

EXPOSURE DRAFT

Offshore Electricity Infrastructure regulations 2024

**Department of Climate Change, Energy, the Environment
and Water**

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Introduction

For more than a century, The University of Queensland (UQ) has maintained a global reputation for delivering knowledge leadership for a better world.

The most prestigious and widely recognised rankings of world universities consistently place UQ among the world's top universities.

UQ has won more national teaching awards than any other Australian university. This commitment to quality teaching empowers our 52,000 current students, who study across UQ's three campuses, to create positive change for society.

Our research has global impact, delivered by an interdisciplinary research community of more than 1500 researchers at our six faculties, eight research institutes and more than 100 research centres.

The UQ organisational unit contributing to this submission is the [Centre for Policy Futures](#). The Centre for Policy Futures positions the University as a key source of ideas and insights on the policy priorities that matter to Australia and the Pacific through robust, rigorous and timely research, and sustained policy engagement.

This submission represents the opinions of the contributing authors listed in this document. It does not necessarily represent an official position of The University of Queensland.

Summary and recommendations

The Australian Government is building a framework to establish an offshore renewable energy industry to support the emissions target of net zero by 2050. An offshore renewable energy industry will reduce emissions from the electricity sector. The Offshore Electricity Infrastructure Act 2021 (OEI Act) puts in place a regulatory framework for the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure (OEI). On 22 October 2022, the first set of regulations made under the OEI Act came into force (*the Offshore Electricity Infrastructure Regulations 2022 (OEI Regulations)*). The proposed Regulations are the next set of regulations, currently known as the (draft) *Offshore Electricity Infrastructure Amendment Regulations 2024*. The proposed Regulations will prescribe regulations that will guide licence holders once they have received an OEI licence. The Australian Government released a consultation paper and sought feedback on the (draft) *Offshore Electricity Infrastructure Amendment Regulations 2024*. UQ thanks the Australian Government for the inquiry and for accepting the submission below.

NOPSEMA is the regulator for both the offshore petroleum and greenhouse gas storage activities and for the offshore renewable activities in Commonwealth waters. However, there is a difference in the proposed regulatory framework for the offshore renewable energy industry compared to the offshore oil and gas industry. *The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* takes into account the potential impacts/risks to the environment, whereas the *Offshore Electricity Industry Act 2021* (OEI Act) does not mention any potential risks to the environment resulting from the activity nor require an Environment Plan to be included within the Management Plan but refers to obligations under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) being met. There will be significant impacts associated with the construction, operation and decommissioning of offshore renewable energy projects, and these risks need to be identified, reduced and managed early at the planning stage, and within the Management Plan. It is recommended that the draft OEI Amendment Regulations be redrafted to provide for an Environment Plan to be included as a requirement as discussed below. Alternatively, draft a separate regulation providing for the potential environmental impacts resulting from the offshore renewable energy industry activities.

Section 174 of the *Offshore Electricity Industry Act 2021* (OEI Act) outlines the Regulators role to include environmental management, and environmental protection (Section 177, OEI Act) however, there is no specific text relating to the management of the environment other than remedial damage (Section 127, OEI Act) after the damage has already been done. There is no consideration for environmental assessment of the existing environment prior to granting a licence or conducting of an environmental risk assessment of the potential activity before granting the licence to prevent any environmental damage from occurring. A prohibition notice can be issued if an activity involves significant threat to the environment (Section 207, OEI Act) however, this is after the activity has caused harm and the licence already granted.

In reviewing the Offshore Electricity Industry Amendment Regulations – Exposure Draft there is a requirement for the proponent to compile a management plan that must describe the obligations under the EPBC Act, and to describe the measures that the licence holder is to implement to comply with the obligations (Section 80). This information will be undertaken by the proponent as an environmental impact assessment when submitting an EPBC Act referral application, and the mitigation measures will be conditions stipulated by the Department for Climate Change, Energy, Environment and Water (DCCEEW). To streamline the regulatory process for both the Regulators and the industry proponents, the environmental impact assessment requirements under the EPBC Act undertaken at the start of the licence application stage could be included within a single Environment Plan. This Environment Plan could be added as a requirement within the Offshore Electricity Industry Amendment Regulations as provided for in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* and discussed below. This Environment Plan can then form the basis and be included within the management plan to avoid duplication of information, and to enable the Regulator to manage the environmental conditions stipulated by DCCEEW. It would also streamline the process if the consultation, consultation report (Section 75(2)(c), 3, 4, and 5), and stakeholder engagement strategy

(Section 76) be included within this Environment Plan which can then form the basis and be included within the management plan to avoid duplication of information.

The *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* provides the regulatory framework for the offshore oil and gas industry activities. The object of these Regulations (Part 1, 3(b)(c)) is to ensure that any petroleum activity or greenhouse gas activity carried out in an offshore area is:

(b) carried out in a manner by which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and

(c) carried out in a manner by which the environmental impacts and risks of the activity will be of an acceptable level.

Within these Regulations the proponent is required to consult with the Environment Minister (Part 1A, (2)) regarding the requirements under the EPBC Act 1999 if applicable, and submit a project proposal (Part 1A, (5)) that will:

(c) describe the existing environment that may be affected by the project; and

(d) include details of the particular relevant values and sensitivities (if any) of that environment; and

(e) set out the environmental performance outcomes for the project; and

(f) describe any feasible alternative to the project, or an activity that is part of the project, including:

(i) a comparison of the environmental impacts and risks arising from the project or activity and the alternative; and

(ii) an explanation, in adequate detail, of why the alternative was not preferred.

In addition, the proposal must provide details of the environmental impacts and risks for the project; and an evaluation of all the impacts and risks, appropriate to the nature and scale of each impact or risk (Part 1A, 8(a)(b)). The following parts of these Regulations provide for the criteria acceptance, implementation and revision of the Environment Plan. There will be significant impacts associated with the construction, operation and decommissioning of offshore wind farm energy projects, and these risks need to be identified, reduced and managed early at the planning stage, and within the Management Plan. The key recommendations are:

1. It is recommended that the draft OEI Regulations be redrafted to provide for an Environment Plan to be included. This Environment Plan can then form the basis and be included within the management plan to avoid duplication of information, and to enable the Regulator to manage the environmental conditions stipulated by DCCEE.
2. It is recommended that a stakeholder engagement strategy to be included within this Environment Plan, which can then form the basis, and be included within the management plan to avoid duplication of information.
3. Alternatively, a separate regulation providing for the potential environmental impacts resulting from the offshore renewable energy industry activities could be compiled.

Terms of reference

- i. This briefing aims to provide feedback on the Offshore Electricity Infrastructure Amendment Regulations 2024 (proposed Regulations) to support the Offshore Electricity Infrastructure Act 2021 and the consultation paper.

This section provides detailed responses to the questions **1-9** only, provided in the '*Consultation Paper - Regulations under the Offshore Electricity Infrastructure Act 2021*' issued by DCCEE. The deadline of the consultation period is the 12 May 2024.

Question 1:

Are the revision triggers listed in subsection 53(2) of the proposed Regulations appropriate? Are there any triggers that should be added or removed?

Answer 1: The changes to environmental conditions need to be included because there will be requirements for mitigation measures to be implemented and ongoing environmental monitoring of the project activities will be reviewed in case there arises any changes that could result in significant adverse impacts to matters of national environmental significance under the EPBC Act 1999.

Question 2:

Is 5 years appropriate for a periodic review? If not, what period of time do you consider is more appropriate?

Answer 2: Five years is an appropriate time for a periodic review if there are no changes to health and safety, environmental risk and projects specifications.

Question 3:

The Australian Government encourages the co-use of the offshore marine environment and ongoing collaboration between OEI licence holders and persons, communities, organisations and groups affected by licence activities. Licence holders should be required to consult meaningfully with them. At the same time, consultation requirements must be practical and capable of being implemented by licence holders.

Is the consultation process provided in the proposed Regulations appropriate? What changes (if any) do you recommend?

You should consider the following questions in drafting your response:

- a. Is it appropriate for licence holders to consult representatives and representative bodies where these bodies could reasonably be regarded as representing the interests of individual persons, organisations, groups or communities?
- b. Is it appropriate for the same consultation requirements to apply to all types of projects (for example, for research and demonstration projects compared to commercial projects)? If not, what changes do you recommend?
- c. Do you consider the proposed stakeholder engagement strategy described in the management plan, but separate to the management plan, to be adequately flexible and appropriate? If not, why, and what might be an alternative approach?
- d. Do you agree with the list of information that must be described in the management plan in relation to the stakeholder engagement strategy? Should any other matters be described?

Answer 3: It is recommended that the consultation should be expanded to include stakeholders that have not yet been identified and that will be through subsequent environmental impact assessments. In *Section 57 Consultation – who is to be consulted*, of the OEI Amendment Regulations, a list of the persons, organisations, communities and groups to be consulted is provided. It is suggested the inclusion of a paragraph that expands this list and provides for the ‘consultation with relevant stakeholders with interests in the activity that have not yet been identified but are identified during the environmental impact assessment process under the requirements of the EPBC Act 1999, and throughout the ongoing consultation with interested stakeholders during the continued management of the activity’.

Section 57 (2) also needs to take into consideration the above point. Currently, Section 57 (1) limits the consultation procedure, and both (1) and (2) need to be expanded to include stakeholders that have not yet been identified because the environmental assessment process has not yet commenced for each offshore renewable energy project, and also to take into account that stakeholders with vested interests can also change over time e.g., fisheries.

Thirdly, it is recommended that a stakeholder engagement strategy to be included within an Environment Plan, which can then form the basis, and be included within the management plan to avoid duplication of information.

Question 4:

Are the content requirements for a management plan listed in Division 4 of Part 2 of the proposed Regulations appropriate? Are there any other matters that should or should not be addressed?

Answer 4: The content requirements for a management plan listed in Division 4 of Part 2 of the proposed Regulations is insufficient.

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Section 174 of the *Offshore Electricity Industry Act 2021* (OEI Act) outlines the Regulators role to include environmental management, and environmental protection (Section 177, OEI Act) however, there is no specific text relating to the management of the environment other than remedial damage (Section 127, OEI Act) after the damage has already been done. There is no consideration for an environmental assessment of the existing environment prior to granting a licence or conducting of an environmental risk assessment of the potential activity before granting the licence to prevent any environmental damage from occurring. A prohibition notice can be issued if an activity involves significant threat to the environment (Section 207, OEI Act) however, this is after the activity has caused harm and the licence already granted.

In reviewing the Offshore Electricity Industry Amendment Regulations – Exposure Draft there is a requirement for the proponent to compile a management plan that must describe the obligations under the EPBC Act, and to describe the measures that the licence holder is to implement to comply with the

obligations (Section 80). This information will be undertaken by the proponent as an environmental impact assessment when submitting an EPBC Act referral application, and the mitigation measures will be conditions stipulated by DCCEEW. To streamline the regulatory process for both the Regulators and the industry proponents, the environmental impact assessment requirements under the EPBC Act undertaken at the start of the licence application stage could be included within a single Environment Plan. This Environment Plan could be added as a requirement within the Offshore Electricity Industry Amendment Regulations as provided for in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* and discussed below. This Environment Plan can then form the basis and be included within the management plan to avoid duplication of information, and to enable the Regulator to manage the environmental conditions stipulated by DCCEEW. It would also streamline the process if the consultation, consultation report (Section 75(2)(c), 3, 4, and 5), and stakeholder engagement strategy (Section 76) be included within this Environment Plan which can then form the basis and be included within the management plan to avoid duplication of information.

The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 provides the regulatory framework for the offshore oil and gas industry activities. The object of these Regulations (Part 1, 3(b)(c) is to ensure that any petroleum activity or greenhouse activity carried out in an offshore area is:

(b) carried out in a manner by which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and

(c) carried out in a manner by which the environmental impacts and risks of the activity will be of an acceptable level.

Within these Regulations the proponent is required to consult with the Environment Minister (Part 1A, (2)) regarding the requirements under the EPBC Act 1999 if applicable, and submit a project proposal (Part 1A, (5)) that will:

(c) describe the existing environment that may be affected by the project; and

(d) include details of the particular relevant values and sensitivities (if any) of that environment; and

(e) set out the environmental performance outcomes for the project; and

(f) describe any feasible alternative to the project, or an activity that is part of the project, including:

(i) a comparison of the environmental impacts and risks arising from the project or activity and the alternative; and

(ii) an explanation, in adequate detail, of why the alternative was not preferred.

In addition, the proposal must provide details of the environmental impacts and risks for the project; and an evaluation of all the impacts and risks, appropriate to the nature and scale of each impact or risk (Part 1A, 8(a)(b)). The following parts of these Regulations provide for the criteria acceptance, implementation and revision of the Environment Plan. There will be significant impacts associated with the construction, operation and decommissioning of offshore wind farm energy projects, and these risks need to be identified, reduced and managed early at the planning stage and within the Management Plan. It is recommended that the draft OEI Regulations be redrafted to provide for an Environment Plan to be included. Alternatively, draft a separate regulation providing for the potential environmental impacts resulting from the offshore renewable energy industry activities.

Question 5:

There is strong public interest in enabling public access to relevant and reliable information on OEI projects. Are management plan summaries an efficient and effective way to make information available to the community? If not, what are your concerns and how can they be addressed?

Answer 5: Summaries are a good way of providing quick information about a project and should include at the very least: the activity, the location with map (with coordinates), what stakeholders will be impacted, what the potential environmental impacts will be, and what is being done to reduce these potential impacts. However, the public still need to be able to access the original management plans, environment plans, and stakeholder engagement plans, as per Section 17 of the *Legislation Act 2003* these should be unaltered and freely accessible to the public in order to demonstrate the Department has conducted an open and transparent consultation process.

Question 6:

Do you think the alternative approaches of publishing management plans in full (with necessary redactions), or requiring licence holders to publish management plans themselves is more efficient or appropriate than the current approach in the proposed Regulations?

Answer 6:

Giving the public the full information in the full unredacted management plan (and environment plan and stakeholder plan) is the most efficient approach as this will save miscommunication, and incorrect concerns that the consultation process has been conducted to the best possible outcome. Feedback as part of this consultation process (if not declared confidential), as per Section 17 of the *Legislation Act 2003*, should be unaltered and freely accessible to the public in order to demonstrate the Department has conducted an open and transparent consultation.

Question 7:

Is the list of matters that must be included in a management plan summary in section 71 of the proposed Regulations appropriate? If not, why?

Answer 7: In the list of matters that must be included in a management plan summary in section 71 of the proposed Regulations, it is recommended that the addition of a category titled '(l) Environmental management, mitigation measures, monitoring and compliance' be added to the list. This is to incorporate the necessary environmental management, mitigation measures, ongoing monitoring and compliance reporting that will be required as part of the management plan.

Question 8:

Is the list of matters that must be included in a design notification in subsection 93(2) of the proposed Regulations appropriate? Do you think any other matters should be addressed?

Answer 8: It is recommended that the addition of a category that specifies preference for integrating international environmental best practice into the design of the project, taking into consideration the environmental mitigation measures balanced with the cost benefit analysis and practical technologies available for the design, construction, operation and decommissioning of renewable energy projects.

Question 9:

The design notification scheme only applies to transmission and infrastructure licences and commercial licences. Should the design notification scheme be extended to all licence types, so that it would also include feasibility licences and research and demonstration licences? If yes, should it be mandatory or voluntary for these other licence types? Please outline your reasoning.

Answer 9: It is recommended that the design notification scheme be extended to all licence types, so that it would also include feasibility licences and research and demonstration licences to enable integration of international environmental best practice into the design element of the project in the early planning stages, taking into consideration the environmental mitigation measures, balanced with the cost benefit analysis and practical technologies available.

Recommendation:

The key recommendations are:

1. It is recommended that the draft OEI Regulations be redrafted to provide for an Environment Plan to be included. This Environment Plan can then form the basis and be included within the management plan to avoid duplication of information, and to enable the Regulator to manage the environmental conditions stipulated by DCCEEW.
2. It is recommended that a stakeholder engagement strategy to be included within this Environment Plan, which can then form the basis, and be included within the management plan to avoid duplication of information.
3. Alternatively, a separate regulation providing for the potential environmental impacts resulting from the offshore renewable energy industry activities could be compiled.

Contributing authors

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