

Commonwealth Environmental Impact Statement

Chapter 5 – Commonwealth
legislative framework



Chapter 5 Commonwealth legislative framework

5.1 Introduction

This chapter outlines the legislative framework for the assessment and planning and environmental approvals applicable to the Star of the South Offshore Wind Farm Project (the project) within the Commonwealth jurisdiction. The legislation that primarily defines this framework is the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)

Star of the South referred the project under the EPBC Act to the Commonwealth Minister for the Environment and Water in May 2020. On 2 June 2020, a delegate of the Minister determined the project was likely to have a significant impact on matters of national environmental significance (MNES) protected under Part 3 of the EPBC Act and, therefore, constitutes a controlled action. As such, a Commonwealth assessment and approval are required through an Environmental Impact Statement (EIS).

The MNES that the project has the potential to significantly impact are:

- The ecological character of declared Ramsar wetlands (sections 16 and 17B)
- Listed threatened species and listed ecological communities (sections 18 and 18A)
- Listed migratory species (sections 20 and 20A)
- The environment in Commonwealth marine areas (sections 23 and 24A).

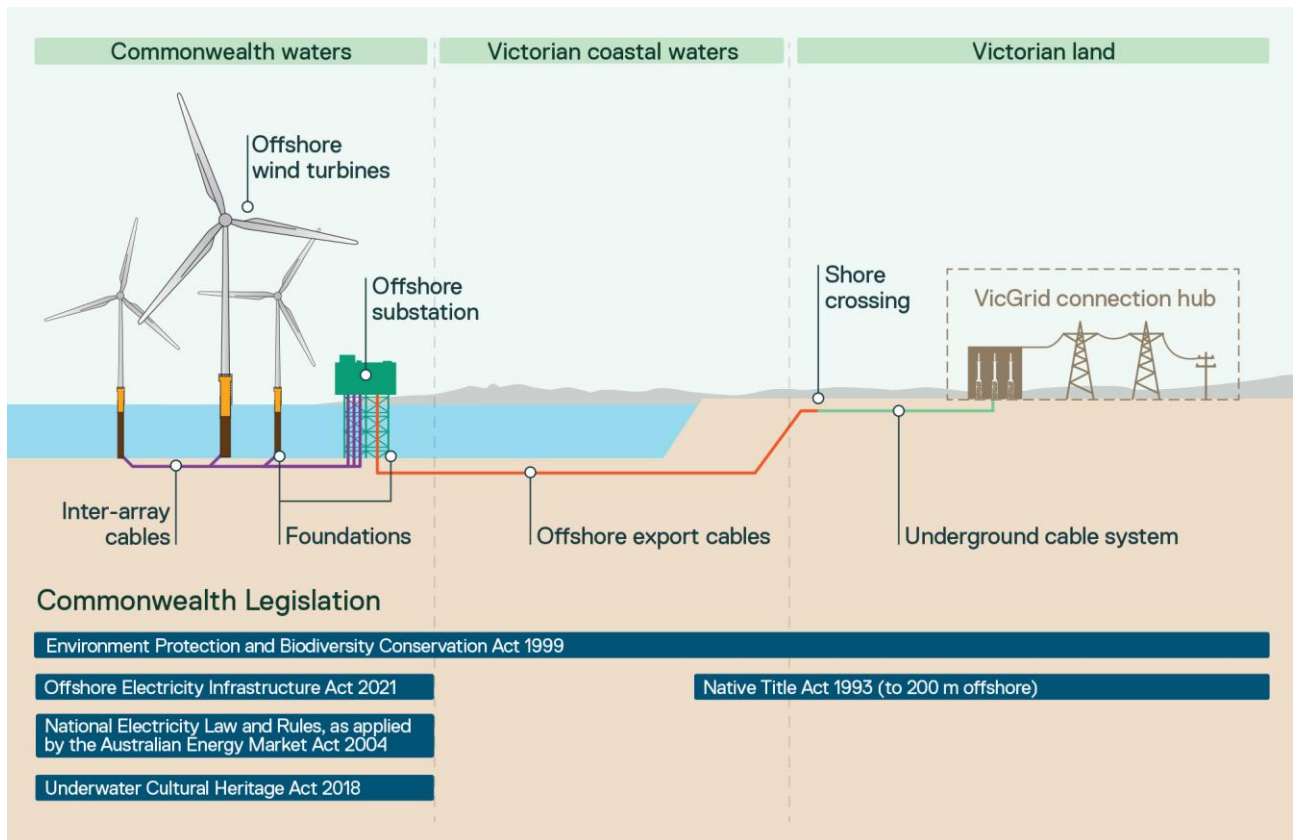
Further details on the planning and environmental approvals pathway for the Commonwealth jurisdiction is provided in Section 5.2.

The Commonwealth EIS investigates and assesses the project's potential impacts on matters protected by the EPBC Act, enabling decisions about whether to approve the project under Commonwealth law.

The project may require additional environmental and planning approvals under Commonwealth legislation, as described in Section 5.3. Secondary approvals, including various plans and procedures, are also likely to be required by the project's primary approval conditions and the Commonwealth Environmental Management Framework - refer to Chapter 23.

Figure 5-1 illustrates the Commonwealth legislation applicable to the project. A range of other environmental legislation, policies and guidelines are relevant to the project’s assessment, with key legislation outlined in Section 5.4. More details on the project’s specific assessment requirements are provided throughout the chapters in the *Commonwealth Environmental Impact Statement* and the assessment’s technical reports.

Figure 5-1 Commonwealth legislation applicable to the project



The legislative framework for the assessment and planning and environmental approvals applicable to the project for the Victorian jurisdiction is not considered in this chapter or the EIS. Detailed consideration of the legislative framework for the Victorian jurisdiction is provided in the project's Victorian Environment Effects Statement.

5.2 Primary planning and environmental approvals and assessment pathway

5.2.1 Environment Protection and Biodiversity Conservation Act 1999 (Cth)

The EPBC Act is the Commonwealth's central piece of environmental legislation. It establishes a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places defined as MNES. The EPBC Act protects nine MNES:

- Declared world heritage properties
- National heritage places
- Wetlands of international importance (often called Ramsar wetlands after the international treaty under which such wetlands are listed)
- Nationally listed threatened species and listed ecological communities
- Listed migratory species (protected under international agreements)
- Commonwealth marine areas
- The Great Barrier Reef Marine Park
- Nuclear actions (including uranium mines)
- Water resources (concerning coal seam gas and large coal mining development).

As set out in Section 5.1, the MNES that the project has the potential to significantly impact are:

- Wetlands of international importance
- Nationally threatened species and listed ecological communities
- Listed migratory species
- Commonwealth marine areas.

The matters to be investigated and assessed in the project's EIS are set out in the EIS guidelines, which were published in August 2021 following a public consultation period.

The EIS provides the Minister with the information required to make an informed decision on whether to approve the project under Part 9 of the EPBC Act. Once the EIS is drafted and authorised for exhibition, it is publicly exhibited for no fewer than 20 business days. During this period, the public can provide written submissions on the draft EIS.

At the end of the public exhibition period, the EIS is finalised, considering any comments received during the public comment period. The final EIS is then submitted to the Minister and published. A recommendation report is prepared, and the Minister, or their delegate, decides whether to approve the project.

The matters to be considered by the Commonwealth when deciding to approve a project are described in section 136, 138, 139 and 140 of the EPBC Act. These include:

- (s136(1)(a)) The relevant MNES protected under Part 3 of the EPBC Act
- (s136(1)(b)) Economic and social matters
- (s136(2)(a)) Principles of ecologically sustainable development
- (s136(4)) A person's environmental history
- (s.138) the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention
- (s.139(1)(a)) the Minister must not act inconsistently with:
 - (i) the Biodiversity Convention, or
 - (ii) the Apia Convention, or
 - (iii) CITES, or
 - A recovery plan or threat abatement plan
- (s.139(2b) (b)) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community; the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.
- (s140) the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:
 - (a) the Bonn Convention;
 - (b) CAMBA;

(c) JAMBA;

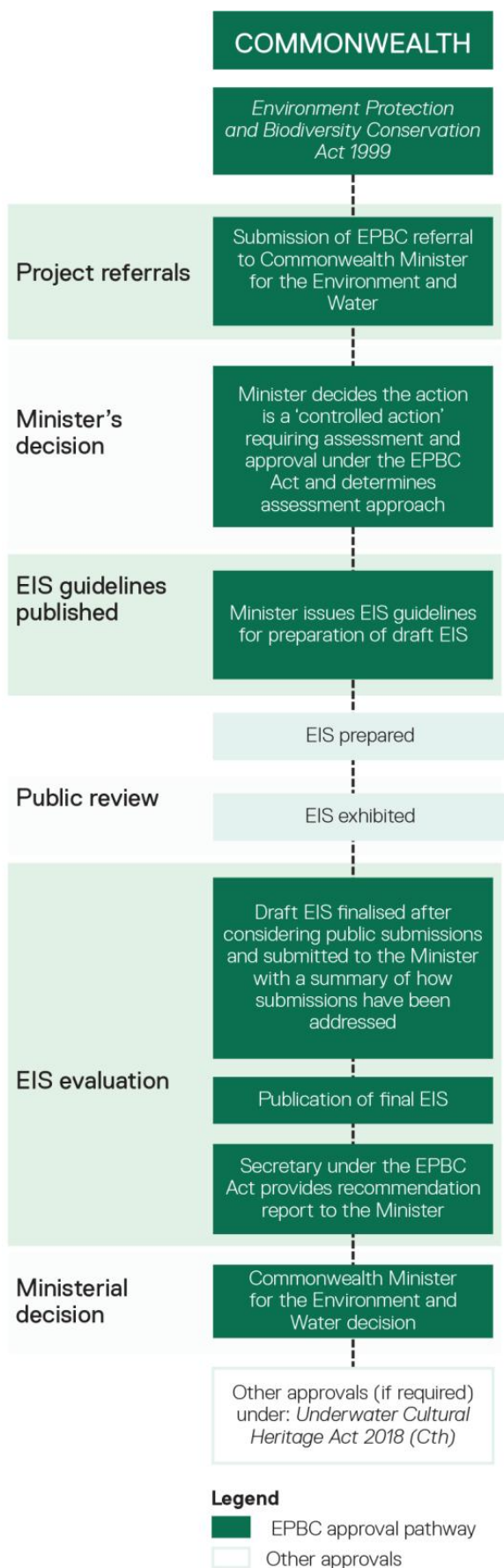
(d) an international agreement approved under subsection 209(4).

The conditions attached to an EPBC Act approval may require protection, repair or mitigation of impacts to MNES protected under the Act.

An Environmental Management Framework has been established for the project to ensure the outcomes of the EIS process and approval decisions are effectively implemented. Further details are provided in *Chapter 23 – Commonwealth Environmental Management Framework*.

The Commonwealth assessment process under the EPBC Act, which is further outlined in the EIS guidelines, is summarised in **Error! Reference source not found.**

Figure 5-2 Commonwealth assessment approach



5.3 Secondary planning and environmental approvals

The project requires a suite of secondary approvals under Commonwealth legislation, as shown in Table 5-1. If required, these approvals would be sought after the primary approvals identified in Section 5.1 have been obtained, and before construction commences for the relevant project component.

Table 5.1 relates primarily to the secondary approvals required for planning and environmental matters within the Commonwealth jurisdiction and is not an exhaustive list of all legislation and policies relevant to the project, which may sit outside this framework.

Table 5-1 Commonwealth secondary planning and environmental project approvals

Legislation	Purpose	Relevance to the project	Approval description	Regulator
<i>Native Title Act 1993</i> (Cth)	To provide recognition and protection of native title for Aboriginal and Torres Strait Islanders.	The project must determine whether native title exists and provide compensation for any acts that affect native title.	Compensation for acts affecting native title.	National Native Title Tribunal
<i>Offshore Electricity Infrastructure Act 2021</i> (Cth)	Provides a legal framework to enable the construction, installation, commissioning, operation, maintenance and decommissioning of offshore renewable energy generation and transmission infrastructure in Commonwealth waters.	The project has been granted a feasibility licence within the Gippsland Declared Area, allowing project development to continue. A commercial licence, a transmission and infrastructure licence (for the offshore export cables) and approved management plans are required to proceed with construction.	The project will require a commercial licence and a transmission and infrastructure licence to export energy to the electricity network.	Commonwealth Offshore Infrastructure Regulator
			The project will require approved management plans to commence construction in Commonwealth waters.	Commonwealth Offshore Infrastructure Regulator

Legislation	Purpose	Relevance to the project	Approval description	Regulator
<i>Environmental Protection Sea Dumping Act 1981 (Cth)</i>	The Sea Dumping Act regulates the loading and dumping of waste at sea and the creation of artificial reefs in Australian waters. Australian waters stretch from the low-water mark of the Australian shoreline out to 200 nautical miles (nm).	Placing of rocks on the seabed for scour or cable protection. Sand leveling may also be required.	A permit may be required for scour protection works and cable seabed preparation.	Commonwealth Department of Climate Change, Energy, the Environment and Water
<i>Underwater Cultural Heritage Act 2018 (Cth)</i>	To provide for the identification, protection and conservation of Australia's underwater cultural heritage.	If any shipwrecks or submerged heritage are discovered within the offshore project area, approval may be required to proceed with the works.	Section 23 – Permit to engage in conduct relating to protected underwater cultural heritage.	Commonwealth Department of Climate Change, Energy, the Environment and Water and Heritage Victoria

5.4 Key legislation relevant to assessment

A range of legislation, policies and guidelines are relevant to and informs the assessment process within the Commonwealth jurisdiction. These are in addition to the legislation, policies and guidelines that govern the primary and secondary planning and environmental approvals required for the project to proceed.

The EIS guidelines specify the need for investigations across the project. Table 5-2 outlines the key legislation relevant to the assessment of the project and their relevant EIS chapters and the technical reports. Policies and guidelines are described further in the relevant technical reports.

Table 5-2 Commonwealth legislation relevant to assessment and corresponding documentation

Key legislation	Relevant chapters	Relevant technical reports
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth)	Commonwealth Environmental Impact Statement chapters:	A – Coastal processes and sediment transport
<i>Airports Act 1996</i> (Cth)	8 – Coastal processes and sediment transport	B – Benthic ecology
<i>Australian Maritime Safety Authority Act 1990</i> (Cth)	9 – Benthic ecology	C – Fish and invertebrates
<i>Biosecurity Act 2015</i> (Cth)	10 – Fish and invertebrates	D – Marine mammals and turtles
<i>Civil Aviation Act 1988</i> (Cth)	11 – Marine mammals and turtles	E – Offshore ornithology and bats
<i>Defence Act 1903</i> (Cth)	12 – Offshore ornithology and bats	F – Marine protected areas
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	13 – Marine protected areas	G – Onshore ecology
<i>Environment Protection (Sea Dumping) Act 1981</i> (Cth)	14 – Non-Aboriginal underwater cultural heritage	H – Groundwater
<i>Fisheries Management Act 1991</i> (Cth)	15 – Commercial and recreational fisheries	I – Surface water
<i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i> (Cth)	16 – Infrastructure and co-existence with other users	J – Soil and waste
<i>Native Title Act 1993</i> (Cth)	17 – Shipping and navigation	K – Aboriginal cultural heritage
<i>Navigation Act 2012</i> (Cth)	18 – Onshore ecology (EPBC matters)	L – Historical heritage
<i>Protection of the Sea (Harmful Antifouling Systems) Act 2006</i> (Cth)	19 – Submerged Aboriginal cultural heritage	M – Non-Aboriginal underwater cultural heritage
<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i> (Cth)	20 – Social	N – Commercial and recreational fisheries
<i>Sea Installations Act 1987</i> (Cth)	21 – Business and tourism	O – Infrastructure and co-existence with other users
<i>Underwater Cultural Heritage Act 2018</i> (Cth)	22 – Seascape, landscape and visual	P – Shipping and navigation
		Q – Business and tourism
		R – Social
		S – Agriculture and forestry
		T – Land use and planning
		U – Seascape, landscape and visual
		W – Onshore noise and vibration
		Y – Air quality
		Z - Submerged Aboriginal cultural heritage