

EXPLANATORY STATEMENT

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

Offshore Electricity Infrastructure (Regulatory Levies) Act 2021

Offshore Electricity Infrastructure (Regulatory Levies) Regulations 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. It is accompanied by the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021* (OEI Levies Act), which prescribes an OEI levy that certain OEI participants must pay. Both Acts commenced on 2 June 2022.

Section 10 of the OEI Levies Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OEI Levies Act or necessary or convenient for carrying out or giving effect to the OEI Levies Act. Part 2 of the OEI Levies Act contains provisions providing for the making of regulations to establish the amounts and operating parameters of the OEI levy.

The present regulations, the *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022* (OEI Levies Regulations), establish the amounts and operating parameters of the OEI levy for the purposes of the OEI Levies Act.

Background

It is intended that the Commonwealth will administer the OEI framework on a full cost recovery basis. The OEI levy provides one part of the Commonwealth's cost recovery arrangements.

Parts 1 and 2 respectively of Chapter 5 of the OEI Act establish the Offshore Infrastructure Registrar (the Registrar) and the Offshore Infrastructure Regulator (the Regulator) to administer and regulate the OEI framework. In addition, the relevant Commonwealth Department is responsible for ongoing policy oversight of the framework.

Part 3 of Chapter 5 of the OEI Act further sets out provisions permitting the Commonwealth to recover any costs associated with administering or regulating the OEI framework. These cost recovery arrangements comprise the payment of fees and levies by OEI participants:

- Under subsection 189(1) of the OEI Act the Commonwealth (or the Regulator or Registrar, on behalf of the Commonwealth) may charge a fee for dealing with an application made, performing functions, or exercising power under the OEI Act or the

applied work health and safety provisions. The applicable fees are prescribed in Part 3 of the *Offshore Electricity Infrastructure Regulations 2022* (OEI Regulations).

- Under subsection 190(1) of the OEI Act certain OEI participants must also pay levies where applicable under the OEI Levies Act and prescribed by regulations made under that Act. The OEI Levies Regulations establish the amounts and operating parameters of the OEI levy. Some additional operating parameters are also prescribed in Part 4 of the OEI Regulations.

The OEI levy is intended to fund ongoing activities of the Commonwealth, Registrar or Regulator that cannot be attributed to a specific OEI licence or participant. In this sense, levies (as opposed to the fees prescribed in the OEI Regulations) provide for cost recovery of functions that are not specifically “fee for service”. Examples of the types of activities levies might fund include ongoing stakeholder engagement, the development of guidance materials, the provision of legislative and operational policy support, compliance monitoring, investigation and enforcement, and the reporting and handling of information.

Authority

Section 10 of the OEI Levies Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OEI Levies Act or necessary or convenient for carrying out or giving effect to the OEI Levies Act.

Section 8 of the OEI Levies Act provides that regulations may prescribe different kinds of OEI levy that are imposed on a person who is an OEI licence holder.

Section 9 of the OEI Levies Act provides that regulations may prescribe the amount of a levy.

Consultation

The then Department of Industry, Science, Energy and Resources (the Department) undertook public consultation on exposure drafts of the OEI Regulations and the OEI Levies Regulations from 22 March to 22 April 2022. Thirty-six submissions were received. Those submissions that were not marked as confidential will be published on the relevant Commonwealth Department’s website.

As part of the development of the OEI Regulations and the OEI Levies Regulations, the Department worked with the Department of Finance and staff supporting the Registrar and the Regulator to develop a Cost Recovery Implementation Statement (CRIS). The CRIS itemises the regulatory activities and estimated costings associated with implementing and administering the OEI framework, with the aim of guiding the setting of fees and levies under the OEI Regulations and OEI Levies Regulations such that the Commonwealth’s administration of the framework is fully cost-recovered. The CRIS was developed in accordance with the requirements of the Australian Government Charging Framework and Cost Recovery Guidelines. A draft CRIS was provided as part of the public consultation

process, and 15 of the 36 submissions received commented on fees, levies and/or the CRIS. The final CRIS will be available on the relevant Commonwealth Department's website.

During the consultation period the Department, along with staff supporting the Registrar and the Regulator, also undertook meetings with around 30 different stakeholders. These stakeholders included industry developers, state governments, non-government agencies and existing users of Australia's offshore area.

Overall, stakeholders were supportive of the exposure draft of the proposed Regulations and cost-recovery arrangements.

In addition to the people and entities mentioned above, the following stakeholders were also consulted during the development of the OEI Levies Regulations: the Attorney-General's Department; the Australian Government Solicitor; the Office of Parliamentary Counsel.

Regulatory Impact

A Regulatory Impact Statement (RIS) was prepared for the OEI Act (Office of Best Practice Regulation reference number 42703) to which the OEI Levies Act relates. This RIS was included in the Explanatory Memorandum for the OEI Act. The Office of Best Practice Regulation has advised that no further RIS is required for the OEI Levies Regulations.

Details of the *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022*

PART 1 – PRELIMINARY

Section 1 – Name

Section 1 provides that the title of the Regulations is the *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022* (OEI Levies Regulations).

Section 2 – Commencement

Section 2 provides that the OEI Levies Regulations commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the OEI Levies Regulations is made under the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021* (OEI Levies Act).

Section 4 – Definitions

Section 4 provides a general definition clause:

- “Act” means the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.
- “Commercial licence”, “feasibility licence”, “holder”, “licence”, “licence area”, “research and demonstration licence”, “transmission and infrastructure licence” and “vacated area” have the same meaning as the corresponding terms in the *Offshore Electricity Infrastructure Act 2021*.

PART 2 – AMOUNTS OF LEVY

The OEI Levies Act prescribes an OEI levy that certain OEI participants must pay. Specifically, paragraph 8(1)(a) of the OEI Levies Act provides that an OEI levy is imposed on a person who is an OEI licence holder. In practical terms, this means that any holder of a feasibility, commercial, research and demonstration or transmission and infrastructure licence must pay an OEI levy. See the definition of “offshore electricity infrastructure licence holder” in section 7 of the OEI Levies Act in conjunction with the definition of “licence” in section 8 of the OEI Act.

The amounts and operating parameters of the OEI levy are to be established by regulations. Subsection 8(2) of the OEI Levies Act provides that the regulations may impose different kinds of OEI levy on OEI licence holders. Subsection 8(3) provides that such kinds of OEI levy may, amongst other things, relate to a period during which a licence holder holds a licence or to a specific regulatory or compliance activity undertaken by the Commonwealth, Regulator or Registrar relating to a licence. Finally, section 9 provides that the amounts of

OEI levy must be either set out in the regulations or else worked out in accordance with a method prescribed in the regulations.

Part 2 of the OEI Levies Regulations provides, for the purposes of sections 8 and 9 of the OEI Levies Act, a framework covering the amounts and operating parameters of the OEI levy. Some additional operating parameters, such as the timing of levy payments, the recipients of the different kinds of levy and the handling of levy refunds, are prescribed in Part 4 of the OEI Regulations.

Prescribing the amount of the levies in regulations ensures the levies can be appropriately calibrated to cover the costs for regulating and administering the OEI regime as the offshore industry develops.

The Commonwealth has prepared a Cost Recovery Implementation Statement (CRIS) that sets out the costs to Government for administering and regulating the framework and the fees and levies to be applied to regulated entities to recover these costs. Specifically, levies are used to fund activities where it is not practical to attribute costs to a specific licence. The CRIS is available on the websites of the Registrar, Regulator and relevant Commonwealth Department.

The amount of the fees and levies charged will be regularly reviewed as the industry develops and matures, and the Government will consult on any proposed changes and update the regulations accordingly.

Section 5 – Levies imposed on holders of feasibility licences

The table in section 5 of the OEI Levies Regulations sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levies imposed on feasibility licence holders;
- the amounts of those levies including, where necessary, the method for calculating them; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a feasibility licence holder for each 12 month period they hold that licence. A note to the table clarifies the intention that this period will first commence on the day the licence is granted, and will then renew annually on that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence, rather than following a calendar or financial year.

Section 47 of the OEI Regulations provides further detail on the payment of the OEI levy. It is expected that the recipients of each of the different kinds of levy will publish information clarifying how feasibility licence holders should pay the relevant levy and when these payments will be due.

The term “feasibility licence” is defined in section 8 of the OEI Act.

Section 6 – Levies imposed on holders of commercial licences

The table in section 6 of the OEI Levies Regulations sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levy imposed on commercial licence holders;
- the amounts of those levies including, where necessary, the method for calculating them; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a commercial licence holder for each 12 month period they hold that licence. A note to the table clarifies the intention that this period will first commence on the day the licence is granted, and will then renew annually on that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence, rather than following a calendar or financial year.

Section 47 of the OEI Regulations provides further detail on the payment of the OEI levy. It is expected that the recipients of each of the different kinds of levy will publish information clarifying how commercial licence holders should pay the relevant levy and when these payments will be due.

The term “commercial licence” is defined in section 8 of the OEI Act.

Section 7 – Levies imposed on holders of research and demonstration licences

The table in section 7 of the OEI Levies Regulations sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levy imposed on research and demonstration licence holders;
- the amounts of those levies including, where necessary, the method for calculating them; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a research and demonstration licence holder for each 12 month period they hold that licence. A note to the table clarifies the intention that this period will first commence on the day the licence is granted, and will then renew annually on that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence holder, rather than following a calendar or financial year.

Section 47 of the OEI Regulations provides further detail on the payment of the OEI levy. It is expected that the recipients of each of the different kinds of levy will publish information clarifying how research and demonstration licence holders should pay the relevant levy and when these payments will be due.

The term “research and demonstration licence” is defined in section 8 of the OEI Act.

Section 8 – Levies imposed on holders of transmission and infrastructure licences

The table in section 8 of the OEI Levies Regulations sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levy imposed on transmission and infrastructure licence holders;
- the amounts of those levies; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a transmission and infrastructure licence holder for each 12 month period they hold that licence. A note to the table clarifies the intention that this period will first commence on the day the licence is granted, and will then renew annually on that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence, rather than following a calendar or financial year.

Section 47 of the OEI Regulations provides further detail on the payment of the OEI levy. It is expected that the recipients of each of the different kinds of levy will publish information clarifying how transmission and infrastructure licence holders should pay the relevant levy and when these payments will be due.

The term “transmission and infrastructure licence” is defined in section 8 of the OEI Act.

Section 9 – Levies are imposed at start of period, and for full period

Section 9 clarifies that the full amount of the levy is imposed on the licence holder at the start of the 12 month period (unless the licence ceases to be in effect, or part of the licence area becomes vacated) even if the licence holder does not intend to hold the licence for the full 12 months. For example, the full levy is payable even if a licence holder intends to apply for the licence to be transferred during the 12 month period for which the levy relates.

Sections 10 and 11 set out the circumstances where levies will be adjusted and the method for calculating the amount payable. Specifically, if during the 12 month period the licence ceases to be in effect, or if a part of the licence area becomes vacated, an amount of the levy will be refunded on a pro rata basis.

The handling of refunds for overpaid levies is prescribed in section 48 of the OEI Regulations. A note is included at the end of the section to identify this.

PART 3 – ADJUSTING LEVIES

Part 3 of the OEI Levies Regulations provides, for the purposes of section 9 of the OEI Levies Act, a method for calculating any necessary adjustments to the amounts of OEI levy payable by OEI licence holders. The handling of levy refunds, where these arise, is prescribed in section 48 of the OEI Regulations.

Section 10 – Licences that cease to be in effect during payment periods

Subsection 10(1) of the OEI Levies Regulations provides that section 10 applies where a person holds a licence for only part of a period for which an OEI levy is payable under Part 2 of the OEI Levies Regulations, because the licence is cancelled, surrendered, or ceases to be in effect before the end of that period. In practical terms, this will occur when a licence holder pays a levy for a prospective 12 month period under sections 5 to 8 of the OEI Levies Regulations, but the licence is subsequently cancelled, surrendered, or ceases to be in effect prior to the expiry of that 12 month period. This would result in the licence holder having paid a levy that is too high for their actual circumstances.

Subsection 10(2) provides that in the circumstances described in subsection 10(1), the amount of levy payable is adjusted downwards on a pro rata basis to reflect the number of days in the period the licence was actually held. For example, if a licence holder paid a levy for a 12 month (non-leap year) period but then surrendered their licence 61 days into this period, the actual amount of levy payable by them would be reduced by multiplying the original levy by the ratio of 61 over 365. The licence holder would then be entitled to a refund of any amount paid in excess of the adjusted levy under section 48 of the OEI Regulations.

If the licence is still in force, for example it reaches its end day during the 12 month period (but is not cancelled or surrendered, or ceases to be in effect), the levy is payable for the entire period. There are obligations licence holders must continue to comply with even when the licence has reached its end date, such as financial security arrangements. Therefore the OEI levy is payable.

The cancelling or surrendering of licences is provided for in sections 73 and 74 of the OEI Act.

Section 11 – Parts of licence areas that become vacated areas during payment periods

Subsection 11(1) of the OEI Levies Regulations provides that section 11 applies where an OEI levy is calculated for a particular period by reference to a licence area under Part 2 of the OEI Levies Regulations, but during the period part of the licence area becomes vacated, thereby reducing the overall size of the licence area. This will result in the licence holder having paid a levy that is too high for their actual circumstances. The term “vacated area” is defined in section 8 of the OEI Act.

Subsection 11(2) provides that in the circumstances described in subsection 11(1), the amount of levy payable is adjusted on a pro rata basis to reflect the number of days in the period before and after the area becomes vacated. For example, if a licence holder paid a levy for a 12 month (non-leap year) period but then part of the licence area was vacated 61 days into this period, the actual amount of levy payable by them would be calculated in three stages: (i) the first “block” of levy, calculated using the original licence area, would be multiplied by the ratio of 60 over 365; (ii) the second “block” of levy, calculated using the new licence area, would be multiplied by the ratio of 305 over 365; (iii) finally, the amounts calculated in (i) and (ii) would be added together to find the new levy payable by reference to the licence area.

As the licence area has decreased, the licence holder is entitled to a refund of any amount paid in excess of the adjusted levy under section 48 of the OEI Regulations.

For clarity, sections 9 and 10 can operate in conjunction with each other. That is, there may be circumstances in which a levy that is adjusted downwards under section 9 must also be further adjusted under section 10 to reflect a reduction in licence area that occurred during the shortened licence period.

Statement of Compatibility with Human Rights

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

Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022

This legislative instrument 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 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. It is accompanied by the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021* (OEI Levies Act), which prescribes an OEI levy that certain OEI participants must pay. Both Acts commenced on 2 June 2022.

Section 10 of the OEI Levies Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OEI Levies Act or necessary or convenient for carrying out or giving effect to the OEI Levies Act. Part 2 of the OEI Levies Act contains provisions providing for the making of regulations to establish the amounts and operating parameters of the OEI levy.

The present regulations, the *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022* (OEI Levies Regulations), establish the amounts and operating parameters of levies payable by certain persons engaging in offshore electricity infrastructure activities for the purposes of the OEI Levies Act.

Human rights implications

The OEI Levies Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The OEI Levies Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Chris Bowen MP
Minister for Climate Change and Energy