



Australian Government

Department of the Environment and Energy

Offshore clean energy infrastructure regulatory framework

Discussion paper

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Contents

Introduction	3
Principles	3
Overview of proposed approach	4
Ministerial declaration.....	4
Commercial activities.....	5
Non-commercial activities.....	5
Transmission and associated infrastructure.....	6
Management plans.....	6
Other elements.....	6

How can I provide feedback?

Please provide your comments on the proposal in this discussion paper by **28 February 2020** to offshorewind@environment.gov.au. All submissions will be held in confidence.

Information sessions will be held in Perth and Melbourne in mid-February. These sessions will take a seminar format with opportunity for Q&A. Exact times and locations for the sessions are to be confirmed - please email offshorewind@environment.gov.au to register your interest.

Should you have any other questions about the proposed framework, please contact Matthew Stuchbery (Director, Clean Energy Technology Innovation) on 02 6275 9688 or matthew.stuchbery@environment.gov.au.

Introduction

Interest in wind and other clean energy projects deployed offshore is expected to grow as technology improves and costs reduce. Offshore clean energy generation can offer large, year-round generation capacity, provide network benefits, align better with demand, and have less visual impact on the landscape than other energy generation options. The development of offshore clean energy industries has the potential for significant new employment, and billions of dollars of investment, in Australia's coastal economies.

The Australian Government is developing a regulatory framework to enable the exploration, construction, operation and decommissioning of offshore wind and other clean energy technologies and associated infrastructure such as transmission, in Commonwealth waters (i.e. beyond three nautical miles), including Australia's Exclusive Economic Zone.

Australia's offshore areas are already of vast importance to our environment, heritage, lifestyle, security and economy. Our offshore areas are used by a broad range of stakeholders including different industry sectors, conservation and heritage interests, recreational use and the broader public. The Australian Government promotes shared use of Commonwealth waters and will continue to balance competing interests while pursuing the most economically efficient use of the offshore area and its resources. Consistent with this approach, the proposed regulatory framework will require comprehensive and detailed consultation throughout the regulatory process (from site identification through to decommissioning) for each development.

The Australian Government minister with responsibility for energy matters will make all major decisions under the framework. It is proposed to leverage the experience of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to operate as the regulator for any new industry. NOPSEMA would be responsible for safety, environment and structural integrity regulation as well as providing technical advice to the Energy Minister to support decision-making.

Principles

The proposed regulatory framework is based on principles which recognise the evolving nature of the industry and impacts on other marine users. The proposed regulatory framework will:

- Be technology neutral, allowing research and demonstration projects as well as commercial projects for wind and other offshore clean energy resources. Regulation of activities will be risk-based, focussing on higher risk aspects of the industry with no unnecessary regulation for low risk activities that have minimal impact on other users or the environment.

- Uphold the existing principle of shared use of Commonwealth waters, and promote coexistence with other users, including safety of navigation.
- Ensure that all environmental impacts and risks are appropriately assessed and managed and that the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* are met.
- Ensure the protection of the offshore workforce and other users in Commonwealth waters, requiring specific consideration and management of safety risks in accordance with international leading practice.

The proposed policy framework will also require licences to be awarded on a competitive basis, and costs incurred by the Australian Government recovered through appropriate fees and levies.

Overview of proposed approach

(Also see the proposed process map available at <https://consult.industry.gov.au/offshore-exploration/offshore-clean-energy-infrastructure>)

Ministerial declaration

The proposed framework will recognise all offshore users and balance competing interests through consultation and negotiation. The first step in this process is the requirement for the Minister to consult over an area that may be potentially suitable for offshore clean energy infrastructure development. The consultation and any subsequent declaration would take place before any licence for progressing development can be awarded. The declaration stage is designed to identify and prevent potential conflicts in competing interests, and set conditions before a project could progress, such as key stakeholders and consultation requirements, constraints on types of activities, as well as other conditions the Minister considers appropriate.

A process for public comment will be made available, as well as targeted consultation with known users of a potential area. Consultation will also take place across state and Commonwealth government agencies. The consultation process will include defence interests, environmental impacts and sensitivities, existing and planned industries (e.g. shipping activity, fishing and petroleum exploration) and national security interests (such as critical infrastructure).

After consideration of the results of the consultation process the Minister may declare an area as suitable for offshore clean energy projects. Following a declaration, the Minister may open applications to seek competitive interest in a declared area for commercial and / or non-commercial activities. The proposed regulatory framework provides for the publishing of the criteria and process for assessing competitive interest.

Commercial activities

A *Feasibility Licence*—awarded over some or all of a declared area—would give a developer the exclusive right to seek a Commercial Licence (see below) over the Feasibility Licence area, subject to any conditions and requirements. The Feasibility Licence provides the proponent a period of up to five years to demonstrate their ability to manage safety and environmental risks and impacts, and to ensure that the interests of other users of the area are appropriately considered.

During this period a developer will be required to complete exploration activities, finalise project design, and undertake detailed consultation with other users and regulators. Where appropriate, developers will reach agreement in relation to plans for interaction with the environment and other users and managing the impacts.

If the Minister is satisfied that all conditions and requirements have been met – including the requirement to have a Management Plan accepted by the regulator – the proponent can apply for a Commercial Licence. Should an offer for a Commercial Licence be made, and on accepting the offer, the proponent must demonstrate that a Final Investment Decision for the project has been reached and lodge the decommissioning bond security (see under Management Plans below).

A *Commercial Licence* will provide rights to undertake a commercial offshore clean energy activity for an initial term of up to 30 years. The licence can be renewed indefinitely (up to 30 years per renewal) for as long as a declaration is in place over the area. The Commercial Licence entitles the holder to apply to the regulator to (a) construct, test and commission, (b) operate the project, and (c) decommission the project.

A Commercial Licence is designed to provide long-term investment security to the licence holder and applies to an area that cannot also be included in another Commercial (or Feasibility) Licence. These licences can, however, occupy the same area as a Non-Commercial Licence or a Transmission and Infrastructure Permit, following negotiation with the Commercial Licence holder. While operations of the commercial activities will take precedence, it is expected that activities will be managed to avoid interference.

Non-commercial activities

A non-exclusive *Non-Commercial Licence* will provide a lower-cost pathway to support pre-commercial seismic exploration or genuinely innovative offshore clean energy demonstration projects (such as wave or tidal projects) to ensure that these activities are regulated for safety and environmental matters, and appropriately decommissioned once they cease. The term of a Non-Commercial Licence is limited to 10 years and does not lead to a Commercial Licence.

Transmission and associated infrastructure

A separate non-exclusive *Transmission and Infrastructure Permit* for construction and operation of transmission or other infrastructure (e.g. offshore energy sub-stations) is proposed. The permit will typically be granted in conjunction with commercial or non-commercial licences. The Minister will also have the power to award a Transmission and Infrastructure Permit for the purpose of transmitting energy generated onshore through the offshore environment. This permit will allow for a safety zone to be established for the purposes of infrastructure protection if required.

Management plans

Management plans will be required for all licence types, providing requirements on delivery of a project, as well as appropriate protections for the project type. These plans will typically include information relating to:

- environmental management;
- safety management;
- project design, engineering and structural integrity; and
- plans for construction, commissioning, operation and decommissioning.

Based on costs estimated through the management planning process all licence holders will also be required to lodge a decommissioning bond from the point when any infrastructure is proposed to be installed in a licence area or as otherwise required by licence conditions.

The bond amount will be calculated in accordance with an appropriate method as agreed with the regulator as part of the management plan. Decommissioning bonds are expected to equal the amount it would cost government to decommission all infrastructure should the licence holder fail to meet its decommissioning obligations.

Other elements

Activities not regulated by this legislation - Low impact research activities such as installing met-ocean buoys are not proposed to be subject to the legislation. Exploration activities that involve seismic surveying, installation of fixtures on the sea-floor and drilling or sediment core sampling will however require an offshore clean energy licence. To avoid doubt, notices may be issued from time to time to specify activities that are or are not 'offshore clean energy activities'.

Existing rights – Offshore clean energy exploration is already being undertaken, and offshore transmission assets are being operated; these rights will be recognised and continue to operate under current arrangements. Any successive or new exploration or development activity or new transmission projects will be subject to the framework.

Asset protection, offences and penalties - The framework will make provision for the establishment of penalties, and safety zones for the protection of offshore clean energy infrastructure, operations and works. It is intended that an offshore clean energy infrastructure licence holder would be permitted to apply to the regulator for a safety zone in order to protect infrastructure, operations or works within an offshore clean energy infrastructure licence area.

Pre-qualification - Before a proponent can participate in the offshore clean energy infrastructure regime and hold a licence, they must first apply for pre-qualification. The pre-qualification process will assess the suitability of the proponent to participate in the offshore clean energy industry in Australia, and will include periodic re-assessment. Tests will include a fit and proper person test, assessment of technical and financial capability as well as measures of past performance.

Spatial definition - Most offshore clean energy infrastructure licences will be defined in relation to 1 x 1 minute graticular blocks. Where it does not make sense to refer to blocks, such as for transmission lines, another form of spatial definition may be used such as coordinates. To encourage the efficient use of the offshore environment, and minimise the potential for 'sterilisation' of surrounding sites, graticular blocks will be contiguous within a licence. In circumstance where graticular blocks cannot be contiguous to practically accommodate a windfarm or other project (for example, significant constraints in a declared area), multiple licences would be considered.

Cost-recovery - The legislative framework will include the option to charge an annual payment based on the size of the area held under the licence. The payment per graticular block will vary according to different licence types, with a lower rent applying to non-commercial activities. Costs are also expected to be recovered through application fees—including for management plans—and ongoing compliance costs relevant to size and nature of physical assets (e.g. number of turbines).

Ongoing compliance and regulation – The NOPSEMA will be provided with sufficient powers and enforcement tools to effectively monitor and enforce compliance with the requirements of the offshore clean energy infrastructure regulatory framework, including the ability to appoint inspectors. The inspectors will be given necessary powers to conduct inspections and investigations to determine whether licence holders are complying with requirements. NOPSEMA will also be provided with enforcement tools, including the power to issue notices, financial penalties and directions and to seek prosecutions for offences against legislative requirements.

Standard licence conditions - Given the long-term nature of the offshore clean energy infrastructure licences, provisions for regular review (i.e. not just at renewal) or variation of licence conditions and regulatory approvals (e.g. management plans) will be built into the regime. Licences will be able to be varied, surrendered, or may be cancelled if there are sufficient grounds (with written notice and opportunity to respond/take action to remove the ground/s). Lastly, proponents will be able to transfer licences to other pre-qualified parties.

Reporting – Licence holders under the framework will be required to report certain information in relation to their projects. This information will include but not be limited to:

- generation, financial and technical
- meteorological and geophysical, and
- safety, structural integrity and environmental management performance information, including on incidents