

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-03-2024) 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.

Before the Minister can invite eligible persons to apply for a feasibility licence under section 9 of the *Offshore Electricity Infrastructure Regulations 2022* (OEI Regulations) in respect of a particular area, the Minister must first declare an area, by legislative instrument under subsection 17(1) of the OEI Act.

Before the Minister can make a declaration, subsection 17(3) of the OEI Act requires certain criteria to 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 29 February 2024, consistent with paragraph 17(3)(a) of the OEI Act, a notice of proposal to declare an area in the Indian Ocean, off Bunbury Western Australia (WA), was published on behalf of the Minister, on the Department of Climate Change, Energy, the Environment and Water (the department)'s website (available at <https://www.dcceew.gov.au/sites/default/files/documents/notice-proposal-declare-area-bunbury-wa.pdf>). Consultation closed on 3 May 2024. Consultation was open for a total of 73 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 August 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 (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 (and outlined in paragraph 17(3)(c) of the OEI Act);
- (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 area proposed for declaration;
- (b) the Western Australian 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 proposed declared area, shipping and the environment.

After the Minister has met all statutory preconditions required to make a declaration under the OEI Act, the Minister may:

- (a) declare the entire area proposed for declaration 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 area proposed for declaration 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.

Through the *Offshore Electricity Infrastructure (Declared Area OEI-03-2024) Declaration 2024* (Declaration), the Minister has declared a part of the proposed area as an area suitable for offshore renewable energy infrastructure. The Declaration defines the spatial extent of the declared area in the Indian Ocean off Bunbury, WA and provides conditions that feasibility licences or research and demonstration licences granted in respect of the declared area are subject to, in accordance with subsection 20(4) of the OEI Act.

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 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-03-2024) were informed by factors including:

- 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;
- Western Australian 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 Commonwealth and Western Australian Government agencies;
- submissions received during the public consultation period.

The Geocentric Datum of Australia 1994 (GDA94) is incorporated by reference in Schedule 1 to the Declaration, as authorised by subsection 9(4) of the OEI Act. Subsection 9(1) of the OEI Act provides that the position on the surface of the Earth of a point, a line or an area is to be determined, for the purposes of the OEI Act, by reference to the Australian Geodetic Datum as defined in Gazette No. 84 of 6 October 1966 (AGD66 geodetic data set). Paragraph 9(2)(a) of the OEI Act allows regulations to provide for the position on the surface of the Earth of a point, a line or an area to be determined in some other way than provided in subsection 9(1) of the OEI Act. Section 49 of the Offshore Electricity Infrastructure Regulations provides that, for the purposes of paragraph 9(2)(a) of the OEI Act, the position on the surface of the Earth of a point, a line or an area is to be determined by reference to the Geocentric Datum of Australia as defined in Gazette No. 35 of 6 September 1995 (GDA94 geocentric data set).

The GDA94 is part of the Australian Geospatial Reference System, which is managed by the Intergovernmental Committee on Surveying and Mappings Permanent Committee on

Geodesy. Further information on the GDA94 available at:
<https://www.icsm.gov.au/datum/geocentric-datum-australia-1994-gda94>.

Australian maritime zones are guided by the *Seas and Submerged Lands Act 1973*. Maritime legislation and treaties in Australia currently reference a variety of datums and sectors have been transitioning to GDA94 over recent decades (for example, fisheries zones, offshore oil and gas areas, marine parks).

The Geocentric Datum of Australia 2020 (GDA2020) is also a model and data standard that defines the positioning of locations on the surface of the earth and is a subsequent version to GDA94. The GDA94 is referred to instead of the GDA2020 as transitioning Australia's offshore sectors to GDA2020 presently offers no benefits, would impose significant costs, and would need to be done as part of a much larger modernisation of the *Seas and Submerged Lands Act 1973* and first principles review of the Australian maritime zones.

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

Under the OEI Act, each licence holder must prepare a management plan for the relevant licence and have it approved by the Offshore Infrastructure Regulator (the Regulator) before they can carry out any offshore renewable energy infrastructure activities under that licence (refer to paragraphs 31(1)(a), 40(1)(a), 50(1)(a) and 59(1)(a) of the OEI Act). The Declaration imposes conditions that require holders of feasibility licences or research and demonstration licences to consult with a range of stakeholders when preparing a management plan and address the outcomes of that consultation in the management plan for the relevant 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, under the Declaration, feasibility licence holders are also required to consult with holders of commercial fishing concessions granted under the *Fisheries Management Act 1991*; or licences issued under the *Fish Resources Management Act 1994* (WA) 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.

Under paragraph 115(1)(c) of the OEI Act, 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 made under that Act, in relation to the activities to be carried out under the licence.

A management plan must be approved by the Regulator before the Minister can grant an application for a commercial licence (paragraph 42(1)(f) of the OEI Act). Before deciding whether to grant a commercial licence, the Minister may require the developer to conduct specific kinds of consultation (section 43 of the OEI Act). 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 several threatened and/or migratory species in the vicinity of the Declared Area OEI-03-2024 including, but not limited to:

- Blue Whale (*Balaenoptera musculus*; subspecies Antarctic blue whale and Pygmy blue whale)
- Southern Right Whale (*Eubalaena australis*)
- Humpback Whale (*Megaptera novaeangliae*)
- Flesh-footed Shearwater (*Ardenna carneipes*)
- Wedge-tailed Shearwater (*Ardenna pacifica*)
- Bridled tern (*Onychoprion anaethetus*)
- Caspian tern (*Hydroprogne caspia*)
- Roseate tern (*Sterna dougallii*)

The area is also close to three Ramsar wetland sites – Peel-Yalgorup System, Vasse-Wonnerup System and Becher Point Wetlands.

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 – Indian Ocean off Bunbury, Western Australia on 20 February 2024 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 3 May 2024, the public consultation period closed. A total of 2,670 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 88,000 addresses in coastal suburbs adjacent to the proposed area to be declared.

Community information sessions

The community was invited to participate in community information sessions held during the consultation period. In total, five information sessions were held across the Bunbury region

(Bunbury (x2), Busselton, Harvey and Mandurah) from 19 March 2024 to 21 March 2024, attracting approximately 1,000 attendees.

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

Targeted information sessions with fishing stakeholders

Targeted sessions with the commercial and recreational fishing industries were also undertaken, with one online and one in-person session with commercial fishing stakeholders (approximately 40 attendees) and one in-person and one online with recreational fishing stakeholders (approximately 75 attendees). Sessions were organised with the assistance of the Western Australian Fishing Industry Council and Recfishwest as the peak commercial and recreational fishing bodies in Western Australia.

Ongoing consultation was also undertaken with Commonwealth and Western Australian Government agencies that have policy and regulatory oversight over marine users and interests.

Issues raised during consultation

Submissions received during the consultation period identified concerns with the potential impact of offshore infrastructure activities on visual amenity, other marine users including fisheries and tourism, safe management of shipping and offshore infrastructure, and environmental interests, including matters of national environmental significance such as threatened species. A summary report of the submissions from the public consultation will be published, along with submissions which have provided consent to be published.

Outcome of consultation

In response to the feedback received during the consultation period, the Minister reduced the size of the proposed area for declaration by approximately 48%, to avoid and/or mitigate concerns raised, including:

- Minimum 30 km setback from coast to minimise visual amenity impact;
- Significant reduction in overlap of identified recreational fishing hotspots, including Naturaliste Reef;
- Significant reduction in overlap of identified commercial fisheries, including West Coast Demersal Scalefish and Southern Demersal Scalefish;
- Additional setbacks from Commonwealth marine parks, coastal Key Ecological Features and Ramsar sites;
- Exclusion of the Ancient Coastline between 90-120m depth Key Ecological Feature;
- Additional buffer from the Southern Right Whale calving Biologically Important Area;
- Reducing the amount of overlap with Humpback Whale migration Biologically Important Areas and Pygmy Blue Whale foraging and migration Biologically Important Areas;

- Allowing space for safe management of shipping and offshore infrastructure.

Regulatory Impact

A Regulation Impact Statement (RIS) was prepared for the OEI Act.¹ 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, RIS was not required for this Declaration.

Statement of Compatibility with Human Rights

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

¹ Office of Impact Analysis reference number 42703.

Details of the Offshore Electricity Infrastructure (Declared Area OEI-03-2024) Declaration 2024.

Section 1 – Name

This section provides that the name of the instrument is the *Offshore Electricity Infrastructure (Declared Area OEI-03-2024) Declaration 2024* (Declaration).

Section 2 – Commencement

This section provides that the Declaration commences on the day after it is registered.

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-03-2024’, which is the area made up of the parts specified in Schedules 1 and 2 to the Declaration.

Section 5 – Declared area

Subsection 5(1) declares the area ‘Declared Area OEI-03-2024’ as a ‘declared area’ for the purposes of the OEI Act.

Subsection 5(2) refers to Schedule 3 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. The conditions are set out in Column 2 of the table in this section. If the matters in Column 1 of the table are satisfied, then the conditions listed in Column 2 of the table will apply.

Condition 1 (Item 1)

This condition requires that feasibility licence holders or research and demonstration licence holders, within the Declared Area OEI-03-2024 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-03-2024 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 (Item 2)

This condition requires that feasibility licence holders or research and demonstration licence holders, within the Declared Area OEI-03-2024 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-03-2024 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 (Item 3)

This condition requires that feasibility licence holders or research and demonstration licence holders, within the Declared Area OEI-03-2024 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-03-2024 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 (Item 4)

This condition requires that feasibility licence holders, within the Declared Area OEI-03-2024, must, when preparing a management plan for the licence, consult with holders of

commercial fishing concessions granted under the *Fisheries Management Act 1991* or commercial licences issued under the *Fish Resources Management Act 1994* (WA) 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-03-2024 overlaps existing fisheries within Commonwealth waters managed under the *Fisheries Management Act 1991* or the *Fish Resources Management Act 1994* (WA). 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-03-2024) 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-03-2024) Declaration 2024* (Declaration) gives legal effect and defines the spatial extent of the declared area in the Indian Ocean off Bunbury, Western Australia 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