



## Guidance Document: Key Legislation for Consenting in Australia

*The guidance documents are intended to be available for regulators and advisors as they carry out their decision-making and for developers as they prepare consenting and licensing applications. This country-specific document presents an overview of key consenting requirements relevant for marine renewable energy development in Australia from pre-application, through to application and post-consent and is intended mainly for developers and consultants.<sup>1</sup> It is not intended to replace any formal guidance or prescribe action, but rather provide a starting point for understanding the key requirements of the regulatory framework.*

### Australia regulatory context

Multiple Australian agencies have some degree of regulatory responsibility for marine renewable energy (MRE). Regulatory requirements can vary state-by-state and in federal waters so depending on the location two or three levels of government may be involved in the decision making. Local Government consent may be required for cable crossing, State Government consent is required for activities between the coastal high-water mark and the 3 nautical mile limit, and Commonwealth Government consent is required for areas beyond 3 nautical miles. The detail and maturity of the Local and State Government processes differ between geographic locations (i.e., by jurisdiction). As of 2021 the Commonwealth Government policy also has legislative requirements around development and operations (Offshore Electricity Infrastructure 2021 Act<sup>2</sup> [OEI Act]), though some details are evolving. Moreover, it is imperative for any development that there is strong engagement with Australia's Aboriginal and Torres Strait Islander communities. Guidelines released by the Australian Energy Infrastructure Commissioner outlines the core principles of engagement with Aboriginal and Torres Strait Islander communities (who are rights holders) and a list of marine and coastal key stakeholders<sup>3</sup>.

The following tables summarize relevant jurisdictional and regulatory details, which attempts to reflect the broad expanse of relevant statutes across jurisdictions, but the list is not exhaustive given the sheer volume of relevant documents/policies (which number in the hundreds). In addition, this is a relatively fast-moving policy space in Australia so any list that attempts to be exhaustive can rapidly become out of date.

**Table 1.** Regulatory jurisdictions in Australia.<sup>4</sup>

Designation	Location	Agencies with jurisdiction
State waters	Shore to 3 nm	State agencies, with some exceptions

<sup>1</sup> This country-specific document should be read in conjunction with the background guidance document, which can be found on *Tethys*: <https://tethys.pnnl.gov/guidance-documents>.

<sup>2</sup> <https://www.legislation.gov.au/C2021A00120/latest/text>

<sup>3</sup> <https://www.nopsema.gov.au/sites/default/files/documents/Licensing%20and%20authorisations%20for%20offshore%20infrastructure%20activities.pdf>; <https://www.oir.gov.au/blog/updated-guidance-offshore-renewables-environmental-approvals>; <https://www.oir.gov.au/guidance-and-regulation/regulatory-guidance#:~:text=The%20Authorisations%20for%20offshore%20infrastructure,are%20appropriately%20authorised%20and%20approved>

<sup>4</sup> The jurisdictional boundaries are defined by provisions of the Commonwealth's Seas and Submerged Lands Act 1973



Commonwealth (territorial) waters	3 nm to 12 nm*	Commonwealth agencies
Exclusive economic zone	12 nm to 200 nm	Commonwealth agencies

\* Note that in Torres Strait territorial waters are limited to around 3 nm (the exact boundary is as defined by Article 3 of the Torres Strait Treaty).<sup>5</sup>

**Table 2.** Government agencies with jurisdiction over licensing/authorization for marine renewable energy projects.

Agency	Relevant Statute	Implementation
Commonwealth waters, nominally <sup>6</sup> : Department of Climate Change, Energy, the Environment and Water – especially for permitting	Offshore Electricity Infrastructure Act (2021) (OEI Act)  And associated Offshore Electricity Infrastructure Regulations (2022) <sup>7</sup>	The Australian Government established a legislative framework to enable offshore infrastructure projects in 2021 (OEI Act) and has refined the process as lease sites have been announced and proponents have begun to enter the process. The legislation applies to renewable energy infrastructure projects to be undertaken in Australian Commonwealth waters (see Table 1).
Offshore Infrastructure Regulator (OIR) – oversees the offshore renewables industry	Environmental Protection and Biodiversity Conservation Act (1999) <sup>8</sup> (EPBC Act)  Fisheries Management Act (1991)(Cth) <sup>9</sup>	Australian government authored guidance documents are available from the OIR <sup>10</sup> on legislative frameworks, safety, zoning, management plans, regulation, fees, and levies. These guidance documents also explain the requirements of, and interactions between the OEI Act 2021 and the EPBC Act, including in terms of licensing and environmental approvals processes. They also explain approvals pathways and licensing requirements for three offshore infrastructure project types under the OEI Act: commercial projects (e.g., wind farms, wave generation, solar, tidal, or other forms of renewable energy generation projects); transmission infrastructure projects (e.g., cables or pipeline projects,
OIR functions are administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) – operational regulator	New legislation/policy coming in terms of offshore energy	

<sup>5</sup> Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as the Torres Strait, and Related Matters (Sydney, 18 December 1978) [1985] ATS 4; entered into force 15 February 1985.

<sup>6</sup> As detailed at <https://www.industry.gov.au/policies-and-initiatives/australias-climate-change-strategies/offshore-renewable-energy>

<sup>7</sup> <https://www.legislation.gov.au/F2022L01422/latest/text>

<sup>8</sup> <https://www.legislation.gov.au/C2004A00485/2014-03-27/text>

<sup>9</sup> <https://www.legislation.gov.au/C2004A04237/2004-08-20/text>

<sup>10</sup> <https://www.oir.gov.au/guidance-and-regulation>



National Offshore Petroleum Titles Administrator (NOPTA) – registrar (would handle titles)		<p>without an associated offshore energy generation component); and research and demonstration projects.</p> <p>The government has proposed the NOPSEMA will operate as the Offshore Energy Regulator with regulatory responsibility for work health and safety, infrastructure integrity, and environmental management for offshore infrastructure activities. NOPTA is the associated Registrar.</p>
<p>State waters – planning:</p> <p>Commonwealth Department of Climate Change, Energy, the Environment and Water</p> <p>AND</p> <p>Relevant state and territory authorities<sup>11</sup></p>	<ul style="list-style-type: none"> <li>• EPBC (1999)</li> <li>• Native Title Act (1993)<sup>12</sup></li> <li>• Environmental Planning and Assessment Act (1979)(NSW)</li> <li>• Environmental Planning and Assessment Regulation (2000)(NSW)</li> <li>• State Environmental Planning Policy (Infrastructure) (2007)(NSW)</li> <li>• State Environmental Planning Policy (State and Regional Development)(2011)(NSW)</li> <li>• Marine Estate Management Act (2014)(NSW)</li> <li>• Coastal Management Act (2016)(NSW)</li> <li>• Environmental Assessment Act (1982)(NT)</li> <li>• Aboriginal Land Rights (Northern Territory) Act (1976)</li> <li>• Northern Territory Aboriginal Sacred Sites Act (1989)</li> <li>• Planning Act (2016)(Qld)</li> <li>• Coastal Management Act (1995)(Qld)</li> <li>• Environmental Protection Act (1994)(Qld)</li> </ul>	<p>The complexity of the Australian regulatory space (and the speed with which it is evolving at present for renewable energy) means that guidance documents put out by the individual Commonwealth and State government agencies are the best place to obtain current information on the exact requirements around permitting, deployment, and regulations pertaining to ongoing operations.</p> <p>In general terms however, all marine activities come under Commonwealth environmental legislation and requirements there-in for Environmental Impact Assessments.</p> <p>It is standard practice to submit referrals simultaneously to the Commonwealth department and the relevant State agency, including: New South Wales (NSW) Department of Planning and Environment<sup>13</sup>; Northern Territory (NT) Environment Protection Authority; Queensland (Qld) Department of Environment and Science or the Qld Department of State Development and Infrastructure or the Qld State Assessment and Referral Agency<sup>14</sup>; South Australia (SA) Department for Infrastructure and Transport or SA Department of Energy and Mining; Tasmanian (Tas) Department of</p>

<sup>11</sup> As described at <https://www.environment.gov.au/epbc/state-federal-government-working-together>

<sup>12</sup> <https://www.legislation.gov.au/C2004A04665/2017-06-22/text>

<sup>13</sup> The NSW Wind Energy guideline is available at [https://www.energy.nsw.gov.au/sites/default/files/2022-08/2016\\_12\\_NSW\\_WindEnergyGuideline\\_StateSignificantWindEnergyDevelopment.pdf](https://www.energy.nsw.gov.au/sites/default/files/2022-08/2016_12_NSW_WindEnergyGuideline_StateSignificantWindEnergyDevelopment.pdf)

<sup>14</sup> <https://planning.statedevelopment.qld.gov.au/planning-framework/state-assessment-and-referral-agency>



	<ul style="list-style-type: none"> <li>• State Development and Public Works Organisation Act (1971)(Qld)</li> <li>• Development Act (1993)(SA)</li> <li>• Planning, Development and Infrastructure Act (2016)(SA)</li> <li>• Environmental Management and Pollution Control Act (1994)(Tas)</li> <li>• Tasmanian State Policies and Projects Act (1994)(Tas)</li> <li>• Major Infrastructure Development Approvals Act (1999)(Tas)</li> <li>• Environment Effects Act (1978)(Vic)</li> <li>• Planning and Environment Act (1987)(Vic)</li> <li>• Flora and Fauna Guarantee Act (1988)(Vic)</li> <li>• Traditional Owner Settlement Act (2010)(Vic)</li> <li>• Aboriginal Heritage Act (2006)(Vic)</li> <li>• Heritage Act (2017)(Vic)</li> <li>• Marine and Coastal Act (2018)(Vic)</li> <li>• Environmental Protection Act (1986)(WA)</li> </ul>	<p>Primary Industries, Parks, Water and Environment or Renewables, Climate and Future Industries Tas or the Tas Planning Commission; Victorian (Vic) Department of Energy, Environment and Climate Action<sup>15</sup>; and the Western Australia (WA) Department of Water and Environmental Regulation or Energy Policy WA.<sup>16</sup></p>
<p>Grid connection:<sup>17</sup></p> <p>Australian Energy Market Operator</p>	<p>National Electricity Rules<sup>18</sup></p>	<p>Large-scale generation projects connect to one of three energy grids depending on location:</p> <p>Eastern states: National Electricity Market (NEM)</p> <p>South and west: South West Interconnected System (SWIS)</p> <p>Northern Territory: Darwin-Katherine Electricity Network</p>

<sup>15</sup> See regulatory guidance document at <https://www.energy.vic.gov.au/renewable-energy/offshore-wind-energy/regulatory-information>

<sup>16</sup> <https://www.wa.gov.au/organisation/energy-policy-wa>

<sup>17</sup> As described at <https://www.cleanenergycouncil.org.au/resources/technologies/grid>

<sup>18</sup> <https://www.aemc.gov.au/regulation/energy-rules/national-electricity-rules>



### Species and/or populations at risk

Potential effects to species and/or populations at risk are regulated by Commonwealth Department of Climate Change, Energy, the Environment and Water and relevant state and territory departments (Table 3).

**Table 3.** Regulations related to species and/or populations at risk.

Agency	Relevant Statute	Implementation
Commonwealth Department of Climate Change, Energy, the Environment and Water	Environmental Protection and Biodiversity Conservation Act (1999)(Cth)(EPBC Act)	<p>Activities that are likely to have a significant impact on the marine environment and species require assessment by the federal department under the EPBC Act. It is a project proponent's responsibility to undertake a self-assessment on whether significant impact is likely but must consider activities in all phases of the proposed project including site surveys, demonstration, construction, operation, and decommissioning. Proponents are encouraged to request a pre-referral meeting with Departmental staff to discuss an EPBC Act referral as it is an involved process.</p> <p>Any assessment of an activity will include consideration of habitats as well as other species of interest, especially those of conservation concern. This is particularly important for species listed under the EPBC Act, as their recovery is promoted using conservation advice, recovery plans, and the EPBC Act's assessment and approval provisions.<sup>19</sup> Measures proposed to avoid, minimize, or mitigate potential impacts on these species and marine habitats (in particular, but marine ecosystems more generally) will inform a decision by the Minister on licensing. These measures, and associated monitoring and reporting schedules, are typically detailed in management plans, which are required under the Offshore Electricity Infrastructure Act for all phases of a project (from construction to decommissioning, including transmission).</p>
Relevant state and territory departments	See environmental agencies and policies listed in Table 2 above	Each state department tasked with responsibility for the environment will have their own approvals process which a proponent will be required to address in addition to the EPBC related assessments. Each state department has a threatened species program, often with scientific advisory panels to advise on listing/delisting processes, and with state specific partnerships (with other government and

<sup>19</sup> As described at <http://environment.gov.au/biodiversity/threatened/species/>



		non-government agencies and community groups) around projects to assist the conservation, management, and recovery of threatened species and avoid undesired impacts. Proponents are advised to obtain guidance documents from the relevant state government, in addition to federal, to ensure all requirements are met at the application stage.
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### Habitat alteration or loss

Potential effects to habitat alteration or loss are regulated by the Commonwealth Department of Agriculture, Water, and Environment and relevant state and territory departments (Table 4).

**Table 4.** Regulations related to habitat alteration or loss

Agency	Relevant Statute	Implementation
Commonwealth Department of Climate Change, Energy, the Environment and Water	Environmental Protection and Biodiversity Conservation Act (1999)(Cth)(EPBC Act)	All marine habitats are listed under the EPBC Act so their management must be guided by conservation advice, recovery/impact plans, and the EPBC Act's assessment and approval provisions. <sup>20</sup> Please see Table 3 also as the same (or very similar) processes apply for habitats
Relevant state and territory departments  (e.g., NSW: Department of Primary Industries <sup>21</sup> )	Often under relevant fisheries or marine parks legislation for that State or Territory	Typically focused on fisheries and marine parks to date, much of the habitat relevant legislation sits within Acts defined for these sectors, with little directly referring to marine renewable energy to date. However, it is changing quickly in some jurisdictions so please approach the agencies in Table 2 for the most relevant guidance for that jurisdiction.

### Effects on water quality

Potential effects on water quality are regulated by relevant state and territory departments (Table 5) with the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality*<sup>22</sup> providing authoritative guidance on the management of water quality in Australia and New Zealand. These guidelines are a joint initiative between the Australian and New Zealand governments, in partnership with the Australian states and territories, but all regulatory responsibilities remain at a jurisdictional level.

**Table 5.** Regulations related to effects on water quality

Agency	Relevant Statute	Implementation
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<sup>20</sup> As described at <http://environment.gov.au/biodiversity/threatened/species/>

<sup>21</sup> <https://www.dpi.nsw.gov.au/fishing/habitat/protecting-habitats>

<sup>22</sup> <https://www.waterquality.gov.au/anz-guidelines/>



<p>The National Water Quality Management Strategy is the Australian Government initiative for inter-governmental consultation and coordination on water quality standards. It is overseen by policy and reform committees and replaces previous bodies such as the Australian and New Zealand Environment and Conservation Council (ANZECC)</p>	<p>Water Quality Management Framework<sup>23</sup></p>	<p>National guidelines exist for water quality (and toxicant levels) for drinking, farming, ecosystems, and recreational uses. These guidelines are a reference for water management and supply and are the mainstay of the implementation of Australia's National Water Quality Management Strategy.</p>
<p>Relevant state and territory agencies – typical water departments or environmental protection agencies (e.g., TAS Environmental Protection Authority or NSW Water<sup>24</sup>)</p>	<p>Most are in line with the current Framework, though many refer to previous ANZECC guidelines: ANZECC Guidelines for Fresh and Marine Water Quality</p> <p>ANZECC Guidelines for Water Quality Monitoring and Reporting</p> <p>There may be specific state level constraints</p>	<p>Additional state and local level guidelines may be in place<sup>25</sup> but they build on and comply with the current Water Quality Management Framework or previous ANZECC guidelines.</p>

### Effects on social and economic systems

Potential effects on social and economic systems are regulated by the relevant Commonwealth agencies and relevant state and territory departments (Table 4).

**Table 6.** Regulations related to effects on social and economic systems.

Agency	Relevant Statute	Implementation
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<sup>23</sup> <https://www.waterquality.gov.au/anz-guidelines/framework>

<sup>24</sup> e.g., <https://epa.tas.gov.au/epa> or <https://www.watarnsw.com.au/water-quality/quality/multi-barrier/guidelines>

<sup>25</sup> <https://www.waterquality.gov.au/anz-guidelines/resources/jurisdictions>



<p>Relevant Commonwealth agencies – there are relevant departments for each sector, as well as the Australian Fisheries Management Authority</p>	<p>Fisheries Management Act (1991)(Cth)</p>	<p>While the majority of activities will come under the Environmental Protection and Biodiversity Conservation Act, individual activities interacting with or impacting individual sectors (e.g., transport, fisheries, tourism) can also fall under sector agencies as well. For example, extractive removal of species (even for scientific or monitoring purposes) in Commonwealth waters must be licensed by the Australian Fisheries Management Authority. This includes sampling during surveys, which may be undertaken as part of proponent applications for licenses.</p>
<p>Relevant state agencies (e.g., Qld Department of State Development, and Infrastructure)</p>	<p>e.g., State Development and Public Works Organisation Act (1971)(Qld)</p>	<p>Similar to the Commonwealth jurisdiction, where an activity interacts with a specific sector in state waters it may also come under that sector’s regulatory arrangements. In some jurisdictions (e.g., Queensland) activities with significant economic or social implications also fall under specific regulatory bodies.</p>
<p>Individual Australian Aboriginal and Torres Strait islander communities. These can be identified through the relevant Land and Sea Councils or the Torres Strait Regional Authority</p>	<p>Native Title Act (1993)(Cth)</p> <p>Torres Strait Treaty (1985)(Cth)<sup>26</sup></p> <p>Aboriginal and Torres Strait Islander Act (2005)(Cth)</p> <p>There will also be relevant Acts in each state jurisdiction. For example,</p> <ul style="list-style-type: none"> <li>• Aboriginal Land Rights (Northern Territory) Act (1976)</li> <li>• Northern Territory Aboriginal Sacred Sites Act (1989)</li> <li>• Traditional Owner Settlement Act (2010)(Vic)</li> <li>• Aboriginal Heritage Act (2006) (Vic)</li> </ul>	<p>Native title is the recognition that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional law and customs. This includes Seacountry (ocean and coastal waters).</p>

<sup>26</sup> <https://www.dfat.gov.au/geo/torres-strait/the-torres-strait-treaty>





	<ul style="list-style-type: none"> <li>• Aboriginal Cultural Heritage Act (2003)(Qld)</li> <li>• Aboriginal Land Rights Act (1983)(NSW)</li> <li>• Aboriginal Heritage Act (1988)(SA)</li> <li>• Aboriginal Heritage Act (1975)(Tas)</li> </ul>	
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### Additional Information

#### Marine Spatial Planning

Marine spatial planning processes are in place at both federal and state levels, with a number of states reviewing plans with regard to MRE relatively recently (in some instances it is still underway). Victoria is the most advanced with an MSP framework in place for the state waters covering all aspects of marine environmental management including MRE in state waters and infrastructure to support MRE in adjacent Commonwealth waters. Typically, however, regulatory processes and policies are single sector focused, so while there are well-established policy frameworks in some jurisdictions, so far there is little capacity to consider issues across sectors or jurisdictions. There is active research underway looking at how to address this, but at present this is not reflected in any policy, regulatory, or permitting processes. Furthermore, in the context of offshore renewable energy the sector has not been a particular focus historically and there can be inconsistencies between jurisdictions.

#### Cumulative Effects Management

Australia's Environmental Protection and Biodiversity Conservation Act (1999; EPBC Act) calls for consideration of direct, indirect, and offsite impacts on biodiversity of any development (including in marine realms). This explicitly includes upstream, downstream, and facilitated impacts (as defined in the Significant Impact Guidelines<sup>27</sup>). The Act also allows for broad-scale strategic assessments. However, in practice this falls far short of consideration of cumulative effects and so it is safe to say that the EPBC Act (and resulting environmental impact assessments) do not explicitly address cumulative effects. A review of the Act in 2020 called for change in this area, but environmental law reforms are not yet complete so it is unclear if this aspect of the EPBC Act will change. Consequently, there is no current framework in any jurisdiction for management of multiple sectors in the marine environment – with current impact assessment methods primarily single sector focused and only considering linear 'additive' approaches to assessing risk of industry on the marine environment, which is inappropriate for addressing the cumulative impacts of multiple sectors.

#### Adaptive Management

Adaptive management approaches are largely followed for MRE projects in Australian waters. This involves granting of consent for an activity conditional on ongoing (and in some cases independent)

<sup>27</sup> <https://www.dcceew.gov.au/environment/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance> and <https://www.dcceew.gov.au/environment/epbc/publications/significant-impact-guidelines-12-actions-or-impacting-upon-commonwealth-land-and-actions>



Guidance Documents



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monitoring for associated effects, with the results able to be taken into account in future regulatory and permitting processes.

#### Consistency Between Jurisdictions

The fact that regulatory requirements and the state of maturity of MRE policy varies strongly between jurisdictions means that there is the potential for large inconsistencies between neighboring jurisdictions. It is possible that a single operation that happens to straddle the three nautical mile limit between State and Commonwealth waters could be beholden to two sets of (potentially inconsistent) regulations.