

**APPLICATION FOR AUTHORISATION  
SECTION 88(1) OF THE COMPETITION AND CONSUMER ACT 2010 (CTH)**

Lodged by  
The Department of Climate Change, Energy, the Environment and Water

14 March 2024

## **Part 1 – Summary**

This authorisation application is made to the Australian Competition and Consumer Commission by the Department of Climate Change, Energy, the Environment and Water (the **Department**) for the benefit of the Department, the Offshore Infrastructure Registrar (the **Registrar**) and certain Offshore Electricity Infrastructure (**OEI**) applicants for feasibility licences.

### The OEI licensing scheme

1. Offshore wind developers are increasingly recognising the potential of Australia as an emerging market following the commencement of the *Offshore Electricity Infrastructure Act 2021* (Cth) (the **OEI Act**).
2. The OEI Act establishes a regulatory framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of OEI in the Commonwealth offshore area.
3. The OEI Act provides that the construction, installation and operation of offshore electricity generation and transmission infrastructure may only be carried out by persons who hold a licence, granted in accordance with the OEI Act and under the licensing scheme prescribed by the *Offshore Electricity Infrastructure Regulations 2022* (the **OEI Regulations**).
4. The OEI Act provides for four types of licences, in relation to a range of activities and developments:
  - **Feasibility licences**, the purpose of which is to allow a licence holder to assess the feasibility of a proposed offshore infrastructure project (to be undertaken pursuant to a commercial licence, but not a research and demonstration or transmission and infrastructure licence). Activities under a feasibility licence may include undertaking exploratory and scoping work;
  - **Commercial licences**, the purpose of which is to allow the licence holder to carry out an offshore infrastructure project to exploit renewable energy resources – this may include large scale offshore renewable energy infrastructure (e.g., an offshore wind farm with fixed or floating wind turbines);
  - **Research and demonstration licences** for the purpose of undertaking research relating to feasibility or capabilities of a technology, system or process, research relating to exploitation or exploration for renewable energy resources, or to demonstrate the capabilities of a technology, system or process; and

- **Transmission and infrastructure licences** for the purpose of storing, transmitting or conveying electricity or a renewable energy product, or assessing the feasibility of doing so in or through a licence area.

#### Competitive application process

5. The Minister for Climate Change and Energy may invite eligible persons to apply for a feasibility licence. Applications for feasibility licences must meet the merit criteria set out in both section 34 of the OEI Act and section 26 of the OEI Regulations.
6. The granting of feasibility licences within a declared area is a competitive process. Applicants will submit proposed licence areas defined by coordinates, which might (unbeknownst to the Applicants) geographically overlap. Section 33(4)(b) of the OEI Act provides that the licence area of a feasibility licence when granted must not include any part of the licence area of any other feasibility licence. As such, licence grants cannot be made to overlapping applicants.
  - a) Where applications for feasibility licences wholly or partly overlap, the Minister will consider the relative merits of those applications and grant the feasibility licence to the applicant with the application of highest merit.
  - b) In circumstances where overlapping feasibility licence applications are considered to be of equal merit, applicants can (and are encouraged in the explanatory statement to the OEI Regulations to) resolve overlaps by revising and resubmitting their applications in accordance with a process set out in sections 11 to 13 of the OEI Regulations.
7. Section 11 of the OEI Regulations provides that the Minister may determine that a group of two or more applications forms an ‘overlapping application group’ if each application overlaps with at least one other application in the group; the licence areas form a continuous area; the Minister considers all of the applications in the group to be of equal merit; and the Minister is satisfied that if not for the overlap, a feasibility licence could be offered in relation to each of the applications.
8. Following the Minister’s decision to determine an overlapping application group, section 12 of the OEI Regulations requires the Registrar to notify the applicants that the determination has been made and invite the applicants to revise and resubmit their applications to remove the overlap.
  - a) In the notice, the Registrar must set out the area or areas of overlap; the name of the other applicant(s); and the kind of project that the other applicant(s) proposes to carry out. This does not include proposed commercial details of the project that are not necessary to describe “the kind of project that the other applicant(s) proposes to carry out” consistent with the Regulations.
  - b) The notice must also specify the date on or before which an application as revised must be resubmitted.
  - c) The notice may also include such information as the Registrar considers reasonable about other applications that cover areas adjacent to, or nearby, the area covered

by the applicant's application. The primary aim of this information is to enable applicants to remove existing overlaps without creating new ones.

9. Revised and resubmitted applications should be made in accordance with section 13 of the OEI Regulations, which requires, amongst other things, that the Registrar is satisfied that a revised application is, so far as is reasonably possible, substantially similar to the original application, and does not overlap any other application for a feasibility licence made in response to the same invitation to apply. For the purpose of being satisfied of these matters, the Registrar may consider the location, shape and size of the licence areas proposed by the revised and original application, details of the proposed commercial offshore infrastructure projects of the revised and original application, and anything else that the Registrar considers relevant.
10. If any overlaps remain after the applicants have been given an opportunity to revise and resubmit their applications, sections 14 to 16 of the OEI Regulations set out a process for inviting and dealing with financial offers. The Minister may determine that a group of two or more applications forms a financial offer group. The Minister may then, in writing, invite the applicants to submit financial offers in relation to their applications. The Minister may only offer to grant a feasibility licence to the applicant that has submitted the highest (or only) financial offer out of the group.

## **Part 2 – Parties to the Proposed Conduct**

11. The Department proposes that the authorisation apply exclusively to:
  - a) the Department, or any future Department of State of the Commonwealth with responsibility for administering the OEI Act;
  - b) the Registrar;
  - c) the Department of State of the Commonwealth of which the Registrar is an SES employee (currently the Department of Industry, Science and Resources);(together, the **Government Parties**), to the extent the Government Parties may be directly or indirectly involved in any conduct the subject of the authorisation; and
  - d) eligible bodies corporate under the OEI Act and OEI Regulations who have:
    - I. made an application for a feasibility licence which has been determined by the Minister to form part of an overlapping application group under section 11 of the OEI Regulations; and
    - II. been invited by the Registrar to revise and resubmit their applications to remove the overlap under section 12 of the OEI Regulations(the **Applicant Parties**).
12. See **Annexure A** for a list of possible entities comprising the Applicant Parties in the Gippsland declared area only, based on current information in the possession of the Department. Please note that this is not an exhaustive list and is not intended to limit the persons or class of persons intended to have the benefit of the authorisation. The relevant

participants listed may also change, as no final decisions regarding overlapping groups have been made by the Minister.

13. The Department is making this authorisation application for itself and for the benefit of the Government and Applicant Parties identified above in its role as the department which administers the legislation under which the Proposed Conduct will be carried out.
14. The Department will be the point of contact for this authorisation application.
15. The Department's details are as follows:

Name and address (registered office)	Contact person(s) name, position, organisation, telephone number and email address	Description of business activities
Department of Climate Change, Energy, the Environment and Water 51 Allara St, Canberra ACT 2601 Australia GPO Box 3090 ACT 2601	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Department of the Australian Government leading Australia's response to climate change, sustainable energy use, protection of the environment, heritage, and water.

Email address for service of documents in Australia

16. The Department's email address for service of documents in Australia:  
offshorerenewables@dcceew.gov.au

**Part 3 – The Proposed Conduct**

17. The Department seeks authorisation for the Applicant Parties (as defined above) to:
  - a) communicate; and/or
  - b) propose agreements; and/or
  - c) enter into agreements; and/or
  - d) give effect to agreements,

with other Applicant Parties who have received an invitation from the Registrar under section 12 of the OEI Regulations (as drafted at the date of this authorisation) in respect of the same declared area (**Proposed Applicant Conduct**), subject to the following limitations (the **Limitations**):

- e) authorisation is sought for the Proposed Applicant Conduct to be engaged in by the relevant Applicant Parties for the sole purpose of enabling those parties to revise the existing areas in their applications and resubmit their applications under section 12 of the OEI Regulations in order to remove the overlap without creating new overlaps; and
- f) authorisation is sought for any communications between relevant Applicant Parties in connection with their applications only to the extent they involve the exchange of

geographical information concerning the licence areas (such as maps, coordinates, area size in km<sup>2</sup>, distances between external boundaries, geographical features) the relevant Applicant Parties have applied for or would propose to be the subject of revised and resubmitted applications; and

- g) authorisation is sought in relation to any agreements proposed, entered into or given effect to between relevant Applicant Parties as part of the Proposed Applicant Conduct only to the extent they are necessary to facilitate the Proposed Applicant Conduct as subject to the Limitations identified above, and not to the extent they involve the exchange or transfer of anything of monetary or commercial value (save for, if applicable: (i) an obligation of confidence; (ii) geographical information in accordance with the Limitations identified above; or (iii) an agreement as to the revision of the geographic scope of an application to be resubmitted for a feasibility licence).

18. The Department seeks authorisation, to the extent necessary, for the Government Parties to facilitate the Proposed Applicant Conduct taking place subject to the Limitations, including by:

- a) providing the Applicant Parties with information necessary to enable them to engage in the Proposed Applicant Conduct subject to the Limitations (other than any information of a commercial kind that is not expressly required to be disclosed in accordance with sections 12 and 13 of the OEI Regulations as at the date of this authorisation); and/or
- b) encouraging Applicant Parties to engage in the Proposed Applicant Conduct subject to the Limitations.

(the **Proposed Facilitating Conduct**).

19. The Proposed Applicant Conduct and Proposed Facilitating Conduct are together referred to as the Proposed Conduct in this application.

Provisions of the *Competition and Consumer Act 2010* which might apply to the Proposed Conduct

- 20. The Applicant Parties have or will have the potential to compete in relation to the supply of electricity. They have or will have sought feasibility licences which they would need to undertake proposed offshore electricity projects, with other applicants also seeking feasibility licences which would enable them to conduct offshore electricity projects in the same declared area.
- 21. Some applicants for feasibility licences have expressed concerns that collaborating with other applicants, with a view to resolving overlaps in their respective proposed licence areas as contemplated by section 12(2) of the OEI Regulations, may raise a risk of breach of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **CC Act**).
- 22. The Department acknowledges that stakeholders have raised concerns that the following provisions of the CC Act would or might apply to the Proposed Conduct:
  - a) cartel conduct (Division 1 of Part IV, including section 45AD);

- b) contracts, arrangements or understandings that restrict dealings or affect competition (section 45);
  - c) misuse of market power (section 46); and
  - d) exclusive dealing (section 47).
23. While the Department does not consider that collaboration that is strictly for the purpose of resolving geographic overlaps (in the manner set out in the OEI Regulations, subject to the Limitations set out above and with a view to the long-term competitive and public benefits detailed below) would likely, in itself, breach the CC Act, the Department wishes to ensure that applicants for feasibility licences who have been invited to revise and resubmit their applications (i.e. Applicant Parties) under section 12(2) of the OEI Regulations are able to participate in the process, and to take appropriate steps to revise and resubmit their applications, with certainty.
24. The Department is also concerned to ensure that the Government Parties are able to discharge their responsibilities and functions as contemplated by the OEI Act and OEI Regulations without risk of being party to any contravention by other persons of the CC Act.

#### Rationale for the Proposed Conduct

25. The granting of feasibility licences is a competitive process, with applicants competing for licence areas in a limited declared area. Due to high interest in a limited area, overlapping feasibility licence applications are likely in every licence round<sup>1</sup> and have been encountered in both licensing rounds commenced up to this point.
26. As explained in Part 1, sections 11-16 of the OEI Regulations set out a process to guide the Minister's decision-making in the situation where two or more feasibility licence applications of equal merit wholly or partly overlap. In summary, overlapping applicants of equal merit will be given a chance to revise and resubmit their applications to remove their overlaps, facilitating multiple feasibility licences being able to be granted if overlaps are resolved and resubmission requirements are met. Any applicants who are still overlapping after the revision process may be required to take the additional step of making a competitive financial offer to secure their licence, from which only one feasibility licence can be granted.
27. The Proposed Conduct will enable the Applicant Parties to undertake, and the Government Parties to facilitate and encourage, the process to revise and resubmit applications to remove overlaps, in accordance with the intention of the OEI Regulations, with certainty that engaging in the Proposed Conduct will not breach the CC Act. Without that certainty, Applicant Parties may choose not to engage in the Proposed Applicant Conduct. This could result in the revision (if any) of overlapping applications lacking the necessary precision, coordination, and overall effectiveness, leading to a higher likelihood of further overlaps or failure to resolve the original overlap. This would trigger the financial offer process.
28. Successful engagement in the Proposed Conduct is necessary to deliver the public benefits originally envisaged by the process and described in Part 5, including efficient use of the

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<sup>1</sup> Invitations to apply for feasibility licences specify the due dates by which applications must be made – the invitation to apply and the processing of applications made in response to the invitation may be referred to as a 'licensing round'.

declared areas, lowering costs to consumers and increasing benefits to the economy and local communities. Importantly, successful engagement in the Proposed Conduct will allow the Minister to make decisions in relation to feasibility licence applications in a timely manner, without needing to resort to the financial offer process set out in sections 14 – 16 of the OEI Regulations. Reliance on the financial offer process would have less desirable outcomes as described below in Part 5.

#### Term of authorisation sought

29. Authorisation is sought for a term of three years from the date that this application is received.
30. The Department is currently focused on the licensing rounds being undertaken in the declared areas off the coasts of Gippsland<sup>2</sup> and Hunter<sup>3</sup>. As discussed further in Part 9, the Gippsland and Hunter licensing rounds are expected to be completed in 2024. Assessment of applications in the next licensing round in the recently declared Southern Ocean area will commence in July 2024 and is not expected to be completed until mid-2025.
31. The Department has identified three further priority areas for possible future OEI declarations. These are:
  - a) Illawarra, New South Wales – currently undergoing Ministerial consideration of whether to declare an area under s 17(1) of the OEI Act, following public consultation;
  - b) Bass Strait, Tasmania – currently undergoing Ministerial consideration of whether to declare an area under s 17(1) of the OEI Act, following public consultation; and
  - c) Indian Ocean off the Bunbury region, Western Australia – currently undergoing public consultation on a proposal by the Minister to declare an area under s 17(1) of the OEI Act.
32. The Department has limited resources to progress the consideration of public feedback, area declaration processes, invitations for feasibility licence applications, and Ministerial consideration of applications necessary to facilitate all applications for feasibility licences being progressed through to a final decision for each declared area simultaneously. Therefore, a staged approach is being undertaken. We anticipate that licensing rounds for the six prioritised areas will be completed by 2026 assuming no more areas are identified and invitations are not re-opened for existing declared areas.
33. Although the Department intends to consider whether amendments to the OEI Regulations to address any competition law issues and provide further certainty may be appropriate, the Minister and the Department will need sufficient time to consider this, as well as the interactions between the OEI Regulations and competition law (including the CC Act), in more detail before timeframes for any amendments can be set out. Due to the urgency of

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<sup>2</sup> The declared area referred to in *Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022*.

<sup>3</sup> The declared area referred to in *Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023*.

this authorisation application, these considerations are not sufficiently advanced to detail further at this stage.

34. For this reason, the requested term would likely allow all intended applicants for feasibility licences in the six prioritised areas to move through the overlapping process (if necessary) as currently understood, without concern about when or if any proposed changes may be affected. It is important to provide industry with certainty that the licensing process will be undertaken on a consistent basis across areas.

#### Persons who may be directly impacted by Proposed Conduct

35. The persons or class of persons who may be directly impacted by the Proposed Conduct include OEI licence applicants (i.e. Applicant Parties) and the Government Parties; and customers, suppliers, workforce, energy consumers and residents of communities impacted by licence grants and offshore energy generation in each declared area. These impacts are as described in the following paragraphs.

### **Part 4 – Market information and concentration**

#### Description of industry

36. The offshore wind industry in Australia is in its infancy. With the passage of the OEI Act in 2021, many developers have shown interest in establishing offshore wind in Australia.
37. In the Gippsland declared area, 37 applications were received for feasibility licences. In the Hunter declared area, 8 applications were received for feasibility licences.
38. Offshore wind is already an established industry in many places around the world, causing pressure on global supply chains, with orders for key components needing to be placed 3 – 6 years in advance of component arrival.
39. The supply chain predominantly consists of towers, nacelles, blades, foundations, secondary steel, cables, monopiles, substations, installation vessels and the associated workforce and materials (mainly steel).
40. Australia does not currently have an existing offshore wind supply chain, and therefore, international advanced manufacturing facilities may be relied upon for offshore wind development, at least initially. However, it is expected that local supply chains and manufacturing capabilities will develop alongside the local industry.
41. Once components are secured, they will be stored at an Australian port and transferred to a wind turbine installation vessel. Local and international skilled workforces will be employed in construction, maintenance, port and vessel services, and other aspects of operation, with expectations that the local workforce will be grown through delivery of education and training. As traditional power stations retire, the offshore wind sector can also take advantage of the skilled workforces and contractors who will become available.

#### Description of services

42. The Applicant Parties would be Australian and international corporations who are applicants for feasibility licences and seek to undertake activities to assess the feasibility of an OEI project in an exclusive licence area within a declared offshore area (e.g. Gippsland, Hunter,



Southern Ocean and any future declared areas). Licence applicants in each declared area have limited space within which to secure a feasibility licence area.

43. The purpose of the feasibility licence is to enable an assessment of the potential to construct and operate a commercial OEI project, such as an offshore wind farm, in the licence area. Once feasibility has been assessed by a proponent, they will have the opportunity to apply for a commercial licence in relation to part or all of the feasibility licence area where an OEI project is considered to be commercially viable.
44. The Proposed Conduct does not extend to any agreements in relation to potential future commercial licences or activities. The intention of the Proposed Conduct is to ensure that the overlap in licence areas can be resolved. This will maximise the number of licences granted, and through this increase potential future generation capacity and the level of competition between parties to bring projects to market in a timely and cost-effective manner.
45. If an overlap is not resolved by means of the Proposed Applicant Conduct, multiple licences will not be granted in one area; instead, the applicants will be invited to submit financial offers, with only the highest offeror being granted a licence (see further paragraphs 52 to 57 below). This may reduce potential competition in the Australian offshore wind industry and potentially result in inefficient allocation of the area available.
46. If the overlap can be resolved, more licence holders will have the opportunity to undertake feasibility work and eventually progress to the commercial licensing phase, where the parties will compete to offer energy services to Australian consumers.
47. In respect of these services, each party's market share in any declared area will depend on how many feasibility licences are granted and later progress to commercialisation. A greater number of commercial licences will, all things equal, result in a smaller market share and greater competition for each licence holder. Greater competition in the commercial phase would, all things equal, encourage lower electricity prices, greater reliability and innovation, and would contribute to Australia's emissions reduction targets to a larger extent.
48. If fewer feasibility licences are granted, due to the non-participation in the Proposed Conduct, the result would tend to be fewer market competitors at the commercial stage. This would, all things equal, have the inverse effect of negatively impacting competition in the longer term, as fewer infrastructure projects would generate less electricity overall, resulting in less choice and likely higher costs for Australian consumers, less innovation and reliability, and a smaller contribution to Australia's emissions reduction targets. See Part 5 below.

## **Part 5 – Public benefit**

### Increased number of feasibility licences

49. The primary public benefit of the Proposed Conduct will be the increased number of feasibility licence grants, which in turn will maximise the potential for commercial licences and OEI projects. As an immediate example, if overlaps can be resolved through the opportunity to revise and resubmit applications under the OEI Regulations, it is possible that an additional three feasibility licences could be granted through the Gippsland licensing round.

50. Ensuring a competitive landscape is considered critical to ensure the Australian Government's legislated net zero by 2050 target is met.

- a) A larger number of developers will provide greater levels of competition within the industry to deliver lower electricity prices to consumers. In Gippsland, for example, this would also include higher participation in the Victorian Government's proposed contract for difference (CfD) auction process.
- b) A larger number of licence holders is also expected to drive industry best practice through benchmarking exercises and development of local supply chains and supporting infrastructure, delivery of education and training, and supporting engagement and involvement from local communities and First Nations.

[REDACTED]

Avoidance of financial offer process

52. Without authorisation, industry's concerns regarding the provisions in Part IV of the CC Act are likely to lead to hesitation or refusal by some applicants to confer with others when moving through the overlap resolution process, necessitating the use of the financial offer process (explained in Part 1).

53. Having recourse to the financial offer process would delay the granting of licences, and OEI projects as a whole, due to the need for feasibility licence applicants to first progress through the overlapping process, followed by the Minister determining a 'financial offer group', inviting licence applicants to submit financial offers, and ultimately assessing all offers and accepting only the highest financial offer from the financial offer group (sections 14 to 16 of the OEI Regulations).

- a) Progression through the overlap resolution process is projected to take five to six months, from the issuing of invitations to revise and resubmit through to the granting of feasibility licences to applicants who have successfully resolved overlaps. This timeframe allows a maximum of 30 days for resubmissions to be made.
- b) Alternatively, the financial offer process will delay the granting of licences by an additional two months, including a further 30 days for applicants to submit financial offers.

54. Use of the financial offer process may alienate some parties and would have financial consequences for both the highest offeror and those who have made significant investments up to this point, while ultimately resulting in fewer licence grants overall and potentially seeing the financial offer cost passed on to energy consumers. Efficient progression through

the licensing process is essential to securing maximum participation in the offshore renewables industry through current and future licensing rounds.

55. In contrast, avoiding the need for financial offer processes will reduce delays, inefficiencies and the overall cost of development for proposed projects, which would otherwise be driven up by protracted timeframes and financial offer payments.
56. A further undesirable outcome from the financial offer process would be the inefficient use of the licence area. As noted above in paragraph 51, inefficient use of the licence area will diminish the potential for energy supply, regional development, job creation, and the use of Australian goods and services. This would likely be the case where the financial offer process results in a single licence grant, instead of multiple potential grants under the overlap resolution process.
57. For completeness, areas that are not covered in a declared area by existing feasibility licences, following all of the above processes, may be re-opened by the Minister for further feasibility licence applications in the future. However, this is not currently contemplated and is not likely to be undertaken until the completion of licensing rounds in the current declared areas and any areas that are currently being considered. As described in paragraph 32, this is unlikely to be in the next three years. For this reason, in addition to the long lead times to construction and commercialisation of projects and the high resourcing required to support the assessment of applications, reliance on future re-invitations to make efficient use of a declared area is highly undesirable.

## **Part 6 – Public detriment (including likely competitive effects)**

58. The Proposed Conduct is unlikely to result in direct public detriment, because:
  - a) The limited nature of the Proposed Conduct will focus collaboration between Applicant Parties to its intended purpose under the OEI Regulations, in order to encourage longer-term competition and discourage anti-competitive conduct between the parties;
  - b) The nature of the licences applied for only enables an assessment of feasibility for a prescribed duration, with no certainty of commercial value or access to the market until the commercial project stage;
  - c) The limited class of persons who the Department proposes may engage in the Proposed Conduct will also assist in narrowing and focusing the purpose of collaboration between parties.
59. There is a limited risk in the Proposed Conduct indirectly resulting in Applicant Parties undertaking separate conduct beyond that for which the Department seeks authorisation. This risk may arise from competitors extending their discussions to matters which do not relate to overlap resolution for the purposes of section 12 of the OEI Regulations.
60. This risk will be minimised through the following factors and measures:
  - a) A confined authorisation and no process or requirement under the OEI Regulations for outcomes or discussions beyond those necessary to resolve overlaps will discourage extraneous collaboration and deal-making;

- b) The minor nature of most overlaps and the benefits of efficient resolution in comparison to the risk involved in the financial offer process will also encourage diligent and genuine attempts to resolve overlaps;
- c) Clear standards for revision and resubmission of applications including proposed licence areas are set out in section 13 of the OEI Regulations.
- d) The Department will update and share clear guidance on appropriate and allowable collaboration. See, for example, **Annexure C** to be updated;

## **Part 7 – Contact details of relevant market participants**

- 61. As the Applicant Parties and the Government Parties are classes of persons, many of whom cannot yet be identified (e.g. because they have not had the opportunity to apply for feasibility licences in licence rounds that have not yet commenced), contact details cannot be provided for all relevant market participants. Contact details cannot be provided for the applications received in the Hunter declared area, as assessments have not yet been provided to the Minister for consideration and preliminary decisions.
- 62. For the contact details of potentially relevant Gippsland participants, see **Annexure A – Potential parties to the Proposed Conduct**. Please note that the relevant participants may change, as no final decisions regarding overlapping groups have been made by the Minister. For this reason, in addition to the reasons in paragraph 64 below, the Department seeks a complete redaction of **Annexure A** in any publication of this application.

## **Part 8 – Reasons for confidentiality claims**

- 63. The Department claims confidentiality over personal email addresses and phone numbers, for privacy reasons.
- 64. The Department claims confidentiality over **Annexure A** for privacy reasons. In addition, this information is commercially sensitive.

## **Part 9 – Urgent interim authorisation sought**

- 65. The Department seeks urgent interim authorisation from the ACCC for the persons who propose to engage in the Proposed Conduct in the assessment period following submission of this application. This interim period will likely encompass the Gippsland licensing round and partially encompass the Hunter licensing round.
  - a) The Minister is currently considering applications for feasibility licences in the Gippsland declared area (being the area declared to be suitable for offshore electricity infrastructure in the *Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022*) and anticipates determining overlapping groups in mid-March 2024, following which invitations to revise and resubmit would be issued and the overlap resolution process commenced.
  - b) The Minister is expected to be briefed on applications for feasibility licences in the Hunter declared area (*Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023*) in May 2024. Overlapping licence groups in the Hunter declared area are expected to be determined in July 2024, following which invitations to

revise and resubmit would be issued and the overlap resolution process commenced.

66. If the Minister determines that applications form an overlapping application group, the Registrar must then invite those applicants to revise and resubmit their applications, by a date specified in the notice to those applicants.
67. An urgent interim authorisation will prevent delays in the resolution of overlapping applications in the Gippsland and Hunter declared areas, with the first decisions by the Minister on whether to determine overlapping application groups expected to be made imminently in mid-March 2024. This urgent interim authorisation is necessary to provide certainty around the scope and nature of direct engagement to any applicants who are invited to revise and resubmit their applications, pending assessment of the application for authorisation.
  - a) The public benefits described in the primary authorisation application above will apply equally to the Gippsland and Hunter licensing rounds if an urgent interim authorisation can be obtained to cover this period.
  - b) The detriments of applicants being unable to engage in the Proposed Applicant Conduct as described in the primary authorisation above will also apply to these rounds if an urgent authorisation is not granted or granted mid-way through the period in which overlapping applications are to be revised and resubmitted. Any harms could be expected to be increased due to the late stage at which the process, intended to commence in less than two weeks, would be unexpectedly altered for participants in these rounds. In addition, delays to these rounds could have negative flow-on effects by potentially deferring the timing of, and causing loss of confidence in, subsequent rounds.

## **Part 10 – Declaration by Applicant**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere. The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

Signature of Authorised Person



Paul Murphy  
Branch Head  
Offshore Renewables  
This 14<sup>th</sup> day of March 2024

**Annexure A** – Potential parties to the Proposed Conduct

**Annexure B** – Extract of sections 11 – 13 of the *Offshore Electricity Infrastructure Regulations 2022*

**Annexure C** – Registrar’s Frequently Asked Questions: Feasibility Licence Process. Please note this is currently published guidance available online. This guidance will be revised and updated in the event that an authorisation is granted.

**Annexure A – Potential Parties to the Proposed Conduct**

Applicant and Project Title	Applicant Contact Details
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

## **Annexure B – Extract of sections 11 – 13 of the *Offshore Electricity Infrastructure Regulations 2022***

### **11 Applications for feasibility licences that overlap—Minister may determine overlapping application groups**

- (1) This section applies if:
  - (a) the Minister has invited applications for feasibility licences under section 9; and
  - (b) 2 or more such applications have been made in response to the invitation.
- (2) The Minister may determine that a group of 2 or more of the applications forms an *overlapping application group* if:
  - (a) the Minister considers all of the applications in the group to be of equal merit; and
  - (b) each application in the group overlaps at least one other application in the group; and
  - (c) 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
  - (d) the Minister is satisfied that, if not for the overlap or overlaps, a feasibility licence could be offered in response to each of the applications in the group.

Note 1: For example, if applications A and B overlap each other, and applications B and C overlap each other, applications A, B and C may be in an overlapping application group even if applications A and C do not overlap.

Note 2: For when applications *overlap*, see section 4.

- (3) In considering the merit of an application for the purposes of paragraph (2)(a):
  - (a) the Minister must have regard to:
    - (i) the technical and financial capability that the applicant is likely to have, or to be able to arrange to have, to carry out the proposed commercial offshore infrastructure project; and
    - (ii) the likely viability of the proposed commercial offshore infrastructure project; and
    - (iii) the suitability of the applicant to hold the licence; and
    - (iv) the national interest; and
  - (b) the Minister may have regard to any of the matters set out in section 26; and
  - (c) the Minister may have regard to any other matters the Minister considers relevant.
- (4) To avoid doubt, the Minister may make more than one determination under subsection (2) in relation to a particular invitation for applications for feasibility licences.

### **12 Registrar may invite applicants in overlapping application group to revise and resubmit applications**

- (1) This section applies if the Minister determines that a group of 2 or more applications for feasibility licences forms an overlapping application group.
- (2) The Registrar must notify the applicants that the determination has been made, and invite the applicants to revise and resubmit their applications to remove the overlap.
- (3) The notice and invitation given to an applicant:
  - (a) must be in writing; and
  - (b) must set out, for each other applicant whose application overlaps the applicant's application:
    - (i) the area or areas of overlap; and
    - (ii) the name of the other applicant; and



- (iii) the kind of project that the other applicant proposes to carry out; and
- (c) may include such other information as the Registrar considers reasonable about the applications mentioned in paragraph (b); and
- (d) may include such information as the Registrar considers reasonable about other applications that cover areas adjacent to, or nearby, the area covered by the applicant's application; and
- (e) must specify the day on or before which an application, as revised, must be resubmitted; and
- (f) must inform the applicant that any revised application must be in accordance with section 13.

- (4) Subsections 10(2) to (4) apply to an application that is revised and resubmitted in accordance with this section, except that paragraph 10(2)(b) and subsection 10(3) apply as if a reference to the day specified in the invitation under paragraph 9(3)(b) were a reference to the day specified by the Registrar under paragraph (3)(e) of this section.
- (5) An applicant who revises an application in response to the invitation is not required to pay any additional fee for revising or resubmitting the application.
- (6) If an applicant revises and resubmits an application in response to the invitation on or before the day specified under paragraph (3)(e), and the revised application is in accordance with section 13, then, after that day:
  - (a) the revised application replaces the original application; and
  - (b) the original application is to be disregarded.

Note: If the revised application is not in accordance with section 13, the original application remains in effect.

### **13 Requirements for revised applications**

- (1) For the purposes of subsection 12(6), a revised application for a feasibility licence is in accordance with this section if the Registrar is satisfied that:
  - (a) the revised application is, so far as is reasonably possible, substantially similar to the original application; and
  - (b) the revised application does not overlap any other application for a feasibility licence made in response to the same invitation under section 9 (including other applications that are, or are not, in the same overlapping application group).
- (2) For the purposes of paragraph (1)(a), the Registrar may consider:
  - (a) the location, shape and size of the licence areas proposed by the revised application and the original application; and
  - (b) the details of the proposed commercial offshore infrastructure projects of the revised application and the original application; and
  - (c) anything else the Registrar considers relevant.
- (3) If, for the purposes of paragraph (1)(b), the Registrar is comparing the licence area of the revised application to the licence area of another application that has also been revised and resubmitted, the Registrar must have regard only to the licence area of the other application as revised (and not to the licence area of the other application as originally made).

**Annexure C – Registrar’s Frequently Asked Questions: Feasibility Licence Process**

[https://www.nopta.gov.au/\\_documents/oei/Feasibility-Licence-FAQ.pdf](https://www.nopta.gov.au/_documents/oei/Feasibility-Licence-FAQ.pdf)