



## Frequently Asked Questions: Feasibility Licence Process

All information should be read in conjunction with the [Offshore Electricity Infrastructure Act 2021](#) (the OEI Act), [Offshore Electricity Infrastructure Regulations 2022](#) (the OEI Regulations) and the relevant guidelines and policies available on [the Offshore Infrastructure Registrar's website](#).

The purpose of this document is to provide responses to a set of general frequently asked questions (FAQs) in relation to applying for feasibility licences under the OEI Act. These FAQs should be read in conjunction with the [Guideline: Offshore Electricity Infrastructure Licence Administration - Feasibility Licences](#) and the [Registrar Forms Guidance – Offshore Electricity Infrastructure](#).

**Please note:** this document is intended as a guide only and should not be relied on as legal advice.

### Merit Criteria Assessment

This FAQ describes the Offshore Infrastructure Registrar (the Registrar)'s approach to assessing applications and providing advice to the Minister. The Minister is the ultimate decision maker regarding the offer of licences.

#### *Is each merit criteria weighted?*

The merit criteria have been designed to be broad to allow for flexibility and are not intended to be weighted or scored. Competitive considerations of higher or lower merit are intended to apply where there are overlapping applications. The Guideline provides examples to indicate how an application may be assessed as of higher merit than another.

#### *In order to meet the merit criteria, should I have already started activities such as electricity connection enquiries, environmental approvals, and stakeholder consultation?*

It is appropriate that activities such as seeking environmental approvals, conducting stakeholder consultation and undertaking electricity connection discussions occur during the term of a feasibility licence, rather than before a licence is granted.

The assessment of feasibility licence applications will account for the preliminary nature of the project proposal.

The application should demonstrate the applicant's plan for undertaking this work in order to progress towards a Final Investment Decision for the project in a timely manner.

The applicant should describe this in as much detail as possible in the Project Development Plan and list activities to be undertaken during the licence term, as well as identifying any risks associated with these activities and how the applicant intends to manage these.

Please refer to the Registrar Forms Guidance for more information on what is expected to be in the application, and

the Guideline in terms of assessment considerations. Approvals received under other regulatory regimes including the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) do not guarantee the award of a licence under the OEI Act.

#### *What industry standards will be used for benchmarking? Do these industry standards consider current market conditions?*

To assess the reasonableness of estimates and modeling provided with an application, the Registrar will review the information provided against industry data acquired through data subscriptions, and develop in-house datasets.

It is expected that data provided with applications is preliminary and will be refined over the course of the feasibility licence term including through contract negotiations and changing market conditions.

#### *With regards to minimum financial resource expectations, under what circumstances will a conditional guarantee be considered?*

A conditional guarantee from another entity stating that the funds will be available to the person upon the grant of a licence may be considered. The conditional guarantee should be legally binding and conditional only on the grant of the licence and the cash or debt facility must be drawn and be visible in the applicant's own bank account upon grant of the licence.

#### *Are debt, equity, and parent company guarantees of funding for the remaining feasibility licence activities considered equally meritorious?*

Under the OEI Act, the Minister must be satisfied that the eligible person is likely to have, or be able to arrange to have, the financial capability to carry out the proposed commercial offshore infrastructure project for the feasibility licence.

A key consideration in the Registrar's assessment of financial capability is the level of certainty that funds will be available to carry out the proposed commercial offshore infrastructure project in the future, and will be available as and when needed to carry out the operations and works that would be authorised by the feasibility licence and discharge the obligations in relation to the licence.

The more of the licence term activities that are covered by cash (that is not allocated to any other use) the higher the



certainty. Commercial arrangements, including conditional guarantees where the only condition is award of licence with the funds being available in the applicants accounts upon grant of the licence, would be viewed as equally certain if they are legally binding. The differentiating factor is the risk associated with the provider.

A binding obligation to fund an applicant's proposed entire feasibility licence activities through a committed debt facility subject to the award of a licence would be considered funding in place for the term of the licence.

## Application Content

The OEI licensing framework is designed to provide flexibility to applicants. Applicants should carefully consider the OEI Act, OEI Regulations, Guideline and Application Content Requirements section of the Registrar Forms Guidance and submit all supporting information that they consider relevant to demonstrating that they have met or are likely to meet the merit criteria. In submitting this information, applicants should consider clarity and concision.

### ***Does a body corporate acting as a trustee satisfy the definition of an “eligible person” under the OEI Act?***

An eligible person is defined in section 8 of the OEI Act as a single body corporate that has a registered office in Australia, or a body corporate established for a public purpose under Australian law.

As corporate trustees (being a company that acts as a trustee of a trust) are artificial legal persons, they would be considered body corporates within the ordinary meaning of the term ‘body corporate’. Therefore, a corporate trustee would likely be an eligible person. A trust would not satisfy this requirement.

### ***What if the eligible person is a new company without evidence of past financial performance?***

If an applicant is a newly established entity without historical financial statements, it will need to provide audited consolidated financial statements for an entity in its corporate structure which it is relying on in order to meet the merit criteria.

### ***Do I need to provide commercially confidential contracts?***

Where agreements are in place, applicants do not generally need to provide the agreement itself. Applicants are expected to provide sufficient detail of the content to allow assessment under the merit criteria. Generally, letters signed by all parties that confirm agreements are in place will be sufficient.

Types of evidence that may be supplied include service level agreements or contracts of engagement, preliminary correspondence with contractors, or evidence of previous

successful partnerships through a summary of previous work undertaken together.

### ***Do I need to show the funds for feasibility activities in the applicant’s bank account? Can I rely on undrawn debt facilities?***

In order to meet the minimum requirements in relation to financial resources, 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 (section 4.4.7(b)(ii) of the Guideline).

Accordingly, on any offer to grant a feasibility licence funds provided under a debt facility must then be drawn down and be visible in the applicant’s own bank account upon grant of the licence.

### ***How long do I have to keep the feasibility licence activity funds in the bank account?***

The applicant must continue to meet the merit criteria at all times. Upon grant of a licence, a licence holder is expected to have the required funding available (150%) for the next 12 months on a rolling basis. A licence may be cancelled under section 73 of the OEI Act if the licence does not meet the merit criteria at any point in time.

### ***What kind of detail is required in the proposed financing plan for a commercial licence stage?***

An applicant should provide, at a minimum, a high-level plan discussing options under consideration for construction and operation of a commercial project. For example, whether it would be debt or equity financed, project financed, the types of investors under consideration, and the bankability of the project.

If further consideration has been given to this, applicants can provide as much detail as they think will support the application.

### ***Does the corporate structure need to be finalised at the time of submission of a feasibility licence application, or can modifications be made between submission of the application and grant of the licence?***

Applications will be assessed on the information provided in the application. Applicants should consider whether they can clearly demonstrate they meet all of the merit criteria and fulfill the Application Content Requirements outlined in the Registrar Forms Guidance if their corporate structure is not finalised.

For more information about suitability disclosures, please see the Registrar Forms Guidance available on the Registrar’s website.



## ***Can modifications be made to the project between submission of the application and grant of the licence?***

All information submitted with an application must be accurate at the time of submission. It is an offence to knowingly give false or misleading information or documents in connection with an application under the OEI Act.

In conducting its assessment, the Registrar may request further information from an applicant under section 41 of the OEI Regulations. However, this process is intended to obtain clarity on the information provided in an application, not for the applicant to provide new or amended information. Noting the competitive nature of the application process, eligible persons should ensure their application clearly outlines, with supporting evidence, how their application meets the merit criteria.

For more information about suitability disclosures, please see the Registrar Forms Guidance available on the Registrar's website.

## ***What datum and format should I use to provide the proposed licence area spatial data? How should I review the proposed size of the licence area prior to submission?***

Geocentric Datum of Australia 1994 (GDA94) is the applicable datum specified in the OEI Regulations. Applicants should provide spatial data in geodesic latitude-longitude (EPSG: 4283).

The Registrar will review the size of the area provided in an application using a geodetic area calculation. As such, applicants also are advised to confirm the size of proposed area using this calculation prior to submission and to ensure the proposed area does not exceed the maximum area of 700 km<sup>2</sup>.

## **Application Submission and Assessment**

### ***How and when do I pay the application fee? Can the Registrar provide an invoice for the application fee?***

Fees can be paid by direct deposit, cheque or credit card. Instructions on how to pay the fee are on the Registrar's website.

The application fee must accompany the application, and applicants should include proof of payment with the application.

It is recommended that the payment is made as close as possible to the day the application is to be submitted. Fees paid into the Registrar's account may be refunded after 30 days if no accompanying application has been submitted.

The Registrar cannot provide an invoice.

## ***Does the application fee need to be paid by the applicant, or can another company, for example a parent company, make the payment?***

Anyone can pay the application fee. Please ensure that the proof of payment included with the application clearly references the application for which payment has been made. Please note that the Registrar does not accept split or partial payments.

## ***Can the application fee payment be made from overseas?***

Yes, you can pay the fee via an international transaction. Instructions on how to pay the fee are on the Registrar's website.

Please note that as the Registrar does not accept split or partial payments, please contact your bank to ascertain any fees that may apply to international payments and include the fees with your payment amount to ensure the exact and correct amount is received in the Registrar's account.

## ***When will I know if my application is successful?***

Following submission, applicants will receive confirmation that their application has been lodged.

Once the closing date has passed, the Registrar checks that the application meets the minimum application submission requirements of the OEI Act and Regulations and the application form. If the Registrar identifies that information required for valid submission is missing, applicants will receive correspondence requesting the missing information.

Assessment of applications will not commence until the closing date has passed.

Where further information is required in order to clarify information provided in an application, the Registrar may request this information from the applicant.

Once finalised, the assessment will be provided to the Minister for decision. From the closing date to the Registrar providing its recommendation to the Minister is expected to take around six months.

## ***In the case of overlapping application groups, how long will applicants have to submit a revised application? How long will applicants have to submit a financial offer?***

If the Minister determines an overlapping application group under section 11 of the OEI Regulations, the Invitation to Revise and Resubmit an application issued by the Registrar must specify the day on or before which an application, as revised, must be submitted by. Please note that any revision of the application relates to the licence area and the application must be substantially similar to the original.



The time period for the revision will take into consideration the need for applicants to consider their options and seek internal approvals.

If an applicant receives an Invitation to Revise and Resubmit, it may be prudent for the applicant to consider financial offers in the circumstance where overlapping licence areas cannot be resolved through revision.

### ***If my application is unsuccessful, will my application fee be refunded?***

The OEI Act framework contains no provision for a refund of, or adjustment to, the fee paid for a valid application.

## **Other Questions**

### ***What parts of the information submitted with the application will be available in the Register of OEI licences?***

Sections 163 and 164 of the OEI Act describe the information that is to be included in a record in the Register of Offshore Infrastructure Licences once a licence is granted.

### ***What conditions are going to be on a feasibility licence?***

There is detailed information in the OEI Act and Guideline regarding licence conditions, including standard conditions specified in section 35 of the OEI Act. The relevant area declaration may also include conditions that would apply to the licence. The Minister may also include conditions on the licence.

### ***When should I apply for Foreign Investment Review Board (FIRB) approval? Could a pending FIRB application delay the offer of a licence?***

It is up to applicants to ensure that they comply with the requirements of all relevant State and Commonwealth legislation, including the Foreign Acquisitions and Takeovers Act 1975. Applicants should make their own enquiries to FIRB regarding requirements, costs and assessments.

The feasibility licence application form requires applicants to identify if FIRB approval is required. Therefore, applicants should ensure they understand how FIRB requirements apply before a feasibility licence application is submitted.

If the Registrar is aware that an applicant has a pending FIRB application, for administrative efficiency the Registrar may advise the relevant decision maker to wait for the FIRB decision prior to a decision under the OEI Act.

If the result of an application to FIRB becomes available after the submission of an application, the applicant should contact the Registrar to provide that information.

### ***Are there potential Competition and Consumer Act 2010 implications of applicants collaborating on resolving overlapping applications?***

Where the licence area proposed in one feasibility licence application overlaps with the licence area proposed in another feasibility licence application, and the Minister considers these applications to be of equal merit, the OEI Regulations set out a process for feasibility licence applicants to resolve overlaps by revising and resubmitting their applications.

If any overlaps remain after the applicants have been given an opportunity to revise and resubmit their applications, the Minister may proceed to a financial offer process.

Applicants must comply with all relevant legal obligations, including those set out in Part IV of the *Competition and Consumer Act 2010* (the **Competition and Consumer Act**), whether for the purposes of collaboration to resolve a feasibility licence application area overlap or any other purpose.

The Australian Competition and Consumer Commission (ACCC) has issued a [final determination](#) in respect of industry collaboration to resolve overlapping feasibility licence applications. Authorisation has been granted until 15 March 2027.

Should an applicant have any concerns regarding the conduct authorised under the determination, they should seek independent legal advice and/or contact the Australian Competition and Consumer Commission prior to commencing conversations with other applicants.

## **Further information**

If you need any further information, please contact the Offshore Infrastructure Registrar via [offshoreelectricity@nopta.gov.au](mailto:offshoreelectricity@nopta.gov.au).

## **Version history**

Version	Date	Comment
1	April 2023	Document created and published
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