Offshore Electricity Infrastructure Bill:

Joint submission from the Maritime Union of Australia and the Electrical Trades Union

17 September 2021

Senate Environment and Communications Legislation Committee

Submitted by email: ec.sen@aph.gov.au

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Introduction

This submission has been prepared by Maritime Union of Australia (MUA) and the Electrical Trades Union (ETU).

The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF). The MUA plays a leadership role in the ITF's Offshore Task Force, and its Offshore Wind Committee, where unions representing workers in offshore wind globally are able to share their experiences.

The 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.

In a future offshore renewables industry, MUA members would work on offshore renewables construction and cable-laying vessels as maritime crew, catering crew, crane operators and divers. During operations, MUA members would work as maritime crew for maintenance vessels. MUA members would also work in offshore wind port terminals handling offshore wind components being prepared for installation and in other port-side roles during construction and operations.

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 thank the Committee for the opportunity to comment on the *Offshore Electricity Infrastructure Bill* (OEI Bill) and the *Offshore Electricity Infrastructure (Regulatory Levies) Bill*.[1]

We welcome these Bills, and it is essential that they are passed in this term of Parliament to allow projects to proceed. Thousands of jobs, billions in investment, and the opportunity for very significant new renewable energy infrastructure and emissions reduction is waiting on these projects.

We note that Commencement could be as late as 6 months after the Act receives Royal Assent and urge the Committee to ensure that commencement of Chapter 2 Part 2, which allows for the Declaration of Offshore Electricity Areas, commences immediately to avoid any further delay to exploration opportunities. The Committee should also consider carefully the appropriate timing of commencement of the other sections of the Bill.

We see two opportunities with this Inquiry process and the resulting Report and Recommendations.

First, these is an opportunity to identify immediate improvements that could and should be made in this session of Parliament.

Second, there is an opportunity to explore and put on the record broader issues and longer-term actions around the development of offshore wind that will be necessary to address in the future, but which may not be included with these Bills.

Immediate Opportunities

The Committee should consider three immediate opportunities to improve the Bill:

1. Ensure that WHS provisions are fully harmonised with the national WHS system, consistent, robust, and provide adequate rights for workers.
2. Add a provision to allow a developer, a government electricity planning agency, or a state government to request that the Minister commence the process for declaring an Offshore Electricity Area, a timeline for when that process will be complete (s.17) and to ensure transparency and certainty as to the matters the Minister shall consider in making a declaration.
3. The Purpose and the Merit Criteria for the Feasibility Licence (s. 30 and 34), the Commercial Licence (s. 39 and 44) and the Transmission Licence (s. 58 and 62) should include creating employment and promoting local industry, manufacturing and jobs, increasing employment and income opportunities for First Nations, and contributing to a just transition for impacted energy workers and communities. The Licensing scheme created by regulation (s.29) should support these objectives in greater detail. Financial offers for Feasibility licences should be removed (s.32(3)), and replaced with decision-making based on social, environmental, and economic criteria.

[1] We note the *Offshore Electricity Infrastructure (Consequential Amendments) Bill* is still being drafted, and will be put to Parliament later this year. We understand that it mainly amends the OPGGS Act to allow NOPSEMA to act as the Regulator for this new industry.

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 while providing the highest possible standards of work health and safety. About eight times more jobs are created in manufacturing components for offshore wind than are created in the construction of projects.[2] 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 certainty about the declaration of offshore electricity areas or clear expectations on local content, Australia will miss out on these benefits. The recommended amendment to the WHS provisions will improve safety, remove uncertainty and duplication while also facilitating project planning which will allow projects to proceed under a consistent WHS framework.

Longer Term Opportunities

The Committee should consider further improvements to the Bill over the longer term, including:

- Including emissions reduction as a priority in the Objects of the Act and the criteria for declaring Offshore Electricity Areas. The Objects should also include the need for a just transition, and the creation of employment and promotion of local industry, manufacturing and jobs.
- Creation of a tripartite body to advise the Minister on granting licences
- Require the use of Australian ships for construction and operations, and require they be Regulated Australian Vessels under the Navigation Act.
- Ensure Native Title rights are not interfered with and First Nations benefit from projects in their lands and waters
- Clarify the role of electricity planning processes and agencies will have in Declaration and Licencing
- Ensure State and Territory portable long service leave schemes can apply to workers offshore
- Ensure offshore renewable energy projects are not held to a higher decommissioning financial security standards than offshore oil and gas
- Ensure that Management Plans require only information appropriate to the relevant stage of the project and that workers and unions can access them.
- Inclusion of strategic environmental assessments for Declaration of areas
- Ensure that change of control provisions do not create obstacles to for pension and superannuation investment in offshore renewable projects

An offshore wind industry package

A broader offshore wind industry package is needed alongside the legislation to deliver broad economic benefits through the energy transition, including:

- Measures for workforce, skills and qualifications development

[2] 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.

- A research and investment program through the Australian Renewable Energy Agency, the Clean Energy Finance Corporation and the CSIRO
- Investment in port terminals and manufacturing hubs, particularly in areas where diversification and a just transition is needed
- Integration of offshore wind into the National Hydrogen Strategy and the Australian Energy Resource Assessment

We note the Bill is framed as if there are no broader social or environmental rationale for the development of offshore wind, and only the most limited role for government in planning and facilitating these projects.

Around the world, other countries are taking the following actions to accelerate the development of their offshore wind industries, and Australia is far behind (details in Appendix 1):[3]

- Setting clear targets for offshore wind construction with local content requirements
- Investing in research and development and port-side innovation and manufacturing hubs
- Building offshore wind training centres
- Doing baseline environmental research
- Coordinating the construction of transmission infrastructure to the offshore substation.
- Providing long-term energy contracts

The benefits of public investment in offshore wind should also be considered, including through Snowy Hydro which is currently spending $600 million on gas-fired generation.

The message from the Australian government is that the construction of offshore renewable energy is a matter for private developers. At the same time, it is pouring hundreds of millions of dollars into supporting the development of fracking and coal seam gas projects, and the construction of gas-fired power stations. It is even proposing the government create long-term contracts to underwrite the development of new gas infrastructure, modelled on those developed to support renewable energy.[4] These funds should instead be diverted to support the development of offshore wind.

After being held back for so long, a full industry package is necessary to accelerate the development of offshore wind in Australia and the potential jobs and transition opportunities it could support.

[3] Briggs, C. et al, p.21-22.
[4] DISER, Gas-fired recovery – Infrastructure and investment, July 2021.

Recommendations

For immediate action

Recommendation 1: The OEI Bill should be amended to adopt the model WHS system in its entirety.

Recommendation 14: Amend the Bill to include a provision to allow a developer, a government electricity planning agency, or a state government to request that the Minister commence the process for declaring an Offshore Electricity Area, and a timeline for when that process will be complete (s.17).

Recommendation 17: The OEI Bill should be amended so that the Purpose and the Merit Criteria for the Feasibility Licence (s. 30 and 34), the Commercial Licence (s. 39 and 44) and the Transmission Licence (s. 58 and 62) include creating employment and promoting local industry, manufacturing and jobs, increasing employment and income opportunities for First Nations, and contributing to a just transition for impacted energy workers and communities. The Licensing scheme created by regulation (s.29) should give effect to these objectives.

Other recommendations

Recommendation 2: Delete s.238 b), c) and d) of the OEI Bill which removes the application of the compliance and enforcement sections of the WHS Act. These provisions should be retained, and the monitoring, compliance and enforcement provisions of the WHS Act should be used for WHS issues. Chapter 5 Part 4 may need further amendment to clarify that monitoring, investigation and compliance would use WHS Act provisions.

> *Note:* If the Committee is of the mind to retain the compliance provisions from the Regulatory Powers Act for WHS in Chapter 5 Part 4, a detailed comparison with the equivalent provisions in the WHS Act will be required, and further amendments will need to be incorporated in order to ensure that the provisions for worker participation are retained.

Recommendation 3: The Committee should carefully consider the most appropriate WHS Regulator for the OEI Act, taking into account factors such as resourcing, skills and capacity as well as issues of duplication.

Recommendation 4: The chosen WHS framework must be clearly linked to Safe Work Australia and Heads of Workplace Safety Regulators structures to ensure it is continuously reviewed and modernised.

Recommendation 5: The OEI Bill should aim for maximum clarity and consistency of coverage across the operations of a project. The WHS Act provisions applied in the OEI Bill should be amended to cover all work under a licence, including voyages between a port and a licence area and within a licence area. An amendment is needed to s. 230 of the OEI Bill to delete 9B, which removes those voyages from coverage.

Recommendation 6: People with experience in safety regulators under the WHS Act system must be included in the development of safety regulations under the OEI Bill. NOPSEMA must ensure that it incorporates expertise from WHS Act regulators in implementing the OEI WHS system.

Recommendation 7: WHS Right of Entry should be retained. The OEI Bill should be amended to delete s. 237 and s. 242.

Recommendation 8: The WHS Act regulations should be retained. The OEI Bill should be amended to delete s. 243.

Recommendation 9: Inspectors should be able to amend PIN notices without cancelling them, as per the harmonised WHS system. The OEI Bill should be amended to delete s. 236.

Recommendation 10: A tripartite body as provided for in Schedule 2 of the WHS Act must be established to provide advice on the regulation of the new offshore electricity industry. It must include employers, workers' representatives and the Australian Maritime Safety Authority. The OEI Bill should be amended to provide for such a body in s.241.

Recommendation 11: Reporting of fatalities, injuries and other WHS issues must be public and in line with reporting used by Safe Work Australia and required under the harmonised WHS system. The OEI Bill should be amended to provide for these measures in s.241.

Recommendation 12: The OEI Bill s. 240 must be amended to allow the standard Codes of Practice under the Commonwealth WHS Act to apply under the OEI Bill, and for the tripartite development of safety Codes of Practice for this new industry – as is the case for all other Australian industries except the offshore oil and gas industry.

Recommendation 13: The OEI Bill should be amended to ensure the Industrial Relations Minister is responsible for WHS matters, as with all other industries in Australia (except offshore oil and gas). The proposed WHS structure must ensure the OEI WHS system is included in current and future reviews of the harmonised WHS system.

Recommendation 15: The criteria for making a decision to declare an Offshore Electricity Area and its boundaries must also include the need to reduce emissions in line with Australia's international commitments. Therefore renewable energy projects (or projects to transition oil and gas leases to renewable energy production) should take precedence. (s.19).

Recommendation 16: The Bill should be clear about what the Minister must consider in determining an Offshore Electricity Area and S.19 (2) should be amended to be clearer and more transparent as to the matters the Minister must have regard to in determining a declaration.

Recommendation 18: The OEI Bill should be amended to create a tripartite industry / government body to advise the Minster on granting Licences to ensure consistency and maximum benefit. Similar jurisdictional models such as self-insurance licencing under the *Safety Rehabilitation and Compensation Act* provide for a workable model.

Recommendation 19: Financial offers for Feasibility licences should be removed (s.32(3)), and replaced with decision-making based on social, environmental, and economic criteria.

Recommendation 20: The OEI Bill must require that the construction, operation and maintenance of wind turbines to be undertaken by Australian ships, and that these ships must be Regulated Australian Vessels covered by the *Navigation Act*, with crew holding qualifications under that Act.

Recommendation 21: The development of offshore renewable energy and transmission must be based on free, prior and informed consent by relevant First Nations. Sections 77 d) and 78 d) allow interference with existing rights and the Bill must be amended so they do not apply to Native Title rights and interests.

Recommendation 22: First Nations must also benefit from projects built on their lands and waters, and this must be built into the licencing scheme and criteria. An outline of methods to achieve this has been developed by the ACTU in consultation with the First Nations Workers Alliance and the ACTU National Indigenous Committee.[5]

Recommendation 23: The Licencing scheme created under the OEI Bill should include detailed measures to maximise the creation of employment, promotion of local industry, manufacturing and jobs, and to contribute to a just transition for the energy workforce.

Recommendation 24: Amend the Object of the OEI Bill to reduce emissions at least in line with international commitments, and to ensure a just transition for workers and communities affected by the need to carry out an energy transition, and to create employment and promote local industry, manufacturing and jobs.

Recommendation 25: Clarify the role that electricity planning and agencies will have in the Declaration of Offshore Electricity Areas, and the Licencing of projects.

Recommendation 26: The Committee should confirm the Bill does not inadvertently interfere with State and territory portable long service leave schemes and that they will apply as intended.

Recommendation 27: Renewable energy developments should not be held to a higher financial security standards for decommissioning than are currently required for oil and gas developments.

Recommendation 28: Ensure the Management Plan required to be lodged with a Commercial Licence application contains only content appropriate to that stage of development.

Recommendation 29: The OEI Act should be amended to ensure workers, Health and Safety Representatives and unions have access to Management Plans.

Recommendation 30: The OEI Bill should be amended to improve public reporting and transparency, particularly on WHS matters and the activities of NOPSEMA.

Recommendation 31: Declaration of offshore wind areas should include a strategic environmental assessment to ensure any sensitive marine ecosystems are protected prior to projects going through the licencing phase.

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[5] Australian Council of Trade Unions, *Sharing the benefits with workers: A decent jobs agenda for the renewable energy industry*, November 2020, p.31-2, 34.

Recommendation 32: The measures in Chapter 3 Part 3 - Change in Control of a Licence Holder should be reviewed to ensure that they do not create obstacles to investment in projects licenced under the OEI Bill by superannuation funds and pension funds.

Recommendation 33: The committee should consider the benefits of public ownership of offshore renewables, including through Snowy Hydro investing in the construction of offshore wind in Commonwealth waters.

Recommendation 34: An industry package to support the development of offshore wind should be implemented alongside the Bill, including research and development, workforce skills and training, support for the development of port terminals and manufacturing hubs, and ensuring that offshore wind is properly included in all energy planning processes.

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Workplace Health and Safety

The *Work Health and Safety Act 2011 (Cth)* is applied to 'work in the nature of offshore infrastructure activities', and any other work carried out under a Licence (s.226). This is very welcome as it applies modern and widely understood work health and safety (WHS) systems and processes to offshore electricity work that will be consistent with work taking place in ports and other workplaces.

However, the harmonised WHS System applied by this Bill is ad hoc and risks introducing a range of uncertainties and/or deficiencies to the proposed offshore framework (Chapter 6 Part 1). The issues are:

1. The monitoring, compliance and enforcement powers of the harmonised WHS system removed and replaced with a customised version of the *Regulatory Powers (Standard Provisions) Act 2014* (RP Act) which was not developed for WHS and the intended Regulator, NOPSEMA, has no previous experience applying
2. The application of the model WHS system is narrowly defined and does not include vessels in transit between an Offshore Electricity Area and a port. This introduces unnecessary uncertainty while also missing a clear opportunity to reduce regulatory overlap and duplication
3. Several important provisions of the harmonised WHS system have been removed entirely or rendered inoperable due to poor drafting

Together, these changes combine to create an entirely new and bespoke work health and safety regulatory regime, significantly different to all existing WHS regimes. This in turn introduces a lack of certainty and transparency to the Bill's application and misses an opportunity to remove regulatory duplication.

The establishment of a new WHS regime for offshore electricity is contrary to the objective of harmonisation of *WHS* laws agreed through Council of Australian Governments' (*COAG*) National Reform Agenda. The formal harmonisation process established by the *Intergovernmental agreement for regulatory and operational reform in occupational health and safety* in July 2008 should be adhered to. Occupational Health and Safety in specific industries or in relation to specific hazards "should only be separately regulated where it is periodically and objectively justified." No such justification has been presented.[6] A recent review of the harmonised WHS system found that if the objective of harmonisation "is to be sustained into the future, it is critical that all jurisdictions commit to it."[7]

The aim of harmonising *WHS* laws remains to reduce regulatory burden and create a seamless national economy. The objectives of the model WHS framework are to:

- protect the health and safety of workers
- improve safety outcomes in workplace
- reduce compliance costs for business

[6] *National Review into Model Occupational Health and Safety Laws*, Second Report, January 2009. Recommendations 76 a), 17.
[7] *Review of the model Work Health and Safety laws - Final report*, December 2018 (the Boland review), Safe Work Australia.

- improve efficiency for regulatory agencies

The manner in which WHS is adopted under the Bill is entirely inconsistent with these principles and the de-harmonising effects are detailed further below.

New systems for monitoring, compliance and enforcement

The Bill seeks to 'switch off' all monitoring, compliance, and enforcement provisions of the WHS Act laws and replace these provisions with processes outlined in the *Regulatory Powers Act 2014* (Chapter 5 Part 4). We understand the main reason for the use of the RP Act to be able to use a single set of monitoring, compliance, and enforcement provisions for the environment and infrastructure integrity, alongside WHS. We are concerned about the implications for WHS of doing this.

The issues which arise because of this approach is that:

a. The harmonised WHS system is carefully balanced to ensure workers' participation in ensuring compliance and reducing risk. The RP Act was not drafted with such a system in mind and to our knowledge has never been used for the WHS enforcement. The consequence is that important aspects of workers' participation are removed from the compliance system, or alternately a series of amendments are required to put them back in.
b. Instead of focusing on duty holders and systems of work in an organisation, the focus is on individuals.
c. The penalty provisions regime contemplated under the RP Act for breaches associated with monitoring, compliance and enforcement activities are inconsistent with the harmonised WHS regime. An important feature of penalties under the WHS Act is the option for them to apply to an individual or the body corporate, dependent on the circumstances
d. NOPSEMA as the nominated regulator are not an experienced regulator when it comes to application of the Regulatory Powers Act
e. The harmonised WHS system has recently undergone a comprehensive review with 34 recommendations, including 12 to update provisions for WHS compliance, enforcement and penalties.[8] At a meeting of Commonwealth and State WHS Minsters on 21 May 2021, agreement for action was reached on all recommendations.[9] Adopting the RP Bill means that offshore WHS would not benefit from such reviews and continuous improvement.

The recent review of the harmonised WHS system also emphasised "the importance of consistent approaches by regulators across jurisdictions to ensure that the harmonised laws are supported by a harmonised approach to their interpretation, application and enforcement."[10] The OEI Bill will significantly undermine these efforts.

In the interests of further WHS harmonisation the Committee should carefully consider whether NOPSEMA is the best regulator for offshore electricity WHS. It makes sense that the monitoring, compliance, and enforcement provisions for environmental and infrastructure integrity are the responsibility of NOPSEMA and managed via the Regulatory Powers Act. However, ensuring WHS monitoring, compliance and enforcement is carried out by an existing WHS safety regulator will

[8] Safe Work Australia, Review of the Model WHS laws.
[9] Meeting of Work Health and Safety Ministers, COMMUNIQUÉ, 20 May 2021
[10] *Review of the model Work Health and Safety laws - Final report*, December 2018 (the Boland review), p.108.

provide for a much more streamlined and harmonised framework and would remove significant levels of duplication and regulatory overlap outlined further in this section.

Recommendation 1: The OEI Bill should be amended to adopt the model WHS system in its entirety.

Recommendation 2: Delete s.238 b), c) and d) of the OEI Bill which removes the application of the compliance and enforcement sections of the WHS Act. These provisions should be retained, and the monitoring, compliance and enforcement provisions of the WHS Act should be used for WHS issues. Chapter 5 Part 4 may need further amendment to clarify that monitoring, investigation and compliance would use WHS Act provisions.

> *Note:* If the Committee is of the mind to retain the compliance provisions from the Regulatory Powers Act for WHS in Chapter 5 Part 4, a detailed comparison with the equivalent provisions in the WHS Act will be required, and further amendments will need to be incorporated in order to ensure that the provisions for worker participation are retained.

Recommendation 3: The Committee should carefully consider the most appropriate WHS Regulator for the OEI Act, taking into account factors such as resourcing, skills and capacity as well as issues of duplication.

Recommendation 4: The chosen WHS framework must be clearly linked to Safe Work Australia and Heads of Workplace Safety Regulators structures to ensure it is continuously reviewed and modernised.

WHS Act coverage

The OEI Bill limits the coverage of the WHS Act to what it defines as Regulated Offshore Activities, and defines ships on voyages outside of these activities as not being covered by the WHS Act (s. 230, amending Section 12 of the WHS Act). It specifically removes vessels from being covered before and after carrying out regulated offshore activities, in such a way as to exclude ships on voyages between ports and the shore. These provisions mean a project's vessels will be continuously moving between WHS jurisdictions creating significant uncertainty and duplication.

By way of example, a worker on a ship in port would be covered by a state WHS legislation, once the vessel has left state waters it would be covered by the *Occupational Health and Safety (Maritime Industry) Act* (OHSMI). Once in the offshore electricity area and having commenced performing regulated offshore activities the WHS Act partially adopted by the OEI Bill would apply. Yet even this not consistent with the WHS jurisdiction the vessel may have left a few hours previously in port, due to the significant number of sections of the WHS system that are removed by the OEI Bill.

A far better framework would be to provide singular coverage under the OEI Bill's proposed safety regime to all regulated activities in the offshore electricity area as well as any travelling activity performed going to and from an electricity area or within an electricity area.

The older OHS(MI) Act is not part of the national WHS harmonized system and there is a missed opportunity here for clarity and consistency.

Recommendation 5: The OEI Bill should aim for maximum clarity and consistency of coverage across the operations of a project. The WHS Act provisions applied in the OEI Bill should be amended to cover all work under a licence, including voyages between a port and a licence area and within a licence area. An amendment is needed to s. 230 of the OEI Bill to delete 9B, which removes those voyages from coverage.

Unharmonising the WHS system

The OEI Bill switches off a number of important sections of the WHS Act, and undermines the opportunity to harmonise WHS systems. No justification is offered for these changes. It appears that the proposed changes to the WHS Act as applied by the OEI Bill seek to bring the WHS Act closer to NOPSEMA's normal operations in administering the OPGGS Act in the oil and gas industry. While this may be simpler for NOPSEMA to administer and reduce any potential political issues with the oil and gas industry, it increases the complication for offshore renewables operators and workforce as they will have to straddle both the harmonised WHS system in ports and the unharmonized OEI WHS provisions offshore, as well as the OHS(MI) Act in between.

It should also be remembered that offshore renewable projects will have very substantial port operations which will also be subject to the harmonised WHS system.

The de-harmonized sections of the WHS Act will have implications for the training of Health and Safety Representatives, WHS duty holders, WHS managers and the Inspectorate. It means that either all training in Australia under the harmonised WHS system will need to be changed in order to explain and accommodate these changes, or specific courses will need to developed and offered for HSRs WHS duty holders, WHS managers and the Inspectorate in the OEI WHS system, and as well as bridging training for those who have been trained under the harmonised WHS system but not under the OEI provisions. This impact on the broader harmonised WHS system has not been contemplated in the Regulatory Impact Statement for the Bill.

The harmonised WHS system is based on the Robens model, in which the participation of workers is a key aspect. The OPGGS Act is based on a different model, and the opportunity for worker participation, and the role of workers' organisation with the regulator NOPSEMA is significantly reduced. In addition to the introduction of the RP Act into WHS monitoring, compliance and enforcement, the OEI Bill also removes WHS Act provisions for a tripartite body that allows for consultation between the Regulator, employers and workers' representatives (s.241), union and employer participation in development of safety codes of practice (s.240), and other worker and union rights.

Noting the substantial number of sections of the WHS Act that have been switched off, we are concerned that there is a lack of understanding of the full functioning of the harmonised WHS system in the Departments and agencies that have been involved in drafting the legislation. Going forward, it is essential that expertise is sought from those with experience in the harmonised WHS system.

When safety issues arise in workplaces, workers who are union members regularly seek the advice of their union in dealing with the hazard, injury or fatality. This allows the experience of workers in improving safety to be shared across multiple workplaces and best practices to be implemented where hazards are identified. A workplace fatality is traumatic for everyone involved, and a union official can also play a critical role in ensuring that workers are supported in recovering from the incident. The WHS Act (Part 7) allows for people who hold permits under the Fair Work Act to also apply for a WHS entry permit. However the OEI Bill (s.237) removes this right, and only allows WHS Right of Entry to be exercised in onshore premised where records are kept. This is inconsistent with the model law as well as other sections of the Bill and other existing right of entry provisions provided for in other legislation.

There are no provisions for right of entry under the OPGGS Act, and this has caused significant difficulty for our members in offshore workplaces where fatalities have taken place. The example of the *Stena Clyde* fatalities are detailed in Appendix 2. Since the time of the *Stena Clyde* fatalities, there has been no substantial improvement in the access that union officials are provided to their members in offshore facilities where injuries have taken place.

We note that OEI licence holders are required to provide transport, accommodation, and subsistence to OEI Inspectors, persons assisting them, and their equipment (s.200). If this can be provided to OEI inspectors we are unsure why persons licenced for WHS entry under the Act cannot be similarly accommodated.

The location of record keeping onshore is not prescribed by the Bill and is instead left to future unspecified regulations. Requirements for the management plan says the records should be kept and made available for inspection at a place in Australia, but not does require this location to be provided (s. 115 (1)(f)).

The Bill specifically disapplies all WHS Act Regulations (s.234) while at the same time stating that some or all of the regulations may be enlivened by the future OEI regulations. There is no requirement contained within the Bill for those regulations to be informed by or consulted with industry representatives including employers, workers or their representative Unions and associations.

The OEI Bill alters the role of inspectors regarding Provisional Improvement Notices (PIN) issued by elected health and safety representatives by removing the capacity for an inspector to confirm a PIN with changes. Instead, the Bill will require an inspector to either confirm or cancel the PIN. (s.236, amending WHS Act s. 102).

Schedule 2 of the model WHS Act serves to establish a tripartite body for the purpose of consultation and reporting. While it makes sense for the specific detail of Schedule 2 to not apply to the OEI Bill, the policy intent of establishing a tripartite body for the purpose of consultation and reporting should not be lost. No other part of the regime provides for the establishment of such a body and there is no current existing body performing this role.

Offshore renewable energy is an emerging industry and substantial details of how the industry will be regulated has been left to unspecified future subordinate legislation which can be created under extremely broad primary legislation. It is critical that a statutory tripartite body is established with a mandatory minimum composition of representatives or workers, employers and relevant regulators

with clear functions and powers. This will ensure that future regulations, codes of practice, reporting and other requirements will genuinely reflect the best interests of the industry going forward.

The deleted Schedule 2 also covers WHS reporting, and this is not covered elsewhere in the Bill.

Recommendation 6: People with experience in safety regulators under the WHS Act system must be included in the development of safety regulations under the OEI Bill. NOPSEMA must ensure that it incorporates expertise from WHS Act regulators in implementing the OEI WHS system.

Recommendation 7: WHS Right of Entry should be retained. The OEI Bill should be amended to delete s. 237 and s. 242.

Recommendation 8: The WHS Act regulations should be retained. The OEI Bill should be amended to delete s. 243.

Recommendation 9: Inspectors should be able to amend PIN notices without cancelling them, as per the harmonised WHS system. The OEI Bill should be amended to delete s. 236.

Recommendation 10: A tripartite body as provided for in Schedule 2 of the WHS Act must be established to provide advice on the regulation of the new offshore electricity industry. It must include employers, workers' representatives and the Australian Maritime Safety Authority. The OEI Bill should be amended to provide for such a body in s.241.

Recommendation 11: Reporting of fatalities, injuries and other WHS issues must be public and in line with reporting used by Safe Work Australia and required under the harmonised WHS system. The OEI Bill should be amended to provide for these measures in s.241.

Safety Codes of Practice

Safety Codes of Practice are provided for in s.240, which replaces s.274 of the WHS Act. The WHS Act allows for a tripartite process to support the development and review of safety Codes of Practice in new industries, or in areas where risks are identified and guidance is needed.

Unfortunately the new s.274 in the OEI Bill does not appear to allow for the development or review of Codes of Practice, and removes the reference to a tripartite process for doing this. Instead it provides for Codes of Practice to be prescribed by regulation. There are many Codes of Practice which could and should be adopted in by the OEI Bill and regulation – for example, for managing risk and managing fatigue. One very useful reference will be the Shipboard and Offshore Safety Code of Practice (presently made under the *OHS (Maritime Industry) Act*, which should be adopted, with a new chapter to reflect work on offshore renewable projects. As a new industry it should be expected that new guidance and code of practice will be developed, and the legislation must allow for a tripartite process to do this, as is the case in every other Australian industry (except the oil and gas industry).

Recommendation 12: The OEI Bill s. 240 must be amended to allow the standard Codes of Practice under the Commonwealth WHS Act to apply under the OEI Bill, and for the tripartite development of safety Codes of Practice for this new industry – as is the case for all other Australian industries except the offshore oil and gas industry.

Minister responsible for WHS matters

The Regulatory Impact Statement (p.28) says that the Minister for Energy would be responsible for WHS matters in offshore renewables. This is not consistent with the WHS Act framework. There is no explanation of why, apart from saying 'this is consistent with analogous regimes, such as the *Offshore Petroleum and Greenhouse Gas Storage Act*'. That is the only regime it is consistent with, as the other specialised maritime Act – the *Occupational Health and Safety (Maritime Industry) Act* - is administered by the Industrial Relations Minister (presently the Attorney General).

The complications this poses is illustrated by the current Review of the harmonised WHS System. The recommendations of this review were discussed and broadly accepted at a meeting of Work Health and Safety Ministers at a Commonwealth and State level.[11] Is it proposed that this body will now include the Energy Minister? Or would such reviews not include the WHS system implemented by the OEI Act, in which case the discrepancy between the systems would continue to increase over time.

Recommendation 13: The OEI Bill should be amended to ensure the Industrial Relations Minister is responsible for WHS matters, as with all other industries in Australia (except offshore oil and gas). The proposed WHS structure must ensure the OEI WHS system is included in current and future reviews of the harmonised WHS system.

Declaration of an Offshore Electricity Area

Part 2 of the proposed OEI Bill allows the Minister to declare an Offshore Electricity Area, provisions for consultation on the area, a decision about its extent, and any conditions attached to future licences in the Area. Discussions with DISER indicate that a process may be set up where individual developer may indicate their interest in developing a project in an area, similar to what presently occurs in the oil and gas industry.

However, there are no provisions explaining how or why the Minister would begin a declaration process, or timelines for when such a process would be complete. This means financiers and developers have no certainty when they will be able to proceed to a project feasibility licence application.

Such a system is also inadequate to deal with the incredibly complex planning needed for Australia's ongoing energy transition. The planning for Australia's future electricity system is now well underway by the Australian Energy Market Operator, and they have so far identified four Offshore Wind Zones.[12] This planning involves a complex range of matters which any one developer is unlikely to have visibility of, ranging from how the timing and strength of renewable resources

[11] Attorney-General's Department, Work Health and Safety - Ministers' Meetings.
[12] Australian Energy Market Operator, 2021 Inputs, Assumptions and Scenarios report, p.109

correlates with current and projected future demand, the impact of the electrification of industries, and the potential for renewable energy exports, and government planning in all of these areas.

A developer, a government energy planning agency, or a state government, should be able to request that a Minister commence a pre-declaration assessment, and know when they will receive a reply.

The imperative that offshore renewable projects do not impact on other marine users (s.19 and Explanatory Memorandum) could also mean that optimal areas for offshore renewable energy development (based on transmission connection, water depth or resource availability) are ruled out if there is an existing oil and gas title in the area, even if it is completely undeveloped. The imperative of reducing emissions means that if there is a conflict between the development of offshore oil and gas projects and offshore renewable energy projects in a given area, the renewables projects should be given precedence.

Recommendation 14: Amend the Bill to include a provision to allow a developer, a government electricity planning agency, or a state government to request that the Minister commence the process for declaring an Offshore Electricity Area, and a timeline for when that process will be complete (s.17).

Recommendation 15: The criteria for making a decision to declare an Offshore Electricity Area and its boundaries must also include the need to reduce emissions in line with Australia's international commitments. Therefore renewable energy projects (or projects to transition oil and gas leases to renewable energy production) should take precedence (s.19).

Recommendation 16: The Bill should be clear about what the Minister must consider in determining an Offshore Electricity Area and S.19 (2) should be amended to be clearer and more transparent as to the matters the Minister must have regard to in determining a declaration.

Licencing Issues

Licensing to support jobs and a Just Transition

An urgent energy transition is necessary to reduce greenhouse gas emissions, and this will have a significant impact on many workers and communities. Unfortunately, the history in Australia is that industrial transitions have increased inequality, with only one half to one third of displaced workers finding equivalent employment.[13] Decarbonising on the scale required to ensure global heating is kept to 1.5°C or 2°C will require comprehensive social programs to ensure that communities and workers can look forward to good secure jobs and improved livelihoods. For these reasons, the Paris Agreement describes "the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities."[14]

[13] ACTU, 2016, *Sharing the challenges and opportunities of a clean energy economy: A Just Transition for coal-fired electricity sector workers and communities*.

[14] UNFCC, Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, p.21, In Australia, the creation of the LaTrobe Valley Authority following the closure of the Hazelwood coal-fired power plant and the Worker Transfer Scheme is one significant effort to establish a just transition in in Australia. The Queensland Government has also established a Just Transition Group, which will be developing a transition plan for the state.

It is essential that new renewable energy projects be planned and developed to maximise the number and quality of jobs and community benefits that they provide. The Australian Council of Trade Unions released landmark reports in 2020 on how to secure good jobs in renewable energy and on achieving a just transition.[15]

The government must use the offshore electricity licencing process to ensure that offshore wind jobs are quality jobs, at industry rates and with good job security, and develop local supply chains to maximise the benefit in regions impacted by the energy transition.

The opportunity to develop offshore wind projects in areas close to existing coal fired power stations offers an important just transition opportunity. In November 2019, the MUA, ETU, AMWU, Victorian Trades Hall Council and the Gippsland Trades and Labor Council launched the report outlining the steps that needed to be taken to be taken to make the Star of the South offshore wind project an example of a Just Transition[16].

Important steps have already been taken in this direction by offshore wind developers. For example, when the Yallorn coal-fired power station closure was brought forward in March 2021, offshore wind developer Star of the South put out a statement to announce:

> We will seek discussions with EnergyAustralia, the Latrobe Valley Authority and other relevant authorities on how we can work together to support workers who may be able to retrain for a future career in offshore wind.[17]

There is also very significant skills overlap with offshore oil and gas industry, and a substantial skilled workforce in this area who could transfer to working on offshore renewable projects.[18]

The licence process must encourage and reward offshore wind developers who make efforts to provide transition opportunities, and ensure they are not undermined by other developers who may not take the same efforts.

While the Explanatory Memorandum does say that the establishment of an offshore electricity framework could provide "employment, regional development, manufacturing and economic development of the offshore environment." (RIS p.12), there are no provisions within the OEI Bill to use the licencing process or any other process to encourage employment and regional development.

About eight times more jobs are created in manufacturing components for offshore wind than are created in the construction of projects.[19] Governments around the world are acting to secure the

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[15] 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.

[16] MUA and others, Putting the Justice in Just Transition: Tackling inequality in the new renewable economy, November 2019.

[17] Star of the South, Statement from Star of the South, 10 March 2021

[18] 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.64-76.

[19] 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.

economic benefits of local supply chains and manufacturing in the development of offshore wind projects, but so far Australia is not.

In Australia, the *NSW Electricity Investment Act 2020* includes economic and social outcomes in its objectives, and the NSW Government is creating detailed regulations and provisions to include local content and First Nations provisions in contracts and other measures created un the Act. Similarly, the Victorian *Renewable Energy (Jobs and Investment) Act 2017* includes provisions to encourage investment and employment in Victoria, and also applies the *Victorian Local Jobs First Act* to projects undertaken under the Victorian Renewable Energy Target.

As a first step, criteria for offshore licence applications that prioritise the creation of quality jobs and the development of local supply chains should be built into the legislation. The Purpose and the Merit Criteria for the Feasibility Licence (s. 30 and 34), the Commercial Licence (s. 39 and 44) and the Transmission Licence (s. 58 and 62) should include creating employment and promoting local industry, manufacturing and jobs, and contributing to a just transition for the energy workforce.[20] The Licensing scheme created by regulation (s.29) should support these objectives in greater detail.

Such measures must be included in legislation as presently there does not appear to be a head of power within the legislation to allow these matters to be addressed in the regulation that will create the licencing scheme (s.29).

The Minister has the ability to grant Licences. This should be done on the basis of advice from a tripartite industry / government body established under the primary legislation with mandated functions and powers. Similar jurisdictional models such as self-insurance licencing under the *Safety Rehabilitation and Compensation Act* provide for a workable model.

Moving forward, the proper development of the industry will require an industry package, outlined later in this submission.

Recommendation 17: The OEI Bill should be amended so that the Purpose and the Merit Criteria for the Feasibility Licence (s. 30 and 34), the Commercial Licence (s. 39 and 44) and the Transmission Licence (s. 58 and 62) include creating employment and promoting local industry, manufacturing and jobs, increasing employment and income opportunities for First Nations, and contributing to a just transition for impacted energy workers and communities. The Licensing scheme created by regulation (s.29) should give effect to these objectives.

Recommendation 18: The OEI Bill should be amended to create a tripartite industry / government body to advise the Minster on granting Licences to ensure consistency and maximum benefit. Similar jurisdictional models such as self-insurance licencing under the *Safety Rehabilitation and Compensation Act* provide for a workable model.

[20] See for example the provisions of the *NSW Electricity Investment Act 2020* and the Victorian *Renewable Energy (Jobs and Investment) Act 2017*.

Feasibility Licences based on the best projects – not ability to pay

Financial offers for Feasibility licences should be removed (s.32(3)), and replaced with decision-making based on social, environmental, and economic criteria. Renewable energy projects on publicly held sea area should be the best projects in the public interest, not selected based on ability to pay.

We note that revenue received through Financial Offers for offshore electricity feasibility licences would not go to the Offshore Infrastructure Registrar Special Account established for regulating the industry (s.172 (2)). It appears that the government is seeking to put any revenue from licencing into its general revenue, while also continuing to charge developers fees and levies to run the regulatory process on a cost-recovery basis.

In other countries with cash bidding processes for licences, enormously inflated prices have resulted. Some companies have also sought to secure licences with no intention of developing them, and instead on-sell them for profit. This would needlessly inflate project costs and potentially electricity prices in Australia, particularly when there does not appear to be an intention to use that revenue for the benefit of the industry.

Recommendation 19: Financial offers for Feasibility licences should be removed (s.32(3)), and replaced with decision-making based on social, environmental, and economic criteria.

Vessels and maritime safety requirements

We are pleased that the OEI Bill will not contain any provisions to disapply the *Navigation Act* and its coverage of matters such as the structural integrity of vessels, emergency procedures, and seafarer qualifications. These provisions will continue to apply to vessels regardless of the offshore electricity infrastructure work they are doing – unlike the offshore oil and gas industry.

The OEI Act and regulations should also require that the marine elements for the construction, operation and maintenance of wind towers are undertaken by Australian ships, and that these ships must be Regulated Australian Vessels covered by the *Navigation Act* (not the *Maritime Safety (Domestic Commercial Vessel) National Law Act*). This could be attached to the declaration or licencing provisions.

A share of the transportation of imported components and inputs to manufacturing of components should also be undertaken on Australian ships.

This will ensure that appropriate skills and qualifications and vessel standards apply to the industry, and will also contribute to the broader pool of maritime skills for the operation of Australian ports and exports.

Serious issues have arisen in the UK offshore wind industry arising from a poor systems for maritime qualifications and training in the offshore wind industry, leading to the publication of a combined report on wind farm vessel incidents by the Marine Accident Investigation Branch

(MAIB).[21] This was also taken up in a submission to the 2020 consultation on the development of this Bill from the University of Aberdeen Centre for Energy Law.[22] In the forward to the combined report on windfarm accident investigations, the MAIB Chief Inspector 'highlighted a need for robust crew recruitment, training and assessment procedures to ensure the supply of mariners with the right skills.[23]

Recommendation 20: The OEI Bill must require the construction, operation and maintenance of wind turbines to be undertaken by Australian ships, and that these ships must be Regulated Australian Vessels covered by the *Navigation Act*, with crew holding qualifications under that Act.

First Nations and Native Title

First Nations must also benefit from projects built on their lands and waters. An outline of methods to achieve this has been developed by the ACTU in consultation with the First Nations Workers Alliance and the ACTU National Indigenous Committee.[24]

Relevant First Nations must be able to provide free, prior and informed consent to in both the Declaration and licensing process. At a minimum, existing rights must be fully respected.

The OEI Bill (s.77 and s.78) prohibits Licence holders and people acting on their behalf from interfering with the exercise of Native Title rights and interests. However, 77 d) and 78 d) allow interference if it is necessary for 'the reasonable exercise of the person's rights under this Act or the licence' or 'the performance of the person's obligations under this Act or the licence.'[25] Interference with the exercise of Native Title rights and interests should not be permitted by the legislation and 77 d) and 78 d) should not apply to Native Title rights and interests.

The application of 77 d) and 78 d) to Native Title rights and interests may create other difficulties for the OEI Bill. It means the Bill itself and any licence granted under it may be a "future act" subject to s.24HA *Native Title Act 1993* (Cth) (Management of Water and Airspace). The notification and consultation provisions of s.24HA *Native Title Act* may be preconditions to the Bill's validity so far as native title is concerned. The section requires:

> Notification
>
> (7) Before an act covered by subsection (2) is done, the person proposing to do the act must:

[21] Marine Accident Investigation Branch, 2013, *Combined report on the investigation of the contact with a floating target by the wind farm passenger transfer catamaran Windcat 9 on 21 November 2012 and the investigation of the contact of Island Panther with turbine I-6, in Sheringham Shoal Wind Farm on 21 November 2012*.
[22] Eddy Wifa and Tina Soliman Hunter, 2020, Proposed Framework for Offshore Clean Energy Infrastructure in Australia, University of Aberdeen School of Law Centre for Energy Law Working Paper Series 002/20.
[23] Marine Accident Investigation Branch, 2013, p.i.
[24] Australian Council of Trade Unions, *Sharing the benefits with workers: A decent jobs agenda for the renewable energy industry*, November 2020, p.31-2, 34.
[25] See also Madeline Taylor and Tina Soliman Hunter, Australia's first offshore wind farm bill was a long time coming, but here are 4 reasons it's not up to scratch yet, *The Conversation*, 3 September 2021.

> (a) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act, or acts of that class, that the act, or acts of that class, are to be done; and
> (b) give them an opportunity to comment on the act or class of acts.

We do not know whether the Commonwealth has complied with the s.24HA(7) notification and consultation requirements. It is not mentioned in the Explanatory Memorandum. However, if they haven't, then this may affect the validity of the new law.

Secondly, the High Court has found that the *Native Title Act 1993* is a code. The definition of a code in the Australian Legal Dictionary specifies that it is:

> A comprehensive coverage of an area of law, often to the exclusion of any other expression of law on the topic. In civil law countries fully codified law is the norm; where a code covers the field there is no room for development of the law by case law which refines and adjusts the system (as in common law systems); each case is decided according to the principles set out in the code itself. Codes are a form of black-letter law.

This means that to the extent that the OEI Bill purports to make law about native title, it may be invalid as the Native Title Act being a code contains a "comprehensive coverage of an area of law, often to the exclusion of any other expression of law on the topic".

Recommendation 21: The development of offshore renewable energy and transmission must be based on free, prior and informed consent by relevant First Nations. Sections 77 d) and 78 d) allow interference with existing rights and the Bill must be amended so they do not apply to Native Title rights and interests.

Recommendation 22: First Nations must also benefit from projects built on their lands and waters, and this must be built into the licencing scheme and criteria. An outline of methods to achieve this has been developed by the ACTU in consultation with the First Nations Workers Alliance and the ACTU National Indigenous Committee.[26]

Licencing scheme

The OEI Bill provides for a licencing scheme to be developed as regulation under the legislation (s.29). Matters below must be included in the Licencing scheme in order to maximise the creation of employment, promotion of local industry, manufacturing and jobs, and to contribute to a just transition for the energy workforce:

- Ensure that the benefits of projects are more fully shared with workers, their families and communities through guaranteed local jobs, local supply chain developments and stronger employment conditions

[26] Australian Council of Trade Unions, *Sharing the benefits with workers: A decent jobs agenda for the renewable energy industry*, November 2020, p.31-2, 34.

- Use of Australian ships (Regulated Australian Vessels), including a portion for imported components
- Hiring and training workers from the fossil fuel industry
- Apprenticeship ratios, including for women and Aboriginal workers
- The project's capacity to facilitate a rapid reduction in energy emissions
- Preference for projects to be operated by Commonwealth- or state-owed energy generators
- Benefits for relevant First Nations
- Support the growth and competitiveness of the industry, including participation in training, industry development, etc
- Include an obligation on licensees to comply with human rights and labour standards, for example the ILO Core Labour Conventions, ILO Maritime Labor Convention, Modern Slavery Act, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises
- Assessment of an applicant's past performance and compliance with various legislative requirements, including in relation to:
    - WHS laws including prosecutions, incidents, notifications and notices
    - workers compensation laws including an assessment against industry benchmarks
    - industrial relations laws including the Fair Work Act
    - corporations law
    - taxation law

The licencing scheme should be able to draw on the processes and studies undertaken by project developers under the EPBC Act. However these will not cover the employments and economic development issues outlined above.

Recommendation 23: The Licencing scheme created under the OEI Bill should include detailed measures to maximise the creation of employment, promotion of local industry, manufacturing and jobs, and to contribute to a just transition for the energy workforce.

Licence area

A number of sections of the Bill require that licences must be a continuous area (s. 33 (4) a) and s. 42 4) a)). The government has said that this was to promote the best use of marine space and to prevent speculation on multiple areas.

We are concerned that this provision could be impractical when it comes to the development of offshore wind projects which are likely to be much busier and closer to major ports, and need to incorporate shipping lanes, ship anchorages and harbour entrances.

Objects of the Act

The Object of the Act is 'to provide an effective regulatory framework' for offshore renewable energy and transmission (s.3), but the Bill does not define what that means. The purpose for the Object of an Act is to resolve disputes or clarify the intent of the Bill in case of doubt.

The Bill's Object should include the need to reduce emissions at least in line with international commitments, to ensure a just transition in the energy workforce and communities, and to create employment and promote local industry, manufacturing and jobs.

Although emissions reduction is mentioned in the Explanatory Memorandum, it is not mentioned anywhere in the Bill.

Recommendation 24: Amend the Object of the OEI Bill to reduce emissions at least in line with international commitments, and to ensure a just transition for workers and communities affected by the need to carry out an energy transition, and to create employment and promote local industry, manufacturing and jobs.

Interface with electricity planning process

Complex electricity planning process are underway, involving multiple Commonwealth agencies. In particular the Australian Energy Market Operator is planning for Australia's future electricity system through the Integrated System Plan, which has so far identified four Offshore Wind Zones.[27] We could not find any description of the interaction between these electricity planning process and the processes created by the OEI Bill. This needs to be incorporated and clarified. This applies to the Declaration process, but potentially also licencing.

Recommendation 25: Clarify the role that electricity planning and agencies will have in the Declaration of Offshore Electricity Areas, and the Licencing of projects.

Application of State and Territory laws in Commonwealth offshore area

The application of State and Territory laws (Chapter 6 Part 2) is a necessary feature of the Bill to ensure the Commonwealth is not required to replicate the usual legal settings of States and Territories as they apply to citizens who happen to be working in an offshore electricity area.

One state and territory workplace law that needs to be considered is the application of portable long service leave scheme which apply in the construction industry. These schemes are important for providing consistency and stability to construction workers who necessarily move from project to project in the course of their work.

Recommendation 26: The Committee should confirm the Bill does not inadvertently interfere with State and territory portable long service leave schemes and that they will apply as intended.

[27] Australian Energy Market Operator, 2021 Inputs, Assumptions and Scenarios report, p.109

Decommissioning of offshore electricity infrastructure

The OEI Bill establishes more stringent decommissioning requirements for renewable energy developers than the 'enhanced' measures which are currently in place for offshore oil and gas developers. This does not make sense in terms of the industry risk profile, or in terms of the need for new infrastructure required to reduce greenhouse gas emissions. The Government says this is 'best practice' internationally, but in those jurisdictions, there are also multiple other initiatives to support the development of offshore wind.

As in offshore oil and gas, the OEI Bill developers are required to remove all infrastructure from licence areas that is not used (s. 116). The OEI Bill incorporates many aspects of the 'enhanced' decommissioning framework for offshore oil and gas which was passed by Parliament on 24 August,[28] motivated by the *Northern Endeavour* decommissioning fiasco which is set to cost the Government $1 billion.[29] Decommissioning plans and financial security are required in the Management Plan required for all Commercial and Transmission licences (s.115). NOPSEMA or the Minister can issue directions to current or previous offshore electricity licence holders to remove old infrastructure (Chapter 4, Part 2 – Directions Powers). If they do not comply, the government can undertake the work and pursue costs in court. Government scrutiny and approval is required for changes of corporate control (Chapter 3, Part 3 – Change in Control of a Licence Holder).

The additional requirement in the OEI Bill is that renewable energy developers must 'provide the Commonwealth with financial security sufficient to pay any costs, expenses and liabilities' associated with decommissioning, removal and remediation of licence areas sufficient to cover all structures in place at that time (s.117-119). This financial security must be in place before the infrastructure is installed and could include 'bonds, letters of credit, bank guarantees and other mechanisms' (Explanatory Memorandum, s.562).

Oil and gas developers are not currently required to put up any financial security up front except to cover the potential costs of oil spills. This is required under s.571 of the OPGGS Act, which does not specify that financial security will only cover oil spills, but has been interpreted this way due to language in the Explanatory Memorandum. Financial security is not required if their Environmental Plan can demonstrate that there are 'no potential oil pollution scenarios and no other foreseeable petroleum incidents' (p.6).

The DISER consultation paper on the Enhanced Decommissioning Framework in December 2020 said that it was intending to expand the requirement for financial security to include decommissioning, and this could be achieved under the current drafting of s.571.[30] However, this not referenced in NOPSEMA's Decommissioning Compliance Strategy and Plan released in April 2021, or on its pages on financial assurance, which only reference marine oil spill pollution. NOPSEMA usually issues consultation documents when it changes guidance, and we could find no consultation on foot on this on NOPSEMA's website or the Department of Industry, Science, Energy and Resources.

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[28] *Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021.*

[29] See www.boilingcold.com.au/tag/decommissioning/ for coverage of decommissioning issues in the oil and gas industry.

[30] Department of Industry, Science, Energy and Resources, Enhancing Australia's decommissioning framework for offshore oil and gas activities - Consultation Paper, December 2020, p.8-9.

Recommendation 27: Renewable energy developments should not be held to a higher financial security standards for decommissioning than are currently required for oil and gas developments.

Management Plans

The framework includes an important role for Management Plans, which must be submitted by developers who hold a Feasibility Licence, to NOPSEMA as part of the application for a Commercial Licence. Transmission Licences also require a Management Plan, but these can be submitted while holding a Transmission licence but before construction.

Management Plans must include (s.115 (1)):

- What activities will be carried out
- Environmental management
- Decommissioning plans and financial security
- Records to be kept and made available for WHS inspections
- Anything else required by the licence, licencing scheme or NOPSEMA

The licencing scheme may also require them to include (s.115 (2)):

- Design, infrastructure integrity and maintenance
- WHS management
- Consultation requirements and outcomes
- Monitoring and reviewing the Management Plan

Plans are reviewed every 5 years or when triggers relating to scope, risk and other factors detailed in regulation are met.

An application for a Commercial Licence will likely be submitted a few years before construction can start. Before the issue of the licence is far too early in the project to make detailed plans in many of these areas. For example, requiring detailed WHS management plans before a licence is issued prevents workforce and stakeholder involvement and turns it more into a paperwork exercise. Projects should follow normal WHS processes and project management practices, and use Codes of Practice to be found in the WHS Act and OHS (MI) Act jurisdictions.

The Explanatory Memorandum comments “There is no requirement for management plans to be made public. However, it is intended the regulations will allow for publication of details within a management plan to enable public comment” (cl.529). We were not able to find any provisions ensuring workers had access to Management Plans, although Health and Safety Representatives are empowered to issue Provisional Improvement Notices if the find a contravention of a Management Plan (s.234 and 235)

The assessment of Management Plans should be done via a tripartite industry / government body established under the primary legislation with mandated functions and powers. Similar jurisdictional models such as self-insurance licencing under the *Safety Rehabilitation and Compensation Act* provide for a workable model. Plans should demonstrate capacity to meet established criteria and look at both future and past performance.

Recommendation 28: Ensure the Management Plan required to be lodged with a Commercial Licence application contains only content appropriate to that stage of development.

Recommendation 29: The OEI Act should be amended to ensure workers, Health and Safety Representatives and unions have access to Management Plans.

Public reporting and transparency

There is no clear summary of what matters will be publicly reported. In several cases, reports are required to the Minister but there are no provisions to share them. WHS Act provisions to publish WHS information on the jurisdiction are removed by s.241 of the OEI Bill and not replaced.

There is a provision for matters to be prescribed by regulation to be included in the NOPSEMA annual report (s.184), but these are not drafted yet.

The only other matters to be publicly reported which we could find include:

- Proposals to declare Offshore Electricity Areas and changes to them (s.18, 24, 27)
- The Register of offshore electricity licences (s.162)
- Prohibition and improvement notices relating to WHS, environment or infrastructure integrity (s.212)
- Enforceable undertakings (s. 219)
- Adverse publicity orders (s.222)

The OEI Bill provides for Minister to require the Regulator to prepare reports or give information about the performance of the Regulator's functions or the exercise of its powers (s.181). However the Explanatory Memorandum qualifies this as follows:

> The ability for the Minister to require the Regulator to provide reports on the exercise of powers and performance of functions is intended to provide the Minister with information. It is not intended that the reports or documents will be tabled in Parliament or made publicly available. The Regulator is required to publish certain enforcement actions under the Bill, to submit Annual Reports and to be subject to periodic reviews of the performance of its functions and the exercise of its powers. Both Annual Reports and review reports must be tabled or otherwise published (s.849)

The Act provides for NOPSEMA to provide services to state governments and foreign governments for the regulation of offshore renewable energy (s.183). However they are specifically exempted from publically from publicly reporting on such services in s.183 (6).

Recommendation 30: The OEI Bill should be amended to improve public reporting and transparency, particularly on WHS matters and the activities of NOPSEMA.

Environmental impact and ongoing monitoring

Projects will be assessed under the *Environment Protection and Biodiversity Conservation Act* (EPBC Act), which is a higher standard than the oil and gas industry, who are not required to go through the EPBC Act process.[31] We support the consistency and protections this will provide. However a major independent review has also found that the Act is flawed and requires updating. Concerns have also been raised that this process will not cover underwater noise and fish spawning.[32]

As a new large-scale technology, it is essential that the public has confidence in the environmental assessment process or necessary projects will be delayed. Potential gaps in the EPBC process should be assessed and particular attention paid to these issues in the Declaration and Licencing process.

Funding for environmental impact studies and best practice mitigation should be included as part of a broader industry package. Global knowledge about how to minimise the impacts needs to be translated to the Australian context. An Australian government research agency should be mandated to begin a program of collection of baseline environmental data and other research necessary to ensure the safe deployment of offshore wind in Australian waters.[33]

Recommendation 31: Declaration of offshore wind areas should include a strategic environmental assessment to ensure any sensitive marine ecosystems are protected prior to projects going through the licencing phase.

Structure of the Bill – role of the Minister and cost-recovery

The framework in the OEI Bill givers authority for most decisions to the Minister.

We are concerned that this will lead to politicisation and delays of projects.

The industry will be regulated on a cost-recovery basis. We note the urgent necessity to encourage the construction of renewable energy projects.

Facilitating investment in offshore projects

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.

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[31] NOPSEMA, NOPSEMA EPBC Act Program.

[32] Madeline Taylor and Tina Soliman Hunter, Australia's first offshore wind farm bill was a long time coming, but here are 4 reasons it's not up to scratch yet, *The Conversation*, 3 September 2021.

[33] 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.14, 77.

We note that these measures were developed in response to the issues 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 other examples of measures developed for the oil and gas industry being applied to the proposed offshore renewable electricity framework without full consideration of the consequences.

Recommendation 32: The measures in Chapter 3 Part 3 - Change in Control of a Licence Holder should be reviewed to ensure that they do not create obstacles to investment in projects licenced under the OEI Bill by superannuation funds and pension funds.

Role of Snowy Hydro and public ownership

We note the Snowy Hydro is wholly owned by the Commonwealth, and is presently investing $600 million in a new gas-fired power station in NSW.

Offshore wind is a genuinely innovative energy source requiring substantial new investment, which can also provide firming opportunity for the grid because it provides energy at times when onshore wind and solar do not.

Recommendation 33: The committee should consider the benefits of public ownership of offshore renewables, including through Snowy Hydro investing in the construction of offshore wind in Commonwealth waters.

Safety zones

The OEI Bill provides for temporary safety zones and ongoing protection zones to protect infrastructure (Chapter 4 Part 3). Safety zones must not unduly limit other activities in the area, and should allow widespread access to recreational fishers.

An industry package for offshore renewables

The potential for the development of offshore wind in Australian waters is huge, but we are well behind. Alongside the Bill, the Department must develop an industry package to accelerate the development of the industry. Some immediate actions that could be taken are listed below.

Many countries are taking strong measures to accelerate the development of offshore wind. These are detailed in Appendix 1 and should be implemented in Australia.

Workforce and skills

Workforce skills and capabilities must be planned and developed. TAFEs must be funded and prepared to deliver the skills required for this new industry. A particular effort should be made to ensure training and transition programs are available to workers in coal fired power stations, the offshore oil and gas industry, and coal export ports.

OPITO offshore renewables training offers a good stepping stone for workers already working in the offshore oil and gas industry.

Australian Renewable Energy Agency and Clean Energy Finance Corporation

The Australian Renewable Energy Agency and Clean Energy Finance Corporation should develop research and development programs to assist in the development of offshore wind, particularly floating offshore wind.

Research also needs to be carried out on the potential of offshore wind to provide technical services such as Frequency Control Ancillary Services in a grid with high levels of renewable energy.

Port facilities and offshore wind terminals and manufacturing hubs

Offshore wind terminals and manufacturing hubs should be developed, particularly in areas of high fossil fuel employment. Ports should be supported to provide the facilities at which offshore wind projects can be based.

National Hydrogen Strategy

The National Hydrogen Strategy should include consideration of the role of offshore wind in delivering renewable hydrogen

Australian Energy Resource Assessment

The Australian Energy Resource Assessment should include offshore wind, particularly in maps they produce of Australian renewable energy resources.

Recommendation 34: An industry package to support the development of offshore wind should be implemented alongside the Bill, including research and development, workforce skills and training, support for the development of port terminals and manufacturing hubs, and ensuring that offshore wind is properly included in all energy planning processes.

Appendix 1: Actions in other countries to support the development of offshore wind

The measures below are some of the actions being taken internationally to support the development of offshore wind.

Excerpt from: 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.21-22.

Table 1. International offshore wind targets

Country	OSW Target	Source
UK	40 GW by 2030, 1 GW of floating offshore wind	*Ten Point Plan for a Green Industrial Revolution* (HM Government, 2020)
US	30 GW by 2030	(Whitehouse.gov, 2021), 2021.
EU	60 GW by 2030, 300 GW by 2050	(*Boosting Offshore Renewable Energy*, n.d.), EU Strategy on Offshore Renewable Energy, 2020.
India	5 GW by 2020, 30 GW by 2030	(*Offshore Wind | Ministry of New and Renewable Energy, Government of India*, n.d.), 2015.
Germany	20 GW (12.5% of demand) by 2030	(BMWI, 2020)
Japan	10 GW by 2030, 45 GW by 2040	(METI, 2020)
Korea	12 GW by 2030	(*Korea's Offshore Wind Collaboration Plan - Kim & Chang*, n.d.) 2020.
Taiwan	20.5GW by 2030	(Buljan, 2021)
Netherlands	11.5 GW by 2030	(*Climate Agreement | Report | Government.Nl*, n.d.), 2019.
Ireland	5 GW by 2030	(*Gov.Ie - Programme for Government: Our Shared Future*, n.d.), 2020
The World Bank 'Energy Sector Management Assistance Program' aims to unlock the 3.1-Terawatt generation potential in Brazil, India, Morocco, the Philippines, South Africa, Sri Lanka, Turkey and Vietnam (World Bank, 2019)		

The global development of offshore wind and efforts to create good jobs in this sector have been supported by a number of government actions in addition to the targets listed above. These include:

- Funding for research and development of offshore wind technologies, for example by the US Department of Energy (US Department of Energy, 2020)
- Building of offshore wind training centres, for example the New York Offshore Wind Training Institute (NYSERDA, 2021)

- Creation and funding of offshore wind port hubs – for example the port of Esbjerg in Denmark, an offshore wind hub in the port of Leith, Scotland, the New Bedford Marine Commerce Terminal, operated by the Massachusetts Clean Energy Centre, an Energiehaven in the port of Amsterdam, the Able Marine Energy Park in the north of England, and the South Brooklyn Marine Terminal in New York. Danish research shows that these ports can bring substantial local economic benefits (QBIS, 2020)
- Assessments of domestic supply chains, investments in increasing local manufacturing capacity, targets for increasing local content in projects, and compliance measures such as audits. A target of 60% local content by 2030 is set out in the UK Sector Deal, alongside a 40GW by 2030 target for installation. This is being implemented through Contract for Difference requirements, with subsequent compliance measures (Ford, 2020; HM Government, 2020).
- Baseline environmental research, for example by the US Bureau of Ocean Energy Management and the Netherlands Enterprise Agency (BOEM, 2021; Netherlands Enterprise Agency, 2017)
- Planning for best areas of offshore wind development, and solicitation of project proposals for those areas – for example in the Netherlands, Denmark, UK and USA. New York created an Offshore Wind Master Plan.
- National transmission grid operators building transmission grid connections out to the offshore substation, which offshore wind projects can then connect to – for example in the Netherlands (Netherlands Enterprise Agency, 2017) and Denmark (Smith, 2018). Greater coordination of offshore transmission is being reviewed in the UK's Offshore Transmission Network Review.
- Provisions of feed-in tariffs and contracts for difference to offshore wind developers (HM Government, 2020)

The US Department of the Interior has also announced a consultation to include new lease stipulations for sea areas used for offshore wind. These include 'a requirement to make every reasonable effort to enter into a project labor agreement covering the construction of any project in the lease area' and 'mechanisms to provide benefits to underserved communities and investments in a domestic supply chain' (US Department of the Interior, 2021).

The regulatory frameworks used for offshore wind also vary significantly. In some cases, these are modelled on the regulatory frameworks for the offshore oil and gas industry, which is predicated on competitive development of individual projects, and cash auctions for the rights to develop areas of the seabed (Smith, 2018). In countries such as Denmark where the electricity grid is state owned, offshore wind has been planned by government as part of the electricity system, aligned with ambitious plans for decarbonisation (Weghmann, 2019).

Appendix 2: WHS right of Entry in offshore areas

The deficiencies of the OPGGS Act's provisions for union right of entry, and NOPSEMA's lack of adequate provisions for incident investigation and communication with stakeholders were illustrated in the aftermath of the deaths of Barry Denholm and Peter Meddens on the drilling platform the *Stena Clyde* on 27 August 2012. The drill became stuck in the hole deep beneath the seafloor. After a whole series of efforts to free the drill, the published 'statement of facts' records the following:

> 50. The forces generated by the sudden application of torque resulted in the 4 tonne snatch block failing and the drill pipe with the tong attached spinning out of control.
>
> 51. The tong weighing 200 kilograms struck Barry Denholm. Peter Meddens (who was further away and not within the red zone) was struck by the associated rigging. Both men died as a result of injuries sustained from the impact of the rig tong and associated rigging.[34]

In a teleconference with NOPSEMA and the ACTU on 30 August, the MUA requested access to the *Stena Clyde* to support the rest of the workforce who were traumatised and shaken by the incident, and were being pressured by management to continue working despite the horrific incident that had just taken place.

NOPSEMA originally refused access to the MUA, and the MUA had to make an application to the Fair Work Commission to gain access. MUA officials were able to finally access the *Stena Clyde* on 6 September, 10 days after the workers were killed.[35] In contrast, workers and unions ashore are required to give 24 hours notice of entry, but entry is often available at shorter notice, particularly if there has been a fatality in a workplace.

When NOPSEMA arrived on the drilling rig, they met directly with company management. NOPSEMA made no effort was made to meet with the affected workforce or Health and Safety Representatives, or to include them in the investigation.[36] When MUA Victoria Branch Secretary Kevin Bracken was finally allowed on board the *Stena Clyde* on 6 September, he was instructed to stay in a single room. Only MUA members were allowed to meet with him, and had to go to that room to do so. Workers who were not in the MUA jurisdiction were not allowed to meet with Kevin, even though no other union official was able to get out to the drilling vessel.[37]

In the aftermath of the incident, NOPSEMA provided very little in the way of public information, findings, or safety recommendations arising from the incident. In October 2012, a one and a half page summary was published, announcing an investigation. No further detailed information was published until 10 December 2015 – and this was the Summary of Facts submitted to the

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[34] Linda Jane Cutler v Stena Drilling (Australia) Pty Ltd (ACN 116 801 435), AGREED SUMMARY OF FACTS, p.8.

[35] A detailed timeline is available in Senate Standing Committee on Economics, ANSWERS TO QUESTIONS ON NOTICE, Resources, Energy and Tourism Portfolio, Supplementary Budget Estimates, 18 October 2012.

[36] This information is from Kyle McGinn, who was a delegate and joint Health and Safety Representative on the Stena Clyde. He is currently a member of the West Australian Legislative Council and happy to discuss details of the incident with any interested parties.

[37] Information from MUA member Kevin Bracken who was the Victorian Branch Secretary at the time. Michael Doleman is a retired MUA member who was also closely involved with this process as the Deputy National Secretary of the MUA.

Magistrates Court of Victoria.[38] As this was a document prepared for court, it is not written in such a way as to provide advice to other operators or workers in the industry to prevent future incidents. No investigation was carried out by any other organisation that we are aware of, and if it was, NOPSEMA has not provided a link to it on their incident summary page. There was never a chance for any worker or their representatives to provide input into any investigation.

In November 2015, Stena Drilling was fined $330,000 for breaching the breaching the OPGGS Act by failing to implement and maintain safe work systems.[39]

The documents and investigation published by NOPSEMA are a wholly inadequate response to the incident. The actions taken by NOPSEMA in response to the deaths of Barry Denholm and Peter Meddens contrast sharply to the investigation into the death of Andrew Kelly, an MUA member also killed in the offshore oil and gas industry. Andrew Kelly was killed on 14 July 2015 on board the *Skandi Pacific*, an offshore supply vessel which was not under NOPSEMA's jurisdiction (although the vessel was located only 30m from the oil platform when Andrew Kelly was killed). As a result, the Australian Transport and Safety Bureau (ATSB) investigated the fatality and took the following actions:

- Published a detailed 38-page report on 23 November 2016 (16 months after the incident), including detailed timelines, photographs and diagrams. Multiple organisations, other vessel crew, and Andrew Kelly's next of kin were consulted in the preparation of the report, and the initial draft report was amended to reflect their input.[40]
- The report included safety recommendations to both the vessel operator and the wider industry.
- The ATSB published clear Safety Advisory Notice on the risks of working on open Stern OSVs on 26 November 2016, and distributed throughout the industry.[41]

In contrast to the actions of NOPSEMA, these actions by the ATSB had the effect of allowing family and vessel crew to be heard in a timely fashion, and have their views expressed in the official investigation and report. Other people working in the industry were also given a clear indication of safety lessons from the incident to be applied to their own workplaces.

Three years after the deaths of Peter Meddens and Barry Denholm on the *Stena Clyde*, under the jurisdiction of NOPSEMA, there was still no published report on the incident. Michael Borowick, Assistant Secretary of the Australian Congress of Trade Unions made the following comments:

> "The families, friends and work mates of Peter Meddens and Barry Denholm have been waiting a long time to find out what happened to their loved ones on that terrible day in 2012."

[38] The documents produced by NOPSEMA are collected here: NOPSEMA, Major Offshore Incidents – Stena Clyde Fatalities, Bass Strait, 27 August 2012.
[39] Stena Drilling Australia fined over worker deaths.
[40] Australian Transport Safety Bureau, Fatality on board Skandi Pacific, off the Pilbara coast, Western Australia on 14 July 2015, 23 November 2016.
[41] Australian Transport Safety Bureau, Fatality highlights risks on open stern OSVs, 23 November 2016.

"We are calling for Federal Government to overhaul NOPSEMA and replace it with a full service regulator who can act quickly to prosecute to ensure the reasons behind an accident are identified without this extraordinary delay."

"The ACTU is also concerned NOPSEMA is too close to the industry to act as an effective regulator."

"Without a full and independent investigation into such tragedies we cannot ensure other workers will not be exposed to similar dangers."

"Offshore safety legislation must be brought into line with national OHS standards – there is no justification for lower standards of protections for offshore workers."[42]

[42] Stena Clyde Tragedy: Continued Govt Inaction, 27 August 2015.