

## **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-02-2024) Declaration 2024***

### **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 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.

The Minister administering the OEI Act is currently the Minister for Climate Change and Energy (the Minister). Before the Minister can issue an invitation 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 subsection 17(1) of the OEI Act.

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

- (a) a notice proposing to declare the area has been published under section 18 of the OEI Act; and
- (b) the day specified in the notice under paragraph 18(d) of the OEI Act 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 area is suitable for offshore renewable energy infrastructure.

On 14 August 2023 a notice of proposal to declare an area in the Pacific Ocean, off the Illawarra region, New South Wales (NSW) was published on behalf of the Minister, on the Department of Climate Change, Energy, the Environment and Water's (the department's) website. On 11 October 2023 a variation to the notice was published on the department's website extending the closure date of consultation to 15 November 2023. Consultation was open for a total of 94 days.

Pursuant to paragraph 17(3)(c) of the OEI Act, the Minister has consulted with the Defence Minister and the Minister administering section 1 of the *Navigation Act 2012* (being the Minister for Infrastructure, Transport, Regional Development and Local Government). This

consultation was formalised through letters sent by the Minister on 12 April 2024. The consultation with these Ministers did not raise any additional issues that had not been addressed during consultation with the respective departments of those Ministers.

In addition, for the Minister to be satisfied that an area is suitable for offshore renewable energy infrastructure under paragraph 17(3)(d) of the OEI Act, subsection 19(1) of the OEI Act requires the Minister to have regard to the following matters:

- (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 (in accordance with the notice under section 18 of the OEI Act);
- (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 subsection 19(1) of the OEI Act.

Subsection 19(2) of the OEI Act states that the Minister may also have regard to any other matters that they consider relevant.

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

- (a) the technical suitability of the proposed declared area;
- (b) the NSW 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 on the area, shipping and the environment.

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 declared area as suitable under subsection 17(1) of the OEI Act; or
- (b) decide not to make a declaration under paragraph 19(3)(a) of the OEI Act; or
- (c) do either or both of the following under paragraph 19(3)(b) of the OEI Act, as they deem appropriate:
  - i. declare a part of the proposed declared 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 section 20 of the OEI Act that they consider make the area suitable for offshore renewable energy infrastructure.

The Offshore Electricity Infrastructure (Declared Area OEI-02-2024) Declaration 2024, gives legal effect and defines the spatial extent of the declared area in the Pacific Ocean off the Illawarra Region, NSW and details the conditions that the declaration is subject to.

The Declaration will remain in force until it is revoked under section 26 of the OEI Act or until it sunsets in accordance with the *Legislation Act 2003*.

### **Background**

The boundaries of the declared area (Declared Area OEI-02-2024) were informed by many 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;
- NSW 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;
- advice received through consultation with the Defence Minister and the Minister administering section 1 of the *Navigation Act 2012*;
- information and advice received through ongoing consultation with relevant Commonwealth and NSW Government agencies; and
- submissions received during the public consultation period.

Pursuant to subsection 20(4) of the OEI Act, the declaration has been made subject to conditions.

Under the OEI Act, licence holders must develop management plans prior to carrying out any offshore renewable energy infrastructure activities within their licence areas. The declaration is subject to conditions that require holders of feasibility licences or research and demonstration licences in preparing these management plans to consult with a range of stakeholders and address the outcomes of this consultation in the management plan for the licence. These stakeholders include the Department of Defence; the Bureau of Meteorology; the Australian Maritime Safety Authority; and the Civil Aviation Safety Authority.

In addition, feasibility licence holders are also required to consult with holders of fishing concessions granted under the *Fisheries Management Act 1991*; or licences issued under the *Fisheries Management Act 1994* (NSW) that can be exercised in relation to any part, or parts, of the licence area. Feasibility licence holders will need to address the outcomes of this

consultation in the management plan for the licence, including how impacts on these holders may be avoided, mitigated, or offset.

The management plan must also address matters of environmental management, including how the licence holder is to comply with any obligations under the *Environment Protection and Biodiversity Conservation Act 1999* (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. Feasibility licence holders should ensure they have received all other relevant approvals, including those required under the EPBC Act, and undertake any other consultation processes, before they apply for commercial licences.

Prospective holders of licences issued under the OEI Act should be aware that there are threatened species in the vicinity of the Declared Area OEI-02-2024 including, but not limited to the following critically endangered or endangered species:

- Herald Petrel (*Pterodroma heraldica*)
- Southern Giant Petrel (*Macronectes giganteus*)
- Various Albatrosses, Petrels and shorebirds
- Southern Right Whale (*Eubalaena australis*)
- Blue Whale (*Balaenoptera musculus*)
- Grey Nurse Shark (*Carcharias taurus*)
- Leatherback Turtle (*Dermochelys coriacea*)
- Loggerhead Turtle (*Caretta caretta*)

There are also migratory species that have important foraging or breeding areas within the declaration area, including humpback and minke whales, dugongs, rays, mako and birds including shearwaters, frigatebird, common noddy and tropicbirds. The area is also close to a Ramsar wetland site – Towra Point Nature Reserve.

### **Authority**

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

### **Consultation**

In addition to the consultation with Ministers required under paragraph 17(3)(d) of the OEI Act, the Minister and the Department undertook extensive public consultation. To facilitate public consultation, the Minister published the Notice of Proposal to Declare an Area – Pacific Ocean off Illawarra, NSW on 14 August 2023 in accordance with section 18 of the OEI Act. Members of the public were able to make submissions via the Department's 'Have Your Say' web platform. On 11 October 2023, the Minister published a variation to

the notice (Variation to Notice of Proposal to Declare an Area – Pacific Ocean off Illawarra, NSW), extending consultation to 15 November 2023. On 15 November 2023, the public consultation period closed. A total of 14,211 submissions were received.

Information on the consultation was shared across social media channels, including on the department's website, X (formerly Twitter), Facebook, Instagram and LinkedIn. Paid advertising was undertaken in local newspapers and radio, and via social media. A leaflet drop was also conducted to 157,000 addresses in coastal suburbs adjacent to the proposed area.

#### Community information sessions

The community was invited to participate in community information sessions held during the consultation period. In total, six information sessions were held across the Illawarra region (Bulli, Port Kembla, Wollongong, Shellharbour, Kiama, Gerringong) from 18 September 2023 to 21 September 2023, attracting more than 1,200 attendees. Staff from the Department also attended two public meetings in Thirroul and Wollongong arranged by the Federal Member for Cunningham on 7 October 2023 and 11 October 2023 respectively.

Targeted meetings with stakeholder groups including local council representatives, First Nation groups, and port operators were also conducted in the Illawarra region.

#### Online sector - based engagement

Relevant industry stakeholders were invited to participate in online industry and community specific sessions held during the consultation period. Five online sessions were held between 4 September and 14 September 2023. These sessions were targeted to the following industry groups: aviation, commercial fishing, recreational fishing, tourism, community groups, local businesses and the maritime industry. Approximately 40 individuals attended these online sessions.

Ongoing consultation was also undertaken with relevant Commonwealth and NSW 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.<sup>1</sup> This RIS was included in the Explanatory Memorandum for the OEI Act. The Office of Impact Analysis has previously been contacted for advice on the need for a RIS and have advised that declarations are within the scope of the OEI Act RIS process. As such, the preparation of an Impact Analysis is not required for this declaration.

### **Statement of Compatibility with Human Rights**

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

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<sup>1</sup> Office of Impact Analysis reference number 42703.

**Details of the *Offshore Electricity Infrastructure (Declared Area OEI-02-2024)*  
Declaration 2024.**

**Section 1 – Name**

This section provides that the name of the instrument is the *Offshore Electricity Infrastructure (Declared Area OEI-02-2024) Declaration 2024* (Declaration).

**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 section 17 of the *Offshore Electricity Infrastructure Act 2021* (OEI Act).

**Section 4 – Definitions**

This section provides for definitions of terms used in the Declaration. These terms include ‘Declared Area OEI-02-2024’, which is the area specified in Schedule 1 of the Declaration.

**Section 5 – Declared area**

Subsection 5(1) declares the area ‘Declared Area OEI-02-2024’ as a ‘declared area’ for the purposes of the OEI Act.

Subsection 5(2) refers to Schedule 2 of 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 and research and demonstration licence holders, within the Declared Area OEI-02-2024 must, when preparing a management plan for the licence, consult with the Australian Maritime Safety Authority and the Civil Aviation Safety Authority. 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-02-2024 may impact the safety of navigation of vessels and aircraft.

This condition ensures that feasibility licence holders and research and demonstration licence holders will undertake consultation with Commonwealth agencies who have identified the potential for offshore renewable energy infrastructure to impact on their existing operations or regulatory regimes, and that these potential impacts will be expressly considered during the development of projects.

#### Condition 2

This condition requires that feasibility licence holders and research and demonstration licence holders, within the Declared Area OEI-02-2024 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, including how impacts may be avoided and mitigated.

The construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure within the Declared Area OEI-02-2024 may present technical challenges for Defence operations and radar capability.

This condition ensures that feasibility licence holders and research and demonstration licence holders will undertake consultation with the Department of Defence, and that these potential impacts will be expressly considered during the development of projects and avoided or mitigated as required.

#### Condition 3

This condition requires that feasibility licence holders and research and demonstration licence holders, within the Declared Area OEI-02-2024 must, when preparing a management plan for the licence, consult with the Bureau of Meteorology. The outcomes of the consultation must be addressed in the management plan, including how impacts may be avoided, mitigated, or offset.

The construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure within the Declared Area OEI-02-2024 may present technical challenges for the existing weather radar network.

This condition ensures that feasibility licence holders and research and demonstration licence holders will undertake consultation with the Bureau of Meteorology, and that these potential impacts will be expressly considered during the development of projects, and avoided, mitigated, or offset as required.

#### Condition 4

This condition requires that feasibility licence holders, within the Declared Area OEI-02-2024, must, when preparing a management plan for the licence, consult with holders of

fishing concessions granted under the *Fisheries Management Act 1991* and licences issued under the *Fisheries Management Act 1994* (NSW) that can be exercised in relation to any part, or parts, of the licence area. If a concession or licence holder has nominated a representative organisation for the purposes of the consultation, the feasibility licence holder must consult with the representative organisation. The outcomes of the consultation must be addressed in the management plan, including how impacts on these holders may be avoided, mitigated, or offset.

The Declared Area OEI-02-2024 overlaps existing fisheries within Commonwealth waters managed under the *Fisheries Management Act 1991* or the *Fisheries Management Act 1994* (NSW). This condition ensures potential impacts on existing commercial fishing rights are expressly considered by feasibility licence holders.



**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-02-2024) Declaration 2024*

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-02-2024) Declaration 2024* (Declaration) gives legal effect and defines the spatial extent of the declared area in the Pacific Ocean off the Illawarra Region, NSW 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**