

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Climate Change and Energy

Offshore Electricity Infrastructure Act 2021

Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022

Purpose and Operation

The *Offshore Electricity Infrastructure Act 2021* (OEI Act) establishes a legal framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure (OEI) in the Commonwealth offshore area. The OEI Act commenced on 2 June 2022.

The OEI Act provides a robust framework for granting licences to undertake OEI activities in the Commonwealth offshore area, while providing for co-existence with other marine users, the effective management of environmental impacts, the safety of workers and the protection of OEI.

Before the Minister can issue an invitation to apply to apply for licences under the OEI Act in respect of a particular area, the Minister must first declare an area, by way of legislative instrument, pursuant to s 17(1) of the OEI Act.

Before a declaration can be made, pursuant to s 17(3) of the OEI Act, a number of criteria must be met:

- (a) a notice proposing to declare the area has been published; and
- (b) the day specified in the notice as the day by which submissions may be made has passed; and
- (c) the Minister has consulted:
 - i. the Defence Minister; and
 - ii. the Minister administering section 1 of the *Navigation Act 2012*; and
- (d) the Minister is satisfied that the proposed area is suitable for offshore renewable energy infrastructure.

On 5 August 2022 a notice of proposal to declare an area in the Bass Strait, off Gippsland, Victoria was published on behalf of the Minister on the Department of Climate Change, Energy, the Environment and Water's (the department's) website. This commenced a 63-day public consultation period which closed on 7 October 2022.

The Minister has consulted with the Defence Minister and the Minister administering section 1 of the *Navigation Act 2012*, formalised through an exchange of letters on 14th and 16th of December respectively.

In addition for the Minister to be satisfied that the area is suitable for offshore renewable energy infrastructure, pursuant to s 19(1) of the OEI Act, they must have regard to a number of prescribed matters. These are:

- (a) the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure in the area on other marine users and interests;
- (b) any submissions received during the public consultation period;
- (c) any advice received as a result of the consultation with the two Ministers identified above;
- (d) Australia's international obligations in relation to the area;
- (e) Australia's greenhouse gas emissions reduction targets.

The Minister has had regard to all the matters required under the OEI Act.

Subsection 19(2) states that the Minister may also have regard to any other matters that they think are relevant.

The Minister has had regard to the following matters considered relevant:

- (a) the technical suitability of the Gippsland Declared Area;
- (b) the Victorian Government's support for future offshore renewable energy infrastructure in the region;
- (c) the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure in the area on visual amenity.

As the Minister has met all statutory preconditions required to make a declaration under the OEI Act, the Minister may:

- (a) declare the entire proposed area as suitable;
- (b) decide not to make a declaration; or
- (c) do either or both of the following, as they deem appropriate:
 - i. declare a part of the proposed area that the Minister is satisfied is suitable for offshore renewable energy infrastructure;
 - ii. declare an area subject to such conditions under section 20 of the OEI Act that they consider will make the declared area suitable for offshore renewable energy infrastructure.

The Minister has declared a part of the proposed declared area that is suitable for offshore renewable energy infrastructure. The Minister has also made the declaration subject to conditions under s 20 of the OEI Act that they consider make the area suitable for offshore renewable energy infrastructure.

The Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022, gives legal effect and defines the spatial extent of the declared area in Bass Strait off Gippsland, Victoria and details the conditions that the declaration is subject to.

The Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022 will remain in force until it is revoked under s 26 of the OEI Act or until it sunsets in accordance with the *Legislation Act 2003*.

Background

The boundaries of Declared Area OEI-01-2022 were informed by a number of factors including:

- key feasibility factors for offshore wind in Australia as identified by the Blue Economy Cooperative Research Centre;
- the proximity of the area to existing electricity infrastructure;
- the technical suitability of the area;
- Victorian government support for offshore electricity infrastructure in the area;
- the level of industry interest in applying for licences under the OEI Act to construct offshore electricity infrastructure in the area;
- information and advice received through ongoing consultation with relevant Commonwealth and Victorian government agencies;
- submissions received during the public consultation period.

Under the OEI Act, licence holders must develop management plans prior to carrying out any offshore renewable energy infrastructure activities within their licence areas. As part of the preparation of these plans, licence holders will need to consult with other marine users and interests, and demonstrate how they have consulted and addressed any feedback received. OEI licence holders will also need to have a plan for gathering and responding to ongoing feedback throughout the life of their project.

The management plan must also address matters of environmental management, including how the licence holder is to comply with any obligations under the EPBC Act, or regulations under that Act, in relation to the activities to be carried out under the licence.

The management plan must be approved by the Offshore Infrastructure Regulator before an application for a commercial licence can be granted. Before deciding whether to grant a commercial licence, the Minister may require the developer to conduct specific kinds of consultation. OEI licence holders must also ensure they have received all other relevant approvals, including those required under the EPBC Act, and undertake any other consultation processes, before they can apply for a commercial licence.

Prospective holders of licences issued under the OEI Act should be aware that there are a number of threatened species in the vicinity of the declared area including, but not limited to:

- Orange Bellied Parrot (*Neophema chrysogaster*)
- Swift Parrot (*Lathamus discolor*)
- Albatrosses and Petrels
- Southern Right Whale (*Eubalaena australis*)
- Blue Whale (*Balaenoptera musculus*)
- White Shark (*Carcharodon carcharias*)

Authority

Under s 17(1) of the OEI Act: Subject to subsection (3), the Minister may, by legislative instrument, declare a specified area in the Commonwealth offshore area for the purposes of this Act.

Consultation

The Minister published the Notice of Proposal to declare an area in Bass Strait, off Gippsland, Victoria on 5 August 2022. This commenced the statutory public consultation period as required under the OEI Act. Members of the public were able to make submissions via the Department of Industry, Science and Resources Consultation Hub web platform. On 7 October 2022, the public consultation period closed. 765 submissions were received.

Information on the consultation was shared across a number of social media channels, including on the department's website and on departmental social media channels, Twitter, Facebook, Instagram and LinkedIn.

Open house sessions

The Gippsland community was invited to participate in a number of open house sessions held during the consultation period. In total, six open house sessions were held across the Gippsland region (Morwell, Lakes Entrance, Sale, Yarram, Wonthaggi and Leongatha) from 29 August to 1 September 2022, attracting more than 500 attendants.

Targeted meetings with stakeholder groups including First Nations, commercial fishing representatives and port authorities were also conducted while in the Gippsland region.

Online sector-based engagement

Relevant industry stakeholders were invited to participate in a number of online industry and community specific sessions held during the consultation period. Five sessions were held between 17 August and 25 August. These sessions were targeted to the following industry groups: Aviation and Emergency Services, Commercial Fishing, Tourism, Community Groups and Recreational Fishing. A total of 79 individuals attended these online sessions.

Ongoing consultation was also undertaken with relevant Commonwealth and Victorian Government agencies that have policy and regulatory oversight over marine users and interests.

Regulatory Impact

A Regulation Impact Statement (RIS) was prepared for the OEI Act.¹ This RIS was included in the Explanatory Memorandum for the OEI Act. The Office of Best Practice Regulation has been contacted for advice on the need for a RIS and have advised that the declaration is within the scope of the previous RIS process. As such, the preparation of an Impact Analysis is not required.

¹ Office of Best Practice Regulation reference number 42703.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is set out in Attachment B.

Details of the *Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022.*

Section 1 – Name

This section provides that the name of the instrument is the *Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022.*

Section 2 – Commencement

This section provides that the declaration commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the declaration is made under s 17 of the *Offshore Electricity Infrastructure Act 2021.*

Section 4 – Definitions

This item provides for definitions of terms used in the declaration. These terms include ‘Declared Area OEI-01-2022’, which is the area made up of the parts specified in Schedules 1, 2 and 3 to the instrument.

Section 5 – Declared area

Subsection 5(1) declares the area ‘Declared Area OEI-01-2022’ as a ‘declared area’ for the purposes of the OEI Act.

Subsection 5(2) refers to Schedule 2 to the declaration, which sets out a simplified map that illustrates the location of the declared area.

Section 6 – Conditions

This section sets out the conditions that the declaration is subject to.

Condition 1

This condition requires that feasibility licence holders, within any part of the Defence consultation area (defined in section 4), must, when preparing a management plan for the licence, consult with the Department of Defence. The outcomes of the consultation must be addressed in the management plan.

This condition ensures that OEI licence holders consult with the Department of Defence to determine the potential impact of offshore infrastructure activities and other activities that are to be carried out under the licence on Defence operations and radar capability.

Condition 2

This condition requires that feasibility licence holders, within the Declared Area OEI-01-2022, must, when preparing a management plan for the licence, consult with a number of Commonwealth Government agencies and titleholders of any existing petroleum or greenhouse gas titles issued under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* whose title area overlaps with the licence area. The outcomes of the consultation must be addressed in the management plan.

The construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure within the Declared Area OEI-01-2022 may:

- present technical challenges for the existing radar network;
- affect Marine Park values in the vicinity of the area;
- impact the safety of navigation.

There are a number of existing petroleum exploration permits, petroleum retention leases, petroleum production licences, petroleum pipeline licences and greenhouse gas assessment permits, granted under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act), within the Gippsland Declared Area.

OPGGS Act titleholders require reasonable access to their facilities and title areas for maintenance, exploration and exploitation related operations and works over the life of their titles. The construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure within the Declared Area OEI-01-2022 may present ongoing interaction risks. These interactions are to be managed through consultation.

Condition 3

This condition requires that feasibility licence holders, within the Declared Area OEI-01-2022, must, when preparing a management plan for the licence, consult with holders of fishing concessions granted under the *Fisheries Management Act 1991* and permits issued under the *Fisheries Act 1995* (Vic) that can be exercised in relation to the licence area. The outcomes of the consultation must be addressed in the management plan.

The Declared Area OEI-01-2022 overlaps existing Commonwealth Fisheries. To ensure potential impacts on existing commercial fishing rights are expressly considered by OEI licence holders the declaration has been made subject to this condition.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022

This declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022 gives legal effect and defines the spatial extent of the declared area in Bass Strait off Gippsland, Victoria and details the conditions that the declaration is subject to.

Human rights implications

This declaration does not engage any of the applicable rights or freedoms.

Conclusion

This declaration is compatible with human rights as it does not raise any human rights issues.

The Hon Chris Bowen MP
Minister for Climate Change and Energy