

Senate Environment and Communications Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Department of Industry, Science, Energy and Resources
Inquiry into the Offshore Electricity Infrastructure Bill 2021 and the Offshore Electricity
Infrastructure (Regulatory Levies) Bill 2021
01 October 2021

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

TOPIC: Licence decision process

REFERENCE: Question on Notice (Hansard, 01 October 2021, Page 45)

QUESTION No.: 1

Senator GREEN: If someone applies for a licence, or is part of the competitive process for a licence, and the minister decides not to grant that licence, what processes can they go through to appeal that decision? I know I sound like a broken record, but in Far North Queensland we have just gone through the experience of having a wind farm vetoed. What would require the minister to actually make a licence decision?

Mr Murphy: Administrative appeal decisions are available. I'm looking for the part of the act that deals with that. If you want more detail—

Senator GREEN: You can take that on notice, because there are a lot of questions we have to get through. I would appreciate that.

ANSWER

1. If someone applies for a licence, and the minister decides not to grant that licence, what processes can they go through to appeal that decision?

The Offshore Electricity Infrastructure Bill 2021 (the OEI Bill) provides for review of licence decisions by the Administrative Appeals Tribunal (AAT). In addition, the OEI Bill also provides for regulations to be made enabling review by the Minister of decisions made by the Registrar (clause 287).

Review of Licence decisions of the Minister

Clause 297 of the OEI Bill currently provides for an application to be made to the AAT for review of decisions of the Minister:

- A decision not to grant a licence (commercial, research and demonstration or a transmission and infrastructure licence)
- A decision not to extend the end day of a licence on the application of the licence holder (feasibility, commercial licences, research and demonstration licences or transmission and infrastructure licences)
- A decision to extend the end day of a licence, in respect of only part of the licence area
- A decision under section 70 (licence transfer);
- A decision to cancel a licence under section 73;
- A decision not to consent to the surrender of a licence under section 74.

2. What would require the Minister to make a license decision?

Regulations will be made setting out the licensing scheme to detail the process, as per clause 29, for:

- making an application for a licence;
- the offering and granting of licences;
- transferring a licence;
- changes in control of licence holders;
- management plans;
- any other matters that this Act provides for the licensing scheme to deal with.

The Government is currently developing regulations for the licensing scheme. The Department will undertake further consultation as part of this process.

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TOPIC: Change to 'relevant worker' definition in the bill

REFERENCE: Question on Notice (Hansard, 01 October 2021, Page 51)

QUESTION No.: 2

Senator GREEN: You may want to take this question on notice. Could you explain why there is a change to the definition of 'relevant worker'? I think it's in paragraph (c) of subsection 2.

Mr Wilson: Sure. We can provide you with a written response. It is to provide that linkage between the onshore workplace and the place offshore where the work is occurring and the workers are working.

Senator GREEN: That would be helpful. That's not my reading of that subsection, so it would be helpful to understand if a few different words could be included to make that clearer. That would be helpful.

ANSWER

Clause 237 of the Offshore Electricity Infrastructure Bill 2021 (the OEI Bill) seeks to make linkages between related onshore premises, regulated offshore activities, and a *relevant worker*.

The proposed provisions allow a permit holder, under Part 7 of the *Work Health and Safety Act 2011* (the WHS Act), to enter a premises to inquire into a suspected contravention of the Act if the contravention relates to a particular regulated offshore activity and relates to, or affects, a *relevant worker* (the worker must work at the workplace where the regulated offshore activity and the contravention in question occurred). The premises being entered must be a related onshore premises - that is the premises where records relating to that specific regulated offshore activity are required to be kept.

The effect of subclause 237(3) is to restrict a permit holder, under Part 7 of the WHS Act, from entering a related onshore premises where the necessary connections between the premises, the activity and the worker do not exist.

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TOPIC: Jurisdiction of state industrial relations laws on offshore projects

REFERENCE: Question on Notice (Hansard, 01 October 2021, Page 51)

QUESTION No.: 3

Senator GREEN: ... Mr Murphy, would the industrial relations law of the state that the offshore project is located in apply?

Mr Murphy: I'm not sure. I'd have to take that on notice, unless someone here can answer that.

Senator GREEN: For example, if you were unfairly dismissed by your employer and you're an offshore worker, there's federal legislation that covers that, but the state legislation complements that, depending on which state you're in. Could we get something on notice about that as well?

Mr Murphy: I'm happy to take that on notice.

ANSWER

The Offshore Electricity Infrastructure Bill 2021 (the OEI Bill) provides for the continued application of federal legislation including unfair dismissal laws. Unless an Act is specifically exempted, it will continue to apply. As such, the *Fair Work Act 2009* would continue to apply to OEI workers.

As regards the state and territory laws generally, clause 248 of the OEI Bill provides for the application of state and territory laws in offshore areas. The offshore area is the area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, to the extent that that area is within the Commonwealth offshore area. Unless the state legislation is specifically exempted, it will continue to apply to the extent that it is not overridden by federal laws which take precedence.

Any unfair dismissal laws, whether they are Commonwealth or state legislation, will continue to apply. Offshore electricity infrastructure licence holders will need to comply with these laws.