Electrical Trades Union

Consultation on the Offshore Electricity and Infrastructure Amendment Regulations 2024 to support the Offshore Electricity Infrastructure Act 2021

May, 2024

Joint Union Submission

Consultation on the Offshore Electricity and Infrastructure Amendment Regulations 2024 to support the Offshore Electricity Infrastructure Act 2021

Submission from the Maritime Union of Australia and the Electrical Trades Union of Australia

May 2024

Department of Climate Change, Energy Environment and Water

Submitted via website.

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Background

This submission has been prepared by the Maritime Union of Australia Division (MUA), Construction Divisions of the **Construction, Forestry, Maritime, Mining and Energy Union** (CFMMEU) and the Electrical Trades Union (ETU).

The Maritime Division (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. This includes coal export terminals. The MUA is also part of the Offshore Alliance (with the AWU) which represents workers on offshore oil and gas facilities.

In a future offshore renewables industry, MUA members will work on offshore renewables construction and cable-laying vessels as maritime crew, catering crew, crane operators and divers as well as involvement in various aspects of landside works essential to the completion of projects and allowing them to connect to the grid.

The Electrical Trades Union of Australia (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 60,000 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 will 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

The MUA and the ETU welcome the opportunity to make a submission to the consultation on the Offshore Electricity and Infrastructure Amendment Regulations 2024 (Amendment Regulations) to support the Offshore Electricity Infrastructure Act 2021. We strongly support the development of offshore renewable energy in Australia, and support a regulatory environment that adheres to national harmonisation objectives and promotes best practice standards in the emerging offshore renewable industries that will help power Australia's renewable energy future.

We offer a package of recommendations with the aim of ensuring a just transition, providing maximum quality employment, and to remove obstacles to the construction of the infrastructure we need to deliver the full potential of offshore renewable energy infrastructure.

Recommendations

Recommendation 1: The role of unions must be explicitly included in the Amendment Regulations, as representatives of the 'workers' referred to in the Regulations, who will not yet be employed at a time that many critical safety decisions are being made in the Management Plan.

Recommendation 2: The regulatory reforms must go further in establishing a harmonised regulatory environment to minimise duplication and costs and maximise certainty and safety for all industry participants. This must include the development of a tripartite body to deal with the application of safety regulation across the offshore renewable industry, including the application and/or development of WHS Codes of Practice, and working through the complex jurisdictional issues to maximise consistency for PCBUs, HSRs and workers.

Recommendation 3: The Amendment Regulations be modified to establish a formal consultation, representation and participation governance framework to ensure the regulator is informed and guided by the views of industry participants, including unions. This body should inform the guidelines for and approval of Design Notifications and Management Plans. This should be reflected through requirements embedded in the stakeholder engagement strategy.

Recommendation 4: Amend requirements for Management Plans to insert a requirement to address how licence holders will fulfill the commitments they have made in their Feasibility Licence applications to the Australian economy and local communities, regional development, job creation, Australian industries and the use of Australian goods and services, including vessels.

Recommendation 5: The stakeholder engagement strategy required in Regulations must also include how a proponent intends to work with all stakeholders to deliver on the commitments made to the Australian economy and local communities, regional development, job creation, Australian industries and the use of Australian goods and services in the Feasibility Licence application process.

Recommendation 6: Unions representing the future workforce should be included in s.57 of the Amendment Regulations on who is to be consulted. This should not be limited to requirements relating to the health and safety of workers, but must also include the commitments made to the Australian economy and local communities, regional development, job creation, Australian industries and the use of Australian goods and services (including vessels) in the Feasibility Licence application process.

Recommendation 7: Provide clearer accountability, including timeframes for the regulator to assess and respond to DNS material.

Recommendation 8: For a tripartite process involving the Regulator, unions and AMSA be held to develop and implement best practice for personnel transfer and to ensure that Australian wind farms are designed to use walk-to-work facilities on construction and maintenance vessels. Clear guidance on the use of walk to work facilities must also developed through a tripartite process.

Recommendation 9: Consider if the financial security regime being applied is proportional to the risk profile of the industry sector, and government policy for other industries, particularly the offshore oil and gas industry.

Recommendation 10: Ensure financial security measures are co-designed with industry and subject to adequate protections to ensure the Australian Government can reliably call upon them if necessary.

Recommendation 11: Allow for security to be accumulated over the course of a project at staged intervals, rather than being required prior to first infrastructure installation.

Recommendation 12: Ensure safety and protection zones are proportional, evidence informed, transparent and informed by criteria co-designed with sector stakeholders with a clear capacity to independently review decisions of the regulator.

Recommendation 13: Remove any uncertainty regarding the application of state and territory occupational licencing laws, including electrical licencing laws, in licence areas by specifically referencing they apply in the explanatory note accompanying the Regulations.

Recommendation 14: Clarify the obligations on employers for related onshore premises including its definition to ensure entry permit holders have clear and reasonable access and can exercise these powers unhindered.

Recommendation 15: Review the proposed amendment to the definition of Principal Contractor with Safe Work Australia to ensure that it is clear and necessary to achieve the desired purpose.

Recommendation 16: Section 38 of the Amendment Regulations should be deleted. This removes the applications of the requirement for signage identifying the Principal Contractor. Rather than deleting this requirement, Principal Contractors should find ways of communicating this information in the context of the work practices and locations of this industry. The Regulator should consult with AMSA about this.

Recommendation 17: Section 39 of the Amendment Regulations should be deleted. This removes the applications of s.315(c) of the WHS Regulations, which makes the Principal Contractor responsible for traffic in the vicinity of the project.

Recommendation 18: The registration of plant provisions should be retained for the types of plant listed in s.24 and s.33.

Recommendation 19: The list of plant in s. 24 and s. 33 of the draft Regulation must be amended to

include any appliance for personnel transfer.

Recommendation 20: To manage the risks of ocean-going vessel mounted cranes, s.30 amending s.235 (1) of the WHS Regulations should be amended to apply to any cranes mounted on vessels. A new section should be added to s.235(2) to specify that a major inspection must also occur when the vessel-mounted crane arrives in Australia, which will be after a long international voyage exposed to salt spray, after operations in an overseas jurisdiction.

Recommendation 21: A tripartite safety forum could also review and identify any other items of safety-critical plant which should be included in these processes.

Recommendation 22: All existing model codes of practice be adopted and a tripartite process involving unions must be established to review codes of practice for the OEI jurisdiction on an ongoing basis including the modification of existing codes or development of new ones.

Recommendation 23: Ensure record keeping requirements and their access by entry permit holders is clearly set out in the regulations including a requirement to publish the location of records.

Recommendation 24: Ensure common user data is made available to the sector to reduce costs over time while also recognising the efforts and investments made by first movers.

Recommendation 25: Ensure industry engagement in fee setting arrangements and their regular review.

Recommendation 26: The status of the Merit Criteria in s.26(4)(a)) should be updated to be a stand-alone mandatory requirement. 'Vessels' should be added to the provision so that it reads 'the use of Australian goods and services including vessels'. The Merit Criteria should be updated to include the New Energy Standards developed by the unions on this submission, including:

a) maximising the use of **locally produced** and supplied goods and services.
b) maximising the **employment of suitably qualified local workers**, including energy workers, engaged under registered industrial instruments, agreed between relevant unions and employers.
c) providing for the **training and skills development** of local workers, minimum requirements for trainees and apprentices, worker transition opportunities from industries facing closure, and the employment of workers from groups underrepresented in the workforce.
d) ensuring projects are aligned with the **First Nations Clean Energy Network Best Practice Principles** for Clean Energy Projects, including employment and income opportunities.
e) ensuring quality jobs through the implementation of labour standards.

Recommendation 27: The government should not amend the Regulations to allow Feasibility Licence applications deemed to be of equal merit to move more quickly to financial offers. Renewable energy projects on publicly held sea area should be the best projects in the public interest, not selected based on ability to pay. Instead the transparency and specificity of the merit criteria should be improved and stretch targets introduced. The option for financial offers for Feasibility licences should be removed from both the Act and the Regulations.

Recommendation 28: The Commonwealth should set clear national offshore wind targets and establish a new national Offshore Renewable Energy Board. The Board should be led by government and involve industry and unions. It should advise government on appropriate targets to meet

emissions reduction goals, ensure all regulatory processes are aligned to meet targets, ensure that the required supply chain, workforce, and infrastructure is in place, and work through other industry challenges going forwards.

Table of contents

General Comment

We appreciate that the adoption of the WHS Regulations is significantly more complete than was first envisaged by the Department. However, we do not believe the draft Regulations and the legislative framework they sit in create an adequate framework for the role of the Regulator, unions, and consultation processes.

The framework proposed in the Regulations and the Act has the following characteristics:

1. Forums for tripartite consultation which are essential to all other harmonised WHS jurisdictions have been removed in the OEI Act (s. 240 and 241 of the OEI Act).

2. The harmonised WHS system is carefully balanced to ensure workers' participation in ensuring compliance and reducing risk in the workplace, according to the Robens model. But many of these practical mechanisms for safety in the workplace have been removed by the OEI Act.[1] Parts 8, 9, 10, and 11 of the WHS Act on compliance and enforcement have been disapplied in favour of compliance and enforcement mechanisms from the Regulatory Powers Act (incorporated into Chapter 5 Part 4 of the OEI Act), which to our knowledge have never been used for WHS. The RP Act is not structured to incorporate workers and HSRs into compliance and focuses on individuals instead of duty holders and systems of work.
    a. In addition, HSRs and other workers regularly need support from their union to effectively exercise their powers and functions in a workplace, or to deal with catastrophic incidents. This has been removed by the current OEI Act.
    b. On our count the OEI Act removes or changes the content of almost 40% of the applied WHS Act (114 of 294 WHS Act sections, including schedules), not including the sections on the application of the Act or changing the names of the inspectorate or the regulator.

3. The Regulator plays a very strong role in examining and approving all infrastructure and work in licence areas, through the Design Notification System and the Management Plan. Yet it is unclear where their industry knowledge will come from. There are no frameworks in place for the Regulator to consult with industry and unions around how it exercises its powers, or to ensure that obstacles to building an essential new industry can be addressed safely and constructively.

4. The Regulations on the Design Notification System and the Management Plan require licence holders to provide very extensive documentation and decision making, well in advance of any workforce being in place or 'workers' being present. The Regulations require licence holders to consult 'workers' on aspects of the management plan 'so far as it might affect the health and safety of workers.' (s.11).

5. Despite this requirement, unions representing the future workforce are not acknowledged or incorporated into *any* processes in the OEI Regulations or Act. The only reference to unions in the Regulations, Consultation Paper and Act is the sections where they are removed from having right of entry to workplaces in offshore areas.

[1] For a fuller exploration of how the OEI Act has amended the harmonized WHS system, please see: ETU and MUA, Joint submission on the Offshore Electricity Infrastructure Bill, Senate Environment and Communications Legislation Committee, 17 September 2021.

6. Consultation processes across a wide range of areas are required under the Regulation. However, these processes are separated from the Regulator and its development of its industry knowledge and the exercise of its decision-making powers.

The result is a focus on advance documentation and communications between the Regulator and licenceholders, which 'workers' will not be present for, and which their unions are not presently included in.

When workers are hired, they will be working in an environment where their rights, powers and support structures are reduced when they arrive in the offshore area. The practical issue of how to deal with a system where PCBUs, HSRs and workers will have quite different legislation and training to comply with while loading components in port versus when they are installing and maintaining the same components on the same vessel in the offshore area is yet to be addressed.

In contrast, the cornerstone of the WHS framework in other harmonised jurisdictions is ongoing safety *processes*: consultative safety structures in the workplace with a balance of powers between employers, HSRs and union, backed up by a tripartite process to resolve issues as they arise. Significant effort has also been made over decades to ensure that WHS processes are consistent across other jurisdictions to reduce confusion in the workplace and the regulatory burden on PCBUs.

We remain baffled as to why government has created and continues to implement a new, un-harmonised WHS jurisdiction at the same time as WHS harmonisation is government policy.

Recommendation 1: The role of unions must be explicitly included in the Amendment Regulations, as representatives of the 'workers' referred to in the Regulations, who will not yet be employed at a time that many critical safety decisions are being made in the Management Plan.

Recommendation 2: The regulatory reforms must go further in establishing a harmonised regulatory environment to minimise duplication and costs and maximise certainty and safety for all industry participants. This must include the development of a tripartite body to deal with the application of safety regulation across the offshore renewable industry, including the application and/or development of WHS Codes of Practice, and working through the complex jurisdictional issues to maximise consistency for PCBUs, HSRs and workers.

Management Plans

Content Requirements

We welcome clear content requirements for management plans. However, the regulator should consider whether full-scale management plans are required for all feasibility activities. For example, some feasibility activities may be very low-impact and simply involve normal vessel operations, which already have a high level of safety regulation through the *Navigation Act*, the *Marine Safety (Domestic Commercial Vessel) National Law Act*, and *the Occupational Health and Safety (Maritime Industry) Act*, all overseen by the Australian Maritime Safety Authority. An effort should be made to assess what kinds of feasibility activities require Management Plan supervision by the Regulator.

One area of feasibility activities which does require attention is the design, deployment and maintenance of FLiDAR buoys. Care must be taken to ensure they are designed to ensure that workers can access them safely as needed, and that safe processes are in place for any at-sea activities, including deployment, inspection, maintenance, and recovery.

We also have concerns about how the Regulator will be assessing the content of management plans. Specifically, the absence of a formal consultation, representation and participation governance framework as contemplated by model laws, intergovernmental agreements on harmonisation and government policy generally means that suboptimal outcomes are being legislatively embedded into the regulatory framework.

Simply relying on the Regulator to 'do the right thing' in determining criteria and subsequently who it engages with, who it listens to, how broadly it consults and which pieces of advice and information it relies upon is a regulatory model that belongs in the 1950's. It is not reflective of best practice regulation or consistent with the Governments commitments to harmonised occupational health and safety regulatory frameworks or to participatory governance frameworks that promote tripartism as a central tenet to strong industry governance.

Recommendation 3: The Amendment Regulations be modified to establish a formal consultation, representation and participation governance framework to ensure the regulator is informed and guided by the views of industry participants, including unions. This body should inform the guidelines for and approval of Design Notifications and Management Plans. This should be reflected through requirements embedded in the stakeholder engagement strategy.

Regional development and job creation

It was an important step for the current government to insert in the merit criteria for Feasibility Licences an assessment of offshore renewable energy projects' 'impact on, and contribution to, the Australian economy and local communities, including in relation to regional development, job creation, Australian industries and the use of Australian goods and services' (*Offshore Electricity Infrastructure Regulations 2022*, s.26(4)(a)). As

Management plans must address how licence holders will fulfill the commitments they have made in their Feasibility Licence applications to the Australian economy and local communities, regional development, job creation, Australian industries and the use of Australian goods and services, including the use of Australian-flagged vessels. The stakeholder engagement strategy required in Regulations must also include how a proponent intends to work with all stakeholders to deliver on the commitments made through the licence application process.

Recommendation 4: Amend requirements for Management Plans to insert a requirement to address how licence holders will fulfill the commitments they have made in their Feasibility Licence applications to the Australian economy and local communities, regional development, job creation, Australian industries and the use of Australian goods and services, including vessels.

Recommendation 5: The stakeholder engagement strategy required in Regulations must also include how a proponent intends to work with all stakeholders to deliver on the commitments made to the Australian economy and local communities, regional development, job creation, Australian industries

and the use of Australian goods and services in the Feasibility Licence application process.

Consultation

The consultation requirements embedded in Management Plans is missing two key elements. Firstly, as outlined above, the development of guidance to the sector on consultation should be informed by a body representative of key stakeholders. Creating a power for the regulator to 'require' consultation but not ensuring that the decision of the regulator is informed by industry means this provision will likely be either underutilised or improperly utilised.

Secondly, the absence of a clear requirement to consult with key stakeholder institutions, specifically trade unions representing the workforce, means that a voice that is representative of a constituent group fundamental to these projects success is simply missing from the conversation. That a project proponent could be permitted to develop a stakeholder engagement strategy that was absent engagement with unions, and that strategy would comply with the current draft regulations is a major deficiency which must be addressed. This will have a major impact on workforce planning, development, skills and training for these projects.

The Amendment Regulations refer to s.49 of the WHS Act in relation to consultation with 'workers' on Management Plan content that relates to the health and safety of workers. However, this section of the WHS Act addresses the requirement for ongoing health and safety consultation in a workplace with an existing workforce. It is not drafted to address the preparation of a Management Plan that is to be approved well before a workforce is hired.

The regulations also provide a role for the regulator in assessing the quality and veracity of consultation but again falls short on ensuring this function is appropriately informed by relevant stakeholders and that industry has co-designed the expected standards that will be required to be met.

Recommendation 6: Unions representing the future workforce should be included in s.57 of the Amendment Regulations on who is to be consulted. This should not be limited to requirements relating to the health and safety of workers, but must also include the commitments made to the Australian economy and local communities, regional development, job creation, Australian industries and the use of Australian goods and services (including vessels) in the Feasibility Licence application process.

Summary Plan

Applicants being required to provide a summary of plan, and those summaries being required to be published on website is strongly supported. However, as outlined above, important matters such as how the minimum content of these summaries is determined, what format they must be published in and how accessible they are will simply be a unilateral decision of the regulator as currently proposed. Co-design would lead to greater industry acceptance of this requirement, more relevant summaries being published and a higher quality outcome for this regulatory objective.

Design Notification Scheme

The Design Notification Scheme (DNS) proposed is sensible regulatory mechanism to smooth the process in the lead up to the management plan application point. Noting that the DNS is a mandated process requirement for the potential applicant it appears somewhat out of balance that the applicant must complete it under regulatory requirements but the regulator itself is not bound more tightly to review and respond to material provided. The 60 days term, noting this is indicative not prescriptive, does not reflect a proportionate accountability on the regulator that is being applied to the applicants.

Recommendation 7: Provide clearer accountability, including timeframes for the regulator to assess and respond to DNS material.

Personnel transfer and the Design Notification Scheme

A critical risk and unique feature of offshore renewable energy which must be addressed in the Design Notification Scheme is a very high frequency of personnel transfer from vessels to turbines. Maintenance and construction workers (known in maritime safety regulation as 'industrial personnel') will work from (and likely live on board) vessels and need to be transferred to carry out work on wind turbines multiple times per day. This is a significant difference from the current offshore oil and gas industry where workers live on offshore facilities and personnel transfer takes place every few weeks, and largely by helicopter.

Our unions have already raised with the Department our concerns about the critical risk of worker transfer from the vessel to the turbine. From our perspective this is the most important issue to be addressed in the DNS, as licence holders will make early decisions about the size and type of vessel and the method of personnel transfer that will be very difficult to change later.

The drafting of s.93 on the DNS requirements appears unclear. It calls for a description of ’how the licence infrastructure will be constructed’ and ’how the licence infrastructure will be operated and maintained’. Yet it does not specify whether vessels should be included in the notification.

We have already put a view to the Department that the intended type and size of vessels should be included in the DNS, as well as the intended form of access from the vessel to the turbine. We would like to understand why this has not been included. The Regulator should be required to consult with unions, workers and AMSA before giving the applicant feedback on design notification. Item 11 under WHS should also say that the Design Notification Scheme is an activity that should be consulted on.

Alternately, if a tripartite safety forum was in place, we could agree on an approach to the kinds of vessels and walk to work structures that would be required, and then the Regulator could apply that in their decision making. This would be a much more efficient approach.

Reducing the risk of personnel transfer

Any interface between a vessel subject to waves and wind and a fixed structure is dangerous and must be treated with the utmost caution.

The risk of personnel transfer is also something that can be addressed and very significantly reduced

by vessel and facility design, mainly through the use of walk-to-work facilities that provide a gangway for workers to walk from a vessel to a turbine platform (Figure 1). The Hierarchy of Controls implemented in Australia through the WHS Act requires that the first step to address risks is to eliminate them, and this step should be taken.

We ask that the Offshore Infrastructure Regulator work with AMSA and consult with unions to ensure that Australian wind farms are designed to use walk-to-work facilities, and that all construction and maintenance vessels have this facility. Clear guidance on the use of walk to work facilities must also developed through a tripartite process. Walk to work mechanisms also carry their own risks if not used or maintained appropriately, particularly in poor weather or light conditions.[2] Some guidance already exists for disembarkation and embarkation of ships, as well as offshore personnel transfer.[3]

In addition, any mechanisms for personnel transfer must be listed as plant for which specific safety records must be kept (see below).

While we understand that crew transfer vessels which require workers to step across the water from the vessel to the turbine and then climb a ladder up the turbine are used in other parts of the world, this has been for smaller turbines, located much closer to shore, and in an early phase of industry development. This is not appropriate for the large-scale and mature industry which will be constructed in Australia, and which will also be located quite far offshore.

[2] Offshore companies fined after grandfather injured on North Sea gangway | HSE Media Centre

[3] AMSA, Marine Notice 2023/06—Means of embarkation and disembarkation from ships in port addresses the use of gangways from ships. A walk to work mechanism is a complex offshore gangway. The *Code of Practice for Health and Safety in Shipboard Work, including Offshore Support Vessels* discusses offshore personnel transfer.

Figure 1: Walk-to-work arrangements for an offshore wind turbine service vessel.

Recommendation 8: For a tripartite process involving the Regulator, unions and AMSA be held to develop and implement best practice for personnel transfer and to ensure that Australian wind farms are designed to use walk-to-work facilities on construction and maintenance vessels. Clear guidance on the use of walk to work facilities must also developed through a tripartite process.

Financial Security

At the outset, there are significant equity and consistency issues which must be addressed in how financial security is being applied to this sector compared to others. Requiring upfront financial security in a sector that can reasonably be characterised as having a much lower risk of environmental and social harm resulting from un-remediated end of life infrastructure sits in stark contrast to obligations placed on other sectors.

Knowing that offshore wind projects for example, being much more likely to be re-powered at end of life than decommissioned, have a very different risk profile when compared to another sector such as uranium mining or offshore oil and gas makes it difficult to understand which this sector is having a much more burdensome and rigid financial security regime compared to others. Opening a new uranium mine or drilling a new offshore or onshore gas well in Australia is not subject to this level of financial security despite having a definite end of life and needing extensive decommissioning and rehabilitation to make those areas safety habitable again.

What is outlined is far more stringent than the financial security required for the offshore oil and gas industry, who are not currently required to put up any financial security up front to cover the cost of removing infrastructure (only the potential costs of oil spills). In 2020 the government said that it was intending to expand the requirement for financial security for offshore oil and gas, so that:

forms of financial assurance, such as bonds and securities will be used under the enhanced framework. Where these tangible forms of assurance are required by NOPSEMA, these forms of financial assurance should be accessible by government or a third party endorsed by government in the event that decommissioning activities are not undertaken. This is consistent with the Walker Review.[4]

While this would have been a similar framework to that is outlined in the OEI Act and Regulations, this policy was never implemented for offshore oil and gas. It not included in the recent Future Gas Strategy.

The proposed regulations will allow for Licence holders to calculate the amounts set aside and explain justification, context and detail in a management plan, which is a useful design feature. However, absent governance arrangements set out earlier in the submission, there remain issues of how the regulator will design, issue guidance and regulate in this area, including:

- How will Regulator assess financial security in a transparent, equitable and fair manner?
- Do these instruments need to be held in Australia or by Australian institutions?
- Will instruments, or the institutions holding them, have to meet minimum ratings?
- How will appropriate ratings and ratings agencies be determined?

Recommendation 9: Consider if the financial security regime being applied is proportional to the risk profile of the industry sector, and government policy for other industries, particularly the offshore oil and gas industry.

Recommendation 10: Ensure financial security measures are co-designed with industry and subject to adequate protections to ensure the Australian Government can reliably call upon them if necessary.

Recommendation 11: Allow for security to be accumulated over the course of a project at staged intervals, rather than being required prior to first infrastructure installation.

Safety Zones and Protection Zones

Safety Zones & Protection Zones having a maximum quantum and no minimum is generally supported. To strengthen this provision it will be important to recognise that avoiding unnecessary exclusion of adjacent vessels and industry will be critical to maintaining social licence of these projects. Therefore, a transparent and evidence informed approach to determining these zones will be a critical element to their success. Again, this raises our earlier concerns about the regulators current unilateral powers to make decisions, including the specific reference in the Amendment Regulation to the regulator making discretionary decisions around consent to vessels to enter these zones and making determinations of distances.

[4] 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.

The public are extremely interested in the issue of public access to ocean areas, and there is also a great deal of misinformation about this. It would be valuable to have safety zones and protection zones be subject to public consultation by the Regulator. It appears to us that the current process means that consultation will be carried out by individual licence holders, which means it will be fragmented and confusing for the public.

Furthermore, whilst supportive of the requirement for consultation frameworks for determining zones and allowing other parties / stakeholders to set out how they expect to be consulted which the regulator needs to consider, this again is ultimately left as a unilateral decision of the regulator.

Recommendation 12: Ensure safety and protection zones are proportional, evidence informed, transparent and informed by criteria co-designed with sector stakeholders with a clear capacity to independently review decisions of the regulator.

Work Health and Safety

There are several areas of concern for workers in how the model regulations are being adapted. Notwithstanding our firm position that the model law itself should be adopted, rather than this ad-hoc bespoke creation of an additional safety regulatory regime, we provide the following feedback on the safety regulation changes outlined at Schedule 1 of the exposure draft.

The impacts of the regulations on jurisdicational occupational licencing standards are unclear. The regulations must make clear that jurisdictional occupational licencing system will not be overridden or bypassed by this scheme. For example, activities such as electrical work must only be performed by licenced electrical workers and the regulations should allow no ‘wriggle room’ on these important quality and safety protections.

Recommendation 13: Remove any uncertainty regarding the application of state and territory occupational licencing laws, including electrical licencing laws, in licence areas by specifically referencing they apply in the explanatory note accompanying the Regulations.

Safety Right of Entry

The practical implication of the changes to Safety Right of Entry wording associated with subparagraph 28 and 30 are entirely unclear. This gives rise to many questions about the operation of this provision, including:

- What is a related onshore premises?
- Is it singular or plural?
- How would a reasonable person ascertain where that premises is?
- What prevents an entity regularly changing the premises?
- Whether the premises is required to be staffed such that a person would be on site to provide lawful access to an entry permit holder, and
- How any dispute arising out of the interpretation of these new provisions would be managed?

The Principal Contractor for Construction work and their duties

The explanatory draft and consultation paper do not outline the purpose of amending regulation 293

to remove the words “to have management or control of the workplace and” or explain the impacts of this change. The model safety laws have long held these definitions, which are well understood by stakeholders, have had their meaning confirmed in case law and are currently serving Australian workplaces reasonably well. The 2018 review of the model laws found no reason to amend these provisions in the manner contemplated in the exposure draft. Introducing such a change, absent clear reasoning and articulation of the issues the change seeks to address simply adds complexity to projects that will work across multiple safety jurisdictions and uncertainty to industry participants bound by them.

The exposure draft regulations at Schedule 1 seeks to adopt several parts of the model regulations by omitting key important safeguards. Firstly, no explanation is provided as to why, and it is unclear why the department would not seek to contextualize regulations that are deemed not to fit ‘neatly’ into the offshore environment and are instead simply ‘switching off’ important provisions. For example, the approach taken with WHS subregulation 308 and 315 (c) simply removes important safety protections relating to managing traffic hazards and ensuring communication of PCBU key contact details and does not replace them with a suitable alternative. This leaves the regulations deficient.

With regards to the proposed removal of the application of s.315(c) of the WHS Regulations, which makes the Principal Contractor responsible for ‘traffic’ in the vicinity of the project. Section 291 n) of the WHS Regs clearly contemplates that a shipping lane is considered to be a ‘traffic corridor’. ‘Vessel traffic’ and Vessel Traffic Control are also common maritime terms.

With regards to the proposed removal of the application of s.308 of the WHS Regulations, this is a requirement for signage identifying the Principal Contractor. Rather than deleting this requirement, Principal Contractors should find ways of communicating this information in the context of the work practices and locations of this industry, in consultation with AMSA. For example, nearby wharves and harbour masters’ offices will have billboards with relevant local maritime information. It could be included in the fortnightly Notices to Mariners issued by the Australian Hydrographic Office. If warning buoys are installed to clearly identify construction safety zones, they could include this information. This information could also be identified in the Management Plan summary available online.

Recommendation 14: Clarify the obligations on employers for related onshore premises including its definition to ensure entry permit holders have clear and reasonable access and can exercise these powers unhindered.

Recommendation 15: Review the proposed amendment to the definition of Principal Contractor with Safe Work Australia to ensure that it is clear and necessary to achieve the desired purpose.

Recommendation 16: Section 38 of the Amendment Regulations should be deleted. This removes the applications of the requirement for signage identifying the Principal Contractor. Rather than deleting this requirement, Principal Contractors should find ways of communicating this information in the context of the work practices and locations of this industry. The Regulator should consult with AMSA about this.

Recommendation 17: Section 39 of the Amendment Regulations should be deleted. This removes the applications of s.315(c) of the WHS Regulations, which makes the Principal Contractor responsible for traffic in the vicinity of the project.

Safety of plant

This section has a close interface with the Design Notification Scheme. While the DNS can address in broad brush larger design questions about turbines, vessels and personnel transfer, this section ensures that records are kept on critical items of plant, and that Health and Safety Reps can access those records to ensure that appropriate maintenance has taken place. It also ensures that large cranes are inspected regularly.

We oppose the proposed deletion of the requirement to register the types of plant listed in s.24 and s.33. While we appreciate that the Regulator will be examining the design of turbines and the project more broadly through the design notification scheme, it appears to us that many other smaller items of plant will be procured at later stages in the project. Leaving the registration of these smaller types of plant until later in the project progress may actually increase the flexibility and adaptability of projects as technology evolves.

The list of plant in s. 24 and s. 33 of the draft Regulation must be amended to include any appliance for personnel transfer. These sections specify which plant require safety records to be kept. As any failure of a personnel transfer device is likely to result in severe injury or death of a worker, this is one of the most critical items to include.

MUA HSRs regularly use s. 68 of the WHS Act to request the maintenance records of cranes and OEM specifications for the maintenance of cranes, which are required to be kept by this part of the WHS Regulations. Cranes in a salt water environment (whether in ports or mounted to vessels) regularly have safety issues that need to be addressed. In particular, cranes mounted on vessels are likely to have travelled internationally and records must be checked to ensure maintenance has even taken place. Cranes used in an offshore electricity area will invariably be mounted to vessels.

It is good start that the draft Regulations on plant include cranes and record-keeping of crane maintenance. It is unclear to us whether cranes mounted on vessels are presently required to be registered plant under the WHS Act – we suspect not.

This section should also be amended to address the risks of ocean-going vessel mounted cranes, which will be a key item of plant for offshore renewable energy construction. The requirements for major inspections in the applied WHS Regulations (s.30 amending s.235 (1) of the WHS Regulations) should be amended to apply to any cranes mounted on vessels. A new section should be added to s.235(2) to specify that a major inspection must also occur when the vessel-mounted crane arrives in Australia, which will be after a long international voyage exposed to salt spray, after operations in an overseas jurisdiction.

A tripartite safety forum could also review any other items of safety-critical plant which should be included in these processes.

Recommendation 18: The registration of plant provisions should be retained for the types of plant listed in s.24 and s.33.

Recommendation 19: The list of plant in s. 24 and s. 33 of the draft Regulation must be amended to include any appliance for personnel transfer.

Recommendation 20: To manage the risks of ocean-going vessel mounted cranes, s.30 amending s.235 (1) of the WHS Regulations should be amended to apply to any cranes mounted on vessels. A new section should be added to s.235(2) to specify that a major inspection must also occur when the vessel-mounted crane arrives in Australia, which will be after a long international voyage exposed to salt spray, after operations in an overseas jurisdiction.

Recommendation 21: A tripartite safety forum could also review and identify any other items of safety-critical plant which should be included in these processes.

Codes of Practice

The implementation of Safety Codes of Practice in every other WHS jurisdiction in Australia follows a robust model of tripartite consultation involving unions. Question 29 of the consultation paper suggests that there will be 'collaboration with industry and representatives' to discuss what codes are appropriate for the OEI jurisdiction. We are unclear on what is proposed, and who will be invited to participate in this process given that the word 'union' does not appear anywhere in the consultation paper, and only in the draft regulations to remove union right of entry in offshore areas.

Recommendation 22: All existing model codes of practice be adopted and a tripartite process involving unions must be established to review codes of practice for the OEI jurisdiction on an ongoing basis including the modification of existing codes or development of new ones.

Record-Keeping

Recard keeping is an important feature of the Amendment Regulation. There are two matters that need to be made clear:

- Interaction of record keeping requirements and access by Union Officials exercising their lawful powers under industrial and safety Right of Entry provisions, and
- Ensuring licence holders must make reasonably available the location of records.

Recommendation 23: Ensure record keeping requirements and their access by entry permit holders is clearly set out in the regulations including a requirement to publish the location of records.

Data Management

The Department is still considering data management. It would seem sensible to create a central common data pool with rules on who must contribute and who can access including fees for access. It does not seem efficient or effective to make every project start from scratch. If data is pooled, there is also the question of how to reward projects who go first in sharing data?

Recommendation 24: Ensure common user data is made available to the sector to reduce costs over time while also recognising the efforts and investments made by first movers.

Fees

Recognising the full cost recovery fee settings provisions, best practice regulatory principles require these fees to be set proportionally, transparently and equitably. As previously outlined in this submission, absent a consultation and participation framework, industry cannot have confidence in the fee setting process.

Recommendation 25: Ensure industry engagement in fee setting arrangements and their regular review.

Updates to the Licencing Scheme

Improvements to merit criteria

We support the inclusion of the merit criteria for Feasibility Licences of the applicant's 'impact on, and contribution to, the Australian economy and local communities, including in relation to regional development, job creation, Australian industries and the use of Australian goods and services' (*Offshore Electricity Infrastructure Regulations 2022*, s.26(4)(a)). However, this remains one of several criteria under the merit criteria for National Interest when developers apply for licenses and is therefore optional.

The status of the Merit Criteria in s.26(4)(a)) should be updated to become a stand-alone mandatory requirement. 'Vessels' should be added to the provision so that it reads 'the use of Australian goods and services including vessels'. This would tie into the government's aspirations to revitalise Australian shipping, and support the overall development of the Australian maritime industry.[5]

The Merit Criteria should be updated to require that all licences maximise the contribution of the project to the Australian economy and local communities by following the New Energy Standards developed by the unions on this submission. The New Energy Standards include:

a) maximising the use of **locally produced** and supplied goods and services.
b) maximising the **employment of suitably qualified local workers**, including energy workers, engaged under registered industrial instruments, agreed between relevant unions and employers.
c) providing for the **training and skills development** of local workers, minimum requirements for trainees and apprentices, worker transition opportunities from industries facing closure, and the employment of workers from groups underrepresented in the workforce.
d) ensuring projects are aligned with the **First Nations Clean Energy Network Best Practice Principles** for Clean Energy Projects, including employment and income opportunities.
e) ensuring quality jobs through the implementation of labour standards.

Recommendation 26: The status of the Merit Criteria in s.26(4)(a)) should be updated to be a stand-alone mandatory requirement. 'Vessels' should be added to the provision so that it reads 'the use of Australian goods and services including vessels'. The Merit Criteria should be updated to include the New Energy Standards developed by the unions on this submission, including:

[5] Minister Catherine King, Report shows Strategic Fleet can bolster Australia's maritime and freight sectors, 8 November 2023.

a) maximising the use of **locally produced** and supplied goods and services.
b) maximising the **employment of suitably qualified local workers**, including energy workers, engaged under registered industrial instruments, agreed between relevant unions and employers.
c) providing for the **training and skills development** of local workers, minimum requirements for trainees and apprentices, worker transition opportunities from industries facing closure, and the employment of workers from groups underrepresented in the workforce.
d) ensuring projects are aligned with the **First Nations Clean Energy Network Best Practice Principles** for Clean Energy Projects, including employment and income opportunities.
e) ensuring quality jobs through the implementation of labour standards.

Financial offers for overlapping licences

We oppose changing the Regulations to allow Feasibility Licence applications deemed to be of equal merit to move more quickly to financial offers instead of revising and resubmitting their applications (flagged on p.35 of the Consultation Paper).

Decision-making on feasibility licences should be based on the merit criteria. The transparency and specificity of the merit criteria should be improved to allow government to more readily assess which proposals have the most merit. Introducing stretch targets as described below could assist in evaluating and weighting applications.

Renewable energy projects on publicly held sea area should be the best projects in the public interest, not selected based on ability to pay. The option for financial offers for Feasibility licences should be removed from both the Act and the Regulations.

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 (OEI Act s.172 (2)). It appears that revenue from such a process would go into general revenue, while licence applicants would still be charged 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 27: The government should not amend the Regulations to allow Feasibiity Licence applications deemed to be of equal merit to move more quickly to financial offers. Renewable energy projects on publicly held sea area should be the best projects in the public interest, not selected based on ability to pay. Instead the transparency and specificity of the merit criteria should be improved and stretch targets introduced. The option for financial offers for Feasibility licences should be removed from both the Act and the Regulations.

Reporting on jobs and local content

Section 33 of the OEI Regulations provides that OEI licences are subject to the condition that the licence holder reports annually on a range of information relating to the OEI project. The proposed Regulations add to the information required to be reported on to include a requirement for licence holders to report annually on how they are contributing to, or will contribute to the Australian and local communities, including in relation to the use of Australian goods and services.

While we welcome these reporting requirements, after the fact reporting is not particularly useful in achieving the objective of ensuring that offshore renewable energy contributes to the development of Australian jobs and regional economies.

Far more important to achieving these objectives is the development of the Offshore Industry Growth Plan with a tripartite approach to this so that industry can ownership of it, and implementing the Plan in coordination with licencing requirements and management plan decisions.

Delivering the potential local benefits of offshore renewable energy and ensuring that projects are built as quickly as possible will require a coordinated national approach that involves industry, unions, and government.

Clear offshore wind targets should be established so that all parts of industry understand what they are planning for. If this is not properly understood and communicated, we will lose the ability to establish the appropriate parts of the supply chain in Australia, and will lose out on local benefits.

Targets will make clear the future role and proper integration of offshore wind in the electricity system, renewable energy supply chains, and renewable energy industries.

We believe that an Offshore Renewable Energy Board could facilitate this process. The purpose of such a board should be:

1. To advise on national targets for the rapid development of offshore wind energy to ensure Australia is able to meet and exceed its emissions reduction targets and timelines.
2. To ensure that the environmental and other regulatory processes for offshore wind are aligned to meet Australia's emissions reduction targets, and that obstacles are identified and effectively addressed.
3. To ensure that the appropriate supply chain, infrastructure and workforce is in place to maximise the contribution of offshore wind investment to Australia's economy and regional communities. This will include requirements for secure union jobs; training, transition and apprenticeships measures, development of industry policy for the local manufacturing of components, cables and vessels; First Nations benefits; and methods to assess these aspects of offshore renewable energy licence applications and management plans.
    - Infrastructure includes transmission, ports and advanced manufacturing common user facilities, training facilities, and vessels.
4. To provide a forum to ensure that legislation and regulation is effective in addressing industry challenges going forwards, including monitoring, compliance, enforcement and safety issues.

A good example of what such a process can achieve is the NSW Renewable Energy Sector Board (RESB) process. The Board's Plan, has now been approved by the Minister and was incorporated into NSW onshore renewable energy tenders at the end of 2022, as well as other areas of government

decision making and policy. The Plan sets out minimum labour, equity and local content requirements (as well as stretch targets) and proposes priority areas for government and private investment.

The RESB is a tripartite statutory board created under the NSW *Electricity Infrastructure Investment Act 2020,* with representatives from unions, steel manufacturers, metal fabricators, employers in the electricity, manufacturing and construction sectors, energy customers, and energy planners. It was established 'to make sure our local workers, communities and industries reap the economic benefits of the transition to cheap, reliable and clean electricity…in ways that are cost-effective for all electricity consumers, drive sustainable growth and competitiveness of our industry, and provide quality jobs for new and existing workers in New South Wales.'[6]

The Board went through an initial research and planning process, underpinned by work from the University of Technology Sydney (UTS) Institute for Sustainable Futures, SGS Economics, MBB Group and ACIL Allen.[7] RESB members were able to participate in the commissioning the required research and providing feedback to researchers as the research progressed.

In particular the study on *Employment, Skills and Supply Chains: Renewable Energy in NSW – Final* produced by the Institute for Sustainable Futures at UTS is a landmark piece of research, for the way it examines supply chain and workforce gaps and opportunities for renewable energy in NSW, and clearly articulates steps forward for policy makers contending with critical planetary deadlines in a challenging environment.[8]

A similar piece of national employment, skills and supply chain research is required to guide government decision-making for offshore renewable energy. There are very considerable economic benefits that could be captured through the development of offshore wind and its supply chains, which have been documented by a Danish study as follows for a 1 GW Danish offshore wind farm:

- Will generate around EUR 5 million (one-off) to the installation port
- An O&M port is assessed to receive around EUR 0.5 million EUR per year, which is equivalent to EUR 12.5 million over 25 years

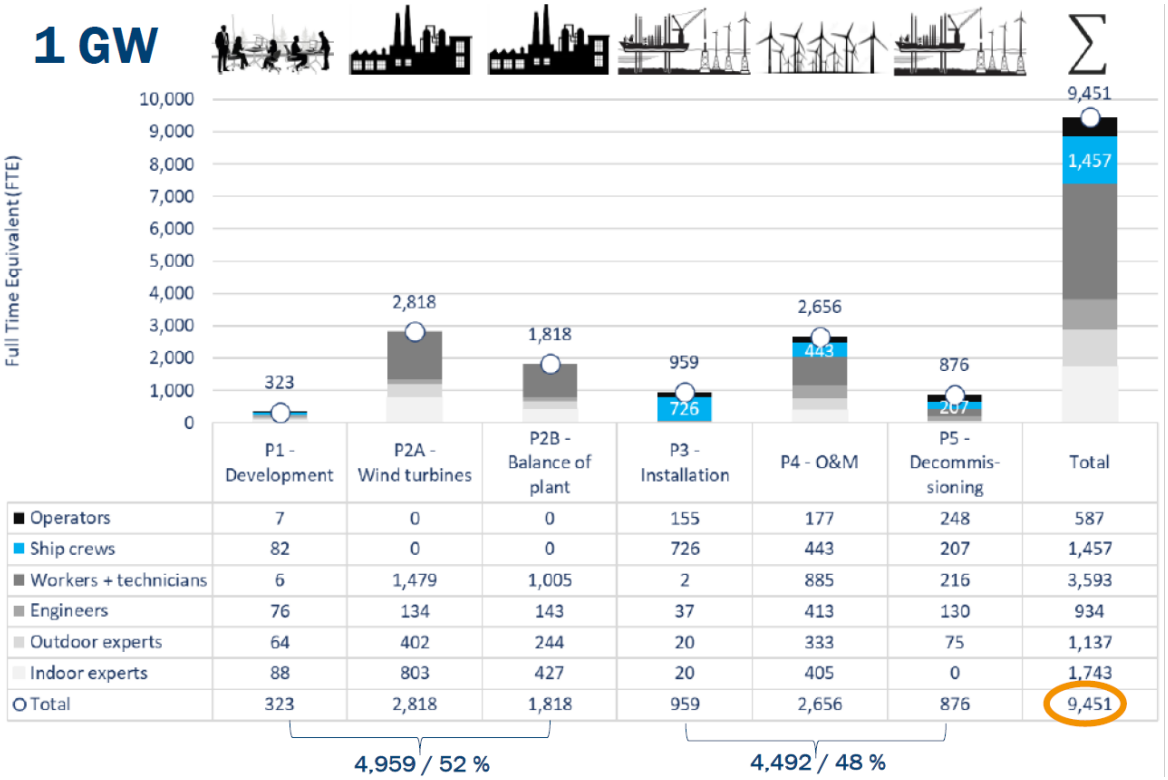
If local suppliers are included (shipyards, steel manufacturers and electricians, to local restaurants, hotels and catering companies), the benefits for a 1 GW project are:

- Between EUR 11-28 million in turnover and between 30-96 FTEs to the local installation port and suppliers combined.
- Between EUR 3.2-9.1 million in turnover and between 59-81 FTEs each year over a period of 25 years to the local O&M port and suppliers combined.[9]

There are also very significant numbers of jobs for the overall project, as illustrated in Figure 2.

[6] Office of Energy and Climate Change, NSW Renewable Energy Sector Board's Plan, September 2022, p.3 The Plan was assessed against Australia's international trade obligations and electricity customers' financial interests (p.18-20), and then separately by the NSW Independent Pricing and Regulatory Tribunal (IPART).
[7] Studies commissioned by the NSW RESB are available under the header Renewable Energy Sector Board on this page.
[8] Briggs, C., Gill, J., Atherton, A., Langdon, R., Jazbec, M., Walker, T., Youren, M., Tjondro, M., Rutovitz, J., Cunningham, R., Wright, S. and Nagrath, K., 2022. *Employment, Skills and Supply Chains: Renewable Energy in NSW – Final Report*. Sydney: University of Technology Sydney and SGS Economics and Planning.
[9] QBIS, Socio economic impact study of offshore wind, 2020, p.7

Figure 2: Estimated number of jobs arising from a 1 GW offshore wind project.



	P1 - Development	P2A - Wind turbines	P2B - Balance of plant	P3 - Installation	P4 - O&M	P5 - Decommis-sioning	Total
Operators	7	0	0	155	177	248	587
Ship crews	82	0	0	726	443	207	1,457
Workers + technicians	6	1,479	1,005	2	885	216	3,593
Engineers	76	134	143	37	413	130	934
Outdoor experts	64	402	244	20	333	75	1,137
Indoor experts	88	803	427	20	405	0	1,743
Total	323	2,818	1,818	959	2,656	876	9,451

Source: Port of Esbjerg presentation, sourced from QBIS, Socio economic impact study of offshore wind, 2020, p.29

Another important outcome of the NSW RESB process is a strong set of minimum standards and stretch targets for renewable energy tenders, used in the 2022 tender round. Where there is competition for a tender, projects will be judged on how far they go to meeting stretch targets. This includes:

- Minimum requirements and stretch goals for apprentices
- Minimum requirements and stretch goals for First Nations participation
- Minimum requirements and stretch goals for employment of underrepresented groups (women, long-term unemployed, young people, and anyone else covered by the NSW *Anti-Discrimination Act).*
- Minimum requirements and stretch goals for steel products and components using locally milled steel
- A contractually binding investment in local supply chain innovation
- Requirements to 'have a current certified industrial agreement registered with the Fair Work Commission'[10]
- The company's record on work health and safety, payment of employee entitlements, timely payment of small business subcontractors, and compliance with modern slavery legislation is also examined.

Introducing similar or better standards into all new energy projects is important to meet the government's current policy objectives to improve job security and pay equity, increase labour force

[10] Office of Energy and Climate Change, NSW Renewable Energy Sector Board's Plan, September 2022, p.28. AEMO Services, Renewable Energy Sector Board update, 5 July 2022, p. 6 'How RESB plan recommendations are considered under MC8'

participation, to reduce barriers and disincentives to employment (particularly for women and other groups underrepresented in the workforce), and to improve skills and incentivize upskilling.[11]

Recommendation 28: The Commonwealth should set clear national offshore wind targets and establish a new national Offshore Renewable Energy Board. The Board should be led by government and involve industry and unions. It should advise government on appropriate targets to meet emissions reduction goals, ensure all regulatory processes are aligned to meet targets, ensure that the required supply chain, workforce, and infrastructure is in place, and work through other industry challenges going forwards.

[11] See Budget Strategy and Outlook Budget Paper No.1 October 2022-3, p.11, p.14 Women's Budget Statement October 2022-3, p.27. Australian Government Treasury, Jobs and Skills Summit September 2022 – Outcomes, September 2022. Australian Government Treasury, Employment White Paper Terms of Reference, September 2022