

MUCH ANTICIPATED AUSTRALIAN OFFSHORE ELECTRICITY INFRASTRUCTURE BILL INTRODUCED TO PARLIAMENT

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AN EXCITING NEW OPPORTUNITY FOR AUSTRALIA

The new Offshore Electricity Infrastructure Bill 2021 (Bill) has been introduced to the Australian parliament with the aim of kick-starting new investment into offshore electricity generation and transmission. The Bill sets out a framework for construction, operation, maintenance and decommissioning of offshore electricity projects. The Bill comes 18 months after consultations on the proposed framework closed in February 2020 and forms part of the Government's drive to deliver a reliable, affordable and secure energy system.

The introduction is a long-awaited move for Australia to work towards more sustainable and large-scale electricity generation capacity. It brings the country one step closer to making use of the huge and untapped resources available off Australia's coastline and to taking advantage of the ever-improving technology and lower costs which have been developing internationally. Under this framework, Australia has the potential to overtake, in scale of generation, other countries already employing offshore electricity infrastructure to great effect. (Europe currently has 25,000MW of installed offshore wind capacity which is greater than all of Australia's installed coal generation.)

We set out in this article some of the key details of the Bill which, if passed, will facilitate the development of a range of offshore generation infrastructure and technologies, at all stages of the generation and transmission chain. The framework will provide massive opportunities for domestic and international developers and investors to be in the vanguard of what will surely be the keystone of the security of Australia's energy supply over the coming years and a major factor in moving towards a future with a much reduced carbon-footprint.

WHAT DOES THE BILL DO?

The Bill sets out the detail of what will be the regulatory framework for offshore electricity infrastructure and transmission. We have set out the key elements of this below.

Geographical scope

The Bill covers offshore electricity activities in specified areas to be declared by the Minister (for Energy and Emissions Reduction) within the Commonwealth offshore area of three nautical miles from shore to the edge of Australia's Exclusive Economic Zone.

Naturally, the new legislation does not apply to the coastal waters of a State or the Northern Territory, where State and Territory laws will continue to apply.

What infrastructure will be covered?

The Bill applies to any offshore renewable energy infrastructure, both fixed and tethered, and covers exploring, exploiting, storing, transmitting and conveying energy product from renewable resources. The extent of what resources this might capture is not exclusive, but is anticipated to include wind, wave, tide, current, solar light and heat, rain and geothermal heat.

Licensing regime

There will be three licensing streams available:

Commercial license

- This license is for commercial-scale projects intending to generate electricity through offshore renewable energy infrastructure.
- The license will have a duration of up to 40 years (with the ability to apply for an extension) and will allow exclusive use of the relevant license area.
- Prior to obtaining a commercial license, a feasibility license is required to undertake scoping activities. The Minister will issue a public invitation to apply for feasibility licenses and these licenses will be valid for up to seven years.
- Financial offers from eligible persons may be considered where applications for same license area are similarly meritorious.

Research and demonstration license

- This license is for small-scale projects to undertake research or to test emerging technologies.
- The license will have a duration of up to 10 years (with the ability to apply for an extension) and may overlap in geographical scope with other research and demonstration licenses.
- All infrastructure installed within the license area must be removed at the end of license period.
- This license cannot lead to the issue of commercial license, which is a separate application process.

Transmission and infrastructure license

- This license is for construction and operation of infrastructure to store, transmit or convey electricity or renewable energy product ie to connect to the onshore grid and other end users.
- The license will have a duration for the life of the asset.

Licensee requirements

Licenses will only be available to "eligible persons". Eligible persons are body corporates with a registered office in Australia or established for a public purpose by or under law of the Commonwealth or a state or territory.

All license holders will need to provide financial security, have an approved management plan and meet merit criteria:

Financial security

Financial security must be provided before commencing installation of any offshore renewable energy infrastructure. The security will cover the costs of decommissioning of the infrastructure at the end of the asset

life. The form of the security will be that acceptable to the Regulator (National Offshore Petroleum Safety and Environmental Authority).

Management Plan

The management plan must also be in place before installation of any infrastructure.

The plan will set out:

- how the license holder intends to manage the potential impacts and risks of its offshore infrastructure activities;
- environmental management, including compliance with obligations and the outcomes of any assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act);
- work health and safety policies and plans;
- infrastructure integrity;
- plans around emergency management;
- consultation schemes; and
- financial security arrangements

Merit criteria

Each license holder must meet the following merit criteria:

- the eligible person has access to the technical and financial capability to carry the project;
- the proposed project is likely to be viable;
- the eligible person is suitable to hold the license; and
- any other criteria prescribed by licensing scheme.

Compliance and enforcement

The Regulator and its inspectors will have powers to monitor and enforce compliance with the framework.

Enforcement powers include issuing notices, infringements, enforceable undertakings, directions and pursuing prosecutions for offences (with civil penalties).

DOES THE BILL ELIMINATE THE NEED FOR ENVIRONMENTAL APPROVALS?

No. The proposed new licensing regime does not eliminate the need for environmental and planning assessments or approvals which are essential to any proposed offshore wind project. In particular:

- Commonwealth environmental assessment and approval will still be required under established processes under the EPBC Act, particularly for actions likely to have a significant impact on Commonwealth marine areas, listed threatened species and communities and listed migratory species; and

- State and Territory assessments and approvals will still be required for any proposed infrastructure in State or Territory coastal waters or on State land, including planning approval and secondary approvals relating to road upgrades, electricity infrastructure, marine parks, maritime laws, fisheries and/or biodiversity conservation.

Generally speaking, the States and Territories have not established clear legislative or policy frameworks to facilitate offshore wind projects but we expect this to change now that the Commonwealth has moved forward with the Bill.

To view our Offshore Wind Handbook, [click here](#).

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