Information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.
<b>Manufacturers of plant, structures, or substances</b>	A PCBU who is a manufacturer of any plant, structure or substance which is manufactured to be used or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is so far as is reasonably practicable without risks to health or safety when used for its intended purpose.	Manufacturers must carry out or arrange tests and examinations sufficient to ensure that the plant, structure, or substance is manufactured to meet work health and safety requirements when used for a purpose for which it was manufactured.	Adequate information must be given to any person to whom the product is provided about the purpose for which it was manufactured, test results and any conditions for its intended purpose it is safe and without risks to health or safety. Current relevant information must also be provided, so far as reasonably practicable to other end users at a workplace upon request.

<sup>14</sup> See section 21 of the WHS Act

<sup>15</sup> See sections 21-26 of the WHS Act

Duty holder	Duty to health and safety in the workplace	Duty to test	Duty to provide information
<b>Importers of plant, substances, or structures</b>	A PCBU who is an importer of any plant, substance or structure which is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling storage and disposal or dismantling is, so far as is reasonably practicable without risks to health or safety when used for its intended purpose.	Importers must carry out or arrange tests and examinations sufficient to ensure that the imported plant, structure, or substance meets work health and safety requirements when used for its intended purpose. Alternatively, importers must ensure that these tests and examinations have been carried out.	Adequate information must be given to any person who the importer supplies with the plant, structure or substance about its intended purpose, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety. Current relevant information must also be provided, so far as is reasonably practicable, to other end users at a workplace upon request.
<b>Suppliers of plant, substances, or structures</b>	A PCBU who is a supplier of any plant, substance, or structure which is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is, so far as is reasonably practicable without risk to health and safety when used for its intended purpose	Suppliers must carry out or arrange tests and examinations sufficient to ensure that the supplied plant, substance, or structure meets work health and safety requirements when used for its intended purpose. Alternatively, suppliers must ensure that these tests and examinations have been carried out.	Adequate information must be given to any person who the supplier supplies with the plant, substances or structures about its intended purpose, test results and any conditions necessary to ensure that it is safe and without risks to health and safety. Relevant information must also be provided, so far as reasonably practicable, to other end users at workplace upon request.
<b>People installing, constructing, or commissioning plant or structures</b>	A PCBU who installs, constructs, or commissions plant or structures must also ensure, so far as is reasonably practicable, all workplace activity relating to the plant or structure including its decommissioning or dismantling is without risk to health or safety.	Not required	Not required
<b>WHS service providers</b>	A PCBU who provides services relating to work	Not required	Not required

Duty holder	Duty to health and safety in the workplace	Duty to test	Duty to provide information
	<p>health and safety must ensure, so far as is reasonably practicable, the WHS services are provided so that any relevant use of them at, or in relation to a workplace will not put at risk the health and safety of a person at the workplace.</p>		

## 7.5. Duties of officers

Officers of corporations and other organisations are those individuals who make, or participate in, making decisions that affect the whole, or a substantial part, of the business or corporation. For example, an officer may make decisions regarding the management of corporate risks, including work health and safety risks.

Under the applied work health and safety provisions an officer of a PCBU must exercise due diligence to ensure the PCBU complies with its health and safety duties. These duties relate to the strategic, structural, policy and key resourcing decisions in the workplace.

Due diligence includes taking reasonable steps to:

- acquire and keep up to date knowledge on work health and safety matters
- gain an understanding of the nature and operations of the work and associated hazards and risks
- ensure the PCBU has, and uses, appropriate resources and processes to eliminate or minimise risks to work health and safety
- ensure the PCBU has appropriate processes to receive and consider information about work-related operation and maintenance incidents, hazards, and risks, and to respond in a timely manner
- ensure the PCBU has, and implements, processes for complying with their duties and obligations (for example, reports notifiable incidents, consults with workers, complies with notices, provides appropriate training and instruction, and ensures HSRs receive training entitlements)
- verify the provision and use of relevant resources and processes.

An officer may be charged with an offence whether or not the PCBU has been convicted or found guilty of an offence under the applied work health and safety provisions.<sup>16</sup>

## 7.6. Duties of workers

While at work, a worker must:

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<sup>16</sup> See section 27 of the WHS Act

- take reasonable care for their own health and safety
- take reasonable care that their actions or omissions do not adversely affect the health and safety of other persons.

They must also:

- comply, so far as they are reasonably able, with any reasonable instructions given by the PCBU to allow the PCBU to comply with the applied work health and safety provisions
- cooperate with any reasonable policy or procedure of the PCBU relating to health and safety at the workplace that has been notified to the workers.<sup>17</sup>

## 7.7. Duties of other persons at the workplace

Similar duties apply to other persons at the workplace. Any person at the workplace, including visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with WHS laws.<sup>18</sup>

## 7.8. Shared duties

More than one person can concurrently have the same duty for health and safety in the workplace. Each of these duty holders must comply with that duty to the standard required by the applied work health and safety provisions even if another duty holder has the same duty.

If more than one person has a duty for the same matter, then each person retains the responsibility for the person's duty in relation to the matter and must discharge their duty to the extent to which the person has the capacity to influence and control the matter. A person cannot contract out their work health and safety duties or responsibilities.<sup>19</sup>

An example of shared duties can be where an OEI licence holder takes a multi contracting approach and awards individual contracts for the installation and operations and maintenance of an offshore wind farm as represented in **Figure 3**.

In this case, the licence holder will perform the project management and owners engineering role, and each contractor must demonstrate that the delivery of their scope of work complies to the standards required by the applied work health and safety provisions.

The nature of information which must be shared by PCBUs is outlined in Table 2 above and extends to information from a range of duty holders. It will also extend to information in approved codes of practice and Australian standards, which are referenced in the applied WHS legislation.

Further to this, PCBUs are expected to manage risks to health and safety by identifying reasonably foreseeable hazards that could give rise to risks to health and safety, assessing these risks, and identifying

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<sup>17</sup> See section 28 of the WHS Act

<sup>18</sup> See section 29 of the WHS Act

<sup>19</sup> See section 16 of the WHS Act

control measures which will minimise the risk so far as is reasonably practicable. Identification of control measures may include identifying and implementing a range of suitable Australian and international standards and guidance materials relating to the hazard which are not cited in the legislation but are considered industry leading practice.

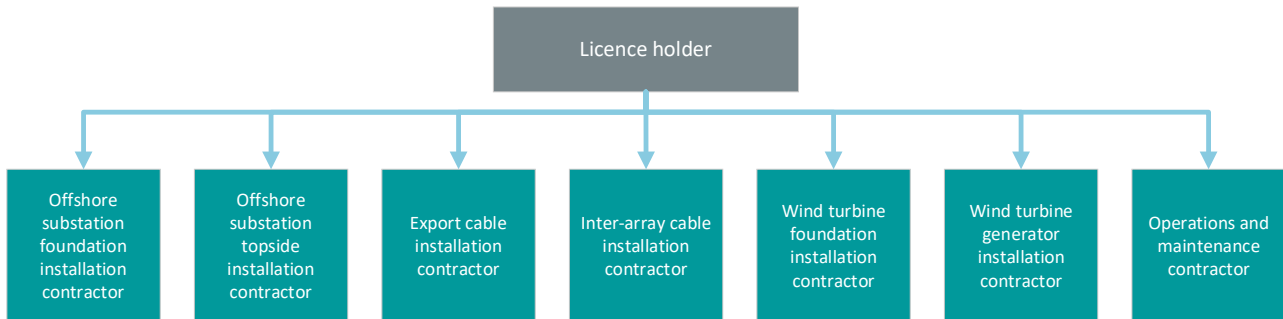


Figure 3. Multi contracting approach and shared duty holders

## 7.9. Principal contractors

The WHS Regulations define a principal contractor as a PCBU that commissions a construction project<sup>20</sup>.

If the principal contractor, engages another PCBU as principal contractor for the construction project and authorises the person to have management or control of the workplace and to discharge the duties of a principal contractor, then the person engaged is the principal contractor for the project.

A construction project has only one principal contractor at any specific time. Where a PCBU has commissioned two or more construction projects and intends to appoint different principal contractors to each one, it is essential that the workplaces associated with each construction project are defined as separate and distinct.

In all cases, the duties of a principal contractor for the project<sup>21</sup> are additional to the duties imposed on a PCBU under division 3 of the WHS Act. In other words, a principal contractor must fulfill the duties of a PCBU and the additional duties of a principal contractor.

The principal contractor must prepare a WHS management plan and ensure that it includes:

- the names, positions and health and safety roles and responsibilities of all relevant parties
- the arrangements in place between any PCBUs regarding consultation, cooperation and the coordination of activities in relation to their WHS duties
- the arrangements for management of WHS incidents
- any site specific WHS rules and the communication of these rules

<sup>20</sup> See WHS Reg 293 and Clause 20 Reg 293A of the OEI Regs

<sup>21</sup> See Part 6.4 of the WHS regulations

- the arrangements for the collection, assessment, monitoring and review of safe work method statements for the project.<sup>22</sup>

## 8. Workforce representation and engagement

Workforce representation and engagement is an important aspect of the OEI Act framework. The ongoing exchange of information and consultation with workers may be carried out directly with the broader workforce or via a representative of the workforce. These workers may be informal representatives, or they may be formally elected Health and Safety Representatives (HSRs) under the OEI Act framework.

Workers are entitled to:

- elect a HSR if they wish to be represented by one
- request the formation of a health and safety committee
- cease unsafe work in certain circumstances
- have health and safety issues at the workplace resolved in accordance with an agreed issue resolution procedure
- not be discriminated against for raising health and safety concerns.

### 8.1. Health and safety representatives

HSRs contribute to improving the safety of the workforce by representing their fellow workers, understanding their health and safety concerns and assisting them to participate in decisions that affect them. Any worker can ask the PCBU to aid in the election of HSR's for the workplace.

A HSR is elected to represent the health and safety interests of a work group and must be part of that work group. There must be consultation and agreement between workers on the number of HSR's and deputy HSR's within a work group.

The PCBU must maintain a current list of all HSR's and deputy HSR's for the workplace and display this list within the workplace.<sup>23</sup>

#### 8.1.1. Work groups

Work groups include a group of workers who share similar work situations or activities. Within the offshore renewables sector, a work group might include a team of installation technicians. Work groups may include contractors, labour hire staff and apprentices.

If a worker requests the election of HSR's, the PCBU must commence the election process within 14 days to determine the following:

- the number and makeup of individual work groups

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<sup>22</sup> See Chapter 6 of the WHS Regulations

<sup>23</sup> See Part 5 Division 3 of the WHS Act

- the workplaces to which the work groups apply
- the number of HSR's and deputy HSR's.

The size and number of work groups may be renegotiated and changed at any time.<sup>24</sup>

### 8.1.2. HSR powers and functions

Health and safety representatives can:

- represent their work group in matters relating to health and safety
- monitor risk control measures which have been put in place to protect workers
- investigate complaints from their work group members relating to work health and safety
- inquire into anything that appears to be a risk to the health and safety of work group members.

HSR's may also represent another work group or work group member for the business or undertaking if there is a serious risk to the health or safety of other workers from an immediate hazard, or a worker in another work group asks for their assistance as their HSR is unavailable.

When exercising their powers or functions, a HSR can:

- spend as much time as necessary to exercise their powers or to perform their functions
- inspect the workplace at any time after giving relevant notice, or at any time without notice in the event of an incident or when there is a serious and imminent risk to health and safety
- accompany an inspector during an inspection of an area where a work group member works
- be present at an interview with a worker that they represent and a PCBU or an inspector
- receive information about work health and safety of work group members which has been deidentified of personal information
- request a health and safety committee be established
- request assistance from any other worker
- issue a provisional improvement notice (PIN)
- direct a person to cease unsafe work in certain circumstances.

It should be noted an HSR is not personally liable for anything done or not done in good faith while carrying out their roles.<sup>25</sup> More information for HSR's is available at [oir.gov.au](http://oir.gov.au).

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<sup>24</sup> See Part 5 Division 3 Subdivision 2 of the WHS Act

<sup>25</sup> See Part 5 Division 3 of the WHS Act

### 8.1.3. Provisional improvement notices (PIN)

A HSR may issue a provisional improvement notice as a part of their core powers and functions under the WHS Act.

A PIN is a written notice issued by a HSR requiring a contravention against the WHS Act or Regulations to be remedied within a certain period or a likely contravention to be prevented.

Under section 90 of the WHS Act a provisional improvement notice can be issued if a HSR reasonably believes that a person:

- is contravening a provision of the WHS Act, or
- has contravened a provision of the WHS Act in circumstances that make it likely that the contravention will continue or be repeated.<sup>26</sup>

Under the OEI Act, the provisions under which a HSR can issue a PIN are expanded further and state that a HSR can issue a PIN if they reasonably believe that a person:

- is contravening a requirement of a management plan, or has contravened a requirement of a management plan in circumstances that make it likely that the contravention will continue or be repeated, and either:
  - the requirement is in connection with the health and safety of any person, or
  - the contravention involves a risk to the health and safety of any person.

### 8.1.4. Eligibility and election of HSRs

The members of a work group elect their own HSR, and all members of the work group are entitled to vote in the election.

To be eligible for election as a HSR, a person must be a member of the work group and not be disqualified from acting as a HSR.

A deputy HSR may also be elected for a work group to take on the HSR role, if the HSR for the work group ceases to hold office or is unable to exercise their powers or perform their functions.

The PCBU must provide any resources, facilities and assistance that are reasonably necessary to conduct an election. Members of the work group decide how the election will be conducted. If the majority of work group members agree, the election may be conducted with the assistance of a union or other person or organisation.

An election is not needed when the number of candidates is the same as the number of vacancies.<sup>27</sup>

The term of office for a HSR or deputy HSR is three years. A HSR ceases to hold office if:

- they leave the work group

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<sup>26</sup> See section 90 of the WHS Act

<sup>27</sup> See section 60 of the WHS Act

- they are disqualified from being a HSR
- they resign as a HSR by written notice
- the majority of members of the group agree the person should no longer represent them and they are removed from office in accordance with the OEI Regulations.

HSR's and deputy HSR's can be re-elected.

Where a person is adversely affected by a decision or an action of a HSR, they may be disqualified in circumstances where a HSR has exercised powers or performed functions improperly or where a HSR has incorrectly used or disclosed information.<sup>28</sup>

### 8.1.5. HSR training

If requested, a PCBU must allow a HSR and deputy HSR's to attend a work health and safety course or training which has been approved by the OIR. A PCBU cannot refuse to allow a HSR to attend an approved course.

A PCBU must as soon as practicable, allow a HSR to attend an approved training program with paid time off from their role.<sup>29</sup>

## 8.2. Health and safety committees

A health and safety committee (HSC) is a formal committee established under the OEI Act framework to facilitate cooperation between a PCBU and workers in developing and carrying out measures to ensure health and safety at work.

This includes health and safety standards, rules and procedures for the workplace. A PCBU at a workplace must set up an HSC for the workplace within two months of being requested to do so by a HSR for the workplace, or by five or more workers at the workplace. A PCBU can also establish a HSC on their own initiative.

The constitution of the HSC is determined by agreement between the PCBU and workers at the workplace although some minimum requirements apply. At least half of the members of an HSC must be workers that have not been nominated by the PCBU.

A HSR for the workplace can join the committee if they wish and, if a workplace has more than one HSR, they can choose one or more HSR's to join the committee (if they consent).

At least one member of the HSC must be a PCBU with sufficient authority to ensure compliance with the duties, including taking action to ensure a decision of the committee is implemented without unreasonable delay.

If the PCBU is an individual, that individual must be a member of the HSC. If agreement cannot be reached on how the HSC should be constituted, any party can ask the OIR to appoint an inspector to decide the matter.

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<sup>28</sup> See sections 60-67 of the WHS Act

<sup>29</sup> See section 72 WHS Act and Regulation 21 of the WHS Regulations

An OEI inspector may decide the constitution of the HSC or that the HSC should not be established. A HSC must meet at least once every three months and at any reasonable time at the request of at least half of the members of the committee.

No formal training requirements apply for committee members. Each committee member must be allowed to spend such time as is reasonably necessary to attend meetings of the committee or carry out functions as a member of the committee.

This must be paid time based on the rate they would have otherwise been paid at the time.<sup>30</sup>

### 8.3. Right to cease work

If a worker has a reasonable concern about a serious risk to their health or safety from immediate or imminent exposure to a hazard, or the health and safety of any other person, they may cease or refuse to carry out work that would expose them, or any other person, to that hazard. A worker who ceases work must notify the PCBU as soon as practicable.

Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

An affected person including the PCBU, HSR or worker may request an OEI inspector to attend the workplace to assist in resolving an issue relating to the cessation of work.

A worker cannot be discriminated against in their engagement for exercising their right to cease unsafe work under the OEI Act.

Issues arising in relation to the continuity of engagement of a worker may be referred to the Work Health and Safety Tribunal for resolution, regardless of whether an inspector was appointed to resolve the matter.<sup>31</sup>

### 8.4. Resolution of issues

Issue resolution procedures apply under the applied work health and safety provisions if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussions between parties.

If the matter is not resolved, the relevant parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with an agreed procedure or the default procedure set out in the applied WHS Regulations.

Relevant parties are:

- the PCBU or their representative
- each PCBU or their representative if the issue involves more than one PCBU

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<sup>30</sup> See Part 5 Division 4 of the WHS Act

<sup>31</sup> See Part 5 Division 6 of the WHS Act

- the HSR for a work group or their representative — if the worker(s) affected by the issue are in a work group
- the worker(s) or their representative — if the worker(s) affected by the issue are not in a work group.

The PCBU's representative must not be an HSR and must have an appropriate level of seniority and be sufficiently competent to act as the person's representative.

A worker's representative may enter the workplace for the purpose of attending discussions with a view to resolving the issue. If the issue remains unresolved, any party may ask the OIR to appoint an inspector to attend the workplace to assist in resolving the issue.

The OIR may refuse the request to appoint an inspector if the parties making the request have not made reasonable efforts to resolve the issue.

While this process is underway, workers may still exercise their right to cease unsafe work and HSRs who have completed the approved training may continue to exercise their powers to issue a PIN or direct that unsafe work cease. Inspectors will not undertake conciliation or mediation to resolve the issue but may exercise any of their compliance powers under the OEI Act framework to resolve any underlying work health or safety issues.

No later than two days after the day on which the request is made, an inspector must make a decision resolving the issue. If this time is insufficient, the OIR may apply to the Work Health and Safety Tribunal for an extension of the deadline.

The Tribunal will provide any affected parties the opportunity to make submissions before setting a new deadline.<sup>32</sup>

## 9. WHS risk management for OEI activities

Robust hazard identification and risk assessment are essential for preventing dangerous incidents.

### 9.1. Safety in design of offshore infrastructure projects

The OEI Act framework makes provision for licence holders to prepare and submit design notifications to the OIR in relation to offshore infrastructure projects under a commercial licence or a transmission and infrastructure licence.

The purpose of the design notification scheme is to ensure that design aspects critical to the management of safety are considered early in the lifecycle of offshore infrastructure projects and that design decisions are made taking safety considerations into account.

Further information on the requirements of the design notification scheme<sup>33</sup> can be found at [oir.gov.au](http://oir.gov.au).

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<sup>32</sup> See Part 5 Division 5 of the WHS Act 2011

<sup>33</sup> See section 114 (2) (d) of the OEI Act

## 9.2. Risk assessments

As detailed in section 7 of this guideline, the applied WHS provisions require PCBU's to eliminate risks to health and safety, or if this is not possible to minimise those risks so far as is reasonably practicable<sup>34</sup>. The applied WHS regulations place further obligations on PCBU's to identify hazards, manage risks to health and safety, apply control measures in accordance with a structured hierarchy and maintain and review those control measures<sup>35</sup>.

Licence holders and other PCBU's should ensure that appropriate risk assessment and management processes are in place which comply with these obligations, and which allow for the effective management of risks to health and safety.

## 9.3. Risk minimisation – what is reasonably practicable?

An overarching object of the WHS Act is to secure the health and safety of workers and workplaces through the elimination and minimisation of risks arising from work, so far as is reasonably practicable<sup>36</sup>.

In determining what is reasonably practicable, there is a requirement to weigh up all relevant matters including:

- the likelihood of a hazard or risk occurring
- the degree of harm that might result from the hazard or risk
- what the person concerned knows, or ought to reasonably know, about the hazard or risk as well as the ways of eliminating or minimising that risk
- the availability of suitable ways to eliminate or minimise the hazard or risk
- the cost of eliminating or minimising the hazard or risk.

Costs may only be considered after assessing the extent of the risk and the available ways of eliminating or minimising the risk.

Cost will not ordinarily be the key factor in determining what is reasonably practicable for a duty holder to do unless it can be shown to be 'grossly disproportionate' to the risk.

## 10. WHS management system

An organisational level WHS management system (WHSMS) is a risk-based and systematic approach to managing work health and safety that is integrated with a PCBU's established business practices and procedures to ensure effective implementation of risk controls. The level of detail of a WHSMS should reflect the risk profile and complexity of the activities being undertaken.

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<sup>34</sup> See section 17 of the WHS Act

<sup>35</sup> Chapter 3 part 3.1 of the WHS regulations

<sup>36</sup> Part 2 Division 1 WHS Act

When developing a WHSMS, consultation with the workforce is essential to gain a full understanding of the work environment and the specific nature of tasks and the associated hazards in the workplace. This consultation should also be ongoing as individual components of the management system are reviewed and improved.

A WHSMS may form part of a broader management system for an offshore infrastructure project. For example, a management system for an offshore infrastructure project may cover the management of other risks that arise from the project including in relation to infrastructure integrity, environmental management and other matters.

### 10.1. OEI Act management plans

OEI Act licence holders must have a management plan approved by the OIR before activities involving the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy or offshore electricity transmission infrastructure can commence. The management plan approach under the OEI framework provides for the whole-of-project oversight by the licence holder for the range of activities and interactions across their project.

The OEI Act and Regulations require each licence holder to develop an OEI management plan which outlines the licence holder's systems and processes for managing WHS, infrastructure integrity and environmental management for the project.

Management plans will detail how offshore infrastructure activities are proposed to be carried out and plans will vary according to the licence and type of project. The management plan provides a basis for the OIR to monitor and enforce compliance against relevant requirements and obligations as described in the management plan and in accordance with relevant legislation.

Further guidance on the requirements for an OEI Act management plan can be found at [oir.gov.au](http://oir.gov.au).

### 10.2. Consultation, cooperation and coordination

A safe workplace is more easily achieved when everyone involved in the work communicates with each other to identify hazards and risks, talks about health and safety concerns, and works together to find solutions. This includes cooperation between the licence holder and external parties engaged by the licence holder (PCBUs) who manage or control the work and those who carry out the work or who are affected by the work.

While PCBU's have clear duties and responsibilities regarding work health and safety, they do not always have a comprehensive understanding of the work environment, or the hazards that may be present in the workplace. It is therefore essential, that each PCBU consult and communicate with the workforce about any changes they intend to make in the workplace and provide workers with an opportunity to discuss potential hazards that may be present in the workplace.<sup>37</sup>

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<sup>37</sup> See section 47 of the WHS Act

The applied WHS provisions require duty holders with shared responsibilities to work together effectively. This means duty holders need to ensure that there is effective consultation, cooperation, and coordination between all parties.<sup>38</sup>

Each PCBU must, so far as is reasonably practicable, consult with workers and health and safety representatives (HSRs) (if there are any in place) about matters that directly affect them<sup>39</sup>. This duty extends to consulting with all kinds of workers not just the PCBU's own employees, including any contractors and their workers, employees of labour hire companies, and apprentices.

The duty to 'consult' does not require total agreement, as each duty holder retains responsibility for discharging their obligations under the applied WHS provisions.

A PCBU must consult with workers when:

- identifying hazards and assessing risks arising from work
- proposing changes that may affect the health and safety of workers
- whenever specifically required to do so under relevant legislation.

They must also consult when making decisions about:

- ways to eliminate or minimise risks
- the adequacy of facilities or worker's welfare at work
- procedures for consulting with workers
- procedures for resolving health and safety issues
- procedures for monitoring the health of workers or workplace conditions
- how to provide health and safety information and training to workers.

It may also be necessary to consult workers about matters that are not listed above, for example when conducting investigations into incidents or 'near-misses'.

Workers who have been consulted under these provisions must be advised of the outcome in a timely manner. There is no particular way this advice must be given, however in all cases communication of outcomes should be transparent, clear and accessible to workers.<sup>40</sup>

The OEI Act and Regulations also contain requirements for the licence holder to consult with the workforce when preparing an initial management plan in relation to the health and safety of workers. If a workforce is not yet in place when the management plan is being developed, the licence holder must consult with each union that is entitled to represent the industrial interests of workers whose health and safety might be directly affected by the activity.<sup>41</sup>

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<sup>38</sup> See section 48 of the WHS Act

<sup>39</sup> See section 70 of the WHS Act

<sup>40</sup> See section 49 of the WHS Act

<sup>41</sup> See section 49 of the OEI Act and OEI Regs 15A and 15B

## 11. Incident notifications

Requirements for incident notification are contained in both the OEI Regulations and the applied WHS legislation.

Under the OEI Regulations the licence holder must notify the OIR of an incident as soon as practicable after the licence holder becomes aware that an event of the types of incidents specified in section 161 of the OEI regulations has occurred.

Under the applied work health and safety provisions, a PCBU has a duty to ensure the OIR are notified of notifiable incidents specified in the Section 35 of the WHS Act

For further information on incident notifications refer to our Notification and reporting of incidents, events and occurrences guideline.

## 12. WHS authorisations

### 12.1. High-risk work

The WHS Regulations list certain types of high-risk work that must only be performed by people who have been authorised by a high-risk work licence to carry out that type of work.

A PCBU must not direct or allow a worker to carry out work requiring authorisations without the required authorisation.<sup>42</sup>

In order to obtain a high-risk work licence a worker must have completed the relevant training as outlined in Schedule 4 of the WHS Regulations.

Further information about high-risk work and how to apply for high-risk work licences is available in our Licensing high-risk work guideline.

### 12.2. Prescribed qualifications and experience

The applied WHS provisions require that certain types of work are to be carried out only by, or supervised by, a person with the prescribed qualifications or experience.<sup>43</sup>

### 12.3. Recognition of licences and authorisations from corresponding regulators

The applied WHS regulations make provision for recognition of licences and authorisations issued under a corresponding WHS law in other jurisdictions. This may include the recognition of licences for asbestos assessment and removal<sup>44</sup>, high risk work<sup>45</sup> and construction induction training cards<sup>46</sup>.

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<sup>42</sup> See section 43 of the WHS Act

<sup>43</sup> See section 44 of the WHS Act

<sup>44</sup> See regulation 488 of the WHS Regulations

<sup>45</sup> See regulation 83 of the WHS Regulations

<sup>46</sup> See regulation 318 of the WHS Regulations

The OIR will also recognise training for entry permit holders and health and safety representatives that has been conducted in other jurisdictions but is subsequently approved by the OIR. Further information about health and safety representatives training is available in the OIR's Health and safety representatives guideline.

### 13. Diving work

Offshore commercial diving may be undertaken at any point throughout the lifecycle of an offshore infrastructure project from supporting its construction, to carrying out inspections and repairs, and installing and removing equipment.

Diving work is inherently dangerous, requiring its workforce to operate specialised equipment in an underwater environment that does not support human life. To protect the health and safety of the diving workforce, the OEI Regulations provide specific provisions for offshore commercial diving operations. These diving provisions apply generally to any relevant PCBU.

For further information about diving requirements under the OEI Act framework including preparation of diving safety management systems and diving project plans refer to the OIR's Diving guidelines.

### 14. WHS entry permit holders

A WHS entry permit holder is a person who holds a WHS entry permit under the WHS Act.

Under the applied WHS provisions, a WHS entry permit holder may enter related onshore premises for the purpose of inquiring into a suspected contravention or breach of the OEI Act and the applied work health and safety provisions in relation to particular regulated offshore activities and that relates to a relevant worker.<sup>47</sup>

A relevant worker is defined within section 237 of the OEI Act as a worker:

- who is a member, or is eligible to be a member, of a relevant union
- whose industrial interests the relevant union is entitled to represent
- who works at a workplace in the Commonwealth offshore area where the regulated offshore activities are carried out.<sup>48</sup>

Under the applied WHS provisions, an entry permit holder may enter related onshore premises to:

- inquire into a suspected contravention of the OEI Act and the applied work health and safety provisions that relates to or affects a relevant worker
- inspect employee records or other documents relating to the suspected contravention held by another person; and
- consult or advise relevant workers on work health and safety matters.

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<sup>47</sup> See section 117 of the WHS Act

<sup>48</sup> See section 237 of the OEI Act

A WHS entry permit can be issued to a union official who has completed an approved training course and holds a valid and current entry permit under the Commonwealth *Fair Work Act 2009* or the relevant state or territory workplace legislation (whichever applies).

A WHS entry permit holder may exercise a right of entry only during the usual working hours at the workplace. There is no right to enter any part of a workplace that is used only for residential purposes.

While exercising the right of entry a WHS entry permit holder must comply with any reasonable request to comply with any work health and safety requirements or any other legal requirement that may apply at the workplace.

A WHS entry permit holder must not contravene a condition of their WHS entry permit. Permits are valid for three years from the date of issue or cease when the permit holder ceases to be a union official for the relevant union or their permit under the Fair Work Act or a state/territory workplace law expires. A permit must be returned to the Fair Work Commission within 14 days of expiry.

WHS entry permit holders must show their WHS entry permit and photographic identification upon request to any person.<sup>49</sup>

### 14.1. Suspected breaches of the applied work health and safety provisions

Before entering a workplace, a WHS entry permit holder must give at least 24 hours' notice but no more than 14 days' notice to the relevant PCBU and the person with management or control of the workplace about the proposed entry and the suspected contravention of the applied work health and safety provisions.

While at the workplace the WHS entry permit holder may exercise a number of powers including:

- inspecting any work system, plant substance or structure relevant to the suspected contravention
- consulting with the relevant PCBU and workers in relation to the suspected contravention
- requiring the relevant PCBU to allow the WHS permit holder to inspect and make copies of any document that is relevant to the suspected contravention, if the document is held at the workplace or is accessible from a computer at the workplace.<sup>50</sup>

The PCBU must not, without reasonable excuse, refuse or fail to comply with this request. A PCBU is not required to allow inspection or copying of documents if this would contravene a law (for example a law relating to privacy) of the Commonwealth, state or territory (whichever applies).

The WHS entry permit holder may also warn any person they believe to be exposed to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard.<sup>51</sup>

### 14.2. Inspecting employee records or information

An entry permit notice must include the following:

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<sup>49</sup> See sections 125-128, 136-137 of the WHS Act

<sup>50</sup> See sections 118 and 122 of the WHS Act

<sup>51</sup> See sections 144-148 of the WHS Act

- so far as is practicable, the particulars of the suspected contravention to which the notice relates
- a description of the ‘employee records’ and other documents, or of the classes of records and documents, directly relevant to the suspected contravention, that are proposed to be inspected
- a declaration stating the prescribed matters.<sup>52</sup>

### 14.3. General requirements

A person must not without reasonable excuse:

- refuse or unduly delay a permit holder’s entry to a workplace under the WHS Act
- intentionally and unreasonably obstruct them from exercising any rights under the WHS Act.

Similarly, a WHS permit holder exercising their rights must not intentionally and unreasonably delay, hinder or obstruct any person or disrupt any work at a workplace, or otherwise act in an improper manner.

A person must not do something with the intention of giving the impression—or be reckless as to whether the impression is given—that they can do something under the laws which they cannot.

A person must not use or disclose information, or a document obtained in an inquiry into a suspected contravention for a purpose that is not related to the inquiry or rectifying the suspected contravention except in a limited number of circumstances. Disclosure is permitted for example to report concerns to the relevant authorities, assist any subsequent investigation or to lessen or prevent a serious risk to a person’s health or safety or a serious threat to public health or safety.<sup>53</sup>

### 14.4. Disputes

Any party to a dispute about a right of entry may ask the OIR to appoint an inspector to attend the workplace to assist in resolving the dispute.

Alternatively, the dispute may be dealt with by the authority that issued the WHS entry permit. An application to have the dispute resolved may be brought by an affected person or the OIR. The authority may also initiate proceedings itself. The authority may deal with a dispute in any way it determines including mediation, conciliation or arbitration.<sup>54</sup>

### 14.5. Revoking a permit

A WHS entry permit may be revoked by the authorising authority for certain reasons including if the permit holder no longer meets the eligibility criteria for holding the permit, contravenes permit conditions or engages in improper behaviour. Upon application the authorising authority can impose additional conditions on the permit or suspend or revoke the permit.<sup>55</sup>

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<sup>52</sup> See sections 117-120 of the WHS Act

<sup>53</sup> See sections 144-148 of the WHS Act

<sup>54</sup> See sections 141-143 of the WHS Act

<sup>55</sup> See section 138 of the WHS Act

## 15. Enforcement, offences and penalties

### 15.1. WHS enforcement

The OIR is responsible for monitoring and enforcing compliance with the OEI framework (including the applied work health and safety provisions) and has access to a range of graduated enforcement tools. These tools include notices, infringements, enforceable undertakings, and the ability to seek prosecutions for offences against legislative requirements.

### 15.2. OEI inspectors

OEI inspectors have a range of functions and powers that can be exercised to monitor and enforce compliance with the requirements of the OEI framework. Specific to WHS, section 244 of the OEI Act inserts additional functions and powers for inspectors as below:

- to assist in the resolution of work health and safety issues at workplaces within the meaning of the applied WHS provisions
- to assist in the resolution of issues related to access to a workplace by an assistant to a health and safety representative
- to review disputed provisional improvement notices.<sup>56</sup>

### 15.3. WHS offences and penalties

The applied work health and safety provisions set out three categories of offences for breach of the work health and safety duties. The maximum penalties differ depending on the category of the offence and whether the offender is an individual (e.g. a worker, or a PCBU), an officer (as defined) or a body corporate.

**Category 1** – applies to those with a WHS duty where their conduct in failing to comply with that duty caused the death of, or serious harm to, a person<sup>57</sup>.

**Category 2** – applies to those with a WHS duty where their conduct in failing to comply with that duty exposed a person to the risk of death, injury, or harm to health<sup>58</sup>.

**Category 3** – applies to those with a WHS duty who failed to comply with that duty<sup>59</sup>.

The legislation sets out the maximum penalties for a breach of the health and safety duties.

### 15.4. Alternative penalty options

In addition to imposing a penalty, courts may impose alternative remedies including:

- work health and safety project orders

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<sup>56</sup> See section 244 of the OEI Act

<sup>57</sup> See section 31 of the WHS Act

<sup>58</sup> See section 32 of the WHS Act

<sup>59</sup> See section 33 of the WHS Act

- release on the giving of a court-ordered work health and safety undertaking
- adverse publicity orders
- orders for restoration
- injunctions
- training orders.<sup>60</sup>

## 15.5. Industrial manslaughter

The offence of industrial manslaughter is included in the WHS Act as a category 1 penalty and may be applied to PCBUs and their officers. The prosecution must establish, that the PCBU or their officer has:

- a health and safety duty
- the person intentionally engages in conduct
- the conduct breaches the health and safety duty
- the conduct causes the death of an individual
- the person was reckless, or negligent, as to whether the conduct would cause the death of an individual.

A person's conduct causes a death if the conduct substantially contributes to the death<sup>61</sup>.

## 16. Monitoring

This guideline 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.

## 17. Related documents

N-04401-PL2048 – Policy - Assessment

N-02401-PL2179 – Policy – Inspections – Monitoring and securing compliance

N-05501-PL2096 – Policy - Enforcement

N-03401-PL2100 – Policy – Investigation

N-11300-PL2064 – Policy – Regulatory fees and levies

N-04403-GL2084 - Management plan content

N-04403-GL2254 – Guideline – Management plan lifecycle

N-03402-GL2083 – Guideline – Notification of incidents, events and occurrences

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<sup>60</sup> See sections 236 – 241 of the WHS Act

<sup>61</sup> See sections 30A WHS Act

N-04406-GL2328 – Guideline – Entry permit holder training

N-04406-GL2245 – Guideline – Health and safety representatives training

N-04402-GL2063 – Guideline – Design notifications

N-04406-GL2214 – Guideline – Licensing high-risk work

N-04500-GL1222 – Guidelines – Diving safety management systems and diving project plans

N-05000-GL2405 – Guideline – Enforceable undertakings

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

OIR Health and Safety Representative Handbook

Fact sheet – Registration of plant and plant design

## Appendix A – A summary of the applied WHS provisions under the OEI Act framework

### 1. Purpose

The information contained in this attachment is intended to explain the operation of the applied work health and safety provisions under the OEI Act and OEI Regulations. It focusses on how the OEI Act applies, modifies or supplements the provisions of the WHS Act and the WHS Regulations to ensure they are fit for purpose to operate in the OEI context.

This document is intended to provide advice that may assist duty holders to navigate the multiple pieces of legislation that are relevant in understanding the applied WHS provisions. This document is not a legal instrument, and it does not override or amend the requirements of the OEI Act or the OEI Regulations.

### 2. Application of the Work Health and Safety Act 2011

Chapter 6 Part 1 of the OEI Act applies the provisions of the WHS Act subject to modifications. Some of these modifications are relatively straightforward and limited guidance beyond the text of the modified provisions is provided in this document. Other provisions are more complex in their application and are discussed in further detail.

#### 2.1. Division 1 - Introduction

##### **OEI Act s225 - Simplified outline of this Part**

*The Work Health and Safety Act 2011 applies, with some modifications, in relation to offshore infrastructure activities and other things done under this Act. Regulations made under this Act may also provide for regulations made under the Work Health and Safety Act 2011 to apply in the same way.*

*This Part mostly applies the Work Health and Safety Act 2011 to matters in the Commonwealth offshore area. However, some provisions also apply onshore, including certain duties of persons conducting businesses or undertakings.*

*The Regulator and OEI inspectors have various functions and powers under the Work Health and Safety Act 2011 as applied by this Part.*

Section 225 provides a simplified overview of the application of the WHS Act and its regulations through the OEI Act framework.

## 2.2. Division 2 – Application of the Work Health and Safety Act 2011

### OEI Act s226 - Application of the Work Health and Safety Act 2011

*The Work Health and Safety Act 2011 (the Work Health and Safety Act), as modified by this Part, applies in relation to any of the following carried out in the Commonwealth offshore area:*

- (a) work in the nature of offshore infrastructure activities;*
- (b) any other work carried out, or purportedly carried out, under a licence;*
- (c) any other work carried out, or purportedly carried out, in accordance with a requirement under this Act.*

Section 226 is the primary provision that extends the application of the WHS Act to activities regulated under the OEI Act framework.

The provision operates to achieve the following:

- Extending the application of the WHS Act to the Commonwealth offshore area as defined under the OEI Act<sup>62</sup>.
- Limiting the scope of application to specific activities and work within the Commonwealth offshore area to the types of work included under s226 (a), (b) and (c).

#### ***(a) Work in the nature of offshore infrastructure activities***

The OEI Act defines an ***offshore infrastructure activity*** as follows:

***offshore infrastructure activity*** means the construction, installation, commissioning, operation, maintenance or decommissioning of:

- (a) offshore renewable energy infrastructure; or
- (b) offshore electricity transmission infrastructure.

This means that any person conducting a business or undertaking<sup>63</sup> or worker who is undertaking work which involves ***offshore renewable energy infrastructure*** or ***offshore electricity transmission infrastructure*** is required to comply with the applied WHS provisions. Work in an OEI Act licence area will fall within the scope of this requirement unless it is unrelated to offshore infrastructure. Examples of this may include persons who are fishing within a licence area or vessels that are transiting through the licence area but are not being used, or being prepared to be used, to undertake offshore infrastructure activities. Further discussion on the application of the WHS provisions to workers on vessels is included in relation to s230 of the OEI Act below.

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<sup>62</sup> See section 8 of the OEI Act

<sup>63</sup> See section 5 of the WHS Act

### ***(b) Any other work carried out, or purportedly carried out, under a licence***

The OEI Act sets out a range of duties and obligations that apply to licence holders, including in relation to decommissioning and removal of property and remediation of the licence area. The OEI Act also provides a range of tools that may be utilised to enforce compliance with the requirements of the Act and the regulations. An example of any other work that may fall within the scope of *any other work carried out, or purportedly carried out, under a licence* is work that is necessary for a licence holder to comply with a direction given by the OIR. The general power to give directions<sup>64</sup> allows the OIR to require the licence holder to do certain things or cease to do certain things within an OEI Act licence area. This may include undertaking work that is not *work in the nature of an offshore infrastructure activity*. For example, a licence holder may be directed to remove structures, equipment or property from a licence area that is not offshore renewable energy infrastructure or offshore electricity transmission infrastructure. This provision allows for work of this nature to be regulated under the applied work health and safety provisions.

### ***(c) Any other work carried out, or purportedly carried out, in accordance with a requirement under this Act***

This provision extends the application of the WHS provisions to work that is required to be carried out under the Act but that may not be taking place in a licence area under a licence. An example of work that may fall within this category is work that a licence holder or former licence holder is required to undertake under a remedial direction<sup>65</sup> from the OIR or the Minister. This provision allows for work of this nature to be regulated under the applied work health and safety provisions.

## **2.2.1. The Regulator**

### **OEI Act Section 227 - References to Comcare**

- (1) The Work Health and Safety Act applies as if a reference to Comcare were a reference to the Regulator (within the meaning of this Act).*
- (2) A reference in this Act to the Regulator's functions or powers under this Act includes a reference to any functions or powers of the Regulator under the Work Health and Safety Act as applied by this Part.*

Section 227 modifies the definition of the Regulator under the WHS Act such that all references to Comcare that appear in the applied WHS provisions should be read as if they refer the Regulator of the OEI Act. The Regulator of the OEI Act is the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) in its capacity as the Offshore Infrastructure Regulator (OIR) as further detailed in chapter 5, part 2 of the OEI Act. This clause provides the OIR with powers and functions under the applied work health and safety provisions which give the capacity for the OIR to monitor and enforce compliance with duties and obligations under those provisions.

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<sup>64</sup> OEI Act s121

<sup>65</sup> OEI Act s126 and s127

### 2.2.2. Definitions

#### OEI Act s228 – Section 4 definitions

*Section 4 of the Work Health and Safety Act applies as if the following definitions were included in that section:*

**Commonwealth offshore area** has the same meaning as in the Offshore Electricity Infrastructure Act 2021.

**management plan** has the same meaning as in the Offshore Electricity Infrastructure Act 2021.

**regulated offshore activities** means any of the following carried out in the Commonwealth offshore area:

- (a) work in the nature of offshore infrastructure activities (within the meaning of the Offshore Electricity Infrastructure Act 2021);
- (b) any other work carried out, or purportedly carried out, under a licence in force under the Offshore Electricity Infrastructure Act 2021;
- (c) any other work carried out, or purportedly carried out, in accordance with a requirement under the Offshore Electricity Infrastructure Act 2021 or regulations made for the purposes of that Act.

**related onshore premises**, in relation to particular regulated offshore activities, means premises where records relating to the regulated offshore activities are required to be kept under a provision of a management plan mentioned in paragraph 115(1)(f) of the Offshore Electricity Infrastructure Act 2021.

Section 228 seeks to extend existing definitions under section 8 of the OEI Act to the applied work health and safety provisions and also introduces a number of new definitions that are necessary to make the applied work health and safety provisions operate effectively. Further discussion of these definitions where they are utilised in the context of other provisions is provided throughout this document.

The definition of related onshore premises makes provision for OEI Inspectors and WHS entry permit holders and to access records related to regulated offshore activities.

### 2.2.3. Definition of inspector

#### OEI Act s229 – Section 4 (definition of inspector)

*Section 4 of the Work Health and Safety Act applies as if the definition of inspector were substituted with the following definition:*

**inspector** means an OEI inspector (within the meaning of the Offshore Electricity Infrastructure Act 2021).

Section 229 operates to provide OEI Inspectors with the powers to monitor and enforce compliance with the requirements of the applied work health and safety provisions in addition to all other provisions of the OEI Act. An OEI inspector is a person who is appointed by the CEO of the OIR under section 192 of the OEI Act.

#### 2.2.4. Scope

##### **OEI Act s230 – Section 12 (scope)**

*Section 12 of the Work Health and Safety Act applies as if the following subsections were inserted after subsection (9) of that section:*

##### *Regulated offshore activities*

- (9A) This Act also applies in relation to regulated offshore activities.*
- (9B) However, subsection (9A) does not apply this Act in relation to work carried out on, or from, a vehicle, vessel, aircraft or other mobile structure:*
  - (a) before it arrives at a site where it is to be used for regulated offshore activities, and any activities necessary to make it operational at the site have begun; or*
  - (b) after regulated offshore activities cease, and the vehicle, vessel, aircraft or other mobile structure is returned to a form in which it can be moved to another place.*

Section 230 operates to more clearly delineate when the WHS provisions apply to work and when they do not. The term **regulated offshore activities** is defined at section 228 of the OEI Act and draws in the core terms used at section 226. Section 230 expands the application of the WHS provisions to all activities that fall within the definition of regulated offshore activities and then seeks to narrow that application in relation to vehicles, vessels, aircraft or other mobile structures.

For illustrative purposes, the discussion below is focussed on work that is undertaken on or from vessels as this will form a major component of work relating to regulated offshore activities.

The OEI Act recognises that where regulated offshore activities are being undertaken on or from vessels, this can present new or increased risks to workers on those vessels even where those workers are not working directly on offshore infrastructure. These risks would not normally exist if the vessel were undertaking an ordinary maritime activity such as moving cargo from one place to another. Maritime activities are regulated under other legislative frameworks relevant to the management of WHS in the maritime industry and are predominantly overseen by the Australian Maritime Safety Authority (AMSA).

Further, the OEI Act recognises that the actions of workers on vessels could directly impact the integrity of offshore infrastructure or the safety of other people working on or near that infrastructure. For this reason, the OEI Act extends the application of the WHS provisions to all workers on a vessel where that vessel is being used to undertake regulated offshore activities and seeks to ensure that there are no gaps in the coverage of WHS laws in relation to this sort of work.

Application of the WHS provisions is further clarified by parts (a) and (b) of subsection 9(B) of the provision inserted into the WHS Act by s230 of the OEI Act. Specifically, a vessel will be subject to regulation under the

applied WHS provisions when it is at the site where it will be used and activities necessary to make it operational at the site have begun. In this context the 'site' is taken to be licence area.

For example, if a vessel is undertaking normal vessel operations while on standby or transiting through the licence area but is not preparing to undertake any regulated offshore activities, then it will not be regulated under the applied WHS provisions. If that same vessel approaches a site where work is to be undertaken and starts taking actions to prepare it to undertake regulated offshore activities the WHS provisions will begin to apply.

The applied WHS provisions will no longer apply once a regulated offshore activity is complete and the vessel is in a navigable form and is able to transit to another place.

There will be situations where vessels and workers on vessels are subject to regulation under multiple WHS laws at the same time (i.e. the OEI Act and maritime WHS laws).

Although these WHS laws are designed to deliver many of the same outcomes, their wording is not exactly aligned. There may be circumstances where inconsistencies arise between the two sets of requirements. It is generally accepted that, in making new laws, the parliament is aware of potential interactions between laws.

If a circumstance arises where it is not possible to comply with both laws, the more contemporary law will usually have primacy. Licence holders and PCBU's are encouraged to seek their own legal advice in relation to compliance with WHS laws if any uncertainty in relation to overlapping requirements exists.

### 2.2.5. Vessels, structures and facilities

#### **OEI Act s231 – Section 12A (Act does not apply to certain vessels, structures and facilities)**

*Section 12A of the Work Health and Safety Act applies as if subsection (1) of that section had not been enacted.*

Section 231 of the OEI Act operates to reapply the WHS provisions of the WHS Act to vessels and structures that are also regulated under the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHSMI Act). As discussed above, this means that vessels that are undertaking or preparing to undertake regulated offshore activities will be subject to regulation under both the OEI Act, regulated by the OIR, and the OHSMI Act, regulated by AMSA.

### 2.2.6. Further duties of PCBU

#### **OEI Act s232 - Division 3 of Part 2 (further duties of persons conducting businesses or undertakings)**

*A provision of Division 3 of Part 2 of the Work Health and Safety Act applies to a person in relation to a workplace in the Commonwealth offshore area whether or not the person is in the Commonwealth offshore area.*

Section 232 extends certain duties under the WHS Act to persons at onshore workplaces where those people are undertaking certain actions in relation to regulated offshore activities in the Commonwealth offshore area. For example, section 20 of the WHS Act places a duty on a PCBU with management or control of a workplace. In the context of offshore infrastructure projects, a PCBU with management or control of a

workplace in the Commonwealth offshore area may be located at an onshore control room or office and may not be physically present at the workplace. The extension of duties under section 232 ensures that PCBU's who have an influence over the management of risks to the health and safety of the offshore workforce hold appropriate duties under the applied WHS provisions.

### 2.2.7. What is a dangerous incident

#### **OEI Act s233 - Section 37 (what is a dangerous incident)**

*Section 37 of the Work Health and Safety Act applies as if paragraph (g) of that section were substituted with the following paragraph:*

*(g) the collapse, overturning, failure or malfunction of, or damage to, any plant; or*

Section 233 modifies part (g) of the definition of a dangerous incident. The effect of this modification is that PCBU's will be required to notify the OIR where there is any collapse, overturning, failure or malfunction of, or damage to, any plant that exposes a worker or any other person to a serious risk to their health and safety. This change reflects that regulated offshore activities will often take place in remote and high hazard environments and provides the OIR with increased oversight of incidents of this nature to inform regulatory actions where required.

### 2.2.8. Provisional improvement notices

#### **OEI Act s234 - Section 90 (provisional improvement notices)**

*Section 90 of the Work Health and Safety Act applies as if the following subsection were inserted after subsection (1) of that section:*

*(1A) This section also applies if:*

- (a) a health and safety representative reasonably believes that a person:
 
  - (i) is contravening a requirement of a management plan; or*
  - (ii) has contravened a requirement of a management plan in circumstances that make it likely that the contravention will continue or be repeated; and**
- (b) either:
 
  - (i) the requirement is in connection with the health and safety of any person; or*
  - (ii) the contravention involves a risk to the health and safety of any person.**

Section 234 extends the circumstances under which a health and safety representative (HSR) can issue a provisional improvement notice (PIN) to a person. This modification recognises that a management plan approved by the OIR under the OEI Act is a critical component of the framework for the management of work health and safety for offshore infrastructure projects.

**OEI Act s235 - Section 92 (contents of provisional improvement notice)**

*Section 92 of the Work Health and Safety Act applies as if it were substituted with the following section:*

**92 Contents of provisional improvement notice**

*A provisional improvement notice must state:*

- (a) that the health and safety representative believes the person:
  - (i) is contravening a provision of this Act, or a requirement of a management plan; or*
  - (ii) has contravened a provision of this Act, or a requirement of a management plan, in circumstances that make it likely that the contravention will continue or be repeated; and**
- (b) the provision or requirement the representative believes is being, or has been, contravened; and*
- (c) briefly, how the provision or requirement is being, or has been contravened; and*
- (d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.*

Section 235 builds on section 234 by providing further requirements for what an HSR must include in a PIN such that contraventions of a management plan are captured.

**OEI Act s236 - Section 92 (decision of inspector on review of provisional improvement notice)**

*Section 102 of the Work Health and Safety Act applies as if:*

- (a) paragraph 102(1)(b) were omitted; and*
- (b) subsection 102(3) were substituted with the following subsection:*
- (3) If the inspector confirms the provisional improvement notice:
  - (a) the provisional improvement notice ceases to be in force; and*
  - (b) the inspector must consider whether to issue an improvement notice under section 209 of the Offshore Electricity Infrastructure Act 2021.**

Section 236 amends the WHS Act to provide that where an OEI inspector is requested to review a PIN issued by an HSR and the inspector confirms the PIN, the inspector may then issue an improvement notice under the OEI Act. Any subsequent improvement notice may reflect the content of the original PIN or may require alternative or additional actions to be taken by the recipient of the notice.

### 2.2.9. WHS entry permits

#### OEI Act s237 – Part 7 (workplace entry by WHS entry permit holders)

- (1) *Part 7 of the Work Health and Safety Act applies in relation to a workplace that is related onshore premises in relation to particular regulated offshore activities.*
- (2) *For the purposes of that application, section 116 of the Work Health and Safety Act applies as if the definition of **relevant worker** were substituted with the following definition:*  
***relevant worker**, in relation to a workplace that is related onshore premises in relation to particular regulated offshore activities, means a worker:*
  - (a) *who is a member, or eligible to be a member, of a relevant union; and*
  - (b) *whose industrial interests the relevant union is entitled to represent; and*
  - (c) *who works at a workplace in the Commonwealth offshore area where the regulated offshore activities are carried out.*
- (3) *Part 7 of the Work Health and Safety Act, as applied by this Part, does not otherwise apply to related onshore premises or in relation to regulated offshore activities.*

Section 237 modifies part 7 of the WHS Act to allow WHS entry permit holders to access onshore premises for the purposes of inquiring into a suspected contravention of the applied WHS laws where that contravention relates to or affects a relevant worker. The definition of relevant worker is modified in this section to create a clear connection between an onshore premises and regulated offshore activities being conducted by workers in the Commonwealth offshore area. The creation of this linkage allows WHS entry permit holders to enter onshore premises that contain records and other information relating to activities in the Commonwealth offshore area and conduct inspections, consult with workers and make copies of documents in support of their inquiries into suspected contraventions that may have occurred offshore.

### 2.2.10. Compliance and enforcement

#### OEI Act s238 – Parts 8 to 11

*The Work Health and Safety Act applies as if the following Parts of that Act had not been enacted:*

- (a) *Part 8 (the regulator);*
- (b) *Part 9 (securing compliance);*
- (c) *Part 10 (enforcement measures);*
- (d) *Part 11 (enforceable undertakings).*

Section 238 turns off a number of different sections of the WHS Act which are replaced by analogous provisions under the OEI Act framework as follows:

WHS Act provisions	OEI Act provisions
<b>Part 8 – The Regulator</b>	<b>Chapter 5 part 2 – Offshore Infrastructure Regulator</b>
<b>Part 9 – Securing compliance</b>	<b>Chapter 5 Part 4 – Compliance and Enforcement</b>
<b>Part 10 – Enforcement</b>	<b>Chapter 5 Part 4 – Compliance and Enforcement</b>
<b>Part 11 – Enforceable undertakings</b>	<b>Chapter 5, Part 4 Division 8 – Compliance and Enforcement, Enforceable undertakings</b>

These changes are necessary to ensure that the suite of powers available to the OIR to monitor and enforce compliance are applicable to the full scope of the OIR's functions across work health and safety, infrastructure integrity and environmental management. Further they create a linkage between the OEI Act and the *Regulatory Powers (Standard Provisions) Act 2014* and provide the OIR with a broader range of graduated enforcement tools than are available under the WHS Act alone.

### 2.2.11. General provisions

#### OEI Act s239 – Division 1 of Part 14 (general provisions)

*The following provisions of the Work Health and Safety Act do not apply:*

- (a) *section 270 (immunity from liability);*
- (b) *section 271 (confidentiality of information);*
- (c) *paragraphs 273A(1)(c) and (d).*

Section 239 of the OEI Act disapplies a number of general provisions of the WHS Act that are replaced through analogous provisions under the OEI Act as follows:

WHS Act provision	OEI Act provisions
<b>Section 270 – Immunity from liability</b>	<b>Section 301 – Liability for acts and omissions</b>
<b>Section 271 – Confidentiality of information</b>	<b>Chapter 7 – Information relating to offshore infrastructure</b>
<b>Paragraphs 273A (1)(c) and (d) (jurisdiction of courts)</b>	<b>Chapter 8 – Miscellaneous provisions</b>

### 2.2.12. Codes of practice

#### **OEI Act s240 – Section 274 (approved codes of practice)**

*Section 274 of the Work Health and Safety Act applies as if it were substituted with the following section:*

#### **274 Approved codes of practice**

- (1) *The regulations may prescribe codes of practice in relation to persons conducting businesses or undertakings that involve work in the nature of offshore infrastructure activities that is carried out in the Commonwealth offshore area.*
- (2) *A code of practice prescribed for the purposes of subsection (1) is taken to be an approved code of practice for the purposes of this Act.*
- (3) *A person is not liable to any civil or criminal proceedings for contravening a code of practice.*

Section 240 substitutes the existing wording of the WHS Act to allow regulations made under the OEI Act to prescribe codes of practice that are applicable to work in the nature of offshore infrastructure activities. This provides for future flexibility for codes of practice that already exist to be applied to this type of work or for new codes of practice to be developed that are specific to the offshore renewables industry but may not have broader application to work regulated under the WHS Act. The OEI regulations<sup>66</sup> apply all codes of practice under the existing WHS Act to work in the nature of offshore infrastructure activities. This is discussed further against related regulations below.

### 2.2.13. Schedule 2

#### **OEI Act s241 - Schedule 2 (the regulator and local tripartite consultation arrangements and other local arrangements)**

*Schedule 2 to the Work Health and Safety Act does not apply.*

Section 241 disapplies Schedule 2 of the WHS Act which relates to the role and functions of the Safety, Rehabilitation and Compensation Commission as established by the *Safety, Rehabilitation and Compensation Act 1988*. This schedule also sets out requirements that apply to Comcare in relation to annual reports under the *Public Governance Performance and Accountability Act 2013* which are covered for NOPSEMA in its capacity as the OIR under the OEI Act and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

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<sup>66</sup> See Clause 28 of Schedule 1 to the OEI Regulations

### 2.2.14. Schedule 3

#### **OEI Act s242 - Schedule 3 (regulation-making powers)**

*Schedule 3 of the Work Health and Safety Act applies as if clause 11 of that Schedule had not been enacted.*

Section 242 modifies the regulation making powers to support changes made to the applied WHS provisions by section 237 relating to WHS entry permits.

### 2.2.15. Regulations under the Work Health and Safety Act

#### **OEI Act s243 - Regulations under the Work Health and Safety Act**

- (1) The regulations made under the Work Health and Safety Act do not apply for the purposes of that Act as applied by this Part.*
- (2) However, regulations made for the purposes of this Act may:*
  - (a) prescribe provisions of regulations made under the Work Health and Safety Act that apply for the purposes of that Act as applied by this Part; and*
  - (b) prescribe modifications of regulations made under the Work Health and Safety Act as they apply for the purposes of that Act as applied by this Part; and*
  - (c) make provision for and in relation to matters that may, under the Work Health and Safety Act as applied by this Part, be provided for by regulations made under that Act.*

Section 243 provides for regulations made under the OEI Act to be made that either apply the WHS regulations or make modifications to those regulations such that they operate effectively within the OEI Act framework.

## 2.3. Division 3 – Other Work Health and Safety Provisions

### 2.3.1. Functions and powers of OEI inspectors

#### **OEI Act s244 - Functions and powers of OEI inspectors**

*The functions and powers of an OEI inspector under this Act include the following:*

- (a) *to assist in the resolution of:*
  - (i) *work health and safety issues at workplaces (within the meaning of the applied work health and safety provisions); and*
  - (ii) *issues related to access to a workplace by an assistant to a health and safety representative (within the meaning of the applied work health and safety provisions);*
- (b) *to review disputed provisional improvement notices.*

Section 244 is necessary to extend the powers of OEI inspectors to cover the full range of matters provided for under the applied work health and safety provisions.

## 3. Application of the Work Health and Safety Regulations.

This section discusses the application of the WHS regulations under the OEI Act framework.

Where a specific provision of the OEI regulations is not discussed below this is due to any modification arising from that provision being largely administrative in nature.

### 3.1. Part 7 – Work Health and Safety

Part 7 of the OEI regulations applies the WHS regulations subject to some modifications.

#### **OEI Regulation 141 – Work health and safety regulations apply with modifications**

*The provisions of the Work Health and Safety Regulations 2011 apply, with the modifications set out in Schedule 1 to this instrument, for the purposes of the Work Health and Safety Act as applied by Part 1 of Chapter 6 of the Offshore Electricity Infrastructure Act 2021.*

Regulation 141 is the primary regulatory provision that applies the *Work Health and Safety Regulations 2011* to activities regulated under the OEI Act framework. Modifications to the regulations may remove or change existing provisions of the WHS regulations or introduce new regulations and subregulations that are necessary to ensure that the WHS regulatory framework operates effectively in the OEI Act context.

## 3.2. Schedule 1 – Modifications of the Work Health and Safety Regulations 2011

### 3.2.1. Clauses 1 - 6 - Definitions

#### **Regulation 5**

*Note: A number of expressions included in these Regulations are defined in the Act, as it applies and is modified because of Part 1 of Chapter 6 of the Offshore Electricity Infrastructure Act 2021, including the following:*

- (a) Commonwealth offshore area;*
- (b) management plan;*
- (c) regulated offshore activities;*
- (d) regulator;*
- (e) related onshore premises.*

#### **Subregulation 5(1)**

**accepted DSMS** means a DSMS that is accepted by the regulator under regulation 168C or 168D.

*Note: Acceptance of a DSMS ends after 5 years, if it is withdrawn by the regulator or if the regulator accepts a revised version of the DSMS: see regulation 168K.*

**ADAS** means the Australian Diver Accreditation Scheme administered by the Board of the Australian Diver Accreditation Scheme.

**approved diving project plan** for a diving project means a diving project plan for the project that is approved under regulation 169B by the holder of the OEI licence the project is connected with.

*Note: The holder of the OEI licence may withdraw the approval. Regulation 169D requires withdrawal in certain circumstances.*

#### **Subregulation 5(1)**

**covers:** an accepted DSMS covers a diving project directly involving one or more persons conducting businesses or undertakings if:

- (a) one of those persons gave the DSMS to the regulator for acceptance; and*
- (b) each of those persons is committed to complying with the DSMS, and the conditions (if any) on its acceptance, as the sole DSMS relevant to the project.*

*Note: Only one accepted DSMS can cover a diving project at any time.*

**crewed submersible craft** means a craft that is designed to maintain its occupant, or some or all of its occupants, at or near atmospheric pressure while submerged (whether or not it is self-propelled, and whether or not it is supplied with breathing mixture by umbilical), including a craft in the form of a suit.

**directly involved** with a diving project, diving operation, or diving work included in a diving project, that is connected with an OEI licence: without limiting the persons conducting businesses or undertakings who are (apart from this definition) directly involved with the project, operation or work, the holder of the OEI licence is directly involved with the project, operation or work.

**diver** means a worker who carries out diving work.

**diving** has the meaning given by regulation 167A.

**diving operation** means one or more dives conducted as part of regulated offshore activities connected with a single OEI licence.

Note: Regulation 167B explains when a diving operation begins and ends.

**diving project** means an activity consisting of one or more diving operations connected with a single OEI licence.

**diving supervisor** means a person appointed under regulation 172A as a diving supervisor to supervise diving included in a diving operation.

**diving work** means work involving diving.

**DSMS** means a diving safety management system (whether revised or not).

**OEI licence** means a licence under the Offshore Electricity Infrastructure Act 2021.

**OEI licence holder**, in relation to an OEI licence, means the holder, within the meaning of the Offshore Electricity Infrastructure Act 2021, of the OEI licence.

**personnel lifting equipment** includes any of the following:

- (a) an air stage;
- (b) a wet bell;
- (c) a closed bell;
- (d) a guide wire system.

Clauses 1 to 6 of Schedule 1 modify WHS regulation 5 and subregulation 5(1) to remove some existing definitions and provide a number of additional definitions that are necessary to allow appropriate application of the WHS regulations. Many of these definitions relate to diving work and are included to ensure that the framework in place for managing diving operations undertaken under the OEI Act framework operates effectively.

### 3.2.2. Clause 8 - Regulation 11A Extraterritoriality

#### **11A Extraterritoriality**

- (1) These Regulations extend to acts, matters and things in the Commonwealth offshore area.*
- (2) Regulations 59, 61, 64, 294 and 295 and Chapter 5 extend to acts, matters and things outside Australia relating to plant or structures that are, or are reasonably expected to be, used as or at a workplace in the Commonwealth offshore area where regulated offshore activities are, or are reasonably expected to be, carried out.*
- (3) Subdivisions 1 and 2 of Division 2 of Part 7.1 extend to acts, matters and things outside Australia relating to substances, mixtures, articles and hazardous chemicals that are, or are reasonably expected to be, used at a workplace in the Commonwealth offshore area where regulated offshore activities are, or are reasonably expected to be, carried out.*
- (4) Provisions of these Regulations that are not mentioned in subregulation (2) or (3) extend to acts, matters and things outside Australia so far as is necessary for the operation under one of those subregulations of a provision mentioned in that subregulation.*
- (5) The subregulations of this regulation do not limit one another.*

Clause 8 of schedule 1 repeals the existing provisions of regulation 11A of the WHS regulations and replaces them to extend the application of the WHS regulations to the Commonwealth offshore area. Further it explicitly extends certain duties relating to plant, structures and hazardous substances to designers, manufacturers, importers, suppliers, installers and constructors and to persons who commission construction work to ensure that these operate effectively in the context of the OEI Act framework.

### 3.2.3. Clause 9 - Division 1A – Consultation

#### **15A Consultation when preparing or revising a management plan under the Offshore Electricity Infrastructure Act 2021**

- (1) Preparation of a management plan, so far as it might affect the health or safety of workers, is prescribed as an activity for the purposes of section 49 of the Act.
- (2) Revision of a management plan, so far as any changes made as a result of the revision might affect the health or safety of workers, is prescribed as an activity for the purposes of section 49 of the Act.

*Note 1: The Offshore Electricity Infrastructure Act 2021 provides for OEI licence holders to prepare and revise management plans.*

*Note 2: This regulation may apply to the preparation or revision of any provision of a management plan that might affect the health or safety of workers, including (but not limited to) provisions included in a management plan for the purposes of section 94 of the Offshore Electricity Infrastructure Regulations 2022.*

Clause 9 of schedule 1 introduces new regulation 15A which makes an explicit linkage between the act of preparing a management plan and section 49 of the WHS Act. The effect of this regulation is to place a duty on a licence holder preparing a management plan or a revision of a management plan to consult with workers on matters that might affect their health and safety.

#### **15B Consultation with unions where there are no workers to consult**

*If:*

- (a) Division 2 of Part 5 of the Act requires a person to consult with workers in relation to an activity mentioned in regulation 15A; and
- (b) there are no such workers at the time the consultation is required to be carried out; the person must, under Division 2 of Part 5 of the Act, consult each union that the person considers will be reasonably likely to represent the industrial interests of workers whose health or safety might be directly affected by the activity.

Clause 9 also introduces regulation 15B which requires consultation about matters relating to health and safety to be undertaken with relevant unions where there are no workers at the time that the management plan or revision is being prepared. This is likely to occur during the preparation of early-stage management plans for activities to be conducted under OEI Act licences.

### 3.2.4. Clauses 10 and 11 - Training

#### **Regulations 21 and 25**

*any approval (however described) of the course by a corresponding regulator, or by an authority of the Commonwealth that has functions similar to those functions of the regulator that relate to work health and safety.*

Clauses 10 and 11 introduce new provisions that allow the OIR to have regard to other analogous regulators approvals of Health and Safety Representative and WHS entry permit training courses when deciding to approve a training course of this type.

### 3.2.5. Clauses 12 and 13 - Entry to premises by WHS entry permit holders

#### **Regulations 28 and 30**

*that the union is entitled to represent the industrial interests of a worker who works at a workplace (in the Commonwealth offshore area) where there are carried out regulated offshore activities in relation to which the workplace entered is related onshore premises, and who is a member, or eligible to be a member, of that union; and*

Clauses 12 and 13 make modifications which relate to the content of notices of entry required to be given by holders of WHS entry permits under the WHS Act. Persons entering a premises under a right of entry permit must ensure that they meet all relevant requirements for notices of entry.

### 3.2.6. Clause 17 - Part 4.8 - Diving work

Clause 17 of schedule 1 repeals existing Part 4.8 of the WHS Regulations, Diving Work, and substitutes more comprehensive provisions relating to the management of hazards and risks associated with diving.

The OIR has published separate guidance relating to the diving provisions of the OEI framework including requirements for diving safety management systems and diving project plans. WHS requirements relating to diving work are not discussed further in this document.

### 3.2.7. Clauses 18 and 19 - Duties relating to registered plant and plant designs

These clauses make modifications to requirements for registered plant and plant designs. These requirements are subject to transitional provisions under the OEI regulations and are not scheduled to commence before December 2027. The OIR will provide additional guidance on plant design and plant registration requirements prior to commencement of those requirements.

### 3.2.8. Clause 20 - Identification of principal contractor

#### **293A - Licence holder must identify principal contractor**

- (1) *This regulation applies to an OEI licence holder if there are one or more construction projects in the Commonwealth offshore area for the purposes of the offshore electricity infrastructure project being carried out under the OEI licence.*
- (2) *For each such construction project, the OEI licence holder must publish the following on the OEI licence holder's website:*
  - (a) *the principal contractor's name and telephone contact numbers (including an after hours telephone number);*
  - (b) *a description of the construction project;*
  - (c) *details of the location or locations of the construction project.*

*Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.*

*Penalty: The tier G monetary penalty.*

Clause 20 introduces a requirement for an OEI licence holder to publish details of principal contractors on their website. This requirement replaces provisions under regulation 308 of the WHS regulations which require signage to be in place at onshore construction projects and reflects the impracticability of applying physical signage requirements in the offshore environment.

### 3.2.9. Clause 25 – Reviewable decisions

Clause 25 modifies regulation 676 of the WHS regulations to provide for decisions about diving safety management systems made under the OEI Regulations to be subject to internal and external review processes outlined in the WHS regulations.

### 3.2.10. Clause 26 – Incident notification

#### **699A Incident notification—prescribed events that are dangerous incidents**

*The following events are prescribed for the purposes of paragraph 37(l) of the Act:*

- (a) *an event that incapacitates a worker or other person for work for at least 3 days;*
- (b) *any of the following events relating to diving work:*
  - (i) *a decompression illness;*
  - (ii) *a pulmonary barotrauma;*
  - (iii) *a case of omitted decompression;*
  - (iv) *an event for which a standby diver is deployed for an emergency, except for the purposes of training, exercises or drills;*
  - (v) *a failure of life support equipment or personnel lifting equipment;*
- (c) *an event that a reasonable person would consider needs immediate investigation for its effects on work health and safety.*

Clause 26 extends the definition of a dangerous incident under paragraph 37(1) of the WHS Act. For further information and guidance on notification and reporting of incidents, events and occurrences please refer to [oir.gov.au](http://oir.gov.au).

### 3.2.11. Clause 28 – approved codes of practice

#### **703 Approved codes of practice**

*For the purposes of subsection 274(1) of the Act, all codes of practice that are, from time to time, approved under section 274 of the Act (disregarding the modifications made by the Offshore Electricity Infrastructure Act 2021 and regulations made under that Act) are prescribed.*

*Note: See section 240 of the Offshore Electricity Infrastructure Act 2021 for a modification of section 274 of the Act*

Clause 28 introduces new regulation 703 to the WHS regulations for the purposes of activities regulated under the OEI Act. The effect of this regulation is to apply all codes of practice that are approved under section 274 of the WHS Act to work in the nature of offshore infrastructure activities.

### 3.2.12. Clause 29 – Chapter 12 Transitional provisions

Clause 29 introduces transitional arrangements for duties relating to the design of plant and the registration of plant and the design of plant. Duties in Part 5.3 of the WHS regulations — *Registration of plant designs and items of plant* will apply from December 2027. Duties in Part 5.2—Additional duties relating to registered plant and plant designs will apply from December 2028. The OIR will provide separate guidance for duty holders on these requirements in due course.

### 3.2.13. Clause 30 – Fees

Clause 30 makes modifications to fees that are payable under the WHS regulations for certain applications. It also introduces some new fees for submissions of diving safety management systems. Further information on fees and levies is available at [oir.gov.au](http://oir.gov.au).