

# EXPOSURE DRAFT

## **EXPLANATORY STATEMENT**

Issued by the authority of the Assistant Minister to the Minister for Industry, Energy and Emissions Reduction

*Offshore Electricity Infrastructure Act 2021*

*Offshore Electricity Infrastructure Regulations 2022*

### **Purpose and Operation**

The *Offshore Electricity Infrastructure Act 2021* (OEI Act) establishes a legal framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure (OEI) in the Commonwealth offshore area. The OEI Act will commence on 2 June 2022.

The OEI Act provides a robust framework for granting licences to undertake offshore infrastructure activities in the Commonwealth offshore area, while providing for co-existence with other marine users, the effective management of environmental impacts, the safety of workers and the protection of OEI. Providing regulatory certainty will enable a new offshore industry to develop in Australia, that will deliver significant benefits including employment, regional development, and a more reliable and affordable electricity network.

Section 305 of the OEI Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OEI Act or necessary or convenient for carrying out or giving effect to the OEI Act. The OEI Act contains a number of provisions providing for the making of regulations, with the intention being that certain elements of the OEI framework would be addressed through regulations rather than established through the initial legislation.

The present regulation, the *Offshore Electricity Infrastructure Regulations 2022* (OEI Reg), sets out the detailed arrangements of the OEI framework that are considered crucial for the framework to become operational: namely the OEI licencing scheme, spatial datum provisions, reporting, arrangements for pre-existing infrastructure, and the application of fees and levies. The OEI Reg will be amended in the future to include the remaining arrangements necessary for the framework.

### **Background**

As noted above, the OEI Reg covers the OEI licencing scheme, spatial datum provisions, reporting, pre-existing infrastructure and the application of fees and levies. Further background on the OEI licencing scheme and the application of fees and levies is provided directly below. Background on spatial datum provisions, reporting, and arrangements for pre-existing infrastructure will be provided below in the section outlining the substantive provisions.

## EXPOSURE DRAFT

### Licensing scheme

Section 15 of the OEI Act prohibits the construction and operation of offshore electricity generation and transmission infrastructure in the Commonwealth offshore area without a licence. The OEI Act sets out three pathways for licensing to accommodate a range of potential types of developments:

- A commercial pathway, which includes a feasibility licence to allow a licence holder to undertake exploratory and scoping work and then seek a subsequent commercial licence to develop large scale offshore renewable energy infrastructure (e.g. an offshore wind farm with fixed or floating wind turbines).
- A research and demonstration pathway, which provides a licence for short-term projects to trial and test new technologies or undertake infrastructure-based exploration and research activities, potentially to generate an evidence base necessary to support a future commercial project proposal (e.g. demonstration of floating solar generation or tidal generation technology).
- A transmission and infrastructure pathway, which provides a licence to construct and operate offshore electricity transmission infrastructure (e.g. cables connecting an offshore renewable energy generation facility to onshore, or interconnectors between Tasmania and mainland Australia).

Section 29 of the OEI Act provides for the regulations to prescribe a licensing scheme dealing with applications for licences, offering and granting of licences, variations to licences, extension of licences, transfers of licences, and changes in control of licence holders. The licensing scheme will be administered by the Offshore Infrastructure Registrar, who will maintain a register of licences and manage the licence application process.

### Application of fees and levies

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

Part 3 of Chapter 5 of the OEI Act further sets out arrangements for the payment of fees and levies by OEI participants. Under subsection 189(1) the Commonwealth (including the Regulator or Registrar) may charge a fee for dealing with an application made, performing functions, or exercising power under the Act or the applied work health and safety provisions. Under subsection 190(1) certain OEI participants must also pay levies where applicable under the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021* (OEI Levies Act) and associated *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022* (OEI Levies Reg). The aim of these provisions is to enable the Commonwealth to recover any costs associated with administering or regulating the OEI framework.

Sections 189 and 190 of the OEI Act provide for the regulations to prescribe various obligations and requirements pertaining to the application of fees and levies.

## EXPOSURE DRAFT

**Authority**

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

The OEI Act also sets out the relevant heads of power which provide for specific regulations for the aspects of the OEI framework set out in the OEI Reg, including spatial datum provisions in section 9, the licencing scheme in section 29, fees and levies in sections 189 and 190, reporting in section 283 and pre-existing infrastructure in section 309.

**Regulatory Impact**

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

**Details of the Offshore Electricity Infrastructure Regulations 2022**

**PART 1 – PRELIMINARY**

**Section 5 – Name**

This section specifies the name of the Regulations as the *Offshore Electricity Infrastructure Regulations 2022*.

**Section 10 – Commencement**

This section provides that the OEI Reg commenced on the later of: the day after the regulations are registered on the Federal Register of Legislation, and the commencement of the *Offshore Electricity Infrastructure Act 2021*.

**Section 15 – Authority**

This section sets out the provision of the *Offshore Electricity Infrastructure Act 2021* under which the OEI Regs are made.

**Section 20 – Definitions**

This item provides for definitions of terms used in the OEI Reg. A number of expressions used in the OEI Reg are defined in the *Offshore Electricity Infrastructure Act 2021*, and have meaning given by that Act.

Key definitions in this instrument are:

- ‘Act’, which means the *Offshore Electricity Infrastructure Act 2021*.
- ‘assessment fee’, which means the total amount of the expenses incurred by the Regulator in performing or exercising the function or power concerned.
- ‘decision maker’, which means:
  - the Minister with respect to not offering to grant a licence; not extending, varying, or transferring a licence; and not consenting to the surrender of a licence; and
  - the Registrar with respect to not approving a change in control of a licence holder.
- “licence application”, which means an application for, or that relates to, a licence.
- ‘offshore electricity infrastructure levy’, which means a levy imposed by section 8 of the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.

## **PART 2 – THE LICENSING SCHEME**

### **Division 1—Operation of this Part**

#### **Section 25 – Operation of this Part**

This part prescribes the licensing scheme established under section 29 of the OEI Act. This is to provide clarity around application procedures.

### **Division 2—Licence areas**

#### **Section 30 – Operation of this Division**

This Division prescribes licence areas by setting a maximum licence area for feasibility and commercial licences.

#### **Section 35 – Licence areas**

Subsection 35(1) prescribes that a feasibility licence must not exceed a maximum area of 700km<sup>2</sup>. It is anticipated that the granting of feasibility licences will be a competitive process. Setting a maximum licence area allows for multiple licences to be issued in a declared area. It also encourages efficient use of the marine area, balancing the needs of other marine users. The explanatory note provides the section of the OEI Act that allows a maximum area for feasibility licences to be set under the licensing scheme.

Subsection 35(2) prescribes that a commercial licence must not exceed a maximum area of 700km<sup>2</sup>. This is to ensure a commercial licence does not exceed the size of the associated feasibility licence. The explanatory note provides the section of the OEI Act that allows a maximum area for commercial licences to be set under the licensing scheme.

### **Division 3—Applications for licences**

#### **Subdivision A—Operation of this Division**

#### **Section 40 – Operation of this Division**

Section 29(1)(a) of the OEI Act allows for regulations to prescribe a scheme (the licensing scheme) relating to applications for licence. This Division specifies the procedures for applying for licences.

#### **Subdivision B—Applications for feasibility licences**

#### **Section 45 – Invitations to apply for feasibility licences**

Section 32(1)(a) of the OEI Act provides for the licensing scheme to prescribe procedures for eligible persons to be invited to apply for feasibility licences. Once an area is declared suitable for offshore renewable energy infrastructure under section 17 of the OEI Act,

## **EXPOSURE DRAFT**

subsection 45(1) of the OEI Reg provides for the Minister to invite applications for feasibility licences. An invitation may be in respect of all or part of one or more declared areas.

Subsection 45(2) sets out that the invitation to apply for a feasibility licence must be in writing and registered on the Federal Register of Legislation as a notifiable instrument. This is to ensure transparency and public accessibility. For clarity, an invitation instrument can invite more than one eligible person at the same time.

Subsection 45(3) provides that the invitation must identify the declared areas for which licences may be granted. For efficiency, a single invitation may be issued that specifies several declared areas for which applications for licences can be submitted. The invitation will also specify any conditions that licences granted in the declared area or areas will be subject to. For example, section 20 of the Act provides that a declaration may restrict the types of licences that can be granted in the area and the types of offshore infrastructure activities authorised.

The explanatory note clarifies that feasibility licences may be subject to the conditions provided for under section 35 of the OEI Act, which are in addition to any conditions attached to a declaration.

Subsection 45(4) sets out that the invitation to apply may specify a closing date by which applications must be submitted. As the granting of a feasibility licence is likely to be a competitive process, providing a closing date for applications enables all applications to be assessed within the declared area at the same time. The invitation to apply may also specify how an application is to be lodged.

Subsection 45(5) provides that the Minister may also specify, in the invitation to apply, any other requirements to be addressed in an application for a feasibility licence.

### **Section 50 – Applications for feasibility licences**

Section 32(1)(b) of the OEI Act provides for the licensing scheme to prescribe procedures for eligible persons to apply for feasibility licences. Subsection 50(1) of the OEI Reg provides for eligible persons to apply for a licence if the Minister has invited applications.

Subsection 50(2) provides that applications for feasibility licences must be made in the manner and form approved by the Registrar and published on its website. The application must include evidence that the licence application fee has been paid and must be submitted to the Registrar by the date specified in the invitation to apply.

The application must describe the proposed commercial offshore infrastructure project to be assessed under the feasibility licence. This is to ensure that projects proposed at the feasibility licence application stage are substantially similar to projects that may be constructed under subsequent commercial licences. The application must include all information required by the approved form and address any requirements specified in the invitation to apply.

## **EXPOSURE DRAFT**

**Section 55 – Applications for licences that cover the same area**

There may be instances where applications for a feasibility licence are submitted at the same time and cover wholly or partly the same area. If the applications are equally meritorious, the Minister may invite applicants who have overlapping applications to make financial offers to determine which applicant should be offered a licence. However, dependant on the nature and extent of any overlap there may be instances where applicants are willing to revise the area applied for, in order to avoid making a financial offer. The provisions in this section provide a mechanism for the Registrar to provide applicants with an opportunity to revise their applications prior to entering into the financial offer process.

Subsection 55 provides for a process to allow the Registrar to invite applicants to revise the area applied for, in order to remove any potential overlap. Subsection 55(1) sets out that only those applications that cover wholly or partly the same area and are considered equally meritorious by the Minister will be invited to revise applications to remove overlapping areas.

*Invitation to revise applications*

Subsection 55(2) enables the Registrar to notify the applicants of the overlap and invite the applicants to revise the area applied for.

Subsection 55(3) provides that the notice and invitation must be in writing, identify the area or areas that overlap, and specify a date by which a revised application must be received. Subsection 55(4) clarifies that an applicant that revises their application in response to an invitation by the Registrar is not required to pay any additional fees.

*Financial offers for feasibility licences*

Subsection 32(3) of the OEI Act empowers the Minister to invite eligible persons that have applied for feasibility licences to submit financial offers in relation to their application. Subsection 55(5) of the OEI Reg sets out that the Minister may invite financial offers where equally meritorious applications are received that propose wholly or partly the same licence area. A financial offer provides a mechanism for the Minister to distinguish equally meritorious applications and to decide which applicant should be offered a feasibility licence.

Subsection 55(6) provides that the invitation to submit a financial offer must state that:

- the financial offer provided should reflect the value of the project (for example, financial offers for larger and more costly projects should be greater than the financial offer of a smaller and less costly project),
- the Minister will take the financial offers into account when deciding the applications, and
- the licence applied for will not be granted unless the financial offer is paid to the Commonwealth.

## EXPOSURE DRAFT

Subsection 55(7) sets out that the invitation to submit a financial offer must specify how a financial offer can be made and the date by which an offer must be submitted. The invitation will also require the applicant to provide evidence of their ability to pay the amount offered.

Subsection 55(7)(b) allows the invitation to specify any other requirements to be addressed by applicants in their submission of a financial offer.

Subsection 55(8) provides that a financial offer must be made in writing to the Registrar and address the requirements specified in the invitation.

### **Subdivision C—Applications for other licences**

#### **Section 60 – Commercial licences**

Section 41(2)(a) of the OEI Act provides for the licensing scheme to prescribe procedures for eligible persons to apply for commercial licences. Subsection 60(1) of the OEI Reg provides for eligible persons that hold a feasibility licence to apply for a commercial licence.

Subsection 60(2) provides that applications for commercial licences must be made in the manner and form approved by the Registrar and published on its website, include evidence that the licence application fee has been paid, and describe the offshore infrastructure project to be carried out under the commercial licence. The application must include evidence that the Regulator has approved a management plan for the commercial licence, and any other information or documents required by the approved form.

#### **Section 65 – Research and demonstration licences**

Section 51(1)(a) of the OEI Act provides for the licensing scheme to prescribe procedures for eligible persons to apply for research and demonstration licences. Subsection 65(1) of the OEI Reg provides for eligible persons to apply for a research and demonstration licence.

Subsection 65(2) provides that applications for research and demonstration licences must be made in the manner and form approved by the Registrar and published on its website, include evidence that the licence application fee has been paid, describe the offshore infrastructure project to be carried out under the licence, and include any other information or documents required by the approved form.

#### *Applications for licences that cover the same area*

Where research and demonstration applications cover wholly or partly the same area, subsection 65(3) provides that the Registrar may notify applicants of the overlap and invite applicants to revise the area applied for to remove the overlap. While research and demonstration licences can overlap with other licences, there may be cases where applicants, if they become aware of an overlap, would prefer to revise the area applied for to ensure that the project proposed to be carried out under the licence remains viable.

## EXPOSURE DRAFT

Subsection 65(4) provides that the notice and invitation must be in writing, identify the area or areas of overlap, and specify a date by which a revised application must be submitted.

Subsection 65(5) clarifies that an applicant that revises their application in response to an invitation by the Registrar is not required to pay any additional fees.

### *Applications for licences that cover existing licence areas*

If the Registrar receives an application for a research and demonstration licence that overlaps with an existing licence area, subsection 65(6) provides for the Registrar to invite the existing licence holder for the area to make a submission in relation to the grant of the research and demonstration licence. While a research and demonstration licence can overlap with other licences, the views of the existing licence holder will assist with assessing whether the proposed research and demonstration project is viable and potentially whether any conditions should be applied to the research and demonstration licence (such as consultation requirements with the existing licence holder).

## **Section 70 – Transmission and infrastructure licences**

Section 60(1)(a) of the OEI Act provides for the licensing scheme to prescribe procedures for eligible persons to apply for transmission and infrastructure licences. Subsection 70(1) of the OEI Reg provides for eligible persons to apply for a transmission and infrastructure licence.

Subsection 70(2) provides that applications for transmission and infrastructure licences must be made in the manner and form approved by the Registrar and published on its website, include evidence that the licence application fee has been paid, describe the offshore infrastructure project to be carried out under the licence, and include any other information or documents required by the approved form.

### *Applications for licences that cover the same area*

Where transmission and infrastructure applications cover wholly or partly the same area, subsection 70(3) provides that the Registrar may notify applicants of the overlap and invite applicants to revise the area applied for to remove the overlap. While transmission and infrastructure licences can overlap with other licences, there may be cases where applicants, if they become aware of an overlap, would prefer to revise the area applied for to ensure that the project proposed to be carried out under the licence remains viable.

Subsection 70(4) provides that the notice and invitation must be in writing, identify the area or areas that overlap, and specify a date by which a revised application must be submitted.

Subsection 70(5) clarifies that an applicant that revises their application in response to an invitation by the Registrar is not required to pay any additional fees.

## EXPOSURE DRAFT

### *Applications for licences that cover existing licence areas*

If the Registrar receives an application for a transmission and infrastructure licence that overlaps with an existing licence area, subsection 70(6) provides for the Registrar to invite the existing licence holder for the area to make a submission in relation to the grant of the transmission and infrastructure licence. While a transmission and infrastructure licence can overlap with other licences, the views of the existing licence holder will assist with assessing whether the proposed transmission and infrastructure project is viable and potentially whether any conditions should be applied to the transmission and infrastructure licence (such as consultation requirements with the existing licence holder).

## **Division 4—Offering and granting of licences**

### **Subdivision A—Operation of this Division**

#### **Section 75 – Operation of this Division**

Section 29(1)(b) of the OEI Act allows for regulations to prescribe a scheme (the licensing scheme) relating to the offering and granting of licences. This Division specifies the procedures and requirements for the offering and granting of licences.

### **Subdivision B—Considering applications**

#### **Section 80 – Additional merit criteria—national interest**

A licence held or applied for under the OEI Act must meet the prescribed merit criteria. Sections 34, 44, 53, and 62 of the Act allow for the licensing scheme to prescribe additional merit criteria for licences to satisfy. Section 80 provides that the Minister must be satisfied that an offshore infrastructure project (or proposed offshore infrastructure project) is in the national interest. Details of what the Minister may consider when undertaking this assessment are in subsection 85(4).

#### **Section 85 – Merit criteria—matters to be considered**

##### *Technical and financial capability*

Subsection 85(1) sets out the matters the Minister may consider when assessing whether an eligible person is likely to have, or be able to arrange to have, the technical and financial capability to carry out an offshore infrastructure project (or proposed offshore infrastructure project) under a licence. These matters may include:

- the technical advice that is or will be available to the person;
- the financial resources that are or will be available to the person;
- the person's ability to carry out the operations and works that will be authorised by the licence;

## EXPOSURE DRAFT

- the person's ability to discharge the obligations in relation to the licence that will be imposed by the Act, the regulations or any other instrument made under the Act (such as decommissioning or activities under a remedial direction); and
- any other matters that the Minister considers relevant.

### *Viability*

Subsection 85(2) sets out the matters the Minister may consider when assessing whether an offshore infrastructure project (or proposed offshore infrastructure project) is likely to be viable. These matters may include the complexity of the project, the route-to-market for the project, the estimated commercial return to the licence holder, and any other matters the Minister considers relevant.

### *Suitability of the applicant*

Subsection 85(3) sets out the matters the Minister may consider when assessing whether an eligible person is suitable to hold a licence. These matters may include the person's past performance in offshore infrastructure projects in Australia and/or overseas, the person's corporate governance structure, and any other matters the Minister considers relevant.

### *National interest*

Subsection 85(4) sets out the matters the Minister may consider when assessing whether an offshore infrastructure project (or proposed offshore infrastructure project) is in the national interest. These matters may include:

- the impact and contribution of the project to the economy and the community,
- national security,
- the complexity of the project,
- conflicts that might arise with other uses or users of the licence area and any measures that are proposed to mitigate these,
- any other matters that the Minister considers relevant.

The explanatory note clarifies that in considering a licence application the Minister must take into account any information, assessment, analysis, report, advice or recommendation made by the Registrar in relation to the application. Section 175 provides further information on advice given by the Registrar.

## **Section 90 – Financial offers—feasibility licences**

Section 90 clarifies that, in considering an application for a feasibility licence, the Minister must take into account any financial offers given in relation to the application.

## **Subdivision C—Offering and granting of licences**

### **Section 95 – Offer of licence**

This regulation sets out the procedures for offering licences. Subsection 95(1) provides that if the Minister decides to grant a licence to an applicant, the Minister must offer the licence to the applicant.

While the Minister is the decision maker with respect to offering of licences, subsection 95(2) provides that the offer may be given to the applicant by the Registrar. This would be done on behalf of the Minister.

Subsection 95(3) specifies that the offer must be in writing and must cover a number of specified matters. These include:

- the licence area for the licence,
- the day the licence would come into force,
- the end day of the licence,
- any conditions that would apply to the licence, including the requirement to pay any offshore electricity infrastructure levy,
- the date by which a financial offer (if one was made) must be paid to the Commonwealth if the offer of a feasibility licence is accepted by the applicant,
- the date by which the offer must be accepted,
- stating that if the offer is not accepted by that date, the application will lapse, and
- how to accept the offer.

### **Section 100 – Granting licences**

This regulation sets out the procedures for the Minister to grant a licence to an applicant. Subsections 100(1) and (2) provide that if the Minister grants a licence to an applicant, the licence must be the same as the licence that was offered to the applicant (unless the applicant has agreed in writing to any differences).

While the Minister is the decision maker with respect to granting of licences, subsection 100(3) provides that the notice of the grant may be given to the applicant by the Registrar. This would be done on behalf of the Minister.

The first explanatory note under subsection 100(3) offers a reminder that the grant of a licence must be recorded in the Register under section 163 of the OEI Act.

The second explanatory note provides the sections of the OEI Act that set out the rules relating to the grant of licences for each licence type.

**Division 5—Extending and varying licences**

**Section 105 – Operation of this Division**

Section 29(1)(f) of the OEI Act provides for regulations to prescribe a scheme (the licensing scheme) relating to any other matters that the Act provides for the licensing scheme to deal with. This Division prescribes the matters relating to extending and varying licences under the licensing scheme.

**Section 110 – Extending the term of a licence**

*On application*

Subsection 110(1) provides that the Minister may extend the term of a licence if the licence holder applies for an extension. Subsection 110(2) sets out that the application for a licence extension must be made in the manner and form approved by the Registrar and published on its website. The application must include evidence that the application fee for a licence extension has been paid and must be accompanied by any other information or documents required by the approved form.

An application to extend a feasibility licence, research and demonstration licence, or transmission and infrastructure licence must be made before the end day of the licence.

In the case of a commercial licence, the application to extend the licence must be made at least five years before the end day of the licence.

*On Minister's own initiative*

Subsection 110(3) provides that the Minister may extend the term of a feasibility licence or a research and demonstration licence on the Minister's own initiative.

*Notice of extension*

Subsection 110(4) provides that if the Minister decides to extend the term of a licence, the licence holder must be given written notice of the extension.

Subsection 110(5) clarifies that this written notice may be given to the licence holder by the Registrar. This would be done on behalf of the Minister.

The first explanatory note under subsection 110(5) offers a reminder that the extension of a term of a licence must be recorded in the Register.

The second explanatory note provides the sections of the OEI Act that set out the rules relating to extending the term of a licence.

## **Section 115 – Application to vary a licence**

Sections 38, 48, 57 and 66 of the OEI Act enable a licence holder to apply to vary a licence to: impose a condition on the licence; or vary or revoke a condition imposed on the licence; or remove one or more areas from the licence area.

Subsection 115(1) sets out that an application to vary a licence must be made in the manner and form approved by the Registrar and published on its website. The application must include evidence that the application fee for a licence variation has been paid and must be accompanied by any other information or documents required by the approved form.

### *Notice of variation*

Subsection 115(2) provides that if the Minister decides to vary a licence, the licence holder must be given written notice of the variation. Subsection 115(3) clarifies that this written notice may be given to the licence holder by the Registrar. This would be done on behalf of the Minister

The first explanatory note under Subsection 115(3) offers a reminder that the variation of a licence must be recorded in the Register.

The second explanatory note provides the sections of the OEI Act that set out the rules relating to varying licences for each licence type.

## **Division 6—Licence conditions**

### **Section 120 – Operation of this Division**

Section 29(1)(f) of the OEI Act provides for regulations to prescribe a scheme (the licensing scheme) relating to any other matters that the Act provides for the licensing scheme to deal with. This Division prescribes the conditions that apply to licences.

### **Section 125 – Reports**

Sections 35, 45, 54 and 63 of the OEI Act provide that the licensing scheme may prescribe conditions that a licence is subject to.

Subsection 125(1) provides that licences are subject to the condition that the licence holder give the Registrar reports. These reports must comply with the details set out in section 125 and form part of the ongoing compliance obligations of licence holders.

### *Annual reports*

Subsection 125(2) provides that the licence holder must give the Registrar annual reports. Subsection 125(3) specifies that the annual report must be provided in writing and be given to the Registrar within 30 days after each anniversary of the grant of the licence (unless a further period is allowed by the Registrar). The annual report must relate to the activities undertaken

## EXPOSURE DRAFT

by the licence holder with respect to the offshore infrastructure project under the licence during the 12-month period immediately before the anniversary (i.e. the reporting period).

Subsection 125(4) sets out the items that must be provided in an annual report, including:

- a description of all work, evaluations and studies carried out in or in relation to the licence area during the reporting period with total expenditure by item and a summary of the results;
- details of how the licence holder has continued to meet, and continues to meet, the merit criteria for the licence;
- a summary of anticipated or expected work, evaluations and studies to be carried out in the licence area during the next year of the licence, including estimated expenditure;
- any other information relating to a condition of the licence; and
- any other information that the licence holder believes is relevant to the licence.

### *Final reports*

There may be instances where a licence ends on a day which is not an anniversary of the grant of the licence. For example, a licence may end part way through a reporting period.

Subsection 125(5) provides that where a licence term ends on a day that is not the anniversary of the grant of the licence, the licence holder must give the Registrar a final report.

Subsection 125(6) provides that the final report must be provided in writing and be given to the Registrar within 30 days after the end of the licence term. The final report must relate to the activities undertaken by the licence holder with respect to the offshore infrastructure project during the period beginning on the most recent anniversary of the grant of the licence to the end of the licence term.

Subsection 125(7) specifies that the final report must include the information set out under paragraphs (4)(a) to (e), including:

- a description of all work, evaluations and studies carried out in or in relation to the licence area during the reporting period with total expenditure by item and a summary of the results;
- details of how the licence holder has continued to meet, and continues to meet, the merit criteria for the licence;
- a summary of anticipated or expected work, evaluations and studies to be carried out in the licence area during the next year of the licence, including estimated expenditure;
- any other information relating to a condition of the licence; and
- any other information that the licence holder believes is relevant to the licence.

## EXPOSURE DRAFT

## **Division 7—Transferring licences**

### **Section 130 – Operation of this Division**

Section 69 of the OEI Act provides for the licensing scheme to prescribe procedures for applying for a licence to be transferred and for the Minister to consider such an application. This Division prescribes matters relating to the transfers of licences.

### **Section 135 – Application to transfer a licence**

Licence holders may apply to the Registrar to have their licence transferred to another eligible person. Section 135 sets out that the application to transfer a licence must be made in the manner and form that is approved by the Registrar and published on its website. The application must include evidence of payment of the application fee for transfer of a licence and must be accompanied by any other information or documents required by the approved form.

The explanatory note clarifies that the application must be made to the Registrar and the relevant section of the OEI Act that provides for licence transfer applications.

### **Section 140 – Assessment by Registrar**

Subsection 140(1) provides that if an application to transfer a licence is made, the Registrar must assess the application according to the criteria set out in Division 2 of Part 2 of Chapter 3 of the OEI Act (licence transfers). Specifically, the Registrar will assess whether:

- The Minister can be satisfied that the licence would meet the merit criteria if it were held by the transferee; and
- The Minister can be satisfied that the transferee will be able to comply with sections 117 and 118 of the Act (financial security), subject to section 72, in relation to the licence; and
- Any other requirements prescribed by the licensing scheme are satisfied.

Subsection 140(2) provides that the Registrar may consult with the Regulator or any other person in order to make its assessment of the application under Subsection 140(1).

### **Section 145 – Decision by Minister**

The Minister is the decision maker with respect to an application to transfer a licence. However, subsection 145(1) provides that the Minister must consult with the Registrar, Regulator or any other person and take their advice or recommendations into account in deciding whether or not to transfer a licence. The Minister must also have regard to the assessment made by the Registrar under subsection 140(1).

*Notice of decision*

Subsection 145(2) provides that the Minister must give the Registrar written notice of the Minister's decision to transfer the licence.

Subsection 145(3) provides that the Registrar may give notice of the Minister's decision to the transferor and the transferee on behalf of the Minister.

The explanatory note provides that the notice must specify when the transfer takes effect as per subsections 70(2) and (3) of the OEI Act.

*Financial security*

Subsection 145(4) provides that the notice to the transferor and the transferee may specify financial security obligations following the transfer of the licence. Specifically, the notice may set out either that:

- both parties must comply with the financial security arrangements set out under sections 117 and 118 of the Act with respect to the licence; or
- the transferor's obligations under sections 117 and 118 of the Act continue, in whole or in part, for any period during which the licence remains in force (including as a result of a licence extension).

Subsection 145(5) provide that the financial security arrangements set out in the notice under subsection 145(4) have effect accordingly.

*Notice of other requirements*

Subsection 145(6) provides that the notice to the transferee must set out any requirements for the transferee to give notice of certain matters under the Act, and any requirement to pay an amount of offshore electricity infrastructure levy.

The first explanatory note under subsection 145(6) offers a reminder that the transfer of a licence must be recorded in the Register.

The second explanatory note provides the sections of the OEI Act that set out other rules relating to the transfer of a licence.

**Division 8—Change in control of licence holder**

**Section 150 – Operation of this Division**

Section 29(1)(d) of the OEI Act provides for regulations to prescribe a scheme (the licensing scheme) relating to changes in control of licence holders. This Division prescribes matters relating to changes in control of licence holders.

## **Section 155 – Application for approval of change in control of licence holder**

Part 3 of Chapter 3 of the OEI Act provides that persons who propose to begin or cease control of a licence holder are required to obtain approval from the Registrar.

Section 155 sets out application requirements for approval of change in control in licence holders. An application for approval of a change in control of a licence holder must be made in writing and in the manner and form approved by the Registrar and published on its website. The application must include evidence of payment of the application fee for a change in control application and must be accompanied by any other information or documents required by the approved form.

The first explanatory note under section 155 clarifies that the application must be made to the Registrar and sets out the relevant section of the OEI Act that provides for applications for change in control of a licence holder.

The second explanatory note provides a reminder that a change in control of a licence holder must be noted in the Register.

The third explanatory note provides the sections of the OEI Act that set other rules relating to the change in control.

## **Division 9—General matters**

### **Subdivision A—Operation of this Division**

#### **Section 160 – Operation of this Division**

This Division prescribes general matters related to the operation of the licensing scheme. This includes procedures to ensure procedural fairness in decision making and for issuing a notice of refusal decision.

### **Subdivision B—Support by Registrar**

#### **Section 165 – Registrar to screen applications**

Upon receipt of an application, the Registrar will screen the application to confirm that it meets the requirements of the OEI Act or the licensing scheme. This section sets out the procedure for re-submitting applications where the Registrar determines that the application does not meet the requirements of the Act or the licensing scheme. This procedure applies to all licence application types, including licence administration applications (for example, extension, transfer or change in control).

Subsection 165(1) clarifies that section 165 applies in the circumstances noted above, namely where the Registrar is not satisfied that a licence application meets the requirements of the OEI Act and/or the licensing scheme. Section 20 defines a licence application as an application for, or that relates to, a licence.

## **EXPOSURE DRAFT**

Subsection 165(2) sets out that the Registrar must, by written notice, inform the applicant that the application does not meet the requirements and detail why it does not meet the requirements. For example, this provision might be used where a signature was missing from an application form or the applicant hadn't yet paid the application fee. The Registrar must also, in the written notice, provide the applicant the opportunity to re-submit the application.

Subsection 165(3) provides that the written notice may specify the timeframe within which the application must be re-submitted. This timeframe must be reasonable having regard to the circumstances, to allow applicants adequate time to correct any mistakes or rectify any oversights.

Subsection 165(4) clarifies that if the application is not re-submitted within the period specified in the written notice, or the re-submitted application does not meet the requirements of the OEI Act and/or the licensing scheme, the Minister is not required to consider the application. This is because in this circumstance, the application would be invalid. Subsection 165(4) also clarifies that the Registrar is not required under paragraph 165(2)(b) to give an applicant more than one opportunity to re-submit an application. This limitation on the opportunity for re-submission is required in order to enable efficient assessment of applications under the competitive licencing scheme framework. If further information is still required, there is an additional opportunity to provide information prescribed by section 170 of the OEI Reg.

### **Section 170 – Request for further information**

Subsection 170(1) provides that the Registrar, for the purposes of advising the Minister, may request additional information from the applicant with respect to their licence application. For example, the Registrar may need additional information to clarify certain aspects of the application. This additional information will assist the Registrar to provide advice to the Minister on the application. This procedure applies to all licence application types, including licence administration applications (for example, extension, transfer or change in control).

Subsection 170(2) provides that the request for further information must be in writing. It must specify the information that is required, when the information is required by, and the manner in which it must be provided to the Registrar.

Subsection 170(3) clarifies that if the applicant does not provide the information within the timeframe specified, the Minister may refuse to consider the application further.

Subsection 170(4) provides that if the Minister refuses to consider the application further, the Minister must notify the applicant in writing of the refusal. This refusal would not be subject to the procedural fairness provisions set out under section 180.

### **Section 175 – Advice given by the Registrar**

The Minister is the decision maker with respect to offering and granting of licences as well as licence administration applications including extension, variation, cancellation, surrender and

## **EXPOSURE DRAFT**

## **EXPOSURE DRAFT**

transfer of licences (but not change in control, which is a Registrar decision). In order to make these decisions, section 175 specifies that the Minister must have regard to any information, assessment, analysis, report, advice or recommendation in relation to the application given to the Minister by the Registrar.

### **Subdivision C—Procedural fairness**

#### **Section 180 – Proposed decision to refuse application**

The refusal of certain types of applications will be subject to a procedural fairness process. Section 180 provides clarity on the steps following an intended decision not to approve an application.

Subsection 180(1) provides the decisions that are subject to a procedural fairness process. These include the decision not to:

- offer to grant a licence (other than a feasibility licence); or
- extend, vary, or transfer a licence; or
- consent to the surrender of a licence; or
- approve a change in control of a licence holder.

The decision not to offer to grant a feasibility licence is not subject to procedural fairness because of the competitive nature of the licence application process.

Subsection 180(2) clarifies the decision makers of the decisions listed in subsection 180(1). The Minister is the decision maker with respect to offering to grant a licence and applications to extend, vary, transfer or surrender a licence. The Registrar is the decision maker with respect to applications for a change in control of a licence holder.

Subsection 180(3) provides that the decision maker must give the applicant written notice of the proposed decision to refuse the application. For decisions made by the Minister, subsection 180(4) enables the Registrar to give the written notice to the applicant on behalf of the Minister.

Subsection 180(5) sets out the items that must be included in the written notice. Specifically, the notice must set out the decision maker's reasons for the proposed decision and invite the applicant to make a written submission about the proposed decision within a specified timeframe. Subsection 180(6) provides that the timeframe given to applicants to provide a submission must be reasonable having regard to the circumstances.

Subsection 180(7) provides that the submission prepared by the applicant must be given to the Registrar. Subsection 180(8) provides that the decision maker must take the submission into account in deciding whether to make the proposed decision.

## **Section 185 – Notice of refusal decision**

If, following procedural fairness processes, the decision maker makes a decision listed under subsection 180(1), subsection 185(1) provides that the decision maker must give the applicant a written notice of refusal. This written notice will set out the decision and the reasons for the decision.

Subsection 185(2) enables the Registrar to give the notice of refusal to the applicant for decisions made by the Minister.

## **Subdivision D—Receipt and service of documents**

### **Section 190 – Documents given to the Minister, Registrar or Regulator**

This section sets out procedures for providing documents to the Minister, Registrar or Regulator. Subsection 190(1) clarifies that the Minister, Registrar and the Regulator are considered recipients under this section.

Subsection 190(2) provides that documents relating to the licensing scheme may be submitted to a recipient (i.e. the Minister, Registrar or Regulator) through a number of methods, including:

- by prepaid post to the recipient's postal address; or
- by emailing it as an attachment sent to the recipient's email address; or
- by sending it electronically in accordance with another method as instructed on a website maintained by the Registrar or Regulator; or
- by leaving it with a person at a place of business that is occupied by the recipient (it must be apparent that this person is employed in connection with the activities of the recipient and is at least 16 years old).

Subsection 190(3) sets out when a document is taken to be received. If the document is sent by pre-paid post, it is taken to have been received 7 days after it was posted. A document sent electronically or left at a place of business is taken to be received on the day it was sent or left.

### **Section 195 – Documents given by the Minister, Registrar or Regulator**

This section sets out procedures for providing documents from the Minister, Registrar or Regulator to an applicant or licence holder.

Subsection 195(1) provides that documents relating to the licensing scheme may be provided to an applicant or licence holder through a number of methods, including:

- by prepaid post to the applicant or licence holder's postal address; or
- by emailing it as an attachment to the applicant or licence holder's email address; or

## **EXPOSURE DRAFT**

- by leaving it with a person at the applicant or licence holder's last known place of business (it must be apparent that this person is employed in connection with the business of the applicant or licence holder and is at least 16 years old); or
- by leaving it with a person at one of the applicant or licence holder's place of business for applicants and licence holders with more than one place of business (it must be apparent that this person is employed in connection with the business of the applicant or licence holder and is at least 16 years old);

Subsection 195(2) sets out when a document is taken to be received. If the document is sent by pre-paid post, it is taken to have been received 7 days after it was posted. A document sent electronically or left at a place of business is taken to be received on the day it was sent or left.

### **PART 3 – FEES**

#### **Section 200 – Application fees**

As noted above, the Commonwealth (including the Regulator or Registrar) may, under subsection 189(1) of the OEI Act, charge a fee for dealing with an application made, performing functions, or exercising power under the Act or the applied work health and safety provisions. Note that the term “applied work health and safety provisions” is defined in section 8 of the OEI Act.

Subsection 189(2) of the OEI Act further provides that the amount of any fee charged under subsection 189(1), or the method for working it out, will be prescribed by the regulations.

The table in section 200 of the OEI Reg sets out, for the purposes of subsection 189(2) of the OEI Act, the amounts of fees for certain applications made by OEI participants under the Act or the applied work health and safety provisions. These fees are intended to cover the costs incurred by the Commonwealth in dealing with each application.

It should be noted that each of these applications is voluntary, meaning that none of the fees will be raised without informed consent. The fees are also directly related to a service provided to each applicant, meaning that the fees cannot be characterised as a tax as per the requirement of subsection 189(3) of the OEI Act.

The applications listed in the table in section 200 of the OEI Reg refer to those that will be made to, or involve, the Registrar under the following provisions:

- Application for a feasibility licence (section 50 of the OEI Reg).
- Application for a commercial licence (section 60 of the OEI Reg).
- Application for a research and demonstration licence (section 65 of the OEI Reg).
- Application for a transmission and infrastructure licence (section 70 of the OEI Reg).
- Application to extend the term of a licence (section 110 of the OEI Reg).
- Application to vary a licence (section 115 of the OEI Reg).

## **EXPOSURE DRAFT**

## EXPOSURE DRAFT

- Application to transfer a licence (section 135 of the OEI Reg).
- Application for approval of change in control of licence holder (section 155 of the OEI Reg).
- Application to surrender a licence (section 74 of the OEI Act).

It is expected that the Registrar will publish guidelines clarifying how applicants should pay the relevant fees and when these payments will be due.

### **Section 205 – Fees for performing or exercising other functions or powers**

The table in subsection 205(1) of the OEI Reg sets out, for the purposes of subsection 189(2) of the OEI Act, the amounts of fees for the performance or exercise by the Commonwealth (including the Regulator or Registrar) of certain functions or powers under the Act or the applied work health and safety provisions. These fees are intended to cover the costs incurred by the Commonwealth in performing or exercising the functions or powers in question. Note that the term “applied work health and safety provisions” is defined in section 8 of the OEI Act.

It should be noted that each of the functions or powers in question can only be enlivened following a request from a person, meaning that none of the fees will be raised without informed consent. The fees are also directly related to a service provided to each applicant, meaning that the fees cannot be characterised as a tax as per the requirement of subsection 189(3) of the OEI Act.

The first item in the table in subsection 205(1) prescribes the fee payable by any person who asks the Registrar to make certain instruments available for inspection under section 111 of the OEI Act.

The remaining items in the table in subsection 205(1) prescribe the fees payable by any person who asks the Regulator to perform or exercise its functions or powers under the following provisions:

- Assessing design notifications for offshore renewable energy infrastructure and offshore electricity transmission infrastructure (section 114 of the OEI Act, with further detail to be provided in future regulations).
- Assessing plans for offshore infrastructure activities and other activities that are to be carried out under a licence (section 114 of the OEI Act, with further detail to be provided in future regulations).
- Assessing a management plan or a revision of a management plan (section 114 of the Act, with further detail to be provided in future regulations).
- Assessing an application for a safety zone (section 137 of the OEI Act, with further detail to be provided in future regulations).
- Assessing an application for a protection zone (section 143 of the OEI Act, with further detail to be provided in future regulations).

## **EXPOSURE DRAFT**

It is expected that the Registrar and Regulator will publish guidelines clarifying how applicants should pay the relevant fees and when these payments will be due.

The items in the table in subsection 205(1) involving the Regulator prescribe both a flat fee and an additional assessment fee. Subsection 205(2) provides that an assessment fee is intended to comprise the total amount of expenses incurred by the Regulator in performing or exercising the function or power concerned. This provides some protection for applicants, in that the combined total of the flat fee and any additional assessment fee cannot exceed the total amount of the expenses incurred by the Regulator in performing or exercising the function or power concerned.

Subsection 205(3) provides that the Regulator may remit all or part of an assessment fee if it considers there are good reasons for doing so. This is a restatement of the discretionary nature of imposing a fee under subsection 189(1) of the OEI Act. For clarity, the Regulator may also remit all or part of a flat fee under subsection 189(1).

Subsection 205(4) provides that an assessment fee is due when the Regulator issues an invoice to the person who requested the performance or exercise of the function or power concerned, and is payable according to the terms of the invoice.

## **PART 4 – PAYMENT OF OFFSHORE ELECTRICITY INFRASTRUCTURE LEVY**

### **Section 210 – Payment of levy**

As noted above, subsection 190(1) of the OEI Act provides that certain OEI participants must pay an offshore electricity infrastructure levy where applicable under the OEI Levies Act and associated OEI Levies Reg. Specifically, subsection 190(1) provides that this levy, where applicable, will be due and payable in accordance with the regulations. Section 210 of the OEI Reg sets out, for the purposes of subsection 190(1) of the OEI Act, the terms on which an offshore electricity infrastructure levy will be due and payable.

Subsection 210(2) provides that a levy payable for a particular period is due and payable 30 days after the beginning of that period. For example, if a levy applied to a licence holder for each 12 month period they held that licence, the levy would first become due and payable 30 days after the commencement of that licence, and would then be due and payable annually on that same day for every subsequent year the licence was held. Note that the levies payable for a particular period are prescribed in sections 5 to 8 of the OEI Levies Reg.

Subsection 210(3) provides that, if a licence area increases during a levy period, any additional amount of levy that is consequently required becomes due and payable 30 days after the licence area was increased. Note that the adjustment of levies following a change in licence area is covered in section 10 of the OEI Levies Reg.

Subsection 210(4) provides for who levies should be paid to. It provides that annual licence levies and annual Commonwealth levies<sup>1</sup> should be paid to the Registrar, and annual compliance levies should be paid to the Regulator. It is expected that the Registrar and/or Regulator (as applicable) will inform affected entities as to the quantum of any levies that are payable and the required method of payment.

### **Section 215 – Refunds of levy**

Subsection 190(2) of the OEI Act provides that the regulations may allow for the remittal or refund of all or part of an offshore electricity infrastructure levy payable under subsection 190(1). Section 215 of the OEI Reg sets out, for the purposes of subsection 190(2) of the OEI Act, the terms on which an offshore electricity infrastructure levy will be refunded.

Subsection 215(2) provides that, where a levy is overpaid, the person to whom the levy was paid must refund the overpaid amount.

Subsection 215(3) provides the circumstances in which a levy is considered to have been overpaid. These are as follows:

- Where the person paying the levy accidentally paid too much.
- Where a levy is paid by a licence holder for a particular period of time, and the licence is subsequently held for less than this period of time (for example, because it is cancelled or surrendered). Note that the adjustment of levies following a change in licence term is covered in section 9 of the OEI Levies Reg.
- Where a levy is paid by a licence holder for a particular licence area for a particular period of time, and the licence area subsequently decreases during this period of time. Note that the adjustment of levies following a change in licence area is covered in section 10 of the OEI Levies Reg.

Note that these provisions are not exhaustive, meaning that there may be further circumstances not prescribed by subsection 215(3) in which a levy is considered to have been overpaid.

### **Section 220 – Unpaid levy—performance and exercise of functions and powers**

Paragraph 190(8)(b) of the OEI Act provides that the regulations may allow for the Minister, Registrar or Regulator to decline to perform a function or exercise a power until a levy is paid.

Section 220 of the OEI Reg provides, for the purposes of paragraph 190(8)(b) of the OEI Act, that the Minister, Registrar or Regulator is not required to perform or exercise a function or power under the Act or the OEI Reg in relation to a person who has an unpaid levy. For

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<sup>1</sup> Note that annual Commonwealth levies, once received by the Registrar, will then be transferred to the relevant Commonwealth Department. In this sense, the identity of the Registrar as initial recipient is for administrative purposes only.

example, the Minister might decline to approve a licence application or variation by an existing licence holder who had unpaid amounts of levy.

## **PART 5 – OTHER PROVISIONS**

### **Section 225 – Datum provisions**

Under section 17 of the OEI Act the Minister may declare an area in the Commonwealth offshore area as suitable for OEI activities. The purpose of a declaration is to allow feasibility licences, commercial licences and research and demonstration licences to be granted within the declared area.<sup>2</sup> Licence holders will also need to specify their proposed licence area when making a licence application.

The precise location of such areas will be determined through the use of datum, which is a reference frame for defining spatial position through geographic coordinates. Subsection 9(1) of the OEI Act determines that the default datum for the Act is the Australian Geodetic Datum as defined in Gazette No. 84 of 6 October 1966 (AGD66 geodetic data set). However, subsection 9(2) further provides that the regulations may substitute an alternative datum for the Act.

Section 225 of the OEI Reg provides that, under subsection 9(2), the datum for the Act will be the Geocentric Datum of Australia as defined in Gazette No. 35 of 6 September 1995 (GDA94 geocentric data set). This datum was chosen following consultation with the National Offshore Petroleum Titles Administrator and Geoscience Australia, which determined that the 1995 datum was the most appropriate data set for the OEI framework at this point in time. Note that the datum may be updated in the future through amendments to section 225 of the OEI Reg, although any such amendments would involve a prior consultation process.

### **Section 230 – Documentary information that can be made public**

This section provides that the Registrar may make reports provided under section 125 of the OEI Reg publicly available. These reports are provided by licence holders as a condition of licence. Their publication may provide transparency of offshore infrastructure projects.

It is important to note that publication by the Registrar is not required under the regulations. Some elements reported by licence holders may be commercially sensitive and therefore not appropriate to share publicly. However, providing transparency of these reports after, for example, a confidentiality period may be generally beneficial.

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<sup>2</sup> Note that transmission and infrastructure licences do not need to be within a declared area: see subsection 61(1) and note to subsection 61(2) of the OEI Act.

**Section 235 – Pre-existing infrastructure**

Section 309 of the OEI Act makes an allowance for pre-existing infrastructure that was already in place at the time the Act received Royal Assent. This pre-existing infrastructure can continue to operate without a licence under the OEI Act. This is to ensure owners or operators of pre-existing infrastructure are not disadvantaged by making them subject to new terms and conditions which had not previously been in place.

Section 235 extends the allowances for pre-existing infrastructure to offshore renewable energy infrastructure or offshore electricity transmission infrastructure constructed, installed or commissioned in connection with the operation or maintenance (including the replacement) of pre-existing infrastructure. For example, this regulation allows for the replacement of pre-existing infrastructure with new infrastructure in the event that the pre-existing infrastructure is damaged.

## **Statement of Compatibility with Human Rights**

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

### **Offshore Electricity Infrastructure Regulations 2022**

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The *Offshore Electricity Infrastructure Regulations 2022* sets out details of the offshore electricity infrastructure licensing scheme relating to applications for licences, offering and granting of licences, variations to licences, extension of licences, transfers of licences, and changes in control of licence holders.

The regulations set out the fees that will be imposed on regulated entities and the arrangements for the payment of levies. Fees and levies will be used to recover the costs to government for administering and regulating the offshore electricity infrastructure framework.

The regulations also covers the use of spatial datum for defining spatial positions and geographic coordinates and clarifies arrangements for operators of pre-existing infrastructure.

#### **Human rights implications**

The regulations do not engage any of the applicable rights or freedoms.

#### **Conclusion**

The regulations are compatible with human rights as they do not raise any human rights issues.

**The Hon Tim Wilson MP**

**Assistant Minister to the Minister for Industry, Energy and Emissions Reduction**