



15 September 2021

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Inquiry into Offshore Electricity Infrastructure Bills

The Clean Energy Council is pleased to provide a submission in response to the Senate Standing Committee on Environment and Communications' (**the Committee**) inquiry into the Australian Government's Offshore Electricity Infrastructure Bill 2021 (**the Main Bill**) and Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021 (**the Levies Bill**) (together, **the Bills**).

The Clean Energy Council (**CEC**) is the peak body for the clean energy industry in Australia. We represent and work with over 900 of the leading businesses operating in renewable energy, energy storage and renewable hydrogen. We are committed to accelerating Australia's clean energy transformation.

We welcome the Australian Government's much anticipated introduction of the Bills to enable and accelerate the nation's offshore wind industry. There is growing commercial interest in an offshore wind industry with 12 wind farms currently in the early planning stages, including Gippsland's Star of the South, the most advanced project in Australia. Indeed, Blue Economy CRC's recent report has shown that Australia has competitive offshore wind resources and that the industry could deliver substantial benefits to our power system, and economic and social benefits to regional communities.¹ We also support the legislation where it assists the development of offshore transmission infrastructure for both export and import purposes to allow us to maximise trade opportunities which leverage our renewable energy resources.

We are pleased to note that several of our recommendations from our submission to the Department of Industry, Science, Environment and Resources (**DISER**) dated 28 February 2020 have been implemented in the Main Bill, including the length of validity for a feasibility licence increasing to 7 years and to 40 years for commercial licences, as well as the ability to transfer commercial licences.

In this submission, the CEC makes comments on the following aspects of the Bills:

1. Process for ministerial declaration
2. Financial security for decommissioning
3. Regulatory and levy burdens
4. Overlapping licences

¹ Blue Economy CRC, *Offshore Wind Potential for Australia*, 2021 <https://blueeconomycrc.com.au/projects/offshore-wind-potential-australia/>.

5. Support for export transmission infrastructure

1. Clarity required around ministerial declaration

The Main Bill enables the Minister to declare an area suitable for offshore infrastructure activities. We would like to see greater transparency and detail in this provision to provide clarity around how the Minister commences declaration assessment, as well as further criteria to make that declaration.

For example, the CEC is concerned that the mandatory considerations for the Minister in declaring an area suitable do not include any practical criteria about the commercial attractiveness of an area for development, such as wind resources, grid and port infrastructure. Furthermore, we consider that the ministerial discretion permitted under clause 19(2) is too broad and reduces certainty and objectivity in the decision-making process.

The CEC recommends that to bring transparency, efficiency and better competition to the framework, DISER should consider making the following considerations mandatory for the Minister in declaring a specified area (perhaps in subordinate regulations if not in the Main Bill itself):

- Robust measurement of wind, wave, sea state, bathometric and geotechnical data.
- Grid strength, as recent onshore experience for renewable energy projects has highlighted the importance of marginal loss factors, system strength augmentation costs and curtailments to project business cases.
- The potential to create adequate infrastructure hubs close to the selected offshore development areas.

Secondly, the CEC suggests that additional criteria should be implemented for when conditions can or should be applied to provide more certainty and transparency around the process. Currently, the Main Bill provides that conditions may be applied on declared areas where the 'Minister thinks it appropriate'. The CEC again considers that this ministerial discretion is too broad.

Finally, there does not appear to be a mechanism for interested parties to request for the commencement of the declaration assessment process under Division 2. The CEC suggests that a request process could outline criteria required to commence a declaration assessment, and that a request must be responded to by the Minister within a certain timeframe.

2. The amount and timing of financial security should be reasonable

The CEC is supportive of a decommissioning scheme for offshore infrastructure to provide peace of mind and certainty to all stakeholders that all relevant infrastructure will be removed at the end of a project's life. We note however that the removal of inert, sub-sea transmission cables could present a higher environmental risk than leaving them in-situ. This may mean that there are minimal decommissioning costs associated with transmission licences and this should be factored into the Regulator's assessment of appropriate financial security.

The financial security scheme must be carefully designed to ensure that it does not place an unreasonable and unmanageable upfront financial burden on new projects, which will act as a significant disincentive to applying for a licence. The Government can avoid this scenario by aligning decommissioning payments with a project's operational earnings. One possible model would be a ratcheting bond, featuring low payments in the early years of operation (when debt repayments are highest), increasing during the asset's operation such that the full cost of decommissioning would be

set aside by the later years of the asset's life. This approach would smooth the total cost over the project's life and allow the bond to be funded by cash-flow from the asset rather than being an upfront lump-sum equity contribution.

We look forward to working with the Department on the detail as it considers the financial security requirements within the regulations.

3. Regulatory and levy burdens should be minimised

The CEC refers to the ability to apply for protection zones under clause 143(2) of the Main Bill. We submit that DISER should avoid duplication for protection zone applications for transmission cables under the Main Act and the *Telecommunications Act 1997* (Cth). It is currently unclear how the two application processes interact, particularly as the Explanatory Memorandum for the Main Bill notes that protection zones established under the Bill are distinct from the *Telecommunications Act* protection zone despite both protection zones achieving a similar purpose. At a minimum, the application processes should be aligned to minimise administrative burdens on the applicant.

Regarding the Levies Bill, the CEC considers that any cost recovery settings must be reasonable, equitable and not prohibitive. Overly burdensome fees with little transparency linked to cost recovery may disincentivise project development.

We request that DISER provides clarification as to what, if any, cost recovery arrangements are proposed for the different licences and that it is transparent about the purposes of the levies. We welcome DISER's proposal to consult on the detailed levies and fee structure in order to inform the levy amounts and design and we look forward to working with DISER to develop these regulations. This process will need to be commenced within a reasonable timeframe in order to allow current projects in the development phase sufficient time to account for these costs.

In the interests of the Government supporting this new sector to get off the ground (as it supports other emerging industries, e.g. hydrogen) the Government could also consider waiving or heavily discounting its annual licence fees in the early years (e.g. first 10 years).

4. Mechanisms for overlapping licences

The CEC supports the Main Bill's licence categories and is pleased to see that transmission licence holders are not required to also obtain commercial licences or build within 'declared areas'. We also support the provision that allows transmission and infrastructure licences to co-exist in the same area and overlap, however we consider that there should be more clarity in the Main Bill or its subordinate legislation around what happens where an overlap occurs between a transmission licence and a commercial licence.

Specifically, there should be further clarification in relation to what activities would be considered to 'interfere with each other' as this appears to be a discretionary decision by the Minister.² There should also be further information for the procedure where the licence activities are deemed to 'interfere with each other' and any processes for resolution of the matter. This would provide more certainty to developers of both offshore energy generation and transmission infrastructure.

² Offshore Electricity Infrastructure Bill 2021 Explanatory Memorandum, para 249.

5. Export projects should be promoted within the legislation

Finally, the CEC notes that the language used in the legislation focuses on domestic energy generation and transmission. As the intent of the Bills is to accelerate both offshore energy and export projects,³ we suggest that the language and intent of the Main Bill, particularly in the Transmission Licence section, could be amended to include references to energy export to clearly encourage and signal support for further development in this area.

In conclusion, the CEC is supportive of the Bills and welcomes this inquiry. We consider it important that there be continued and timely progress of the Bills and the necessary regulations to optimise Australia's offshore energy opportunity. We look forward to working with DISER to develop and refine this enabling legislation, particularly regarding the details of regulations, levies, fee structures and financial security for decommissioning.

Please don't hesitate to contact Lucinda Tonge on 0432 612 955 or at ltonge@cleanenergycouncil.org.au should you wish to discuss any aspects of our submission further.

Yours sincerely,



Anna Freeman
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³ Offshore Electricity Infrastructure Bill 2021 Explanatory Memorandum, Annexure A, Section 1; Minister Taylor media release on 2 September 2021: <https://www.minister.industry.gov.au/ministers/taylor/media-releases/introducing-legislation-unlock-investment-offshore-energy-projects>.