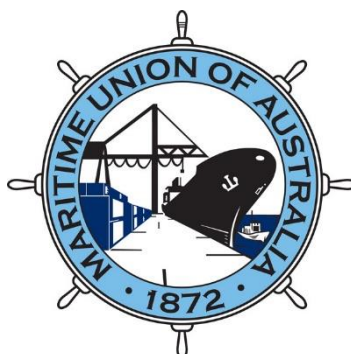


Offshore Electricity Infrastructure Regulations:

Joint submission from the Maritime Union of Australia and the Construction Divisions of the CFMMEU, and the Electrical Trades Union



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Department of Industry, Science, Energy and Resources

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**Paddy Crumlin, National Secretary,
Maritime Union of Australia**
A Division of the Construction, Forestry, Maritime, Mining and Energy Union
365 Sussex St, Level 2, Sydney, NSW, 2000
Paddy.Crumlin@mua.org.au

**Michael Wright, Acting National Secretary
Electrical Trades Union of Australia**
Suite 408 Level 4, 30-40 Harcourt Pde
Rosebery NSW 2018
Admin@etuaustralia.org.au

**Chris Cain, National Secretary
Construction, Forestry, Maritime, Mining and Energy Union**
6th Floor, 540 Elizabeth Street,
Melbourne, 3000
CCain@cfmeu.org

For inquiries contact: penny.howard@mua.org.au

Background

This submission has been prepared by the Maritime Union of Australia Division (MUA) and Construction Divisions of the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), and the Electrical Trades Union (ETU).

The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) represents workers across multiple sectors involved in offshore wind construction, installation, operations, maintenance and eventual decommissioning.

The Maritime Division (MUA) represents approximately 14,000 workers in the shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry. For offshore renewables, MUA members would work as maritime crew for maintenance and construction vessels. MUA members would also work in offshore wind port terminals handling offshore wind components being prepared for installation at sea, either by loading parts onto ships or preparing whole floating turbines to be towed out. MUA members would also carry out other port services related to the ongoing safe operations of offshore wind port terminals.

The Construction Division has been involved in building onshore wind farms for many years. Our members have dug the holes, tied the steel, poured the concrete, rigged the turbines and lifted them in place since the first Wind Farm in Salmon Beach, back in 1987. Once the Salmon Beach Wind Farm was completed, many workers transferred to offshore careers as they were well skilled and formally trained.

In a future offshore renewables industry, CFMMEU members across both Divisions would work on offshore renewables construction and cable-laying vessels as maritime crew, catering crew, crane operators and divers as well as involvement in various aspects of landside works essential to the completion of projects and allowing them to connect to the grid.

The Electrical Trades Union of Australia ('the ETU') is a division of the Communications, Electrical and Plumbing Union ('the CEPU'). The ETU is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over sixty thousand workers around the country. The CEPU represents close to one hundred thousand workers nationally, making us amongst the largest trade unions in Australia.

In a future offshore renewables industry, ETU members would be performing all electrical work associated with the offshore generation, transmission and distribution infrastructure during construction, installation, testing and operations both on shore and at sea.

Summary

We welcome the implementation of the legislative framework that will allow offshore renewable energy projects to be built in Australia, and the progress being made on the underpinning regulation. We need to see these projects progress as quickly as possible to address the ongoing climate crisis, to reduce emissions, and to facilitate a fair and just transition to a new electricity system based around renewable energy.

Two considerations are very important to us in this process:

- The legislative framework must ensure this new industry delivers the broadest possible economic benefits to the Australian community. The regulations can do this by prioritising the creation of employment and promoting local industry, manufacturing and jobs, increasing employment and income opportunities for First Nations, and contributing to a just transition¹ for impacted energy workers and communities. This is critical to ensuring that the energy transition is a just transition.
 - Improvements should be made to the merit criteria for licences to ensure these outcomes are achieved and that individual project proponents cannot undermine each other by avoiding delivering broad economic benefits. These requirements must be aligned with the expectations for jobs and community benefit currently being set by multiple state governments.
- The Declaration process and the resources for it set out in the Cost Recovery Implementation Statement (CRIS) must be fully funded to ensure that Offshore Electricity Areas are declared quickly in all the required areas, in a thorough and robust process. The government must not seek cost recovery for the Declaration process, as it will unnecessarily slow down this critical process which must take place before any licences are granted. A key role of Government is to assist in the creation of new industries, not create barriers and additional costs. The CRIS proposes that only 4.6 FTE will work on the Declaration process to cover potential Offshore Electricity Infrastructure Areas all around the coast of Australia.
 - Resources must be very significantly increased so that assessment and Declaration can begin in areas beyond Gippsland, particularly in NSW, western Victoria, and south-west West Australia. As part of this legislative package, a commitment must be made to fund a review of adequate resourcing capacity to ensure the Department is capable of delivering the required support to establish this new industry.

We continue to be baffled as to why the Minister responsible for this framework insists on cost recovery for the development of the completely new and necessary development of offshore wind,

¹ A Just Transition is defined in the UNFCCC, [Report of the Conference of the Parties on its twenty-first session](#), held in Paris from 30 November to 13 December 2015, p.21. A plan for a Just Transition is required as part of Australia's Nationally Determined Contribution to this process but has never been developed. See further discussion in these documents: ACTU, 2016, [Sharing the challenges and opportunities of a clean energy economy: A Just Transition for coal-fired electricity sector workers and communities](#). MUA and others, [Putting the Justice in Just Transition: Tackling inequality in the new renewable economy](#), November 2019. Australian Council of Trade Unions, [Sharing the benefits with workers: A decent jobs agenda for the renewable energy industry](#), November 2020 and ACTU, [Securing a Just Transition Guidance to assist investors and asset managers support a just transition](#), December 2020.

while handing out billions of dollars to subsidise onshore fracking and coal seam gas projects, which are part of an industry that has been established and profitable for decades, but also faces significant structural decline and divestment. For example:

- In March 2022 the Minister announced \$50.3 million in subsidies for seven onshore gas projects as part of its Future Gas Infrastructure Investment Framework Expression of Interest process.²
- In April 2022, the government announced it would contribute \$660 million to a deal to accelerate onshore gas fracking in the NT Beetaloo Basin.³
- The government is spending at least \$600 million to build a new publicly-owned diesel and gas-fired power station in NSW.⁴
- There will be other government spending associated with its 'gas fired recovery' policy, even the creation of long-term contracts to underwrite the development of new gas infrastructure, modelled on those developed to support renewable energy.⁵

These funds should instead be diverted to support the development of offshore wind, including assessment and Declarations of Offshore Electricity Areas and a full industry package covering research and development, reducing environmental impact, workforce training and development and the establishment of local supply chains, port hubs and manufacturing.

We note that consultation around regulations for WHS, the safety/protection zones and management plan requirements will take place later in 2022.

Our position on the development of offshore wind and this legislative framework remains as we have set out in our submission to the Senate Inquiry in the Offshore Electricity Infrastructure Bill in 2021, which provides additional background to the positions we set out in this submission.⁶ Significant amendments are still needed to improve this legislative framework.

² Minister Angus Taylor, [Accelerating priority natural gas infrastructure projects](#), 22 March 2022.

³ Samantha Dick, [NT and federal government sign off on funding deal to accelerate Beetaloo Basin gas production](#), 14 April 2022.

⁴ Cameron Gooley, [Federal government will spend \\$600 million on new Kurri Kurri gas plant in the NSW Hunter Valley](#), 18 May 2021.

⁵ DISER, [Gas-fired recovery – Infrastructure and investment](#), July 2021.

⁶ Maritime Union of Australia and Electrical Trades Union, [Joint submission on the Offshore Electricity Infrastructure Bill](#), 17 September 2021. [Inquiry into Offshore Electricity Infrastructure Bill 2021](#), Senate Standing Committees on Environment and Communications, 2021.

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Merit criteria

Contribution of the project to the economy and community

Onshore renewable energy projects have unfortunately been rife with poor labour practices and exploitation of workers.⁷ We are determined that this experience not be repeated with the offshore renewables industry. The licencing process should be used to ensure a baseline minimum best practice employment, safety and supply chain standard is established across all offshore renewable energy projects, which facilitates the development of a genuine local industry that delivers the broadest possible economic benefits to the Australian community.

Our submission to the Senate Inquiry on the Offshore Electricity Infrastructure Bill detailed the need for a just transition and the importance of offshore electricity projects in creating jobs in communities and for workers impacted by the energy transition, as well as First Nations. We called for amendments to the OEI Bill to ensure that this is embedded in consideration of all offshore renewables projects.

Offshore renewable energy projects can provide regional economic diversification, worker transition opportunities, expanded local manufacturing and scalable supply chain benefits for Australian SME's. However, without clear expectations on local content, Australia will miss out on these benefits.

Since the introduction of the OEI Bill, work has progressed in NSW and Victoria on policies to provide good jobs and transition opportunities in offshore renewable energy. The NSW Renewable Energy Sector Board Plan provides a very detailed consideration of these issues, as well as practical support for developing offshore renewable energy off the coast of NSW. The Victorian Offshore Wind Policy Directions Paper and underpinning work is also forging ahead with ensuring that this new industry will support good quality jobs, local procurement, manufacturing, training and First Nations benefits.

It is critical that the Commonwealth licencing system is complementary to this work by state governments as it provides important leverage to ensure such provisions are properly implemented. For example, it will be difficult to properly establish the scale needed to support local manufacturing without a consistent national approach. About eight times more jobs are created in manufacturing components for offshore wind than are created in the construction of projects.⁸

We note the new inclusion of 'National Interest' in the draft regulations for licence merit criteria, which includes a reference to 'the impact and contribution of the project to the economy and community' (s.85 (4) of the draft regulations, plus the guidelines 4.3.17 and 4.6.22).

⁷ Australian Council of Trade Unions, [Sharing the benefits with workers: A decent jobs agenda for the renewable energy industry](#), November 2020.

⁸ Briggs, C., M. Hemer, P. Howard, R. Langdon, P. Marsh, S. Teske and D. Carrascosa (2021). [Offshore Wind Energy in Australia, P3.20.007 – Final Project Report](#). Hobart, TAS: Blue Economy Cooperative Research Centre, p.29 and p.70.

We support this inclusion, and it reflects the view of the Senate inquiry report, which said:

the committee acknowledges the strong view that legislative support should be given for economic development, local supply chains and community benefits. The committee welcomes the significant and wide-spread benefits that would result from the Bill... the committee suggests that the Australian Government should consider incorporating broad socio-economic benefits as part of the merit criteria in the overall administrative framework. (s. 3.48, p.30)⁹

However, as currently drafted, the criteria for ‘the impact and contribution of the project to the economy and community’ is part of a list of 6 items which ‘the Minister may consider one or more of’. This makes such considerations entirely optional. We don’t believe this is in the spirit of what the Senate report recommended, or what was called for in multiple submissions to the Inquiry.

The contribution of the project to the economy and community is absolutely critical, and we believe it merits the inclusion of a fifth merit criteria to ensure that there is an appropriate focus on these issues. We propose the addition of a merit criteria titled ‘Contribution of the project to the economy and community’, which steps out the aspects of this which licence holders must consider, as follows:

Contribution of the project to the economy and community

(5) For the purposes of being satisfied that an offshore infrastructure project (or proposed offshore infrastructure project) makes a contribution to the economy and community, the eligible person must submit a plan that demonstrates the granting of a feasibility licence will deliver broad economic benefits that:

- a) maximise the use of locally produced and supplied goods and services
- b) maximise the employment of suitable qualified local workers, including energy workers
- c) provides for training and skills development of local workers, including worker transition opportunities where projects are in regions facing structural adjustments and/or decline
- d) increase employment and income opportunities for Aboriginal and Torres Strait Islander people
- e) ensure that regulated offshore activities taking place in declared areas must be undertaken on Regulated Australian Vessels

These amendments aim to provide greater certainty to a future offshore wind industry and to ensure that the economic benefits of local supply chains and manufacturing jobs are maximised. The regulation must also be clarified in the guidelines that this criteria also applies to offshore transmission licences.

⁹ Senate Environment and Communications Legislation Committee, [Report of the Inquiry into Offshore Electricity Infrastructure Bill 2021](#), October 2021.

Suitability of the applicant

Under the merit criteria for 'suitability of the applicant' (s.85 (3)) we suggest adding 'engaging with affected communities and stakeholders'. This will assist in ensuring that projects have social licence and are not unduly delayed at later stages.

One aspect of the merit criteria is 'the person's past performance in offshore infrastructure projects in Australia or internationally' (s.85 (3)(a)). It is explained in the Guidelines that:

Past performance refers to compliance matters over the past five years in similar operating environments. Past performance may also refer to any health, safety and/or environmental incidents within Australia or internationally. Applicants should provide details of any legal or regulatory actions taken against it or other project-involved parties in the last five years (4.3.14)

While this explanation of past performance is broadly satisfactory, the focus should be on the compliance by the licence applicant in general, without limiting this to 'similar operating environments'. The Guidelines suggest a very tight focus only on 'past performance in offshore electricity infrastructure projects' in Australia and overseas (4.3.13). This is inconsistent with the draft Regulations, which include consideration of 'offshore infrastructure projects' in general.

A corporation's safety and environmental performance strongly relates to their whole corporate culture, and all of this information should be considered. At the very least this should include their past performance in all energy infrastructure projects, offshore and onshore. It should also have regard to joint ventures and other corporate structures to ensure adequate analysis of a parent company or companies performance is also able to be considered where necessary.

Viability

Under the merit criteria for 'viability' (s.85 (2)) we suggest adding 'data collection and feasibility studies conducted'. This will help ensure that licence applications are not done on a speculative basis, and areas of the sea are not allocated to inappropriate projects.

Financial Offers

The legislation and regulations allow for financial offers to be considered, mainly where areas overlap and projects are of 'equal merit'.

The role of financial offers for licences should be replaced with competition on the basis of the contribution of the project to the economy and community.

The following references to financial offers should be deleted:

- a. s.55 (applications for licences that cover the same area)
- b. s.90 (considering applications). This is particularly important because it appears to provide that financial offers could be made with an initial feasibility licence application even if there was no overlap in areas.
- c. s.95 f) (offer of licence)

A new provision for applications for licences that cover the same area (s.55) should be drafted to provide that where bids are approximately evenly matched after merit assessment, a value for money (VFM) assessment should be made that considers the overall economic and social benefits a bid brings to the region. The VFM assessment should consider the value of the overall net economic and social benefits during the lifetime of the project; for example, a project may deliver economic value through cost-saving innovations, supply chain expansion and / or downstream job creation. This approach is being implemented in the NSW Renewable Energy Sector Board Plan.

Assessment of merit criteria and creation of a tripartite body

We note that under the new framework, The Registrar will assess whether the merit criteria have been met for the licence, and provide advice to the Minister (Guidelines para 4.6.10). The Registrar function will sit with the National Petroleum Titles Administrator (NOPTA), who say that ‘assigned staff in the NOPTA branch of DISER will assist the Offshore Infrastructure Registrar to administer the licensing scheme, maintain the Register of Offshore Infrastructure Licences, and support ongoing licence compliance’.¹⁰

Examining NOPTA’s website and Strategic Plan,¹¹ there is no experience in this organisation of the kind of social and economic considerations that will be essential to the successful development of offshore renewables and which must be part of the licencing process. NOPTA describes its responsibilities under the Offshore Electricity Infrastructure Act as ‘administrative duties’.¹² Given the purpose of the organisation is ‘to support of the effective regulation and management of our offshore petroleum resources consistent with good oil field practice and optimum recovery’, there is no indication that there is an organisational understanding of the need for an energy transition or the challenges of it.¹³

It is essential that the Registrar and the staff supporting them are hired with experience and understanding of the social and economic challenges of the energy transition. In order to ensure proper understanding and support for this work, the regulations should also be amended to create a tripartite industry / government body to advise the Registrar to ensure there is full understanding and contextual application of the merit criteria, and maximum benefit. This body should also have a role in ongoing monitoring of compliance with merit criteria among licence holders, and advising on the adjustment of merit criteria as the industry develops.

An example of a similar structure exists in relation to self-insurance licencing under the *Safety Rehabilitation and Compensation Act*, which could be adapted to the OEI framework to ensure the objectives of the legislative framework are met, and to ensure that it is responsive to the needs and changes within the industry.

¹⁰ NOPTA, [Offshore electricity infrastructure framework: regulations and cost recovery consultation](#), March 2022.

¹¹ NOPTA, [Strategic Plan 2020-23](#), December 2019.

¹² NOPTA, [Legislation & compliance](#).

¹³ NOPTA, [Strategic Plan 2020-23](#), December 2019.

Role of state governments

We note the concerns raised by the Victorian government in their submission to the Senate inquiry on the OEI Bills.¹⁴ Consideration should be given to how information sharing provisions could be embedded in the regulatory processes to address some of the concerns outlined in the Victorian Government submission, recognising the need to avoid introducing any unnecessary delay or uncertainty to approval processes.

In particular, merit criteria and licencing requirements must be aligned with the expectations for jobs and community benefit currently being set by State Governments such as the NSW state government through their Renewable Energy Sector Board Plan and in Victoria in their Offshore Wind Policy Directions Paper. Projects must also demonstrate they will participate in or comply with State based transition programs and Authorities where they are established, for example the Latrobe Valley Authority.

Resources for Declarations

We note the emphasis on cost recovery in the proposed process, and the limitations placed on this by the projection of the numbers of licence holders. We believe the current projections of seven approved licences by 2024-25 are likely to be conservative and should be increased.

However, Declarations of Offshore Electricity Areas should not be captive to cost recovery considerations, as this process must take place well before any developer can even apply for a licence. The Declaration process should be directly funded with plenty of resources to be able to make multiple Declarations as quickly as possible. Every Declaration will be a complex process, but it is one that is vital and will require plenty of resources.

Undertaking Declarations thoroughly and beginning this process as quickly as possible is absolutely in the public interest – in terms of reducing emissions, securing electricity supply, and providing transition employment for workers and economic benefits to communities affected by the energy transition.

In the CRIS there are not enough staff proposed to be allocated to make the initial Declaration process for an Offshore Electricity Area – only 4.6 FTE (s. 7.2.2).

We were very pleased to hear the announcement of the beginning of the assessment process for Gippsland, and the intention to begin the formal Declaration process once a Minister is in place and the legislation commences in July 2022.

However, resources should be significantly increased and allocated to allow for assessments to begin for Offshore Electricity Areas for:

- a) NSW – a single assessment and declaration process should be undertaken that could result in two Offshore Electricity Areas (broadly, a Hunter-Central Coast Area and an Illawarra Area)
- b) South west WA, between Rockingham and Bunbury
- c) western Victoria, around Portland.

¹⁴ Victorian Government, [Offshore Electricity Infrastructure Bills Submission](#), October 2021.

Change of control

We understand that there is substantial interest in investment in offshore renewables from pension funds and superannuation funds in Australia and internationally. However, the provisions of the OEI Bill in Chapter 3 Part 3 - Change in Control of a Licence Holder may require the approval of the Minister for routine investment processes within workers' capital funds. We are concerned that these measures are not targeted to identify the kinds of changes of control which could actually be problematic, and may act as a disincentive for investment in offshore renewable energy.

We note that these measures were developed in response to the issues in the oil and gas industry that arose with the *Northern Endeavour* and were developed through the subsequent Walker Review, DISER's Enhanced Decommissioning Framework and the passage of the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021*.

They are measures developed for the oil and gas industry which are being applied to the offshore renewable electricity framework without full consideration of the consequences.

We support further amendments to the regulations to allow changes that remain internal to investment funds and which do not result in a material change in control to be carved out from the requirements to seek Ministerial approval. Longer term, the entire 'Change of Control' provision should be reviewed to ensure that it does not create obstacles to investment in projects by superannuation funds and pension funds.