

EXPLANATORY STATEMENT

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

Offshore Electricity Infrastructure Act 2021

Offshore Electricity Infrastructure Amendment (Information Disclosure) Regulations 2024

Legislative Authority

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.

Section 305 of the OEI Act provides that the Governor-General may make regulations on matters required or permitted by the OEI Act to be prescribed by the regulations or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part 3 of Chapter 7 of the OEI Act relates to the confidentiality and release of documentary information contained in certain documents given to the Offshore Infrastructure Registrar (the Registrar) and the Minister for Climate Change and Energy (the Minister), who is responsible for administering the OEI Act. ‘Documentary information’ is defined in section 8 of the OEI Act as information contained in an applicable document. An ‘applicable document’ is also defined in section 8 of the OEI Act to mean:

- an application made to the Minister or the Registrar under Chapter 3 of that Act; or
- a document accompanying such an application; or
- a report, return or other document that relates to a licence or an application for a licence and was given to the Minister or the Registrar under Chapter 3 or 7 of that Act, or regulations made for the purposes of those Chapters.

Subsections 283(2), 285(2) and 285(3) of the OEI Act restrict the Registrar and the Minister from releasing documentary information to the public or making the documentary information available to a person (other than another Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory).

Paragraph 283(3)(a) of the OEI Act provides that subsection 283(2) does not apply if the Registrar makes the documentary information known or available in accordance with regulations made for the purposes of this paragraph.

In addition, paragraph 285(4)(a) of the OEI Act provides that subsections 285(2) and (3) do not apply if the Minister makes the documentary information known or available in accordance with regulations made for the purposes of this paragraph.

Purpose

The purpose of the *Offshore Electricity Infrastructure Amendment (Information Disclosure) Regulations 2024* (Information Disclosure Regulations) is to empower the Registrar and the Minister to release certain documentary information to the public or make that information available to a person (other than another Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory). The documentary information will pertain to applications made under the OEI Act to grant, vary, extend, transfer or surrender a licence.

The Information Disclosure Regulations will be made for the purposes of paragraphs 283(3)(a) and 285(4)(a) and under the general regulation-making power in section 305 of the OEI Act.

Background

The licensing scheme

The OEI Act requires a licence for the construction and operation of offshore electricity generation and transmission infrastructure. The OEI Act sets out four licences to accommodate a range of potential activities and developments:

- *Feasibility licences* authorise a licence holder to undertake exploratory and scoping work;
- *Commercial licences* authorise the development of large scale offshore renewable energy infrastructure (e.g., an offshore wind farm with fixed or floating wind turbines);
- *Research and demonstration licences* authorise short term projects to trial and test new technologies, or undertake infrastructure-based exploration and research activities, potentially in support of a future commercial project proposal (e.g. demonstration of floating solar generation or tidal generation technology); and
- *Transmission and infrastructure licences* authorise the construction and operation of offshore electricity transmission infrastructure (e.g., cables connecting an offshore renewable energy generation facility to onshore, or interconnectors between Tasmania and mainland Australia).

The OEI Act provides a framework for the application of each of these licences, which forms the ‘licensing scheme’. The licensing scheme is established under subsection 29(1) of the OEI Act and relates to applications for licences, the offering and granting of licences, transfers of licences, changes in control of licence holders, management plans and any other matter in relation to the licensing scheme provided by the OEI Act.

The details of the licensing scheme are prescribed in the *Offshore Electricity Infrastructure Regulations 2022* (Principal Regulations). The Registrar is responsible for administering the

licensing scheme, including the requirement to maintain a register of licences and manage the licence application process.

Licence application process

An ‘eligible person’, as defined in section 8 of the OEI Act, may apply to the Minister to grant, vary, extend, transfer or surrender a licence.

The eligible person would initially submit their licence application, which contains documentary information, to the Registrar. The Registrar would then provide the documentary information to the Minister under section 284 of the OEI Act. The Minister must then consider the documentary information in order to make a final decision on the licence application.

Impact and effect

The Registrar’s and the Minister’s powers to release certain documentary information during the consideration of licence applications and when (or after) the Minister has made a final decision will ensure the public is updated appropriately on the progress of those applications, as well as promote public transparency and interest in OEI projects more generally.

The ability to publicly release timely and relevant information on the status of OEI projects is essential to building social licence for this new industry. This is important for achieving the government’s commitment to reaching net zero emissions by 2050.

The OEI industry is important for reducing climate change, as well as economic growth and job creation (including in regional areas). Communicating with the public on the progress of applications and granting, varying, extending, transferring or surrendering licences will help build trust in the industry, as well as encourage OEI investment and economic development.

The Information Disclosure Regulations will apply retrospectively to eligible persons that have already applied for feasibility licences before the commencement of those Regulations.

Consultation

The Registrar was consulted in the preparation of the Information Disclosure Regulations.

Public consultation, including with affected stakeholders, was not undertaken on the development of the Information Disclosure Regulations as the Minister had already considered feasibility licence applications prior to the commencement of the Information Disclosure Regulations. As the Information Disclosure Regulations will apply to those feasibility licence applications already considered by the Minister prior to the commencement of the Information Disclosure Regulations, the Department will contact feasibility licence applicants to inform them of the Information Disclosure Regulations and the intended publication of their application information.

Details/ Operation

Details of the Information Disclosure Regulations are set out in Attachment A.

Other

The Information Disclosure Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Information Disclosure Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Information Disclosure Regulations commence the day after registration.

Authority: section 305 of the OEI Act.

Details of the *Offshore Electricity Infrastructure Amendment (Information Disclosure) Regulations 2024*

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Offshore Electricity Infrastructure Amendment (Information Disclosure) Regulations 2024* (Information Disclosure Regulations).

Section 2 – Commencement

This section provides that the Information Disclosure Regulations commence the day after they are registered.

Section 3 – Authority

This section provides that the Information Disclosure Regulations are made under the *Offshore Electricity Infrastructure Act 2021* (OEI Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

SCHEDULE 1 – AMENDMENTS

Item 1 – Section 4 (before paragraph (a) of the note to the heading)

This item inserts new paragraph (aa) in section 4 of the Principal Regulations to include ‘documentary information’. The effect is to clarify in section 4 of the *Offshore Electricity Infrastructure Regulations 2022* (Principal Regulations) that ‘documentary information’ is already defined in the OEI Act, as that term will be referenced in the new provisions inserted by Schedule 1 to the Information Disclosure Regulations.

Item 2 – Section 4

This item inserts definitions of key terms, used in the Information Disclosure Regulations, into section 4 of the Principal Regulations. These are:

- ***commercially confidential information*** as defined in new section 48G;
- ***general licence application information*** as defined in new section 48A.

Item 3 – After Part 4

This item inserts new Part 4A into the Principal Regulations.

PART 4A – INFORMATION RELATING TO OFFSHORE INFRASTRUCTURE

Section 48A – Meaning of *general licence application information*

This section sets out the meaning of ‘general licence application information’ in relation to applications made to the Minister or the Registrar under the OEI Act.

These applications are made under the following provisions of the Principal Regulations:

- section 10 (applications for feasibility licences);
- section 17 (commercial licences);
- section 18 (research and demonstration licences—application);
- section 21 (transmission and infrastructure licences—application).

General licence application information falls within the definition of ‘documentary information’ under section 8 of the OEI Act.

Subsection (2) sets out the meaning of general licence application information in the context of applications to grant a licence:

- the name of the applicant;
- whether the application is for:
 - a feasibility licence; or
 - a commercial licence; or
 - a research and demonstration licence; or
 - a transmission and infrastructure licence;
- general information about the proposed licence area, including (but not limited to) the following:
 - geographic coordinates;
 - the approximate size;
 - the approximate distance offshore;
- general information about the proposed project, including (but not limited to) the following:
 - the name of the project;
 - the generation capacity (if any) of the project;
 - the transmission capacity (if any) of the project;
 - the renewable energy resource of the project (for example, wind, solar, wave, tidal, etc.);
 - the technology to be used for the project (for example, fixed-bottom wind, floating tethered wind, floating solar, tidal, etc.);

- the approximate location of offshore renewable energy infrastructure and offshore electricity transmission infrastructure in the proposed licence area.

The proposed project for a feasibility licence or an application for a feasibility licence is the proposed commercial offshore infrastructure project for the licence (see definition of ‘proposed project’ in section 4 of the Principal Regulations).

Subsection (3) sets out the meaning of general licence application information in the context of an application to extend the end day of a licence (made under section 30 of the Principal Regulations):

- the name of the applicant;
- the licence that the application relates to;
- the proposed end day of the licence;
- whether the proposed extension is to be in respect of the whole or part of the licence area;
- if the proposed extension is to be in respect of only part of the licence area—the location of the part of the licence area.

Subsection (4) sets out the meaning of general licence application information in the context of an application to vary a licence (made under section 31 of the Principal Regulations):

- the name of the applicant;
- the licence that the application relates to;
- the variation proposed to be made to the licence.

Subsection (5) sets out the meaning of general licence application information in the context of an application to transfer a licence (made under section 74 of the OEI Act):

- the name of the transferor (within the meaning of section 70 of the OEI Act);
- the name of the transferee (within the meaning of section 70 of the OEI Act);
- the licence that the application relates to.

Subsection (6) sets out the meaning of general licence application information in the context of an application to surrender a licence (made under section 74 of the OEI Act):

- the name of the applicant;
- the licence that the application relates to;
- the proposed surrender area;
- the reasons for the surrender;
- how each of the requirements in subsection 74(3) of the OEI Act has been met.

Section 48B – Release of information by Registrar

This section provides, for the purposes of paragraph 283(3)(a) of the OEI Act, a new power for the Registrar to publish or make available to a person (other than a Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory)

general licence application information in relation to an application mentioned in new section 48A.

The Registrar may exercise this power at any time from the initial receipt of a licence application and including when (or after) the Minister has made a final decision on the application.

Section 48C – Release of information about progress of application by Registrar

This section inserts a new provision for the Registrar to publish or make available to a person (other than a Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory), information about the progress of a licence application. The purpose of this section is to amplify transparency in relation to the application process.

The type of information that the Registrar may publish, or make available to a person, under this section may be published on National Electronic Approvals Tracking System (NEATS). This may include information as to whether:

- the licence application has been received by the Registrar or the Minister;
- the licence application is being considered by the Registrar or the Minister
- the Minister has formed a preliminary view on the licence application;
- the Minister has made an offer to grant a licence to an applicant; and
- the Minister has made a final decision on the licence application.

This section relies on the necessary or convenient regulation-making power under paragraph 305(b) of the OEI Act and does not extend the scope of the general operation of the OEI Act. This section is not expressed to be for the purposes of paragraphs 283(3)(a) and 285(4)(a) of the OEI Act, as information about the progress of an application mentioned in section 48A would not be ‘documentary information’ and therefore would not fall within the scope of the prohibitions on disclosure in subsections 283(2) and 285(2) of the OEI Act. The power to release information about the progress of an application is ancillary or incidental to the existing powers of the Registrar and the Minister under that OEI Act to receive, consider and make a decision on an application. The progress of an application forms part of the broader ‘licensing scheme’ to be prescribed by regulations under section 29 of the OEI Act and would, therefore, complement the broader licensing scheme under the OEI Act.

Section 48D – Release of information by Minister

This section provides, for the purposes of paragraph 285(4)(a) of the OEI Act, a new power for the Minister to publish or make available to a person (other than a Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory) general licence application information in relation to an application mentioned in new section 48A.

The Minister may exercise this power at any time from the initial receipt of a licence application (or in the Minister's case, from the initial receipt of documentary information from the Registrar under section 284 of the OEI Act) and including when (or after) the Minister has made a final decision on the application.

The Minister's power under this section is akin to the Registrar's power under new section 48B.

Section 48E – Release of information about progress of application by Minister

This section inserts a new provision for the Minister to publish, or make available to a person (other than a Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory), information about the progress of a licence application. The purpose of this section is to amplify transparency in relation to the application process.

Information about the progress of an application may already be published by the Registrar on NEATS. The type of information that the Minister may publish, or make available to a person under this section, may be similar to the information published on NEATS. This may include information as to whether:

- the licence application has been received by the Registrar or the Minister;
- the licence application is being considered by the Registrar or the Minister
- the Minister has formed a preliminary view on the licence application;
- the Minister has made an offer to grant a licence to an applicant; and
- the Minister has made a final decision on the licence application.

This section relies on the necessary or convenient regulation-making power under paragraph 305(b) of the OEI Act and does not extend the scope of the general operation of the OEI Act. This section is not expressed to be for the purposes of paragraphs 283(3)(a) and 285(4)(a) of the OEI Act, as information about the progress of an application mentioned in section 48A would not be 'documentary information' and therefore would not fall within the scope of the prohibitions on disclosure in subsections 283(2) and 285(2) of the OEI Act. The power to release information about the progress of an application is ancillary or incidental to the existing powers of the Registrar and the Minister under that OEI Act to receive, consider and make a decision on an application. The progress of an application forms part of the broader 'licensing scheme' to be prescribed by regulations under section 29 of the OEI Act and would, therefore, complement the broader licensing scheme under the OEI Act.

Section 48F – Release of information in public interest

Subsection (1) inserts a new provision for the Registrar, for the purposes of paragraph 283(3)(a) of the OEI Act, to publish documentary information relating to an application mentioned in section 48A if the information is not general licence application information or

commercially confidential information; the Minister considers it is in the public interest to publish the information; and if the Minister has approved the information being published.

Subsection (2) inserts a new provision for the Registrar, for the purposes of paragraph 283(3)(a) of the OEI Act, to make available to a person documentary information relating to an application mentioned in section 48A if the information is not general licence application information or commercially confidential information; the Minister considers it is in the public interest to make the information available to the person; and if the Minister has approved the information being made available to the person.

Subsection (3) inserts a new provision for the Minister, for the purposes of paragraph 285(4)(a) of the OEI Act, to publish documentary information relating to an application mentioned in section 48A if the information is not general licence application information or commercially confidential information; and if the Minister considers it is in the public interest to publish the information.

Subsection (4) inserts a new provision for the Minister, for the purposes of paragraph 285(4)(a) of the OEI Act, to make available to a person documentary information relating to an application mentioned in section 48A if the information is not general licence application information or commercially confidential information; and if the Minister considers it is in the public interest to make the information available to the person.

The purpose of this section is to allow the Registrar and Minister to release documentary information, other than the information listed in section 48A that may be contained in a licence application or relates to a licence application, while protecting against the release of commercially confidential information

Based on the Administrative Review Council's guide, *What decisions should be subject to merit review? (1999)*, the Minister's or the Registrar's decision to release or disclose information under this section, or any other section of this instrument, will not be subject to merits review. The main reason is that the decision to release information is a policy decision of a high political content. The ability for the Minister (and the Registrar) to release or disclose information under this instrument is of the highest consequence to the Government to ensure that there is timely and transparent communication with the Australian public and industry stakeholders to build public interest, support and social licence in the industry. Supporting the transition to renewable energy through offshore electricity infrastructure will help achieve the Government's commitment of reaching net zero emissions by the year 2050 and the international commitments regarding climate change. The release or disclosure will enable the Government to update the public and stakeholders on the progress of offshore electricity projects and build confidence in the emerging industry.

Developing an offshore electricity industry is important for the future of the Australian economy as it transitions from fossil fuels to renewable energy. Supporting the establishment of the industry will help secure Australia's energy needs during a time of growing

international uncertainty. Further, the ability to release information under this instrument to the public will ensure clarity in the information being provided across the political spectrum in relation to the operation and impacts of offshore electricity projects. It is unlikely that the Minister or the Registrar will release information under this instrument unless it had a positive contribution to the above-mentioned factors.

Furthermore, the Minister's or the Registrar's decision to release or disclose information under this section, or any other section of this instrument, preliminary or procedural in nature. The decision to release or disclose information in relation to an application will form part of the procedural consideration of applications and will facilitate or lead to the final substantive decision made by the Minister on that application. Accordingly, the decision will be unsuitable for a merits review as any review of the decision would frustrate or delay the final decision and the proper operation of the Minister's administrative decision-making process.

Section 48G – Meaning of *commercially confidential information*

This section provides a definition for 'commercially confidential information', which is documentary information given by a person to the Registrar or the Minister that is not general licence application information and the Minister considers the information to be:

- a trade secret; or
- information the disclosure of which would, or could reasonably be expected to, adversely affect any person's business, commercial or financial affairs.

The purpose of this section is to protect the confidentiality of certain documentary information contained in a licence application that may be a trade secret or would, or could reasonably be expected to, adversely affect any person's business, commercial or financial affairs.

Section 48H – References in this Part to the Minister

For the avoidance of doubt, this section provides that the references to the Minister in new Part 4A of the Principal Regulations is a reference to the Minister administering the OEI Act, being the Commonwealth Minister with portfolio responsibility under the Accountable Authority Instructions. The purpose of this section is to clarify which Minister is referred to in new Part 4A as Part 3 of the OEI Act includes provisions which refer to other Ministers.

Item 4 – At the end of the instrument

PART 6 – APPLICATION, SAVING AND TRANSITIONAL PROVISIONS

This item adds new Part 6 at the end of the Principal Regulations. Part 6 provides a new application, saving and transitional provision.

Section 51 – Application of amendments made by the *Offshore Electricity Infrastructure Amendment (Information Disclosure) Regulations 2024*

This section provides that the amendments made by Schedule 1 to the Information Disclosure Regulations apply to:

- applications made before, on or after the commencement of Schedule 1; and
- documentary information given to the Minister or the Registrar before, on or after the commencement of that Schedule.

The purpose of this section is to clarify that the Registrar and the Minister may exercise their new powers (incorporated by Schedule 1 to the Information Disclosure Regulations to release documentary information, and any other information authorised under that Schedule) in relation to feasibility licence applications, or any other licence applications, that may have been made or submitted by eligible persons prior to the commencement of that Schedule.

Statement of Compatibility with Human Rights

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

Offshore Electricity Infrastructure Amendment (Information Disclosure) Regulations 2024

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 purpose of this instrument is to allow the Registrar and the Minister to release to the public or a person (other than another Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory) certain documentary information. The documentary information will be contained in applications made under the *Offshore Electricity Infrastructure Act 2021* (OEI Act) to grant, vary, extend, transfer or surrender licences. The instrument is made for the purposes of paragraphs 283(3)(a) and 285(4)(a) and the general regulation-making power under section 205 of the OEI Act.

Subsections 283(2), 285(2) and 285(3) of the OEI Act restrict the Registrar and the Minister from making publicly known, or available to a person (other than another Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory), documentary information unless allowed by regulations (under paragraphs 283(3)(a) and 285(4)(a) of the OEI Act) or for the purposes of administering the OEI Act.

The documentary information to be released under the instrument is defined as ‘general licence application information’ under section 48A of the instrument. The general licence application information is not commercially sensitive or commercially confidential. The Minister is required to consider whether any other information, not outlined in section 48A, that the Minister considers to be in the public interest would be commercially confidential.

This instrument does not authorise the disclosure of ‘personal information’ as defined in the *Privacy Act 1988*. Applicants and licence holders will be body corporates in accordance with the definition of ‘eligible person’ under the OEI Act. The documentary information contained in, or related to, a licence application, and information about the progress of an application will not contain any personal information.

The release of certain documentary information during the consideration of licence applications and when the Minister has made a final decision will ensure the public is updated appropriately on the progress of those applications. It will also promote public transparency and interest in OEI projects more generally and build social licence for the

industry. This is important for achieving the government's commitment to reaching net zero emissions by 2050.

The OEI industry is important for its impact on reducing climate change, as well as economic growth and job creation (including in regional areas). Communicating with the public on the progress of applications and granting, varying, extending or transferring licences will help build trust in the industry, as well as encourage OEI investment and economic development.

Human rights implications

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

Conclusion

This Legislative Instrument 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