

To: Department of Climate Change, Energy, the Environment, and Water

15 May 2024

### **Offshore Electricity Infrastructure Amendment Regulations 2024**

We appreciate the opportunity to make this submission to the proposed Regulations for Offshore Electricity Infrastructure (OEI Regulations).

Environment Victoria is the leading not-for-profit environmental advocacy organisation in Victoria. With 40 grassroots member groups and over 200,000 individual supporters, we've been representing Victorian communities on environmental matters for over 50 years. Through advocacy, education and empowerment, Environment Victoria seeks significant and enduring solutions that will safeguard the environment and future wellbeing of all Victorians.

We are strong advocates for the transition to renewable energy and away from fossil fuels. Offshore wind has enormous potential in this regard and we support its development. However, it is essential to the continued community support for the transition that the right safeguards are in place.

### **Introductory comments**

The licensing framework established by the OEI Regulations is intended to complement approvals made under the Environment Protection and Biodiversity Conservation (EPBC) Act. The OEI management plan is then used by the OEI Regulator to enforce compliance with all approvals. This approach aims to avoid duplication; however, there are problems with this approach with regard to the assessment of environmental impacts.

It is not clear whether all license activities or applications will be referred for assessment under the EPBC Act. This means that different projects are subject to different environmental approvals regimes, leaving gaps. Likewise, the well-known shortcomings of the EPBC regime constrain the activities of the OEI Regulator, and it is not practical to wait for EPBC reform.

Consultation requirements are not equal between the EPBC and OEI regimes. The EPBC Act provides windows for public comment, where people are permitted to make submissions on a proposal. This is different to a true consultation process, where the onus is on the proponent to reach out to affected groups, give them sufficient information about the proposed activities, and seek their input. Public comment windows in the EPBC Act tend to be short, and proponents are not required to engage to the extent set out in the OEI Regulations.

**Outcomes are more important than elegant legislation.** Offshore wind is a novel industry that involves significant early investment – not only activities requiring licensing which are visible to regulators, but also major logistics, infrastructure, supply chain and workforce planning. Given this reality, the risks caused by late consideration of the environment and inadequate consultation have the potential to be consequential and incentivise poor practices. It is essential for both investment certainty and social license that a robust and trustworthy environmental framework is in place from this early stage.

In the remainder of this submission, we detail specific improvements to the OEI Regulations that could tackle some of these issues.

### **Consultation requirements**

The OEI Regulations appear to provide an exhaustive list of persons to be consulted with. Environment organisations are not listed, which is a clear omission given that DCCEEW considers the environment as one of the competing interests.<sup>1</sup> Consultation with environment organisations will improve the quality of decision-making due to our community connections and expertise.

As noted earlier, the EPBC consultation process is not a substitute because proponents are only required to inform, which is a one-way process; they are not required to listen to and acknowledge concerns nor provide feedback on how those concerns influenced the approach taken.

Therefore, **the OEI Regulations should either expressly include environmental organisations or put in place an interested person test** as used in the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regs 2023: *a titleholder must consult with “a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan”.*

The OEI Regulations includes First Nations groups with native title rights and interests in the list of persons to be consulted with. This should be broadened to recognise and consult with any First Nations person who has cultural responsibilities toward or connection to affected sea Country. Regulations should also enshrine principles of Free, Prior and Informed Consent (FPIC) to ensure that First Nations peoples have sufficient leverage over project decisions.

### **Safety and protection zones**

The OEI Regulations are part of a regime that operates under the principle of shared use of the marine environment. Our particular concern is the use of areas for scientific research activities, and the broad protections and disproportionately strict penalties in the OEI Act. This has the potential to restrict the collection of data that can improve decision-making and public trust in the offshore wind industry.

The Regulations can mitigate this situation and facilitate genuine shared use with some changes. Firstly, **proposed safety and protection zones should be open to public comment** to allow researchers and other users to coordinate their planned activities. **The Regulator should be obliged**

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<sup>1</sup> “The Australian offshore wind regulatory framework operates under the principle of shared use of the offshore marine environment. This aims to balance competing interests. Australia’s marine waters are used for many activities. These include shipping, fishing, environment, tourism, and oil and gas extraction.”  
<https://www.dcceew.gov.au/energy/renewable/offshore-wind/building-offshore-wind-industry>

**to review the necessity of established zones regularly, for example every 12 months.** This is particularly important given the novelty of offshore wind as it provides the Regulator with greater opportunity to evaluate and refine its own activities.

**The Regulations should provide a process for parties seeking consent to enter safety and protection zones.** The Regulator should have obligations toward that party – to respond within a prescribed timeframe and a presumption in favour of granting permission, unless there is a credible threat to safety.

### **Transparency**

Given the novelty of offshore wind in Australia, much of the environmental data that will be collected will be new data. It is important that proponents—who will be the parties collecting the data—are required to make it public in order to grow the body of environmental knowledge and support better decision-making for the industry as a whole, and for other offshore activities.

Data may be collected for licensing under OEI, or for approvals under EPBC. The OEI framework should require that **environmental data collected under either regime be submitted to the OEI Regulator, and that this be made public.** Ideally this is able to be achieved via the amendment Regulations, however should nevertheless be considered if an amendment to the OEI Act would be required.

A second improvement to transparency and accountability would be to **make public the Minister's reasons when granting a license.** We recommend that the Regulations include an obligation to publish reasons when a license is issued.

### **Management plan reviews**

There is a strong case to strengthen the management plan review process given the novelty of offshore wind in Australia and the likelihood of emergent and significant information relevant to effective regulation.

The Regulations provide for management plans to be prepared every 5 years. **There should additionally be a public comment window as part of this process** to ensure that stakeholders have an opportunity to contribute new information.

Likewise, given that the OEI framework operates under a shared used principle, **there should be a public referral process for the case where a party other than the proponent identifies a new hazard, impact or risk.** This accounts for license holders having a vested interest in not identifying new risks. The Regulations should provide for parties to make an application to the Regulator regarding a new or increase hazard, risk, or impact and for the Regulator to consider varying or revoking the existing management plan.

## **Final comments about environment protections**

The nascent offshore wind industry presents challenges for environmental protection that are new and unique. Onshore wind, in contrast, is subject to existing planning frameworks which provide guidance on acceptable activities. In addition, there are moves towards regional approaches to guide the development of Renewable Energy Zones (REZ); for example, the Victorian Government have recently announced funding for REZ spatial risk mapping. These approaches support both environmental values and investment certainty. Offshore wind, however, lacks such guidance. We would like to see environmental values considered and protected up front, for example via merit criteria and marine planning.

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