11 May 2024

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Submission in response the *Offshore Electricity Infrastructure Amendment Regulations 2024* Exposure Draft and Consultation Paper

The Clean Energy Council (CEC) welcomes the opportunity to make a submission on the *Offshore Electricity Infrastructure Amendment Regulations 2024* (the Proposed Regulations) exposure draft. We note that the Proposed Regulations are intended to support the *Offshore Electricity Infrastructure Act 2021* (OEI Act) and establish the next set of regulations following the *Offshore Electricity Infrastructure Regulations 2022* (OEI Regulations).

The CEC is the peak body for the clean energy industry in Australia, working with close to 1,000 of the leading businesses operating in renewable energy and energy storage. As the peak industry body for offshore wind, we represent 65 companies that are actively contributing to developing offshore wind in Australia, including many of the companies recently awarded Feasibility Licences in the Gippsland region.

We are committed to accelerating Australia's clean energy transformation and recognise the critical role offshore wind will play in decarbonising the nation's electricity network. Offshore wind also creates a significant opportunity for investment and economic development: benefits will flow directly from the construction and operation of projects that feed electricity into Australian grids, while also supporting the growth of a hydrogen export industry, which has the potential to contribute to significant amounts of export revenue as our exports of coal and gas decline.

This submission will provide feedback and recommendations on the proposed Regulations as well as the related Consultation Paper (the paper).

Offshore Electricity Infrastructure Act Amendment Regulations 2024

Overall, it is very welcome to now have the proposed Regulations for the construction, installation, commissioning, operation, maintenance and decommissioning of offshore wind. We appreciate the balance the Department must strike for how the marine area is used by all users, in both the near and longer term.

We feel confident that Australian offshore wind proponents recognise their obligations to comply and act in accordance with the Regulations. However, to support this, we need to ensure that the Regulations are free of ambiguity and prioritise working in alignment with the industry by minimising delays through revisions and time required for feedback.

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As detailed throughout this submission, a concern we have with not just these proposed Regulations but broadly with regulations and guidelines being prepared for use by the Australian offshore wind industry, is that the level of complexity, rigor and financial obligation being asked of by proponents goes far above that of any other industry. Being a new industry looking to establish, proponents are not asking for special consideration, but just the opportunity to be fairly considered in line with other established industries in Australia.

Similarly, we acknowledge the importance of diligent and rigorous planning and approvals processes. As in any good process there will be some projects rejected or delayed on environmental grounds, which is all part of a robust planning system. We are concerned when those regulations are inconsistent across Australia, and proponents are being asked to meet conditions which will render their projects unfeasible.

Building on this broad concern, some of the key areas in the proposed Regulations we will provide feedback and recommendations on include:

- **review time periods are long**, and the Regulator is permitted to be extend them repeatedly without any repercussions. This is unnecessarily cumbersome for early works such as launching of LiDAR's. We expect that if the Regulator is under resourced, this will cause extensive delays in the approval process.
- **level of financial security for decommissioning** required in advance of any construction is prohibitive and will risk projects being unable to reach final investment decision.
- **extraterritoriality of the *Work Health and Safety Regulations 2011*** is unnecessarily applied, which will further exacerbate the offshore wind supply chain.
- **ambiguous language** and definitions relating to completion and revision requirements for management plans that we see as being **open to interpretation**, specifically in relation to what will trigger revisions and levels of consultation required.

Management Plans

The details provided in in the proposed Regulations in subdivision A, B and C relating to the application and revision of management plans is comprehensive, and we see it as a productive step to enabling proponents to manage risk under the OEI Act. To strengthen the proposed Regulations, clarifications regarding consultation requirements, triggers to revisions and time permitted for review of management plans would assist industry's ability to comply.

Consultation of management plans

As with all consultation processes, it is imperative the right stakeholder groups are sufficiently engaged, while always ensuring a balance is found to mitigate against consultancy fatigue. It is welcome to see that the list of persons, organisations, communities, and groups of who should be consulted with is clearly outlined in section 57.1. This will enable a targeted consultation approach and reduce some level of consultation fatigue.

We would however welcome further refinement of section 57.1(e)(ii), which outlines a requirement for licence holder to engage with anyone they consider may be 'affected by the activities subject to consultation'. This language is quite subjective and has potential for significant variance in interpretation.

Similarly, section 58 relating to the manner of consultation includes phrases such as 'sufficient information', 'reasonably foreseeable' and 'reasonable period' that we have found to be ambiguous and open to interpretation. Further guidance and clarification on adhering to these consultation requirements would be welcome.

Licence holders will always look to address all legitimate concerns of outlined stakeholder groups; however, it is not clear what will be defined as 'sufficient' to mitigate or alleviate concern in some instances. Section 75 discusses plans for consultation that will be carried out by licence holders, as well as the how to consider claims made by consulted parties. We see that there needs to be a reasonable approach applied for determining at what point a claim is resolved, to avoid situations where there has been extensive and ongoing consultation but there is the inability to resolve a stakeholder claim.

We also would also encourage the Department to consider if there is opportunity to utilise regulatory approvals as part of the Environment Protection and Biodiversity Conservation (EPBC) Act to inform the consultation process, given the likely duplication under the proposed Regulations. Using outcomes from these assessments on the impacts to socio-economic and cultural aspects to the Commonwealth marine area would be extremely valuable and be a good opportunity to reduce consultation fatigue.

Triggers for revision of management plans

Section 53 outlines the circumstance that would require a management plan revision and subsequent approval, in addition to the 5 yearly periodic review (section 52). We would encourage the Department and the Regulator to provide more clarity on what exactly these circumstances will be, as currently, the list of revision requirements is extensive and open to discretion.

For example:

- section 53.2(a) lists that if licence activities were to 'change significantly', this would be a circumstance that would require revision of the plan. However, this term is quite broad and subject to interpretation.
- section 53.2(b) requiring a revision when 'a new stage of licence activities is to commence' is not clear what a stage refers to – does this refer to feasibility to commercial licence, or a specific project phase.
- section 53.2.(c) requires a revision when the list of relevant structures, equipment, and property in the plan is 'significantly incorrect'. This phrase is not defined and unclear.

Further clarification on the level of consultation required on revisions would also be welcome, either as part of the Regulations or through additional memorandums of explanation from the Regulator.

Where possible, to reduce consultancy fatigue, additional consultation for minor revisions should be reduced or avoided.

We do also note that the list of circumstances outlined in section 53.2 are broader than the circumstances requiring a revised Environment Plan under the Offshore Petroleum and Greenhouse Gas Storage (OPGGS) Act Environment Regulations, which include to incorporate a significant modification or new stage of activity, where there is a new or increased environmental impact or risk, or a change in the titleholder. Highlighting the higher bar being set for the offshore wind industry.

As industry looks to ensure compliance with all requirements under the Regulations, we would welcome clarity on all the subsections listed in all of section 53 to ensure minimisation of plan revisions where possible.

Time for consideration of applications

Section 60 outlines that the Regulator has 90 days after the day the application is made to decide an outcome, however the Regulator also can extend the decision time, more than once, without consequence. We appreciate there will be circumstances where the Regulator requires further information or clarification, however the flexibility provided to the Regulator does not provide confidence to applicants in the set timeframe and has the potential to cause applicants significant delays without any ability for resolution. These delays can impact a proponent's ability to secure vessels and human resources and can lead to significant cost increases to the overall project if delays are ongoing.

Conversely, should the Applicant be required to amend and resubmit plan (section 62), the Applicant is at risk of having their plan refused by the Regulator. There is no flexibility granted to the Applicant.

We would therefore encourage considering a more robust mechanism to ensure the Regulator does not unduly cause delay. This could include proactive prevention measures including the Regulator prioritising that they have a suitable number of trained and skilled resources available to complete these review processes to avoid backlogs in advance.

Additionally, we also encourage the Department to consider a shortened review period (30 days) for management plans for works under a Feasibility Licence. As it's expected these management plans will be shorter than management plans being considered for a Commercial Licence. Shortening this period would enable Licence holders to progress with geotechnical and geophysical surveys as soon as possible and enable confidence in securing necessary resources.

Management plan summaries

The additional requirement on Licence holders to provide a summary of a management plans (subdivision D) seems an unnecessary addition on already completed work.

We would encourage consideration for how the activity of management plan summaries can be mitigated from a time perspective, as to not add unnecessary additional workload. This could be through publication of redacted management plan, or publishing of compete sections while excluding content that is commercially sensitive.

Design Notifications

A design notification, as per section 92, must be provided by a licence holder to the Regulator before the licence holder applies for an initial management plan under a transmission and infrastructure licence or a proposed commercial licence. While we see that this will ensure project designs are aligned with what the Regulator will approve under licence, we note that this process is not mirrored from the oil and gas industry.

Subsection 93.2 details that the notification will include information about the intended location and layout of licence infrastructure for the related offshore wind farm, however it is unclear to what extent there is optionality and flexibility to modify the design notification beyond the point of submission to the Regulator. While all endeavours will be made to ensure that the project remains in accordance with the design notification, as the project progresses through various phases, the design can be subject to unavoidable change – for example, change in supplier components due to supply chain constraints.

Additionally, as highlighted in relation to feedback on management plans, the Regulator's timeframe to consider the notification (60 days) needs to be carried out in such a way as to not cause delays in the process. As currently, again there is no penalty for delay or extension on the Regulators part.

To expedite the process further, if the Regulator has already been consulted on the design as part of approval under the EPBC Act, then this should be considered with all feedback being in accordance with approval under the EPBC Act. In this instance, we could expect approvals to be completed in under 30 days.

While there will inevitably be some instances where delays occur, we would again welcome the introduction of a measure of assurance that the Regulator will not invertedly be able to cause extensive delays to projects by issuing ongoing extensions to review of Design Notifications.

Finally, we would encourage alignment between the design notification Regulations and the recently released draft Transmission and Infrastructure Licence guideline, to ensure there are no conflicts and duplication of works.

Provision of Financial Security

Section 117(1) of the Act requires licence holders to establish financial security to protect the Commonwealth from exposure to costs, expenses and liabilities that may arise from decommissioning of infrastructure, the removal of equipment and property, and remediation for licence areas. The CEC find this level of financial security to be excessive, and once again setting a seemingly unattainably high bar for this nascent industry.

Implications of requiring upfront bonds for full decommissioning cost

Requiring a full upfront bond for decommissioning, in the form of cash or cash equivalent such as a bank guarantee, is likely to be fatal to most if not all offshore wind projects in Australia.

For any projects that might proceed under this framework, the consequence of a full upfront bond would be a much higher cost of electricity: in order to maintain the same internal rate of return, assets would need to charge higher amounts for the electricity they supply to offset the cost of maintaining the security. For onshore projects, the CEC have estimated this effect on power-purchase agreements to be in the order of $2/MWh higher. This may be even higher for offshore wind. The later in an asset's life any security requirements are introduced, the less this effect is.

Differences between offshore wind and offshore oil & gas

When setting a framework for regulating decommissioning requirements for offshore wind, it is important to note critical differences between an offshore wind farm and offshore oil and gas facilities.

Firstly, offshore wind farms pose a much lower risk of adverse consequences from infrastructure. The risk of an offshore wind farm not being properly decommissioned is much less that the risk of an offshore oil or gas facilities not being properly decommissioned.

Secondly, oil and gas facilities typically reach end-of-life when there is no longer a resource to capitalise on. That means that continued operation will not yield any further revenue for the company or any company that might purchase the asset. By contrast, when an offshore wind farm reaches its end-of-life, the site is still windy, and the asset will continue to generate revenue. This means that the risk of default on decommissioning liabilities is much less for offshore wind than it is for oil and gas, which means a risk-based approach would not apply the same simple framework of requiring a full upfront bond.

Thirdly, the amount of steel and other recyclable metals in each offshore wind turbine means that the cost of decommissioning a wind farm often comes with a revenue stream – i.e. the on-selling of recyclable metals. While exact figures are unavailable for the extent to which this will offset the costs of decommissioning of assets some 30 years from now, the net cost to an offshore wind asset owner is not the cost of dismantling and removing the infrastructure. Any security should account for this.

Decommissioning costs can be accumulated in final years of operation

Onshore wind farms in Australia typically make provisions for decommissioning liabilities through their agreements with host landholders. In the case of offshore wind, the landholders are effectively the Commonwealth.

These agreements typically specify that in the final years of operation, the asset owner will put aside a proportion of revenue/profits into a separate fund that is created for the purpose of accumulating the finances necessary to conduct decommissioning works. Asset owners will often provide a mechanism to provide visibility to the landholder that the decommissioning fund is accumulating.

Our analysis of operating onshore wind farms indicates that the revenue needed to cover decommissioning costs is generated within 1-3 years of operation, potentially even less, depending on the asset. While offshore wind is likely to have higher decommissioning costs than onshore wind, it is also likely to be generate more electricity (and therefore more revenue). This supports an approach of only requiring a bond or other security from later in the life of an offshore wind farm.

Overall position

For the reasons listed above, we consider that requiring a full upfront bond is not necessary for offshore wind farm. Further, we consider that to do so will present a major risk to Australia's offshore wind sector and therefore future economic opportunities.

In summary:

1. Imposing a full upfront bond will add to the cost of electricity supplied by offshore wind to consumers, with minimal benefit to risk reduction.
2. The resource an offshore wind farm is using still exists at the assets end-of-life, and the revenue need to carry out decommissioning works can be accumulated within a couple of

years of operation, greatly reducing the risk of a scenario in which the asset owner defaults on decommissioning liabilities.

A more pragmatic approach would be to require a security to be built up over time in the later years of an asset's life, such as from year 20 or 25 onwards. The amount of this security will also then more accurately reflect the likely decommissioning costs, factoring in the evolution of Australia's decommissioning capability as offshore oil and gas assets, and later onshore wind farms, reach end-of-life.

We would also encourage inclusion of additional forms of financial assurance, as seen in the OPGGS Act, which includes any of the following, in any combination and without limitation:

a) insurance;
b) self-insurance;
c) a bond;
d) the deposit of an amount as security with a financial institution;
e) an indemnity or other surety;
f) a letter of credit from a financial institution;
g) a mortgage.

Expanding the forms of financial security would provide greater flexibility for proponents while still ensuring a robust mechanism for financial security in relation to decommissioning works. Again, it is imperative that proponents are not unfairly challenged in their attempts to construct renewable energy in Australia, and we welcome consideration of further options to enable this industry.

Modifications of the *Work Health and Safety Regulations 2011*

An area in the proposed Regulations of great concern to the CEC is the modifications to the Work Health and Safety Regulations 2011 (WHS Regulations) outlined in schedule 1. While there is limited detail provided in this section, we see the implications of this modification to be potentially debilitating for the offshore wind industry in Australia.

Our primary concern is the level the extraterritorial reach is extended for the work health and safety (WHS) laws outside of Australia. While we recognise that the Commonwealth WHS laws currently include some limited extraterritorial application, the proposed extension as per section 11A will see requirements for the application of Commonwealth WHS laws to international design, manufacturing, and import and supply activities relating to plant, structures and substances.

Essentially, every tower manufacturer, nacelle assembly plant and engineering firm will need to be complying with Commonwealth WHS laws. This extensive application of the WHS laws will have significant impact on the Australia offshore wind market given a large majority of equipment will be procured from international suppliers. From a compliance perspective, this application of the law is also quite unpractical and contractually challenging.

For clarity, the CEC support all components and inputs across the offshore wind supply chain being sought from suppliers with the highest levels of safety standards available. The CEC have also undertaken extensive work to raise awareness and address the issue of modern slavery in the clean energy sector. Yet we don't believe this immense level of oversight and scrutiny – unparallel to any

other industry in Australia – will increase standards or reduce the risk of modern slavery, but instead add detrimental increases to project costs and significantly reducing the already constrained pool of suppliers.

The Global Wind Energy Council (GWEC) detail the current risks and constraints on the global wind supply chain in their recent report *Mission Critical: Building the global wind energy supply chain for a 1.5 °C world*, where they outline one of the reasons for supply chain constraints as being a result of conflicting and complex policy signals that are preventing industry from adjusting and scaling production capacity[1]. The report also notes that the forward outlook for wind supply chains shows that the market is only going to become more challenging as the global demand for renewables increase in the attempt to triple global renewable capacity by 2030, noting that there will be more pressures on offshore wind than onshore.

If we then apply the extension of the WHS Regulations as proposed in the Proposed Regulations, the limitations and oversight that will be applied to the Australia offshore wind supply chain are ruinous. We would strongly recommend removing the modifications to the WHS Regulations and explore alternate opportunities with proponents to work with suppliers to ensure a high calibre of work health and safety standards are being met.

Finally, we also note that the application of regulations identified in 11A(2) and 11A(3) adds further complexity, giving the Regulator the ability to require further details in relation to extraterritorial operations. We expect this further power provided to the Regulator in relation to WHS laws will lead to further delays for projects.

Diving

We appreciate the consideration taken to detail diving standards in the Regulations, seeing many similarities from the OPGGS Regulations, however, would like to acknowledge that diving is far less utilised by the offshore wind industry compared to the oil and gas industry. We also support the industry positions to reduce diving activities as much as possible. Given this, we would instead recommend that diving standards as part of the Regulations be align with existing international standards.

Application Fees

We recognise the role fees play in supporting the Regulator to complete the scope of works outlined in the proposed Regulations, however, again note these are generally higher than for the oil and gas industry.

As a nascent industry, we would appreciate consideration for the challenges in establishing this new clean energy sector for Australia and request where possible, any revision and reduction to the fees to support the industry's establishment be included.

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[1] Global Wind Energy Council, *Mission Critical: Building the global wind energy supply chain for a 1.5 °C world*, 2024, p.4

Considerations for resolving overlapping applications

As detailed in the Consultation Paper, the Department is considering future amendments to Regulations to allow projects that are equally meritorious, but have an area overlapping, to go straight to financial offer. While we appreciate this approach may be more efficient from a time perspective, it would add an additional cost to projects that could be avoided. Given the nature of the financial offer mechanism, it could also see proponents making excessive bids to secure an area that could have been resolved through consultation, as successfully done in the Gippsland region.

We see this scenario could be suitable however in the situation where there is an extensive overlap between two equally meritorious proponents and if they were to engage in overlap resolution, it would see projects cut in half – most likely due to being in a smaller offshore zone or with additional projects nearby – and therefore so projects no longer be meritorious based on the new far smaller size. We would welcome clarity on outcomes in this scenario.

We acknowledge the CEC along with many industry proponents had concerns the original proposed resolution method for overlaps, however following the ACCC's authorisation, it was welcome to see quick resolution of the overlapping areas with positive outcomes for proponents involved with a larger area of seabed able to be declared. Given this, recommended this process remaining industry led as much as possible led to deliver outcomes in the best interest of all parties while still ensuring projects can be independently meritorious and with minimisation of financial offers being required.

General feedback

As highlighted in earlier sections, some of the language and phrases through the Regulations are subjective and open to interpretation, such as 'reasonable', 'sufficient' and 'adequate'. Further guidance is necessary to ensure compliance, reducing revisions and consultancy fatigue. Similarly, the proposed Regulations acknowledge Sea Country, however this is also not defined.

We appreciate that, as done previously, the Department and the Regulator will provide further guidance through explanatory memorandums, and welcome clarification on the points raised throughout this paper.

As always, the CEC welcomes further engagement from DCCEEW to discuss any of the information presented in this submission. Further queries can be directed to Morgan Rossiter at the CEC (mrossiter@cleanenergycouncil.org.au).

Kind regards,

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