



**Australian Government**

**Department of Climate Change, Energy,  
the Environment and Water**

# **Guideline: Offshore Electricity Infrastructure Licence Administration – Feasibility Licences**

***In relation to the [Offshore Electricity Infrastructure Act 2021](#)***

***December 2022***

This document has been developed as a general guide only. It is subject to, and does not replace or amend the requirements of, the [Offshore Electricity Infrastructure Act 2021](#) and associated [Regulations](#), which should be read in conjunction with this guideline.

This guideline is made available by the Australian Government for information only. Before relying on this material, users should carefully evaluate the accuracy, currency, completeness and relevance of the information and obtain independent, legal or other professional advice relevant to their particular circumstances.

This document will be reviewed and updated as required.

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# 1. Overview

- 1.1 The [Offshore Electricity Infrastructure Act 2021 \(OEI Act\)](#) allows licence holders to undertake offshore infrastructure activities within the Commonwealth offshore area (defined in section 8 of the OEI Act).
- 1.2 The purpose of this guideline is to assist prospective licence holders, and other stakeholders, to understand the requirements and processes for licensing under the OEI Act and the [Offshore Electricity Infrastructure Regulations 2022 \(OEI Regulations\)](#).
- 1.3 The OEI Act establishes the Offshore Infrastructure Registrar (**Registrar**) to administer the licensing framework. The Registrar's principal functions are to administer the licensing scheme including managing the licence application process and providing advice and recommendations to the Minister on licence applications, monitor licence compliance and maintain a register of licences.
- 1.4 The OEI Act also identifies the Offshore Infrastructure Regulator (**Regulator**) with responsibility for work health and safety, infrastructure integrity, environmental management, financial security and regulation of day-to-day operations.
- 1.5 Costs associated with functions under the framework will be fully recovered through fees and levies imposed on regulated entities under the [Offshore Electricity Infrastructure \(Regulatory Levies\) Act 2021 \(OEI Levies Act\)](#), the OEI Regulations and the [Offshore Electricity Infrastructure \(Regulatory Levies\) Regulations 2022 \(OEI Levies Regulations\)](#).
- 1.6 This Guideline will be updated in future to include information relating to commercial licences, research and demonstration licences and transmission and infrastructure licences.

# 2. General Administrative Information

- 2.1 Proponents should review the OEI legislation, the OEI regulations, this Guideline, the declaration instrument, the invitation to apply instrument, the approved form and the Registrar Forms Guidance when preparing a licence application.
- 2.2 A person must be an eligible person in order to apply for a licence. An “**eligible person**” is defined in section 8 of the OEI Act to mean:
  - (a) A body corporate that has a registered office (within the meaning of the [Corporations Act 2001 \(Corporations Act\)](#)) in Australia; or
  - (b) A body corporate established for a public purpose by or under a law of the Commonwealth or a State or Territory.

**Note:** A licence holder must remain an eligible person while the licence is in force. A licence that is not held by an eligible person may be cancelled under section 73 of the OEI Act.
- 2.3 Each licence will only be granted to one eligible person (single body corporate).
- 2.4 A feasibility licence or a commercial licence must not exceed the maximum area prescribed in section 7 of the OEI Regulations (currently a maximum of 700 km<sup>2</sup>).
- 2.5 In order to construct, install, commission or operate any offshore renewable energy infrastructure (defined in section 10 of the OEI Act) or offshore electricity transmission infrastructure (defined in section 11 of the OEI Act) in the licence area (defined in section 8 of the OEI Act), a licence holder must first obtain approvals from the Regulator including, but not limited to, a management plan and must lodge required financial securities.
- 2.6 Licence holders are expected to commence activities within a reasonable time (subsection 73(1)(d) OEI Act).
- 2.7 Failure to comply with a condition of the licence is a ground for cancellation of the licence under section 73 of the OEI Act.
- 2.8 Licence holders should make themselves aware of relevant legislation and approvals outside of the OEI legislative framework, including but not limited to the [Environment Protection and Biodiversity Conservation Act 1999 \(EPBC Act\)](#) and State/Territory Government approval requirements.

- 2.9** Licence holders carrying out activities in the Commonwealth offshore area must not interfere with navigation, the exercise of native title rights and interests (within the meaning of the *Native Title Act 1993*), fishing, conservation of the resources of the sea or the seabed or any other activities being lawfully carried on by another person, to a greater extent than is necessary for the reasonable exercise of the rights and performance of the duties of the licence holder (section 77 OEI Act).
- 2.10** On or after the end day of a licence, the licence does not authorise the construction, installation, operation or maintenance of offshore renewable energy infrastructure except to the extent necessary to decommission infrastructure.
- 2.11** A licence must be either surrendered under section 74 of the OEI Act or cancelled under section 73 of the OEI Act to cease to be in force.  
**Note:** A feasibility licence may also cease to have effect if a commercial licence is granted in relation to a feasibility licence (subsection 36(4) OEI Act).
- 2.12** The Registrar's assessment of the merit criteria in relation to an applicant or licence holder is done specifically for the administration of the OEI Act. Third parties should satisfy themselves as to the adequacy of an applicant or licence holder.
- 2.13** The service or giving of application and licence-related documents by the Registrar or the Minister will be in accordance with the provisions of the [Electronic Transactions Act 1999](#) and the [Acts Interpretation Act 1901](#).

### 3. Declaration (Chapter 2, Part 2 OEI Act)

- 3.1** The Minister with responsibility for Energy will declare areas as suitable for offshore renewable energy infrastructure. An area must be declared before an application for a feasibility licence or a research and demonstration licence within the declared area can be submitted. A flow chart illustrating the licence types and processes is available [here](#).  
**Note:** A declaration is not required for a transmission and infrastructure licence.
- 3.2** The process for assessing areas to inform the Minister's decisions on declarations will be managed by the [Department of Climate Change, Energy, the Environment and Water](#). Consideration of areas for declaration will be informed by a public consultation process and will need to balance a number of factors including industry interest and readiness, as well as the suitability of conditions for offshore renewable energy infrastructure.  
The declaration may specify conditions that licences granted in the declared area will be subject to and/or limit the type of licences that can be applied for within the declared area.

## 4. Feasibility Licence Applications

### 4.1 Purpose of a Feasibility Licence (sections 30 and 31 OEI Act)

- 4.1.1 A feasibility licence is provided to allow the licence holder to assess the feasibility of an offshore infrastructure project (defined in section 8 of the OEI Act) that the licence holder proposes to carry out in the licence area under a potential future commercial licence. Commercial generation is not included in the purpose of a feasibility licence.
- 4.1.2 A feasibility licence authorises the licence holder to construct, install, commission, operate, maintain and decommission offshore renewable energy infrastructure in the licence area, so long as the legislative requirements are met (section 31 OEI Act).

### 4.2 Invitation to Apply (section 9 OEI Regulations)

- 4.2.1 Once the Minister has declared an area (**Part 3** of this Guideline), an invitation to submit a feasibility licence application will be issued. Invitation instruments will be published on the [Federal Register of Legislation](#).
- 4.2.2 The invitation will specify a closing date for licence application submissions, which will generally be 60-90 days after the invitation is issued depending on the declared area. It may also specify other requirements to be addressed by the licence application.
- 4.2.3 Licence applications must be submitted by the closing date.  
**Note:** Application assessment will not begin until the closing date has passed. All applications will be assessed against the merit criteria.

### 4.3 Receipt and Screening of Feasibility Licence Application by the Registrar

- 4.3.1 Upon receipt of a feasibility licence application, the Registrar will screen the application to check it meets the minimum application submission requirements in the OEI Act and OEI Regulations.

Application Screening	Reference	Assessment
Eligible person	Section 33 OEI Act	Yes / No
Application made in the approved manner and form, by the day specified in the invitation	Section 10 OEI Regulations	Yes / No
Payment of application fee (for fee amount see section 45 of the OEI Regulations)	Section 46 OEI Regulations	Yes / No
Description of the proposed commercial offshore infrastructure project	Subsection 32(2) OEI Act and section 10 OEI Regulations	Yes / No
Be accompanied by any other information or documents required by the approved form	Section 10 OEI Regulations	Yes / No
Be accompanied by any other information or documents specified in the invitation	Section 10 OEI Regulations	Yes / No
Licence area	Subsections 33(1)(b), 33(4) OEI Act and section 7 OEI Regulations	Yes / No

#### [Eligible Person](#) (section 33 OEI Act)

- 4.3.2 A person must be an eligible person (defined in section 8 OEI Act). Merit-based considerations regarding the person's suitability to hold a licence are in sections 4.4.3–4.4.10 of this Guideline.

#### [Description of the Proposed Commercial Offshore Infrastructure Project](#) (subsection 32(2) OEI Act)

- 4.3.3 The application must describe the proposed commercial offshore infrastructure project for the feasibility licence. Merit-based considerations regarding the proposed project are in sections 4.4.3–4.4.10 of this Guideline.
- Note 1:** The offshore infrastructure project to be carried out under a commercial licence must be substantially similar to the proposed commercial offshore infrastructure project description in the feasibility licence application (section 42 OEI Act).
- Note 2:** A condition may be placed on the grant of a feasibility licence in relation to the type and capacity of the proposed project (subsection 35(2) OEI Act and section 4.10 of this Guideline).

[Licence Area \(subsections 33\(1\)\(b\) and 33\(4\) OEI Act and subsection 7\(1\) OEI Regulations\)](#)

4.3.4 The proposed licence area must:

- (a) Be continuous (one connected area).
- (b) Not include any part of the licence area of any other feasibility licence or commercial licence granted under the OEI Act.
- (c) Not exceed the maximum area stated in the OEI Regulations (see section 7 OEI Regulations).
- (d) Be entirely within the Commonwealth offshore area at the time the licence is granted.
- (e) Be part of a declared area under a current declaration at the time the licence is granted.

4.3.5 Merit-based considerations regarding the licence area are in sections 4.4.3–4.4.10 of this Guideline.

## 4.4 Assessment of Feasibility Licence Application by the Registrar

4.4.1 Applications are assessed by the Registrar and advice is provided to the Minister for decision.

Assessment Criterion	Reference	Assessment
Consistent with any conditions that apply to the declaration	Subsection 33(1)(c) OEI Act and section 9 OEI Regulations	Yes / No
Merit criteria:		
(a) The technical and financial capability to carry out the proposed commercial offshore infrastructure project for the feasibility licence.	Subsection 34(1)(a) OEI Act	Merit-based
(b) The proposed commercial offshore infrastructure project is likely to be viable.	Subsection 34(1)(b) OEI Act	Merit-based
(c) The eligible person is suitable to hold the licence.	Subsection 34(1)(c) OEI Act	Merit-based
(d) Any criteria prescribed by the licensing scheme are satisfied, including that the proposed commercial offshore infrastructure project is in the national interest.	Subsection 34(1)(d) OEI Act and section 25 OEI Regulations	Merit-based

[Conditions that apply to the Declaration \(subsection 33\(1\)\(c\) OEI Act\)](#)

4.4.2 The Minister must be satisfied that granting the feasibility licence would be consistent with any conditions that apply to the declaration.

[Merit Criteria \(section 34 OEI Act and sections 25 and 26 OEI Regulations\)](#)

4.4.3 For a feasibility licence to be granted to an eligible person, the Minister must be satisfied that the licence applied for meets the merit criteria.

4.4.4 For the purposes of the merit criteria, “*likely to have, or be able to arrange to have*” means there is evidence that the criterion has been met or there is a substantial likelihood that it can be met.

4.4.5 The assessment of a feasibility licence application against the merit criteria will reflect the preliminary nature of the proposal. A person will be assessed as to how their proposal meets the merit criteria and the likelihood that the criterion can be met, as demonstrated by the person’s project development plan and identification of the remaining work to be undertaken and risks to be addressed during the proposed licence term prior to progressing to final investment decision (**FID**) and eventual carrying out of the proposed commercial offshore infrastructure project.

**Note:** The grant of a feasibility licence does not guarantee the grant of a commercial licence.

4.4.6 Competitive considerations of higher or lower merit will only apply where there is an overlapping application group. Where there are no overlaps, the Minister will consider whether the licence applied for meets the merit criteria.

[Technical and Financial Capability \(subsection 34\(1\)\(a\) OEI Act and subsection 26\(1\) OEI Regulations\)](#)

4.4.7 The Minister must be satisfied that the eligible person is likely to have, or be able to arrange to have, the technical and financial capability to carry out the proposed commercial offshore infrastructure project for the feasibility licence. The merit-based assessment may consider one or more of the following:

- (a) The technical advice that is or will be available to the person.
- i. This will be an assessment of the quality of advice or expertise that is or will be available to the person in order to be able to carry out the proposed commercial offshore infrastructure project in future.
  - ii. The assessment may also consider:
    - The quality of advice or expertise that is or will be available to the person in assessing the feasibility of the proposed commercial offshore infrastructure project.
    - The role of each identified member of the project team in carrying out the operations and works authorised by the feasibility licence to progress the proposed project towards FID and carrying out the proposed commercial offshore infrastructure project.
    - Any additional technical expertise that is required to carry out the proposed commercial offshore infrastructure project, including how it will be arranged if not already available to the person.
  - iii. At a minimum to carry out the proposed commercial offshore infrastructure project, a person should have, or be able to arrange to have, advice in relation to:
    - Engineering – civil, mechanical, project, electrical/electronic and instrumentation, aerospace/aeronautical, as relevant.
    - Construction, manufacturing, logistics and procurement.
    - Project management, governance and planning/scheduling.
    - Commercial.
    - Environment and work health and safety.
    - Stakeholder engagement.
    - Risk assessment/management and audit, inspection and quality assurance.
  - iv. A person with a project team with demonstrated experience in successfully delivering similar large-scale infrastructure projects in a timely manner would be assessed as higher merit than a person with a project team containing little prior experience in delivering a similar project in a timely manner.
  - v. A person with a project team with demonstrated experience in delivering the preferred technology for the proposed project would be assessed as higher merit than a person with a project team that has little or no experience in delivering the preferred technology.
  - vi. Contracted advice would be assessed as equal merit to in-house advice where a contract of engagement can be provided that demonstrates similar relevant skills or expertise in the contracted project team.
  - vii. A person that has multiple offshore electricity infrastructure project proposals or licences in Australia or internationally will be assessed on its ability to provide resources for each project or licence in a timely manner.
- (b) The financial resources that are or will be available to the person.
- i. This will be an assessment of the financial resources that are or will be available to the person to demonstrate the likelihood of the person being able to carry out the proposed commercial offshore infrastructure project in future.
  - ii. At a minimum, a person should have:
    - Funds in place (in its own accounts) for at least 150% of the estimated cost of the proposed work for the next 12 months of the feasibility licence term.  
**Note 1:** This may include cash or cash equivalents, or committed undrawn debt facilities.  
**Note 2:** A conditional guarantee from another entity that the funds will be available to the person upon the grant of a licence may be considered.
    - A detailed funding plan for how to arrange the financial resources to carry out the proposed commercial offshore infrastructure project, including the remainder of the feasibility licence term showing all funding requirements are likely to be met.
  - iii. A person that has funding in place for the entire feasibility licence term would be assessed as higher merit than a person that has funding in place for only a portion of the licence term and a proposed funding plan for the remainder of the licence term.

- (c) The person's ability to carry out the operations and works that will be authorised by the licence.
  - i. This will be an assessment of whether the technical advice and the financial resources that are or will be available to the person are sufficient to enable the person to carry out the operations and works authorised by the feasibility licence to progress the proposed project towards FID and carrying out the proposed commercial offshore infrastructure project in future.
  - ii. The assessment will consider the person's other project interests in Australia and internationally which may impact upon the person's ability to deliver the proposed commercial offshore infrastructure project proposed in the feasibility licence application within a reasonable time.
- (d) The person's ability to discharge the obligations in relation to the licence that will be imposed by the Act, the OEI Regulations or any other instrument made under the Act.
  - i. This will be an assessment of whether the technical advice and the financial resources that are or will be available to the person are sufficient to enable the person to meet all compliance obligations in relation to the licence, including but not limited to, directions issued under the OEI Act or OEI Regulations, fees and levies.
  - ii. A person that has experienced project team member(s) with designated responsibility for licence compliance would be assessed as higher merit than a person that does not.
- (e) Any other matters the Minister considers relevant.

**Project Viability (subsection 34(1)(b) OEI Act and subsection 26(2) OEI Regulations)**

4.4.8 The Minister must be satisfied that the proposed commercial offshore infrastructure project is likely to be viable. The merit-based assessment may consider one or more of the following:

- (a) The complexity of the project.
  - i. This will be an assessment of the technical viability of delivering the proposed project and whether the feasibility activities are likely to address the technical risks and uncertainties of the proposed project to support a timely FID.
  - ii. The assessment will consider key risks and uncertainties that need to be resolved for a positive FID on the proposed project and the potential for the feasibility activities to address these, including where relevant:
    - Site- and resource-considerations such as geotechnical and geophysical uncertainties, hydrographic and soil/seabed considerations, metocean conditions, climatology and resource assumptions (yield, variability).
    - Technology and infrastructure considerations such as engineering requirements, potential infrastructure options, technological advances and installation requirements.
    - Supply chain assumptions such as availability and capability of support services for the proposed project and supply of project components (global and local).
  - iii. At a minimum, a person should have a robust comprehensive project development plan that outlines the key risks and uncertainties and the activities to be undertaken during the feasibility licence term and explains how these activities will support a timely FID on the proposed project. If the proposed project is phased, the assessment will consider the drivers for delivery of each phase.
  - iv. A person is expected to address any conditions on the declared area that may apply to the proposed project.
  - v. A person that demonstrates the complexities of the proposed project are likely to be resolved through the feasibility activities, supported by the project development plan, would be assessed as higher merit than a person with poorly defined feasibility activities or an inadequate project development plan.
  - vi. A person that identifies the specific complexities to be considered relevant to the proposed licence area would be assessed as higher merit than a person that provides a general discussion of common site considerations.



(b) The route-to-market for the project.

- i. This will be an assessment of the person's preferred option for supply or transmission of the electricity and/or renewable energy products that would be generated by the proposed project and the likelihood of the option becoming viable during the licence term to support a timely FID on the proposed project.
- ii. The assessment will consider the person's plans and schedules to investigate this potential route-to-market in a timely manner, including plans for addressing future grid connection agreements and end user/offtake agreements, where relevant.
- iii. At a minimum, a person should identify offtake/supply options that will be considered during the feasibility licence term and the uncertainties to be resolved for each option.
- iv. A person with a comprehensive project development plan and risk assessment identifying how to achieve their preferred route-to-market approach would be assessed as higher merit than a person who provides general discussion of potential route-to-market options.

(c) The estimated commercial return to the licence holder.

- i. This will be an assessment of the likelihood of the proposed project meeting the person's commercial conditions for a positive FID. As commercial conditions are specific to each person and may differ between entities in the person's corporate structure, there are no standard conditions or threshold values for this assessment.
- ii. The assessment will consider commercial complexities that need to be addressed to progress the proposed project from feasibility stage to FID. This may include investor milestones, funding targets beyond feasibility activities and/or access or proximity agreements, where relevant.
- iii. The assessment will consider the reasonableness of proposed financing methods, project construction schedules, commercial and economic assumptions, cost and price estimates, annual energy production forecasts and before and after tax cashflows. Base, low and high case scenarios will be assessed. Project economics are understood to be preliminary at this stage. Cost and price estimates will be benchmarked with reference to industry standards.
- iv. Likelihood will be assessed as the potential to resolve commercial barriers and refine uncertainty ranges for significant variables, and the appropriateness of the project development plan. A person that demonstrates the proposed project is likely to achieve a positive FID would be assessed as higher merit than a person that is unable to do so.
- v. A person with a project development plan containing activities to resolve uncertainties around key variables will be assessed as higher merit than a person with a project development plan where these activities are poorly defined.

**Note:** Uncertainty ranges around estimates of key variables are expected to be refined and commercial agreements are expected to progress towards finalisation as work is undertaken during the feasibility licence term. The results of the work and updated project economics should be provided in annual licence reports.

- vi. A person with a clear pathway to finalising commercial agreements, including evidence of agreements to be negotiated, would be assessed as higher merit than a person with a general understanding of the relevant commercial agreements or poorly defined activities to resolve these issues.

(d) Any other matters the Minister considers relevant, which might include:

- i. Consenting requirements and stakeholder consultation: This will be an assessment of the person's identified environmental, State/Territory and energy regulator consenting requirements for the proposed project (if applicable) and identified stakeholders/users likely to be impacted by the proposed project, and the person's plans and schedules to address these to obtain the consents and agreements required for FID in a timely manner.
- ii. A person that has commenced EPBC Act referral processes before being granted a feasibility licence would not be assessed as higher merit as this is one of the consenting activities that should be undertaken during the feasibility licence term.

Suitable to Hold the Licence (subsection 34(1)(c) OEI Act and subsection 26(3) OEI Regulations)

4.4.9 The Minister must be satisfied that the eligible person is suitable to hold the licence. The merit-based assessment may consider one or more of the following:

- (a) The person’s (body corporate and its key officers) past performance in offshore infrastructure projects, or other large infrastructure projects, in Australia or internationally.
  - i. Past performance and conduct of the person (body corporate and its key officers) refers to compliance matters and financial performance in similar operating environments in Australia or internationally.
  - ii. The Minister may choose not to offer a licence to a person if the person’s past performance or conduct indicates a history of non-compliance with relevant legislation or the person has been declared bankrupt, insolvent, had their affairs placed in administration, has been disqualified from managing a company, or has been found guilty of certain offences.
  - iii. A disclosure of past misconduct will not necessarily result in an assessment that the eligible person is not suitable to hold a licence. The assessment will have regard to the disclosures in the context of the application in its entirety to determine what relevance they bear to the suitability of the person regarding the particular licence for which they have applied.
  - iv. The assessment of the person’s (and any of the entities in its Corporate Structure that it is relying on) past performance will include an assessment of the experience of the person in prior and current offshore infrastructure or large-scale infrastructure projects of a similar size to that proposed in the feasibility licence application.
  - v. The assessment may consider the person’s (and any of the entities in its Corporate Structure that it is relying on) experience in successfully delivering feasibility works in prior project(s) in a timely manner and how the feasibility activities addressed risks and uncertainties to progress the prior project(s) to a positive FID.
  - vi. A person that has experience in delivering similar-scale infrastructure projects, or has technical advice from personnel with this experience, would be assessed as higher merit than a person with little prior comparable project delivery experience or which is unable to satisfactorily justify delays in prior project delivery.
- (b) The person’s past financial performance.
  - i. A person should meet **at least one** of the criteria in **Table 1**. Where appropriate this assessment may consider the financial performance of any entity in the person’s Corporate Structure or any entity providing financial resources to the person and will apply in aggregate across these entities.

Criteria Previous Three-Year Average	Feasibility Licence Requirements (USD)
Annual turnover	> \$300 million
Net assets	> \$100 million
Cash at bank	> \$300 million
Assets / funds under management	> \$500 million
Undrawn debt facilities	> \$300 million

Table 1. Financial performance criteria previous three-year average of person or controlling/funding entity.

- (c) The person’s corporate governance arrangements, including the relevant Board’s size, collective skills and experience to operate an offshore infrastructure project.
  - i. Corporate governance arrangement refers to the structure and oversight of the person and may take into account how the person has been established including transparency, chain of command and responsibilities and relevant skills and experience of the Board.

- ii. At a minimum, a person should be implementing the principles of a recognised corporate governance code and have:
    - An appropriately sized Board with the skills, commitment and knowledge of the entity and industry in which it operates.
    - Clearly defined roles and responsibility of the Board and Management with a regular review process.
    - A sound risk management framework.
  - iii. A person who meets the benchmarks in section 4.4.9(c) of this Guideline and has appropriate audit processes to verify the integrity of corporate reports would be assessed as higher merit than a person who meets only some of the benchmarks in section 4.4.9(c) of this Guideline or is relying on the corporate governance standard of an entity in its Corporate Structure to meet the benchmarks.
- (d) Any other matters the Minister considers relevant.

**National Interest (subsection 34(1)(d) OEI Act and sections 25 and 26(4) OEI Regulations)**

4.4.10 The Minister must be satisfied that the proposed commercial offshore infrastructure project for the licence is in the national interest. The merit-based assessment may consider one or more of the following:

- (a) The project’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.
  - i. This will be an assessment of the forecast socio-economic benefits of the proposed project should it proceed to a commercial licence. It may consider current assumptions and forecasts relating to benefits to the broader economy, potential jobs creation, regional development, Australian content, potential contribution to electricity grid supply, energy security, emissions reduction assumptions and/or benefits to international relations, where relevant.
 

**Note 1:** Assumptions and forecasts are expected to be preliminary and should be updated during the feasibility licence term through annual licence reports.

**Note 2:** Assumptions and forecasts provided in the feasibility licence application will be reviewed during the assessment of any future commercial licence application to ascertain the realised impact and contribution of the project to the economy and the community.

**Note 3:** Local communities means the communities that are located adjacent to or in close proximity to the proposed licence area.
  - ii. A person that can demonstrate through their project development plan that there is a likely future benefit to the Australian economy and local community would be assessed as higher merit than a person that is unable to do so.
- (b) National security.
  - i. This will be an assessment of whether the proposed project has the potential to impact negatively on national security.
  - ii. The assessment is separate to any assessment by the Foreign Investment Review Board.
- (c) Whether the project is likely to be delivered within a reasonable time.
  - i. This will be an assessment of how efficiently the person is planning to deliver the proposed project, supported by a robust comprehensive project development plan, as the most efficient delivery is preferred.
  - ii. The assessment will consider whether the project is proposed to be delivered in phases, the timing of the projected phasing and the drivers for delivery of each phase.
  - iii. A person that appropriately demonstrates they are capable of delivering the proposed project in the most timely and efficient manner, supported by a robust comprehensive project development plan, would be assessed as higher merit than a person which is reliant upon uncertain drivers to justify proceeding to FID.

- iv. A person that has multiple offshore electricity infrastructure project proposals or licences in Australia or internationally will be assessed on its ability to deliver the proposed project under the licence taking into account all of the proposed and current projects and licences in the portfolio.
- (d) Whether the project is likely to make efficient use of the licence area.
- i. This will be an assessment of the proposed licence area against the proposed generation capacity of the proposed project to ensure the most efficient use of the Commonwealth seabed area.
  - ii. The assessment will consider the factors to be taken into account in determining the proposed infrastructure layout, including spacing, and the person's justification for the operational area.
  - iii. A person that proposes a 2 GW project in a 500 km<sup>2</sup> licence area would be assessed as higher merit than a person that proposes a 1 GW project in a 500 km<sup>2</sup> licence area unless specific area restrictions apply to the licence area.
  - iv. Where a project is proposed to be delivered in phases, for comparative purposes the efficiency of use of the licence area in each phase will be considered along with the drivers for delivery of each phase.
  - v. A person that appropriately identifies the factors to be considered for infrastructure layout with respect to the characteristics of the proposed licence area would be assessed as higher merit than a person that provides a general discussion of layout considerations without demonstrating appropriate application to the proposed licence area.
- (e) Conflicts that might arise with other uses or users of the licence area and the person's proposed measures and actions to investigate and mitigate such conflicts.
- i. This will be an assessment of whether the proposed project is likely to be incompatible with other uses or users of the licence area or adjacent marine environment including Defence, shipping, aviation, fishing, native title, local communities, oil and gas, greenhouse gas and other offshore electricity infrastructure licences, where relevant.
  - ii. The person's proposed measures and actions to investigate and mitigate such conflicts will also be assessed. A person should be able to demonstrate that they have identified relevant stakeholders and have a plan to manage and resolve any conflicts.
- (f) Any other matters the Minister considers relevant.

[Overlap with Other Offshore Electricity Infrastructure Licence Areas](#) (subsection 10(4) OEI Regulations)

- 4.4.11 If an application for a feasibility licence covers an area that is covered by an existing offshore research and demonstration or transmission and infrastructure licence, the person should have consulted with the existing licence holder prior to applying for the feasibility licence. If this is not done to an appropriate standard as evidenced in the application, a submission will be invited from relevant existing licence holder(s) as appropriate. This will extend the assessment process by a minimum of 30 days.
- 4.4.12 The Registrar may notify the holder of the existing licence of the name of the applicant; the proposed licence area of the feasibility licence; and the kind of project that the applicant proposes to carry out in the proposed licence area.

**4.5 Request for Further Information from the Registrar** (section 41 OEI Regulations)

- 4.5.1 For the purposes of advising the Minister in relation to an application, the Registrar may request additional information or clarify any aspect of the application through a written request for further information (**RFI**) issued to the person. The RFI will specify the information that needs to be provided by the person and the manner and timeframe for submission of the RFI response.
- 4.5.2 If further information is requested and not submitted within the specified timeframe, the Minister may, by written notice given to the person, refuse to consider or take any further action in relation to the application. The application fee will not be refunded. A person will need to re-apply under the licensing scheme if it wishes to proceed with its proposed project.

## 4.6 Decision-Making (section 42 OEI Regulations)

- 4.6.1 When sufficient information has been provided by the person, the Registrar will prepare advice for the Minister and recommend whether a feasibility licence should be offered to the person. The advice may recommend conditions to be placed on the licence and reasons for the conditions (see section 4.10 of this Guideline).
- 4.6.2 In considering an application for a licence, the Minister must have regard to any information, assessment, analysis, report, advice or recommendation in relation to the application given to the Minister by the Registrar.
- 4.6.3 The Minister will make a decision and advise the Registrar of the decision.

## 4.7 Overlap of Feasibility Licence Application Areas (sections 11-16 OEI Regulations)

- 4.7.1 If two or more applications for a feasibility licence made in response to the same invitation overlap, in that they cover wholly or partly the same area, the Registrar will assess the applications against the merit criteria in subsection 11(3) of the OEI Regulations then advise the Minister of the assessment.

**Note 1:** If an application is not considered to be of equal merit under subsection 11(3) of the OEI Regulations, the Minister may refuse the application which is of lesser merit.

- 4.7.2 If the Minister considers there is a group of applications that are of equal merit, and:
  - (a) Each application in the group overlaps at least one other application in the group; and
  - (b) The licence areas proposed by all of the applications in the group (including parts of those areas that overlap, and parts that do not overlap) together form a continuous area; and
  - (c) The Minister is satisfied that, if not for the overlap(s), a feasibility licence could be offered in response to each of the applications in the group;

the Minister may determine that these applications form an overlapping application group under section 11 of the OEI Regulations. The Registrar will notify the applicants in writing that the determination has been made and invite the applicants to revise and resubmit their applications to remove the overlap.

- 4.7.3 The notice and invitation must set out, for each other applicant whose application overlaps the applicant's application, the area(s) of overlap; and the name of the other applicant; and the kind of project that the other applicant proposes to carry out. The notice and invitation may include such other information as the Registrar considers reasonable about the applications and other applications that cover areas adjacent to, or nearby, the area covered by the applicant's application.
- 4.7.4 The notice and invitation must specify the date on or before which an application, as revised, must be resubmitted, and must inform the applicant that any revised application must be in accordance with section 13 of the OEI Regulations.
- 4.7.5 An applicant who revises its application in response to the invitation is not required to pay an additional fee for revising or resubmitting the application.
- 4.7.6 If an applicant revises and resubmits an application in response to the invitation, and the revised application is in accordance with section 13 of the OEI Regulations and meets the submission requirements in subsection 12(4) of the OEI Regulations, the resubmitted application replaces the original application and the original application will be disregarded.
  - Note 1:** The revised application must be, so far as is reasonably possible, substantially similar to the original application.
  - Note 2:** The revised application must not overlap with any other application for a feasibility licence, including other applications that are not in the overlapping application group.
  - Note 3:** If as a result of the resubmission the overlap is resolved, refer to the Offer section of this Guideline.

- 4.7.7 If the Registrar has invited two or more applicants from an overlapping application group to revise and resubmit their applications under subsection 12(2) of the OEI Regulations and the day specified in the notice has passed, the Minister may determine that a group of two or more of the applications forms a financial offer group if:
- (a) Each application in the group overlaps at least one other application in the group; and
  - (b) The licence areas proposed by all of the applications in the group (including parts of those areas that overlap, and parts that do not overlap) together form a continuous area; and
  - (c) The Minister is satisfied that, if not for the overlap(s), a feasibility licence could be offered in response to each of the applications in the group.

#### Feasibility Licences – Financial Offers (sections 15 and 16 OEI Regulations)

- 4.7.8 If the Minister determines that a group of two or more applications for feasibility licences forms a financial offer group, the Minister may, in writing, invite the applicants to submit financial offers in relation to their applications.
- 4.7.9 The invitation to submit a financial offer must include information on how the offers are to be made, specify the day on or before which the offers must be made, require the applicants to substantiate their ability to pay amount offered and set out the effect of section 16 of the OEI Regulations. The invitation may specify other requirements to be addressed in the submission of the financial offer.
- 4.7.10 A financial offer will only be accepted if it has been invited by the Minister (subsection 32(3) OEI Act). Unsolicited financial offers will be rejected.
- 4.7.11 A financial offer in relation to an application for a feasibility licence must be made in writing to the Registrar, on or before the day specified in the invitation, and must address any other requirements specified in the invitation. The Registrar will advise the Minister of the financial offers after the day specified in the invitation has passed.
- Note:** For the purposes of subsections 16(2) and 16(3) of the OEI Regulations, an applicant that does not submit a financial offer in response to the invitation will be treated as having submitted a financial offer of nil.
- 4.7.12 The Minister may only offer to grant a feasibility licence to the applicant that has submitted the highest financial offer out of the applications in the financial offer group.
- Note:** Once the Minister has offered a feasibility licence in this manner, it may be possible for the Minister to offer further feasibility licences to applicants who submitted lower financial offers under the process set out in subsection 16(5) of the OEI Regulations.
- 4.7.13 If there is no single highest offer because two or more applicants have submitted equal financial offers, the Minister may:
- (a) If a tied applicant's application does not overlap any other tied applicant's application, offer to grant a feasibility licence to that tied applicant.
  - (b) If the tied applicants' applications overlap each other, invite the tied applicants to submit increased financial offers and, if this invitation does not result in a single highest financial offer, offer to grant a feasibility licence to any of the tied applicants as the Minister thinks fit.

#### **4.8 Offer to Grant a Feasibility Licence (section 27 OEI Regulations)**

- 4.8.1 If the Minister decides to grant a feasibility licence to a person, a written offer will be given to the person by the Minister or by the Registrar on behalf of the Minister.
- 4.8.2 The offer must specify the feasibility licence area, the day that the licence would come into force if the offer is accepted, the end day of the licence, the conditions that would apply to the licence, the day on or before which the offer must be accepted and the method for accepting the offer.
- Note:** For a feasibility licence, the offer must specify the day on or before which amounts of the financial offer (if any) must be paid to the Commonwealth if the applicant accepts the offer.
- 4.8.3 If the offer is not accepted by the day specified, the applicant's application for the licence will lapse. The application fee will not be refunded.

- 4.8.4 In relation to an overlapping application group, if a person receives an offer for the grant of a feasibility licence and declines the offer, the Minister may make an offer to the second ranked person, where applicable.

#### 4.9 Grant of Feasibility Licence (section 33 OEI Act and section 28 OEI Regulations)

- 4.9.1 If the offer is accepted by the person in the manner and by the day specified in the offer, the licence will be granted to the person. The notice of grant of the licence will be given to the person by the Minister or by the Registrar on behalf of the Minister.

**Note:** If an applicant for a feasibility licence submits a financial offer in relation to the application, the Minister may only grant the feasibility licence to the applicant if the amount of the financial offer has been paid to the Commonwealth.

- 4.9.2 A feasibility licence granted as a result of the acceptance of an offer under section 27 of the OEI Regulations must be consistent with the details set out in the offer.
- 4.9.3 The notice of grant must specify the licence area, the start day and end day of the licence, the conditions that are to apply to the licence and any other matters prescribed by the licensing scheme. It must be given in accordance with the licensing scheme.
- 4.9.4 The licence comes into force on the day on which it is granted, or a later day as specified in the notice of grant.
- 4.9.5 A record of the notice of grant must be entered in the Register of Licences (see **Part 6** below).

##### End Day of a Feasibility Licence (section 36 OEI Act)

- 4.9.6 The end day will be stated in the notice of grant and may be extended (see **Part 5** below).
- 4.9.7 The end day is calculated from the start day of the licence and includes all calendar days.
- 4.9.8 If a commercial licence is granted in relation to a feasibility licence, and the licence area of the commercial licence is the whole of the feasibility licence area (including any vacated area), the feasibility licence ceases to have effect when the commercial licence takes effect.
- Note:** If the licence area of the commercial licence is not the whole of the licence area of the feasibility licence, the end day of the feasibility licence in respect of the whole of the licence area of the feasibility licence is the day the commercial licence comes into force. The feasibility licence may be surrendered under section 74 of the OEI Act if the conditions for surrender are satisfied.
- 4.9.9 On or after the end day of a feasibility licence, the licence does not authorise the construction, installation, operation or maintenance of offshore renewable energy infrastructure except to the extent necessary to decommission infrastructure.

#### 4.10 Conditions on a Feasibility Licence (section 35 OEI Act)

- 4.10.1 Licence holders must comply with the conditions of the licence including:
- (a) Any conditions on the licence as stated in the OEI Act including:
    - i. To pay an amount of offshore electricity infrastructure levy.
    - ii. To comply with any conditions on the declared area that apply to the licence area.
    - iii. To comply with any conditions prescribed by the licensing scheme.
    - iv. That the licence holder, or any other person carrying out activities on behalf of the licence holder, complies with the management plan for the licence.
    - v. To comply with any conditions imposed on the licence in the notice of grant.
  - (b) Any reporting requirements in the OEI Regulations.
- 4.10.2 The Minister may, when granting a feasibility licence, impose such conditions on the licence as the Minister thinks fit (subsection 35(2) OEI Act). Examples of conditions may include:
- (a) Compliance with the provisions of the OEI Act, OEI Regulations, OEI Levies Regulations and any other instrument made under the OEI Act.
  - (b) Compliance with the type of offshore infrastructure project proposed in the application.

*Example: A condition may be placed on the grant of a feasibility licence requiring the licence holder to assess the feasibility of a 1 GW fixed offshore wind farm project in the licence area. This will enable the Registrar to monitor compliance with the merit criteria; monitor the requirement for the licence holder to commence activities under the licence within a reasonable time; assess the ability of a future transferee to undertake the obligations of the licence; and assess a future commercial licence application in relation to the 'substantially similar' criterion. If a licence holder wishes to change the type of proposed commercial offshore infrastructure project, a variation of the licence conditions may be required.*

(c) Reporting requirements.

#### **4.11 Refusal of Feasibility Licence Application**

4.11.1 The grounds the Minister may take into account for refusing to offer to grant a feasibility licence include, but are not limited to:

- (a) The application does not meet the OEI Act or the OEI Regulations.
- (b) The application does not meet the application requirements.
- (c) The Minister is not satisfied the licence applied for meets the merit criteria.

4.11.2 Written notice of refusal will be provided to the person by the Minister or by the Registrar on behalf of the Minister.



## 5. Licence Administration

### 5.1 Extension of a Licence Term (sections 37, 47, 56 and 65 OEI Act)

5.1.1 A licence holder may apply under the licensing scheme to extend the term of the licence beyond its end day. More than one extension may be granted in respect of a particular licence.

5.1.2 Upon receipt of an application, the Registrar will screen the application to check it meets the minimum application submission requirements in the OEI Act and OEI Regulations.

Application Screening	Reference	Assessment
Application made in the approved manner and form	Subsection 30(2) OEI Regulations	Yes / No
Payment of application fee (for fee amount see section 45 of the OEI Regulations)	Section 46 OEI Regulations	Yes / No
For a licence other than a commercial licence, be made before the end day of the licence	Subsection 30(2) OEI Regulations	Yes / No
For a commercial licence, be made at least 5 years before the end day of the licence	Subsection 30(2) OEI Regulations	Yes / No
Be accompanied by any other information or documents required by the approved form	Subsection 30(2) OEI Regulations	Yes / No

5.1.3 Applications are assessed by the Registrar and advice is provided to the Minister for decision.

Assessment Criterion	Reference	Assessment
For a feasibility licence, commercial licence or research and demonstration licence, the extension must not apply to any part of a licence area that is not a declared area at the time the extension is granted	Sections 37, 47 and 56 OEI Act	Yes / No
For a feasibility licence, the extension must not result in the end day of a feasibility licence being later than the day after the end of 7 years after the extension is made	Section 37 OEI Act	Yes / No
For a commercial licence, the extension must not result in the end day of a commercial licence being later than the day after the end of 40 years after the extension is made	Section 47 OEI Act	Yes / No
For a research and demonstration licence, the extension must not result in the end day of a research and demonstration licence being later than the day after the end of 10 years after the extension is made	Section 56 OEI Act	Yes / No
For a transmission and infrastructure licence, the extension must not apply to any part of a licence area that is not in the Commonwealth offshore area at the time the extension is granted	Section 65 OEI Act	Yes / No

5.1.4 The Registrar may seek additional information or clarify any aspect of the application through a RFI issued to the person.

5.1.5 For a feasibility licence or a research and demonstration licence, the Minister may extend the end day of the licence on the Minister's own initiative (subparagraphs 37(1)(a)(ii) and 56(1)(a)(ii) OEI Act).

5.1.6 If the Minister extends the end day of a licence, the licence holder will be given written notice of the extension by the Minister or by the Registrar on behalf of the Minister.

5.1.7 The extension must be recorded in the Register of Licences (see **Part 6** below).

5.1.8 Except for transmission and infrastructure licences, which may be non-continuous, an extension of the end day may be in respect of the whole licence area or part of the licence area provided the part is continuous.

5.1.9 An extension of the end day does not affect the date for payment of annual levies and does not change the reporting date for annual licence reports.

## 5.2 Variation of a Licence (sections 38, 48, 57 and 66 OEI Act)

5.2.1 A licence holder may apply under the licensing scheme to vary a licence to impose a condition on the licence, to vary or revoke a condition imposed on the licence, or remove one or more areas from the licence area.

5.2.2 Upon receipt of an application, the Registrar will screen the application to check it meets the minimum application submission requirements in the OEI Act and OEI Regulations.

Application Screening	Reference	Assessment
Application made in the approved manner and form	Subsection 31(1) OEI Regulations	Yes / No
Payment of application fee (for fee amount see section 45 of the OEI Regulations)	Section 46 OEI Regulations	Yes / No
Be accompanied by any other information or documents required by the approved form	Subsection 31(1) OEI Regulations	Yes / No

5.2.3 Applications are assessed by the Registrar and advice is provided to the Minister for decision.

Assessment Criterion	Reference	Assessment
The licence may be varied to: (a) Impose a condition on the licence; or (b) Vary or revoke a condition imposed on the licence; or (c) Remove one or more areas from the licence area.	Sections 38, 48, 57 and 66 OEI Act	Yes / No
An area may be removed only if: (a) The licence holder has not carried out any offshore infrastructure activities in the area; and (b) The Minister is satisfied that the licence holder does not intend to carry out any offshore infrastructure activities in the area under the licence; and (c) For a feasibility licence, commercial licence and research and demonstration licence, the removal does not result in the remaining licence area being non-continuous	Subsections 38(4), 48(4) and 57(4) and 66(4) OEI Act	Yes / No

5.2.4 The Registrar may seek additional information or clarify any aspect of the application through a RFI issued to the person.

5.2.5 The Minister may vary a licence on the Minister's own initiative (subsections 38(3), 48(3), 57(3) and 66(3) OEI Act).

5.2.6 A variation made on the Minister's own initiative may only be done where the Minister:

- (a) At the same time, extends the end day of a licence as a result of an application by the licence holder ("*variation + extension*"); or
- (b) At the same time, decides to transfer the licence under subsection 70(1) of the OEI Act ("*variation + transfer*"); or
- (c) At the same time, makes another variation as a result of an application by the licence holder ("*variation*"); or
- (d) The Minister becomes aware that there has been a change in control of the licence holder and the variation is made by the Minister in connection with that change in control ("*variation + change in control*").

5.2.7 If the Minister varies a licence, the licence holder will be given written notice of the variation by the Minister or by the Registrar on behalf of the Minister.

5.2.8 The variation must be recorded in the Register of Licences (see **Part 6** below).

5.2.9 A variation of a licence does not affect the date for payment of annual levies and does not change the reporting date for annual licence reports.

### 5.3 Cancellation of a Licence (section 73 OEI Act)

- 5.3.1 Licence holders are expected to ensure all obligations under the OEI Act, the OEI Levies Act, the associated OEI Regulations, any directions under the OEI Act and all licence conditions are met at all times.
- 5.3.2 A licence may be cancelled under section 73 of the OEI Act if any of the grounds for cancellation arise. These include:
- (a) The licence holder fails to comply with a condition of the licence.
  - (b) The licence holder has contravened a provision of the OEI Act or the applied WHS provisions.
  - (c) The licence does not meet the merit criteria.
  - (d) The licence holder has failed to commence activities under the licence within a reasonable time.
  - (e) The licence holder is not an eligible person.
  - (f) A person has contravened the change in control provisions in relation to the licence.
- 5.3.3 For the purposes of the cancellation provisions, a “reasonable time” will be assessed on a case-by-case basis and may consider the size and scale of the project.
- 5.3.4 The Registrar will monitor a licence holder’s compliance with the licence obligations. In particular, licence holders should be aware of the importance of maintaining compliance with the merit criteria and the eligible person criterion while the licence is in force.
- 5.3.5 If a ground for cancellation arises, the Registrar will advise the Minister of the circumstances. Before the Minister decides to cancel a licence, the licence holder will be given a written notice of intention to cancel the licence by the Minister or by the Registrar on behalf of the Minister.
- 5.3.6 The notice of intention to cancel will set out the ground(s) for cancelling the licence, invite the licence holder to make a written submission about the proposed decision to cancel and specify a manner and timeframe for making the submission. Licence holders will be given at least 30 days to make the written submission. The Minister may give a copy of the notice to such other persons (if any) as the Minister thinks fit.
- 5.3.7 In deciding whether to cancel a licence, the Minister must take into account:
- (a) Any submissions made by the licence holder or persons who have been given a copy of the notice of intention to cancel.
  - (b) Any action taken by the licence holder to address the circumstances that give rise to the ground(s) for cancelling the licence, or prevent the recurrence of similar circumstances.
- 5.3.8 The licence holder will be notified in writing if the Minister decides to cancel the licence.
- 5.3.9 A cancellation takes effect on the day a notice of cancellation is published on the Federal Register of Legislation. A copy of the notice of cancellation will be placed on the Register of Licences (see **Part 6** below).

### 5.4 Surrender of a Licence (section 74 OEI Act)

- 5.4.1 A licence holder may apply at any time for consent to surrender the licence under section 74 of the OEI Act in respect of an area that is the whole or a part of the licence area.
- 5.4.2 A licence holder is required to decommission all infrastructure in the licence area before applying to surrender the licence (subsection 74(3) OEI Act).
- 5.4.3 Upon receipt of an application, the Registrar will screen the application to check it meets the minimum application submission requirements in the OEI Act and OEI Regulations.

Application Screening	Reference	Assessment
Application made in writing	Subsection 74(1) OEI Act	Yes / No
Payment of application fee (for fee amount see section 45 of the OEI Regulations)	Section 46 OEI Regulations	Yes / No

5.4.4 Applications are assessed by the Registrar and advice is provided to the Minister for decision.

Assessment Criterion	Reference	Assessment
Application specifies the surrender area	Subsection 74(2) OEI Act	Yes / No
Application sets out the reasons for the surrender	Subsection 74(2) OEI Act	Yes / No
Application sets out how each of the requirements of subsection 74(3) of the OEI Act have been met	Subsection 74(2) OEI Act	Yes / No

5.4.5 Under subsection 74(3) of the OEI Act, the Minister must consent to the surrender if:

- (a) The licence holder has paid all fees and amounts due and payable under the OEI Act or the OEI Levies Act, or has made arrangements for the payment of those fees and amounts that are satisfactory to the Regulator (for a fee charged by the Regulator on behalf of the Commonwealth) or to the Registrar (for any other amount); and
- (b) The licence holder is in compliance with all of the conditions of the licence; and
- (c) The licence holder is in compliance with any other obligations under the OEI Act in relation to the licence or the surrender area; and
- (d) If there is a management plan for the licence, the licence holder is in compliance with any requirements that, under the management plan, must be complied with for the licence to be surrendered; and
- (e) The licence holder has either, to the satisfaction of the Regulator, removed or caused to be removed from the surrender area all equipment or other property brought into the surrender area by any person engaged or concerned in the activities authorised by the licence, or made arrangements that are satisfactory to the Regulator in relation to that equipment or property; and
- (f) The licence holder has, to the satisfaction of the Regulator, made good any damage to the seabed or subsoil, or any other environmental damage, in the Commonwealth offshore area (whether inside or outside the surrender area) caused by any person engaged or concerned in the activities authorised by the licence; and
- (g) For a feasibility licence, commercial licence or research and demonstration licence, if the surrender area is a part of the licence area, the remaining licence area would be continuous.

5.4.6 The Registrar may seek additional information or clarify any aspect of the application through a RFI issued to the person.

5.4.7 If the Minister gives consent to the surrender, the licence holder will be given written notice of the consent by the Minister or by the Registrar on behalf of the Minister.

5.4.8 Following receipt of the notice of consent, the licence holder may, by written notice to the Registrar accompanied by the notice of the Minister’s consent, surrender the licence in respect of the surrender area.

5.4.9 The surrender takes effect when the notice of surrender is registered on the Federal Register of Legislation. A copy of the notice of surrender will be placed on the Register of Licences.

- (a) If the surrender relates to the whole of the licence area, the licence ceases to be in force when the notice of surrender is registered on the Federal Register of Legislation.
- (b) If the surrender relates to part of the licence area, that part ceases to be part of the licence area when the notice of surrender is registered on the Federal Register of Legislation.

5.4.10 If the licence holder has submitted a consent to surrender application before the end of the levy year, and the licence is wholly or partly surrendered after entering the next levy year, the licence holder may be eligible for a refund of levies.

- (a) If the whole licence area is surrendered, the entire amount of the applicable levy amount will be refunded.
- (b) If part of the licence area is surrendered, a pro rata refund will be made, if applicable.
- (c) It is the Registrar’s policy to process refunds after the surrender has been registered on the Federal Register of Legislation.

(d) In other instances when a licence is surrendered within a levy year and no additional levy has been imposed, the licence holder is not eligible for a refund.

5.4.11 Licence holders may choose to submit the final licence report in support of the surrender application. If the final licence report is not submitted with the surrender application, the final licence report is still required to be given to the Registrar within 30 days after the end of the licence term (section 33 OEI Regulations) and must relate to the activities of the licence holder during the period that begins on the most recent anniversary date of the licence and ends at the end of the licence term.

## **5.5 Procedural Fairness**

5.5.1 Section 43 of the OEI Regulations provides that procedural fairness may apply to certain applications where a decision-maker proposes to make a decision to refuse an application:

- (a) A decision by the Minister not to offer to grant a licence (other than a feasibility licence); or
- (b) A decision by the Minister not to extend the end day of a licence; or
- (c) A decision by the Minister not to vary a licence; or
- (d) A decision by the Minister not to transfer a licence; or
- (e) A decision by the Minister not to consent to the surrender of a licence; or
- (f) A decision by the Registrar not to approve a change in control of a licence holder.

5.5.2 The decision-maker must give the person written notice of the proposed decision (subsection 43(3) OEI Regulations). The notice must set out the decision-maker's reasons for the proposed decision and invite the person to make a written submission about the proposed decision and specify the period within which the submission must be made (subsection 43(5) OEI Regulations).

5.5.3 Any submission must be given to the Registrar and must be taken into account by the decision-maker in deciding whether to make the proposed decision (subsections 43(7) and (8) OEI Regulations).

5.5.4 If the decision-maker is the Minister, the notice may be given to the person by the Minister or by the Registrar on behalf of the Minister (subsection 43(4) OEI Regulations).

## **5.6 Review of Decisions**

5.6.1 A decision by the Minister under sections 42, 52 and 61 of the OEI Act may be subject to an application for review made to the Administrative Appeals Tribunal (section 297 refers).

## 6. The Register of Licences

- 6.1.1 The Registrar is responsible for keeping the Register of Licences (**Register**). The Register is available for public inspection on the internet.
- 6.1.2 The Registrar must enter a record in the Register for each licence granted under the OEI Act which includes details for the licence as set out in section 163 of the OEI Act. This includes:
- (a) The licence holder's name and ACN or ARBN within the meaning of the Corporations Act.
  - (b) The type of licence and details of the licence area (including a map).
  - (c) The date of grant of the licence and the date the licence comes into force.
  - (d) The end day of the licence.
  - (e) The conditions that apply to the licence.
  - (f) Any other matters that the Registrar thinks appropriate or as prescribed by the OEI Regulations.
- 6.1.3 The Registrar must include a record of the following events in the record for a licence:
- (a) A variation of a licence or the extension of the end day of a licence.
  - (b) The transfer of a licence.
  - (c) A requirement for a person applying for a commercial licence to consult or undertake other activities under section 43 of the OEI Act.
  - (d) A change in the name of the licence holder.
  - (e) An approval of a change in control of a licence holder.
  - (f) The licence reaches its end day.
  - (g) The licence is surrendered in whole or in part.
  - (h) The licence is cancelled.
- 6.1.4 A record for a licence will remain on the Register even if the licence has been surrendered or cancelled or has otherwise ceased.
- 6.1.5 The Register, or a certified extract or copy, is to be received in all courts and proceedings as *prima facie* evidence of all matters required or authorised by the OEI Act to be entered in the Register.
- 6.1.6 The Registrar may alter the Register for the purposes of correcting a clerical error or an obvious defect in the Register.

## 7. Notification Requirements

- 7.1.1 A licence holder is required to provide the Registrar with up-to-date, accurate contact information for notification purposes.
- 7.1.2 If a change in details occurs, a licence holder must give the Registrar written notice, via the form, of the change **before the end of 30 days** after the change occurs. This includes a change in any of the following:
- (a) The licence holder's name or ACN/ARBN within the meaning of the Corporations Act;
  - (b) The address of the registered office of the licence holder within the meaning of the Corporations Act;
  - (c) The licence holder's telephone number or email address.
- 7.1.3 Failure to meet the notification requirements of section 168 of the OEI Act is an offence of strict liability and the person may be liable to a civil penalty.

## 8. Ongoing Compliance Obligations

- 8.1.1 Licence holders are expected to ensure all obligations under the OEI Act, the OEI Levies Act, the OEI Regulations, the OEI Levies Regulations, any directions and all licence conditions are met at all times.
- 8.1.2 The Registrar will monitor a licence holder's compliance with the licence obligations.
- 8.1.3 A licence is subject to a condition that the licence holder give the Registrar or the Minister reports in accordance with section 33 of the OEI Regulations (subsection 33(1) OEI Regulations).

### *Annual Reports*

- 8.1.4 Under subsection 33(2) of the OEI Regulations, a licence holder must give the Registrar annual reports.
- 8.1.5 An annual report for each licence must be given to the Registrar within 30 days after the most recent anniversary of the grant of the licence and be given in the manner and form published on the Registrar's website and be accompanied by any other information or documents required by the approved form (subsection 33(3) OEI Regulations).
- 8.1.6 An annual report must relate to the activities of the licence holder during the **12-month** period immediately before the anniversary (subsection 33(3) OEI Regulations).
- 8.1.7 An annual report must include the items in subsection 33(4) of the OEI Regulations:
  - (a) A description of all work, evaluations and studies carried out in or in relation to the licence area during the reporting period with total expenditure by item and a summary of the results.
  - (b) Details of how the licence has continued to meet, and continues to meet, the merit criteria. This should include any new or updated information (e.g. in relation to the project development plan or project funding plan) or progress against activities from that outlined in the licence application.
  - (c) A summary of anticipated or expected work, evaluations and studies to be carried out in or in relation to the licence area during the next reporting period for the licence, including estimated expenditure and funding.
  - (d) Any other information or documents relating to a condition of the licence.
  - (e) Any other information that the licensee believes is relevant to the licence.

### *Final Reports*

- 8.1.8 Under subsection 33(6) of the OEI Regulations, a licence holder must give the Minister a final report if the licence holder applies under section 74 of the OEI Act for consent to surrender the licence and the licence would cease to be in force if the licence was surrendered.
- 8.1.9 A final report for each licence must be given to the Minister and accompany the surrender application and be given in the manner and form published on the Registrar's website (subsection 33(7) OEI Regulations).
- 8.1.10 A final report must relate to the activities of the licence holder during the period that begins on the most recent anniversary of the grant of the licence and ends on the day before the surrender application is made (subsection 33(7) OEI Regulations).
- 8.1.11 A final report must include the items in subsection 33(8) of the OEI Regulations:
  - (a) A description of all work, evaluations and studies carried out in or in relation to the licence area during the reporting period with total expenditure by item and a summary of the results.
  - (b) Details of how the licence has met the merit criteria.
  - (c) Any other information or documents relating to a condition of the licence.
  - (d) Any other information that the licensee believes is relevant to the licence.

## 9. Transfer of Licence Applications

- 9.1.1 An application for a transfer of a licence must be submitted to the Registrar using the approved form on the Registrar's website. The application may be submitted by either the transferor (the licence holder) or the transferee but may only be made with the agreement of both parties.
- 9.1.2 Upon receipt of a transfer application, the Registrar will screen the application to check that it meets the application submission requirements. For an application to be considered validly made, the Registrar requires:
- (a) The application to be accompanied by any legislatively prescribed documents/information and submitted within any prescribed timeframes; and
  - (b) A correctly executed approved application form to be lodged; and
  - (c) The application fee to be paid.
- 9.1.3 The Registrar may seek additional information or clarify any aspect of the application through a RFI issued to the person.
- 9.1.4 The Minister is the decision-maker on transfer of licence applications under the OEI Act. In relation to an application, the Minister may decide to transfer a licence or refuse to transfer a licence under section 70 of the OEI Act.
- (a) The Registrar will assess the application and make a recommendation to the Minister. The assessment will consider the criteria in section 70 of the OEI Act:
    - i. The Minister is satisfied that the licence would meet the merit criteria if it were held by the transferee; and
    - ii. The Minister is satisfied that the transferee will be able to comply with sections 117 and 118 (financial security), subject to section 72, in relation to the licence; and
    - iii. Any other requirements prescribed by the licensing scheme are satisfied.
  - (b) The Minister will make a decision to transfer the licence or refuse to transfer the licence. Written notice of the decision will be given to the transferor and the transferee by the Minister or by the Registrar on behalf of the Minister.
  - (c) The written notice may mandate the continuance of any financial security obligations of the transferor, either temporarily or until the end of the licence.
- 9.1.5 In making the decision the Minister may consult with the Registrar, Regulator or any other person, and must have regard to any prior assessment by the Registrar.
- 9.1.6 The transfer of a licence takes effect on the date specified in the written notice. A copy of the notice of transfer will be placed on the Register of Licences.
- 9.1.7 Licence holders are reminded of the notification requirements in section 168 of the OEI Act.
- 9.1.8 The transfer of a licence does not affect the end day of the licence and does not affect any conditions that apply to the licence (section 71 OEI Act), although the Minister may at this time choose to vary existing conditions or impose new conditions.



## 10. Change in Control Applications

- 10.1.1 A person who begins to control, or ceases to control, a licence holder may commit an offence or contravene a civil penalty provision if the change in control has not been approved by the Registrar or if it occurs outside an approved window of time.
- 10.1.2 These provisions enable the Registrar to oversee transactions proposing to effect a change in control of a licence holder, in order to ensure that the licence holder's ability to comply with its obligations under the OEI Act will not be adversely impacted.
- 10.1.3 Licence holders are encouraged to engage with the Registrar well before a change in control transaction is anticipated but once sufficient information about the transaction can be shared so as to ensure the engagement is effective.
- 10.1.4 An application should address any change in control transactions that are anticipated to occur within nine months from the anticipated date of approval. Nine months represents a reasonable cut-off point for the approval to be of effect to ensure that information provided with the application for approval of the change in control remains current, while providing the parties to the transaction flexibility in obtaining any other regulatory approvals. Transactions outside of this timeframe will require a separate application.
- 10.1.5 Licence holders should note that approval of a management plan by the Regulator that outlines a future change in control **does not imply** that the future change in control application will be approved by the Registrar.
- 10.1.6 An application for approval of a change in control is to be submitted to the Registrar using the approved form on the Registrar's website. The application may be submitted by a person who proposes to begin to control a licence holder or by a person who proposes to cease to control a licence holder.
- 10.1.7 Upon receipt of a change in control application, the Registrar will screen the application to check that it meets the application submission requirements. For an application to be considered validly made, the Registrar requires:
- (a) The application to be accompanied by any legislatively prescribed documents/information and submitted within any prescribed timeframes; and
  - (b) A correctly executed approved application form to be lodged; and
  - (c) The application fee to be paid.
- 10.1.8 The Registrar may seek additional information or clarify any aspect of the application through a RFI issued to the person.
- 10.1.9 The Registrar is the decision-maker on change in control applications under the OEI Act. The Registrar can either approve or refuse to approve a change in control application.
- 10.1.10 The Registrar may obtain information, documents or evidence in relation to a change in control of a licence holder, or a possible change in control, in certain circumstances.
- 10.1.11 The Registrar may consult with the Regulator or the Minister before deciding whether to approve or refuse to approve a change in control application.
- 10.1.12 In deciding whether to approve or refuse to approve the change in control application, the Registrar must have regard to whether the licence would, if the change in control occurred, meet the merit criteria.
- (a) The Registrar must also have regard to any matters prescribed by the licensing scheme.
  - (b) The Registrar may have regard to any matters raised in any consultations with the Regulator or the Minister, any matters prescribed by the licensing scheme and any other matters the Registrar considers relevant.
- 10.1.13 If the Registrar decides to approve the change in control application, the Registrar must give the person written notice of the approval and, if applicable, return the original instrument to the person.

- 10.1.14 The approval will be given for the approval period as set out in section 85 of the OEI Act, which starts on the day the notice of approval is given and ends at the earliest of the following:
- (a) Immediately after the change in control takes effect;
  - (b) If the approval is revoked, when written notice of revocation is given;
  - (c) Nine months after the date the notice of approval is given.
- 10.1.15 The person must notify the Registrar once the change in control takes effect. This notice must be in writing and provided as soon as practicable but no later than 10 days after the end of the approval period.
- 10.1.16 The change in control will be entered in the Register in the record for the licence, including the date of the change in control application, the date of the decision and the date the change in control takes effect.
- 10.1.17 A person contravenes sections 95, 96 and 97 of the OEI Act if the change in control takes effect without approval or after the approval period for the change in control. Contravention of this section is a ground for cancellation of the licence.
- (a) A person is liable to a civil penalty if the person contravenes subsection 95(1) of the OEI Act unless the Registrar is satisfied that the person did not know, and could not reasonably be expected to have known, that the person has begun to control, or ceased to control, the licence holder.
- 10.1.18 If the Registrar decided to refuse the change in control application, the Registrar must give the person written notice of the refusal.

### **Meaning of Change in Control**

- 10.1.19 As set out in section 84 of the OEI Act, a person controls a licence holder if the person (whether alone or together with one or more persons the person acts jointly with):
- (a) Holds the power to exercise, or control the exercise of, 20% or more of the voting rights in the licence holder; or
  - (b) Holds, or holds an interest in, 20% or more of the issued securities in the licence holder.
- 10.1.20 A person *acts jointly with* another person if the person acts or is accustomed to acting in agreement with, or in accordance with the wishes of, the other person (section 84 OEI Act).
- 10.1.21 As set out in section 84 of the OEI Act, there is a *change in control* of a licence holder if:
- (a) One or more persons (an original controller) control the licence holder at a particular time; and
  - (b) Either (i) one or more other persons begin to control the licence holder (whether alone or together with one or more other persons the person acts jointly with) after that time; or (ii) an original controller (whether alone or together with one or more other persons the person acts jointly with) ceases to control the licence holder after that time.

### **Change in Circumstances During Assessment or Approval Period**

- 10.1.22 If an application is made for approval of a change in control, and there is a change in circumstances of the person either before the Registrar makes a decision on the application or during the approval period for the change in control, the person must notify the Registrar in writing as soon as practicable after the change in circumstances occurs.
- 10.1.23 A change in circumstances means any change in relation to the person that materially affects any of the matters the Registrar must consider under subsection 87(4) of the OEI Act, namely whether the licence would, if the change in control occurred, meet the merit criteria or any other matters prescribed by the licensing scheme.
- 10.1.24 Contravention of section 91 of the OEI Act is a ground for cancellation of a licence and the person is liable to a civil penalty.

### ***Revocation of Approval by the Registrar***

10.1.25 The Registrar may, by written notice, revoke an approval of a change in control of a licence holder in the approval period for the change in control if:

- (a) There is a change in the circumstances of a person who is approved to begin to control the licence holder, or cease to control the licence holder; and
- (b) The Registrar considers it appropriate to revoke the approval.

### ***Failure to Seek Approval of Change in Control***

10.1.26 If a change in control takes effect after the approval period for the change in control has ended or if the Registrar has not approved the change in control, a person should notify the Registrar of the change in control within 30 days of the change taking effect.

10.1.27 Contravention of subsection 96(1) of the OEI Act is a ground for cancellation of the licence.

10.1.28 A person may be liable to a civil penalty if the person contravenes subsection 96(1) of the OEI Act unless the Registrar is satisfied that the person did not know, and could not reasonably be expected to have known, that the person has begun to control, or ceased to control, the licence holder.