



COVERSHEET

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|-------------------------------|--|-----------------------------|------------------|
| Minister | Hon Simeon Brown | Portfolio | Energy |
| Title of Cabinet paper | Offshore Renewable Energy Regulatory Regime Offshore Renewable Energy Bill: Approval for Introduction | Date to be published | 20 December 2024 |

| List of documents that have been proactively released | | |
|--|---|-----------------------------------|
| Date | Title | Author |
| November 2024 | Offshore Renewable Energy Bill: Approval for Introduction | Office of the Minister for Energy |
| November 2024 | Offshore Renewable Energy Bill: Approval for Introduction LEG-24-MIN-0235 | Cabinet Office |
| 13 June 2024 | 2324-3049 Offshore renewable energy regime – offences, penalties, powers and appeals | MBIE |
| 20 June 2024 | 2324-3446 Offshore Renewable Energy regulatory regime – permit variations | MBIE |
| 25 July 2024 | 2324-4013 Offshore renewable energy - update on progress and establishment of a developer working group | MBIE |
| 8 August 2024 | 2425-0577 Accelerated timing for Offshore Renewable Energy Bill and Hydrogen Action Plan | MBIE |
| 19 August 2024 | 2425-0725 Engagement with iwi on the offshore renewable energy regulatory regime | MBIE |
| 23 August 2024 | 2425-0230 Offshore renewable energy regulatory regime – decommissioning obligations | MBIE |
| 23 August 2024 | 2324-3448 Offshore renewable energy regulatory regime – transmission infrastructure | MBIE |
| 18 October 2024 | BRIEFING-REQ-0004369 Offshore Renewable Energy Bill – draft Cabinet paper seeking approval for introduction and agreement to related policies | MBIE |
| 7 November 2024 | BRIEFING-REQ-0005576 Offshore Renewable Energy Bill – updated Cabinet paper seeking approval for introduction | MBIE |
| June 2024 | Offshore Renewable Energy Regulatory Regime: Policy Decisions | Office of the Minister for Energy |
| June 2024 | Offshore Renewable Energy Regulatory Regime: Policy Decisions Minute of Decision CBC-24-MIN-0041 | Cabinet Office |

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| May 2024 | Offshore Renewable Energy Regulatory Regime | Office of the Minister for Energy |
| May 2024 | Offshore Renewable Energy Regulatory Regime Minute of Decision ECO-24-MIN-0062 | Cabinet Office |

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

- a. Privacy of natural persons
- b. Confidential advice to Government



BRIEFING

Offshore Renewable Energy Bill – draft Cabinet paper seeking approval for introduction and agreement to related policies

| | | | |
|---------------------------------|-----------------|-------------------------|----------------------|
| Date: | 18 October 2024 | Priority: | High |
| Security classification: | In Confidence | Tracking number: | BRIEFING-REQ-0004369 |

| Action sought | | |
|--|--|-----------------|
| | Action sought | Deadline |
| Hon Simeon Brown Minister for Energy | <p>Agree to provide feedback on the draft Bill and Cabinet paper by 22 October 2024.</p> <p>Agree to circulate the draft Cabinet paper for Ministerial consultation by 24 October.</p> <p>Agree to further policy decisions under your delegated authority, and to seek Cabinet approval of further decisions.</p> <p>Agree that the draft Bill (or relevant parts of the Bill) can be shared with key Crown entities.</p> <p>Forward this briefing to the Minister of Justice for consultation on changes to offences and penalties.</p> | 22 October 2024 |

| Contact for telephone discussion (if required) | | | |
|--|---|----------------------------|-------------|
| Name | Position | Telephone | 1st contact |
| Melanee Beatson | Manager, Offshore Renewable Energy and Hydrogen | Privacy of natural persons | ü |
| Laurie Boyce | Principal Policy Advisor | 04 978 3338 | |
| Jahnvi Manubolu | Senior Policy Advisor | 09 928 6626 | |

| The following departments/agencies have been consulted |
|--|
| The final stages of departmental consultation on the attached draft Cabinet paper and Bill are underway. |

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Offshore Renewable Energy Bill – draft Cabinet paper seeking approval for introduction and agreement to related policies

| | | | |
|---------------------------------|-----------------|-------------------------|----------------------|
| Date: | 18 October 2024 | Priority: | High |
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Purpose

To provide you with:

- drafts of the Offshore Renewable Energy Bill and associated Cabinet paper for Ministerial consultation
- advice on related decisions you need to make, and
- advice on related decisions for Cabinet.

Executive Summary

The Government has committed to establishing a regulatory regime for offshore renewable energy, as set out in Electrify NZ.

Cabinet made key policy decisions on an offshore renewable energy regulatory regime [CBC-24-MIN-0041] in June 2024, including for a new permitting regime, decommissioning obligations, safety zones, and cost recovery.

In August 2024 you instructed MBIE to provide a draft Bill and Cabinet paper to take to Cabinet in November 2024. Introduction of the Bill by the end of 2024 is included in the Government's Quarter 4 Action Plan.

A draft Bill and associated Cabinet paper are attached for Ministerial consultation. We are seeking feedback from Ministerial consultation by 31 October 2024, to stay on track for the Bill to be considered by the Cabinet Legislation Committee (LEG) on 21 November 2024. We will undertake final departmental consultations at the same time as Ministerial consultation.

The draft Bill reflects policy decisions already made by Cabinet, as well as decisions you have made under delegated authority, and further decisions to be made by Cabinet (as set out in the draft Cabinet paper). In this briefing, we are seeking agreement to further policy proposals under your delegated authority relating to offences and penalties, and permits.

Following Ministerial and departmental consultation, we will seek your approval of a revised version of the draft Bill and Cabinet paper, so that it can be lodged by 14 November 2024.

Further changes will be required to the Bill following various quality assurance processes. We have prioritised provisions in the Bill relating to key policy areas. We have identified key areas where changes will need to be made either before introduction of the Bill or during the Select Committee process.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Provide feedback** on the attached draft Bill and Cabinet paper by 22 October 2024
Agree / Disagree
- b **Agree** to circulate, subject to any revisions from your feedback, the draft Bill and Cabinet paper for consultation with your Ministerial colleagues by 24 October 2024
Agree / Disagree
- c **Note** that to lodge the paper on time for Cabinet's consideration in November, feedback for Ministerial consultation must be received by 31 October 2024
Noted
- d **Note** that the Bill will require further changes following final quality assurance by the Parliamentary Counsel Office (PCO), departmental consultation and policy review
Noted
- e **Agree** to policy proposals under your delegated authority [CBC-24-MIN-0041] that are set out in this briefing and reflected in the draft Bill relating to:
- Offence and penalty provisions, in consultation with the Minister of Justice (**Table 1**)
 - Additional decisions on permitting (**Table 2**)
- Agree / Disagree*
- f **Forward** this briefing to the Minister of Justice for consultation (in accordance with your delegated authority) on changes to offences and penalties before, or during, Ministerial consultation
Agree / Disagree
- g **Agree** to seek Cabinet approval of the decisions set out in Appendix One of the attached draft Cabinet paper (including decisions on transmission infrastructure that were set out in Briefing-REQ-0004370), which are reflected in the draft Bill
Agree / Disagree
- h **Agree** that the draft Bill (or relevant parts of the Bill) can be shared with the New Zealand Defence Force, Maritime New Zealand and Electricity Authority as part of our final inter-agency consultation, as their input now will support operationalising the regime in the desired timeframes.
Agree / Disagree

Melanee Beatson
Manager, Offshore Renewable Energy and Hydrogen Policy
Building, Resources and Markets, MBIE

18 / 10 / 2024

Hon Simeon Brown
Minister for Energy

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Background

1. In August, you instructed MBIE to provide a draft Offshore Renewable Energy Bill and Cabinet paper to take to Cabinet on 21 November 2024.
2. This briefing provides you with:
 - a. drafts of the Offshore Renewable Energy Bill and associated Cabinet paper for Ministerial consultation
 - b. advice on related decisions you need to make, and
 - c. advice on related decisions for Cabinet.

Draft material for Ministerial consultation is attached

3. A draft Bill (**Annex One**) and Cabinet paper (**Annex Two**) are attached. A draft of the full Departmental Disclosure Statement will be provided with the next briefing.

We are seeking feedback from Ministerial consultation

4. Subject to any feedback you have, we recommend circulating the attached version of the Bill and Cabinet paper for consultation with your Ministerial colleagues by 24 October 2024. We are seeking feedback from Ministerial consultation by 31 October 2024 for the Bill to stay on track and be considered by LEG on 21 November 2024 as planned.

Changes to the Bill will be made before introduction and during the Select Committee process

5. The attached version of the draft Bill is subject to change following Ministerial and departmental consultation, Bill of Rights Act review by the Ministry of Justice, Treaty Provisions Oversight Group review, further policy review and PCO's quality assurance process. We will advise you of any further changes when we provide a further version of the draft Bill and Cabinet paper for lodgement.
6. To help manage compressed timeframes, we have prioritised drafting of the key policy areas in this version of the Bill. We intend to make further changes:
 - a. **Before introduction:** Alignment with the Māori consultation provisions with the Fast-track Approvals Bill (which is still at Select Committee), the permit transfer process, financial security arrangement provisions, and minor and technical clarifications to improve the quality of the Bill and respond to PCO queries.
 - b. **During the Select Committee process:** Tidying any operational issues, and addressing some known gaps relating to commercial permits, decommissioning obligations and the management of transmission infrastructure. These issues were not prioritised as they are not considered immediately relevant to the public and industry.

Further policy decisions for matters included in the Bill

7. We are seeking further policy decisions to address issues identified through the drafting process.

We are seeking agreement from you to further policy proposals under your delegated authority

8. We are seeking your agreement to further policy proposals under your delegated authority from Cabinet [CBC-24-MIN-0041]. The specific policy decisions and rationale are set out in the tables below.

Changes to offence and penalty provisions

9. Cabinet authorised you to make decisions, in consultation with the Minister for Justice, about the offences and penalties for the offshore renewable energy regime. In June 2024, you agreed to a list of offences and penalties to be included in the Offshore Renewable Energy Bill [briefing 2324-3049].
10. We propose changing the penalty level for the offence of giving effect to a consent without a commercial permit. This is because of the seriousness of such an offence and the potential for such action to undermine the regime.
11. We have also subsequently identified an additional offence, and associated penalties, that we consider should be included in the Bill for failing to put in place or maintain the acceptable financial security arrangement, to avoid risks to the Crown.
12. We recommend that you forward this briefing to the Minister of Justice for consultation on these decisions (**Table 1**) before, or during, Ministerial consultation. We are in the final stages of consultation with the Ministry of Justice on these changes and will advise you of any issues as soon as possible.

Table 1: Further policy decisions on offence and penalty provisions

| | Proposal | Rationale | Decision |
|----|---|---|-------------------------|
| 1. | Increased penalty: The penalty for committing the offence of giving effect to a consent without a commercial permit should be, if they are an individual (e.g. a director), imprisonment for a term not exceeding two years or a fine not exceeding \$1 million (or both) and in any other case a fine not exceeding \$10 million | You previously agreed to a fine not exceeding \$400,000 or a prison term not exceeding two years (aligned with the Crown Minerals Act) Stronger incentive to avoid the potential for the system to be undermined Matches the penalties for failing to decommission or failing to have the required financial security, which is at the outer limits of the penalty regime | <i>Agree / disagree</i> |
| 2. | New offence: It is an offence to knowingly fail to put in place or maintain an acceptable financial security arrangement | Avoids risk to the Crown that the permit holder (or transmission owners, except Transpower) will not be financially capable of decommissioning the offshore renewable energy infrastructure Australia's regime also has a similar offence | <i>Agree / disagree</i> |
| 3. | If the offence in (2) is committed by an individual (e.g. a director) they could be liable to imprisonment for a term not exceeding two years or a fine not exceeding \$1 million (or both), or for any other case a fine not exceeding \$10 million or three times the amount by which the contravention reduced the required amount of security | Consistent with how existing offences, penalties and defences work for failing to decommission | <i>Agree / disagree</i> |

| Proposal | Rationale | Decision |
|----------|---|-------------------------|
| 4. | <p>A person that is a director also commits the offence in (2) if they were a director of the body corporate at the time the offence was committed. However, a director may have a defence if a director proves that:</p> <ul style="list-style-type: none"> the permit holder liable for carrying out the financial security obligation took all reasonable steps to ensure that they would meet those obligations, or the director took all reasonable steps to ensure that the permit holder would meet their obligations, or in the circumstances, the director could not reasonably have been expected to take steps to ensure that the permit holder would meet the permit holder's financial security obligations | <i>Agree / disagree</i> |

Changes to previous decisions regarding approving variations and transfers of permits

13. In June 2024, we sought your agreement to the approach for approving variations and transfers of permits [briefing 2324-3446]. This included agreement to the criteria that must be met and a requirement for permit transfer applications to be made at least 90 days before the transfer takes effect.
14. Following further consideration in the drafting process, we recommend you agree to further policy changes, as explained in the table below. These changes are minor and technical.

Table Two: Further policy decisions on permitting

| Policy | Rationale | Decision |
|--------|---|-------------------------|
| 5 | <p>Easier to implement and avoids any sort of retrospective assessment of merit which could present judicial review risks</p> <p>(Replaces previous decisions to be satisfied permit considerations are likely, or highly likely, to be met to the same standard)</p> | <i>Agree / disagree</i> |
| 6 | <p>No longer necessary with the prohibition on giving effect to a consent</p> <p>Avoids risk of prescribing a sequence that may not be practical</p> | <i>Agree / disagree</i> |
| 7 | <p>Correction in line with the original policy intent and ensures the information provided is accurate and up-to-date</p> | <i>Agree / disagree</i> |

Further decisions for Cabinet are included in the draft Cabinet paper

15. There are some remaining policy changes that go beyond your delegated authority. We recommend you seek agreement from Cabinet for these changes. The specific changes and rationale are summarised in **Appendix One of the draft Cabinet paper**. The proposals include provisions relating to the regulation of transmission infrastructure, as advised in Briefing-REQ-0004370.

We are seeking agreement to consult on the draft Bill with non-core government agencies involved in implementation

16. We are undertaking departmental consultation on the draft Bill and the Cabinet paper in parallel with Ministerial consultation.
17. You have previously agreed to share the draft Bill with the Environmental Protection Authority (a Crown entity). We are also seeking your agreement to provide a draft of the Bill to the following non-core government agencies that have important roles in the regime. Their input now will support the ability to operationalise the regime within the desired timelines:
 - New Zealand Defence Force (non-Public Service department)
 - Maritime New Zealand (Crown entity)
 - Electricity Authority (Crown entity)

The BORA review will be required before introduction

18. The review of the Bill by the Ministry of Justice, to determine whether it is consistent with the New Zealand Bill of Rights Act 1990 (BORA), will be undertaken alongside departmental consultation. It is due to the Attorney-General a week before the LEG meeting.

Next steps

19. Following Ministerial and departmental consultation, we will brief you on a revised version of draft Bill, Cabinet paper and full Departmental Disclosure Statement and seek your approval for lodging by 14 November 2024.
20. Officials will work with your Office to prepare talking points and will be available to support you at LEG.
21. The table below summarises the timeline for the Bill:

| Milestone | Timing |
|---|--------------------|
| Ministerial and agency consultation (concurrent) | Ends by 31 October |
| Updated version of Bill, Cabinet paper and Departmental Disclosure Statement provided to Minister | By 7 November |
| Minister approval of lodgement | By 14 November |
| Lodgement for Cabinet Legislation Committee | 14 November |
| Cabinet Legislation Committee | 21 November |
| Cabinet confirmation | 25 November |
| Introduction of Bill into the House | 25 November |
| First Reading | 10 December |

| Milestone | Timing |
|--|--------------------------------------|
| Select Committee report back (six months) | Mid-2025 |
| Second Reading, Committee of the Whole, Third Reading and Royal Assent | Mid-2025 |
| Commencement | The day after receiving Royal Assent |

Annexes

Confidential advice to Government

