



Offshore Electricity Infrastructure Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated: 27 October 2022

David Hurley
Governor-General

By His Excellency's Command

Chris Bowen
Minister for Climate Change and Energy

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Part 1—Preliminary

1 Name

This instrument is the *Offshore Electricity Infrastructure Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	2 November 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Offshore Electricity Infrastructure Act 2021*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) eligible person;
- (b) licence;
- (c) proposed commercial offshore infrastructure project;
- (d) Registrar;
- (e) Regulator.

In this instrument:

Act means the *Offshore Electricity Infrastructure Act 2021*.

decision maker: see subsection 43(2).

financial offer group: see subsection 14(2).

licence application means an application for, or that relates to, a licence.

offshore electricity infrastructure levy has the same meaning as in the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.

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overlap: applications for feasibility licences **overlap** each other if the licence areas proposed in the applications cover wholly or partly the same area.

overlapping application group: see subsection 11(2).

proposed project, in relation to a licence or an application for a licence, means:

- (a) in the case of a feasibility licence or an application for a feasibility licence—the proposed commercial offshore infrastructure project for the licence; or
- (b) in any other case—the offshore infrastructure project proposed to be carried out under the licence.

Part 2—The licensing scheme

Division 1—Operation of this Part

5 Operation of this Part

For the purposes of section 29 of the Act, this Part prescribes the licensing scheme.

Division 2—Licence areas

6 Operation of this Division

For the purposes of paragraph 29(1)(f) of the Act, this Division prescribes licence areas.

7 Licence areas

Feasibility licences

- (1) The maximum area for a feasibility licence is 700 km².

Note: See paragraph 33(4)(c) of the Act.

Commercial licences

- (2) The maximum area for a commercial licence is 700 km².

Note: See paragraph 42(4)(c) of the Act.

Division 3—Applications for licences

Subdivision A—Operation of this Division

8 Operation of this Division

For the purposes of paragraph 29(1)(a) of the Act, this Division prescribes matters relating to applications for licences.

Subdivision B—Applications for feasibility licences

9 Invitations to apply for feasibility licences

- (1) The Minister may invite eligible persons to apply for feasibility licences.
- (2) The invitation must be:
 - (a) in writing; and
 - (b) registered on the Federal Register of Legislation as a notifiable instrument.
- (3) The invitation must:
 - (a) identify the declared area for which licences may be granted; and
 - (b) specify the day on or before which applications must be made; and
 - (c) specify any conditions that the declaration requires licences granted in the declared area to be subject to.

Note: Licences will also be subject to other conditions: see section 35 of the Act.

- (4) The invitation may specify additional information or documents that must accompany applications.

10 Applications for feasibility licences

- (1) If the Minister has invited applications for feasibility licences under section 9, an eligible person may apply for a feasibility licence.
- (2) The application must:
 - (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar's website; and
 - (b) be made on or before the day specified in the invitation under paragraph 9(3)(b); and
 - (c) include a description of the proposed commercial offshore infrastructure project to be assessed under the feasibility licence; and
 - (d) be accompanied by any other information or documents required by the approved form; and
 - (e) be accompanied by any other information or documents specified in the invitation under subsection 9(4).
- (3) An application under this section is taken to include or be accompanied by a thing mentioned in paragraph (2)(c), (d) or (e) if the thing is given to the

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Registrar before the end of the 30-day period that begins on the day after the day specified in the invitation under paragraph 9(3)(b).

Applications for licences that cover existing licence areas

- (4) If an application for a feasibility licence covers an area that is, or is part of, the licence area of an existing licence, the Registrar may:
- (a) notify the holder of the existing licence that the application has been made; and
 - (b) inform the holder of the existing licence of:
 - (i) the name of the applicant; and
 - (ii) the proposed licence area of the feasibility licence (including a description of the location, shape and size of the area); and
 - (iii) the kind of project that the applicant proposes to carry out in the proposed licence area; and
 - (c) invite the holder of the existing licence to make a submission in relation to the potential grant of the feasibility licence.

Note: The licence area of a feasibility licence must not include any part of the licence area of any other feasibility licence or a commercial licence (see paragraph 33(4)(b) of the Act).

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.

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- (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).

14 Applications for feasibility licences that overlap after opportunity to revise and resubmit—Minister may determine financial offer groups

- (1) This section applies if:
 - (a) the Registrar has invited 2 or more applicants from an overlapping application group to revise and resubmit their applications under subsection 12(2) (whether or not any of those applicants have done so); and
 - (b) the day specified in the invitation under paragraph 12(3)(e) has passed.
- (2) The Minister may determine that a group of 2 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 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 a financial offer group even if applications A and C do not overlap.

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

- (3) If the Registrar has made more than one invitation under subsection 12(2) as a result of a particular invitation by the Minister under section 9, the Minister may make a determination under subsection (2) of this section only after the end of the latest day specified under paragraph 12(3)(e) in any of the invitations under subsection 12(2).
- (4) To avoid doubt, the Minister may make more than one determination under subsection (2) in relation to a particular invitation under subsection 12(2) for applicants from an overlapping application group to revise and resubmit their applications.

15 Financial offers for feasibility licences

- (1) This section applies if the Minister determines that a group of 2 or more applications for feasibility licences forms a financial offer group.

Financial offers for feasibility licences

- (2) The Minister may, in writing, invite the applicants to submit financial offers in relation to their applications.
- (3) The invitation to submit financial offers:
- (a) must:
 - (i) include information on how the offers are to be made; and
 - (ii) specify the day on or before which the offers must be made; and
 - (iii) require the applicants to substantiate their ability to pay amounts offered; and
 - (iv) set out the effect of section 16; and
 - (b) may specify other requirements to be addressed in the submission of the financial offer.
- (4) A financial offer in relation to an application for a feasibility licence must:
- (a) be made in writing to the Registrar; and
 - (b) be made on or before the day specified in the invitation under subparagraph (3)(a)(ii); and
 - (c) address any other requirements specified in the invitation.

16 Procedure for dealing with financial offers

- (1) This section applies if the Minister invites, under subsection 15(2), the applicants whose applications are in a financial offer group to submit financial offers in relation to their applications.

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Dealing with financial offers

- (2) The Minister may only offer to grant a feasibility licence to:
- (a) the applicant that has submitted the highest financial offer out of the applications in the financial offer group; or
 - (b) if, as a result of the operation of subsection (5), there is only one application in the financial offer group—the applicant for that application.
- (3) If there is no single highest financial offer because 2 or more applicants (the ***tied applicants***) have submitted equal financial offers, the Minister may do any of the following:
- (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) for any tied applicants whose applications overlap each other—invite those tied applicants to submit increased financial offers;
 - (c) if an invitation under paragraph (b) does not result in there being a single highest financial offer because the financial offers of 2 or more of the tied applicants are equal—offer to grant a feasibility licence to any of those tied applicants, as the Minister thinks fit.
- (4) Subsections 15(3) and (4) apply in relation to an invitation under subsection (3)(b) of this section, and any financial offer submitted in response to such an invitation, as if the invitation were an invitation under subsection 15(2).
- (5) If:
- (a) the Minister offers to grant a feasibility licence to an applicant whose application is in the financial offer group; and
 - (b) any of the following occurs:
 - (i) the feasibility licence is granted;
 - (ii) the applicant withdraws the application;
 - (iii) the application lapses;
 - (iv) the feasibility licence is not granted for some other reason (including because the applicant does not pay a financial offer in relation to the application); and
 - (c) after that occurrence, a feasibility licence could be offered in respect of at least one of the other applications in the financial offer group;
- this section applies again to the remaining application or applications mentioned in paragraph (c) as if that application, or those applications, comprised a financial offer group.

Note: For example, if applications A, B and C are in a financial offer group, and:

- (a) applications A and B overlap each other; and
- (b) applications B and C overlap each other; and
- (c) applications A and C do not overlap each other; and
- (d) the Minister invites each applicant to submit a financial offer; and
- (e) applicant A submits the highest offer;

then:

- (f) the Minister may only offer to grant a licence to applicant A; and
- (g) if applicant A accepts the offer, and the licence is granted—this section applies again, and the Minister may offer to grant a licence to applicant C; and

- (h) if applicant A does not accept the offer—this section applies again, and the Minister may offer to grant a licence to whichever of applicant B or C submitted a higher financial offer.
- (6) If an applicant for a feasibility licence submits a financial offer in relation to the application, the Minister may only grant the licence to the applicant if the amount of the financial offer has been paid to the Commonwealth.

Note: The financial offer must be paid even if, at the time the licence would be granted, there are no overlapping applications (for example, because all other applicants have withdrawn their applications, or in the case mentioned in paragraph (g) of the note to subsection (5)).

Applicants that do not submit financial offers

- (7) For the purposes of subsections (2) and (3), treat an applicant that has not submitted a financial offer as having submitted a financial offer of nil. Subsection (6) does not prevent the Minister granting a feasibility licence to such an applicant.

Subdivision C—Applications for other licences

17 Commercial licences

- (1) An eligible person that holds a feasibility licence may apply for a commercial licence.
- (2) The application must:
- (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) include a description of the offshore infrastructure project to be carried out under the commercial licence; and
 - (c) be accompanied by evidence that the Regulator has approved, under the licensing scheme, a management plan for the commercial licence; and
 - (d) be accompanied by any other information or documents required by the approved form.
- (3) An application under this section is taken to include or be accompanied by a thing mentioned in paragraph (2)(b), (c) or (d) if the thing is given to the Registrar before the end of the 30-day period that begins on the day after the application is made.

Applications for licences that cover existing licence areas

- (4) If an application for a commercial licence covers an area that is, or is part of, the licence area of an existing licence, the Registrar may:
- (a) notify the holder of the existing licence that the application has been made; and
 - (b) inform the holder of the existing licence of:
 - (i) the name of the applicant; and
 - (ii) the proposed licence area of the commercial licence (including a description of the location, shape and size of the area); and

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- (iii) the kind of project that the applicant proposes to carry out in the proposed licence area; and
- (c) invite the holder of the existing licence to make a submission in relation to the potential grant of the commercial licence.

Note: The licence area of a commercial licence must not include any part of the licence area of any other commercial licence or a feasibility licence (see paragraph 42(4)(b) of the Act).

18 Research and demonstration licences—application

- (1) An eligible person may apply for a research and demonstration licence.
- (2) The application must:
 - (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) include a description of the offshore infrastructure project to be carried out under the research and demonstration licence; and
 - (c) be accompanied by any other information or documents required by the approved form.
- (3) An application under this section is taken to include or be accompanied by a thing mentioned in paragraph (2)(b) or (c) if the thing is given to the Registrar before the end of the 30-day period that begins on the day after the application is made.

Applications for licences that cover existing licence areas

- (4) If an application for a research and demonstration licence covers an area that is, or is part of, the licence area of an existing licence, the Registrar may:
 - (a) notify the holder of the existing licence that the application has been made; and
 - (b) inform the holder of the existing licence of:
 - (i) the name of the applicant; and
 - (ii) the proposed licence area of the research and demonstration licence (including a description of the location, shape and size of the area); and
 - (iii) the kind of project that the applicant proposes to carry out in the proposed licence area; and
 - (c) invite the holder of the existing licence to make a submission in relation to the potential grant of the research and demonstration licence.

19 Research and demonstration licences—applications for licences that cover the same area

- (1) If applications for research and demonstration licences cover wholly or partly the same area, the Registrar may notify the applicants of the overlap and invite the applicants to revise and resubmit their applications to remove the overlap.
- (2) The notice and invitation:
 - (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 20.
- (3) Subsections 18(2) to (4) apply to an application that is revised and resubmitted in accordance with an invitation under this section. For this purpose, treat subsection 18(2) as requiring the application to be made on or before the day specified under paragraph (2)(e) of this section.
- (4) 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.
- (5) If an applicant revises and resubmits an application in response to the invitation on or before the day specified under paragraph (2)(e), and the revised application is in accordance with section 20, 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 20, the original application remains in effect.

20 Research and demonstration licences—requirements for revised applications

- (1) For the purposes of subsection 19(5), a revised application for a research and demonstration licence is in accordance with this section if the Registrar is satisfied that the revised application is, so far as is reasonably possible, substantially similar to the original application.
- (2) For the purposes of subsection (1), 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 offshore infrastructure projects proposed to be carried out under the revised application and the original application; and
 - (c) anything else the Registrar considers relevant.
- (3) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Registrar under this section that a revised application for a research and demonstration licence is not in accordance with this section.

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21 Transmission and infrastructure licences—application

- (1) An eligible person may apply for a transmission and infrastructure licence.
- (2) The application must:
 - (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) include a description of the offshore infrastructure project to be carried out under the transmission and infrastructure licence; and
 - (c) be accompanied by any other information or documents required by the approved form.
- (3) An application under this section is taken to include or be accompanied by a thing mentioned in paragraph (2)(b) or (c) if the thing is given to the Registrar before the end of the 30-day period that begins on the day after the application is made.

Applications for licences that cover existing licence areas

- (4) If an application for a transmission and infrastructure licence covers an area that is, or is part of, the licence area of an existing licence, the Registrar may:
 - (a) notify the holder of the existing licence that the application has been made; and
 - (b) inform the holder of the existing licence of:
 - (i) the name of the applicant; and
 - (ii) the proposed licence area of the transmission and infrastructure licence (including a description of the location, shape and size of the area); and
 - (iii) the kind of project that the applicant proposes to carry out in the proposed licence area; and
 - (c) invite the holder of the existing licence to make a submission in relation to the potential grant of the transmission and infrastructure licence.

22 Transmission and infrastructure licences—applications for licences that cover the same area

- (1) If applications for transmission and infrastructure licences cover wholly or partly the same area, the Registrar may notify the applicants of the overlap and invite the applicants to revise and resubmit their applications to remove the overlap.
- (2) The notice and invitation:
 - (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 23.
- (3) Subsections 21(2) to (4) apply to an application that is revised and resubmitted in accordance with an invitation under this section. For this purpose, treat subsection 21(2) as requiring the application to be made on or before the day specified under paragraph (2)(e) of this section.
- (4) 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.
- (5) If an applicant revises and resubmits an application in response to the invitation on or before the day specified under paragraph (2)(e), and the revised application is in accordance with section 23, 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 23, the original application remains in effect.

23 Transmission and infrastructure licences—requirements for revised applications

- (1) For the purposes of subsection 22(5), a revised application for a transmission and infrastructure licence is in accordance with this section if the Registrar is satisfied that the revised application is, so far as is reasonably possible, substantially similar to the original application.
- (2) For the purposes of subsection (1), 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 offshore infrastructure projects proposed to be carried out under the revised application and the original application; and
 - (c) anything else the Registrar considers relevant.
- (3) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Registrar under this section that a revised application for a transmission and infrastructure licence is not in accordance with this section.

Division 4—Offering and granting of licences

Subdivision A—Operation of this Division

24 Operation of this Division

For the purposes of paragraph 29(1)(b) of the Act, this Division prescribes matters relating to the offering and granting of licences.

Subdivision B—Considering applications

25 Additional merit criteria—national interest

For the purposes of being satisfied that a licence meets the merit criteria, the Minister must be satisfied that the proposed project for the licence is in the national interest.

26 Merit criteria—matters to be considered

Technical and financial capability

- (1) For the purposes of being satisfied that an eligible person has, is likely to have or is likely to be able to arrange to have the technical and financial capability to carry out a proposed project under a licence, the Minister may consider one or more of the following:
 - (a) the technical advice that is or will be available to the person;
 - (b) the financial resources that are or will be available to the person;
 - (c) the person's ability to carry out the operations and works that will be authorised by the licence;
 - (d) the person's ability to discharge the obligations in relation to the licence that will be imposed by the Act, these regulations or any other instrument made under the Act;
 - (e) any other matters the Minister considers relevant.

Viability

- (2) For the purposes of being satisfied that a proposed project for a licence is likely to be viable, the Minister may consider one or more of the following:
 - (a) the complexity of the project;
 - (b) the route-to-market for the project;
 - (c) the estimated commercial return to the licence holder;
 - (d) any other matters the Minister considers relevant.

Suitability of the applicant

- (3) For the purposes of being satisfied that an eligible person is suitable to hold a licence, the Minister may consider one or more of the following:
 - (a) the person's past performance in offshore infrastructure projects, or other large infrastructure projects, in Australia or internationally;

- (b) the person's past financial performance;
- (c) the person's corporate governance structure;
- (d) any other matters the Minister considers relevant.

National interest

- (4) For the purposes of being satisfied that a proposed project for a licence is in the national interest, the Minister 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;
 - (b) national security;
 - (c) whether the project is likely to be delivered within a reasonable time;
 - (d) whether the project is likely to make efficient use of the licence area;
 - (e) conflicts that might arise with other uses or users of the licence area;
 - (f) any measures that are proposed to mitigate such conflicts;
 - (g) any other matters the Minister considers relevant.

Note: In considering a licence application, 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: see section 42.

Subdivision C—Offering and granting licences

27 Offer of licence

- (1) If the Minister decides to grant a licence to an applicant, the Minister must offer the licence to the applicant.
- (2) The Minister may make the offer by arranging for the Registrar to give the offer to the applicant.
- (3) The offer must:
 - (a) be in writing; and
 - (b) specify the licence area for the licence; and
 - (c) state the day on which the licence would come into force; and
 - (d) state the end day of the licence; and
 - (e) specify the conditions that would apply to the licence, including the requirement to pay any offshore electricity infrastructure levy; and
 - (f) for a feasibility licence—specify the day on or before which amounts of the financial offer (if any) must be paid to the Commonwealth if the offer of the licence is accepted by the applicant; and
 - (g) specify the day on or before which the offer must be accepted; and
 - (h) state that, if the offer is not accepted by that day, the applicant's application for the licence will lapse; and
 - (i) specify the method for accepting the offer, which may include giving the acceptance or other information to the Registrar.

Section 28

28 Granting licences

A licence granted as a result of the acceptance of an offer under section 27 must be consistent with the details set out in the offer.

Note 1: The grant of a licence must be recorded in the Register: see section 163 of the Act.

Note 2: For other rules relating to grants of licences, see the following sections of the Act:

- (a) section 33 (grant of a feasibility licence);
- (b) section 42 (grant of a commercial licence);
- (c) section 52 (grant of a research and demonstration licence);
- (d) section 61 (grant of a transmission and infrastructure licence).

Note 3: The Minister may delegate to the Registrar the function of giving notice of the grant of a licence (see section 303 of the Act).

Division 5—Extending and varying licences

29 Operation of this Division

For the purposes of paragraph 29(1)(f) of the Act, this Division prescribes matters relating to extending and varying licences.

30 Extending the term of a licence

On application

- (1) The Minister may extend the end day of a licence if the licence holder applies for the extension.
- (2) The application must:
 - (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) be made:
 - (i) for a licence other than a commercial licence—before the end day of the licence; and
 - (ii) for a commercial licence—at least 5 years before the end day of the licence; and
 - (c) be accompanied by any other information or documents required by the approved form.
- (3) An application under this section is taken to be accompanied by the information or documents mentioned in paragraph (2)(c) if the information or documents are given to the Registrar before the end of the 30-day period that begins on the day after the application is made.

On Minister’s own initiative

- (4) The Minister may extend the end day of a feasibility licence or a research and demonstration licence on the Minister’s own initiative.

Notice of extension

- (5) If the Minister extends the end day of a licence, the Minister must give the licence holder written notice of the extension.
- (6) The Minister may give the notice by arranging for the Registrar to give the notice.

Note 1: The extension must be recorded in the Register: see item 7 of the table in subsection 164(1) of the Act.

Note 2: For other rules relating to extending the term of a licence, see the following sections of the Act:

- (a) section 37 (extending the term of a feasibility licence);
- (b) section 47 (extending the term of a commercial licence);
- (c) section 56 (extending the term of a research and demonstration licence);
- (d) section 65 (extending the term of a transmission and infrastructure licence).

Section 31

31 Application to vary a licence

- (1) An application to vary a licence must:
- (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) be accompanied by any other information or documents required by the approved form.
- (2) An application under this section is taken to be accompanied by the information or documents mentioned in paragraph (1)(b) if the information or documents are given to the Registrar before the end of the 30-day period that begins on the day after the application is made.

Note 1: The variation of a licence must be recorded in the Register: see item 1 of the table in subsection 164(1) of the Act.

Note 2: For other rules relating to varying licences, see the following sections of the Act:

- (a) section 38 (varying a feasibility licence);
- (b) section 48 (varying a commercial licence);
- (c) section 57 (varying a research and demonstration licence);
- (d) section 66 (varying a transmission and infrastructure licence).

Note 3: The Minister may delegate to the Registrar the function of giving notice of the variation of a licence (see section 303 of the Act).

Division 6—Licence conditions

32 Operation of this Division

For the purposes of paragraph 29(1)(f) of the Act, this Division prescribes conditions to which licences are subject.

33 Reports

- (1) A licence is subject to the condition that the licence holder give the Registrar or the Minister reports in accordance with this section.

Annual reports

- (2) The licence holder must give the Registrar annual reports.
- (3) An annual report must:
- (a) be given to the Registrar in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) be given within 30 days after the most recent anniversary of the grant of the licence (or such further period as allowed by the Registrar); and
 - (c) relate to the activities of the licence holder during the 12-month period (the **reporting period**) immediately before the anniversary; and
 - (d) be accompanied by any other information or documents required by the approved form.
- (4) An annual report must include the following:
- (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;
 - (c) a summary of anticipated 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;
 - (d) any other information or documents that a condition of the licence (other than this condition in this section) requires the annual report to include.
- (5) An annual report is taken to be accompanied by or include a thing mentioned in paragraph (3)(d) or subsection (4) if the thing is given to the Registrar before the end of the 10-day period that begins on the day after the annual report is given to the Registrar.

Final report

- (6) The licence holder must give the Minister a final report if:
- (a) the licence holder applies to the Minister under subsection 74(1) of the Act for the Minister to consent to the surrender of the licence; and

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- (b) the licence would cease to be in force if the licence were surrendered in accordance with the application.
- (7) A final report must:
- (a) be given to the Minister in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar's website; and
 - (b) accompany the application under subsection 74(1) of the Act; and
 - (c) relate to the activities of the licence holder during the period (the **reporting period**) that:
 - (i) begins on the most recent anniversary of the grant of the licence; and
 - (ii) ends the day before the application is made; and
 - (d) be accompanied by any other information or documents required by the approved form.
- (8) A final report must include the following:
- (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 that a condition of the licence (other than this condition in this section) requires the annual report to include.
- (9) A final report is taken:
- (a) to accompany the application under subsection 74(1) of the Act for the purposes of paragraph (7)(b) of this section; and
 - (b) to include or be accompanied by the things mentioned in paragraph (7)(d) and subsection (8) of this section;
- if the final report and the things are given to the Minister before the end of the 10-day period that begins on the day after the application is made.

Division 7—Transferring licences

34 Operation of this Division

For the purposes of paragraph 29(1)(c) of the Act, this Division prescribes matters relating to transfers of licences.

35 Application to transfer a licence

- (1) An application to transfer a licence must:
 - (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) be accompanied by any other information or documents required by the approved form.

Note The application must be made to the Registrar: see section 69 of the Act.

- (2) An application under this section is taken to be accompanied by the information or documents mentioned in paragraph (1)(b) if the information or documents are given to the Registrar before the end of the 30-day period that begins on the day after the application is made.

36 Assessment by Registrar

- (1) If an application for the transfer of a licence is made, the Registrar must:
 - (a) make an assessment of the application by reference to the criteria set out in subsection 70(1) of the Act (licence transfers); and
 - (b) provide advice to the Minister in relation to the assessment.
- (2) For the purposes of making the assessment, the Registrar may consult with the Regulator or any other person.

37 Decision by Minister

- (1) In deciding whether or not to transfer a licence, the Minister:
 - (a) may consult with the Registrar, the Regulator or any other person; and
 - (b) subject to paragraph (c)—may take into account any advice or recommendations given or made by the Registrar, the Regulator or any other person; and
 - (c) must have regard to any advice provided by the Registrar under paragraph 36(1)(b) in relation to the application for the transfer.

Note 1: The transfer of a licence must be recorded in the Register: see item 2 of the table in subsection 164(1) of the Act.

Note 2: For other rules relating to the transfer of licences, see Part 2 of Chapter 3 of the Act.

Note 3: The Minister may delegate to the Registrar the function of giving notice of a decision to transfer, or not to transfer, a licence (see section 303 of the Act).

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Financial security

- (2) If a licence is transferred, then, for the purposes of subsections 72(2) and (3) of the Act, the transferor must comply with sections 117 and 118 of the Act in relation to the licence, as if the transferor still held the licence, until:
- (a) the licence ceases to be in force; or
 - (b) the Minister gives a notice to the transferor and transferee under subsection (3) of this section.
- (3) The Minister may, by written notice to the transferor and transferee, determine that subsection (2) no longer applies to the transferor if the Minister is satisfied that the transferee is in compliance with sections 117 and 118 of the Act in relation to the licence.
- Note: The Minister may delegate to the Registrar the function of giving a notice under this subsection (see section 303 of the Act).
- (4) To avoid doubt, subsection (2) does not affect any obligation of the transferee to comply with sections 117 and 118 of the Act.

Division 8—Change in control of licence holder

38 Operation of this Division

For the purposes of paragraph 29(1)(d) of the Act, this Division prescribes matters relating to changes in control of licence holders.

39 Application for approval of change in control of licence holder

- (1) An application for approval of a change in control of a licence holder must:
- (a) be made in the manner and form that is:
 - (i) approved by the Registrar; and
 - (ii) published on the Registrar’s website; and
 - (b) be accompanied by any other information or documents required by the approved form.

Note 1: The application must be made to the Registrar: see section 86 of the Act.

Note 2: A change in control of a licence holder must be noted in the Register: see section 94 of the Act.

Note 3: For other rules relating to the change in control of a licence holder, see Part 3 of Chapter 3 of the Act.

- (2) An application under this section is taken to be accompanied by the information or documents mentioned in paragraph (1)(b) if the information or documents are given to the Registrar before the end of the 30-day period that begins on the day after the application is made.

Division 9—General matters

Subdivision A—Operation of this Division

40 Operation of this Division

For the purposes of section 29 of the Act, this Division prescribes general matters relating to the operation of the licensing scheme.

Subdivision B—Support by Registrar

41 Request for further information

- (1) For the purposes of advising the Minister in relation to a licence application, the Registrar may request additional information from the applicant.
- (2) The request must:
 - (a) be in writing; and
 - (b) specify the information required; and
 - (c) specify the day on or before which the information must be provided; and
 - (d) specify the manner in which the information must be provided.
- (3) If the additional information is not provided on or before the day specified, the Minister may refuse to consider the application further.
- (4) If the Minister so refuses, the Minister must give the applicant written notice of the refusal.
- (5) To avoid doubt, this section applies to an application for a feasibility licence in relation to which the Minister is considering making a determination under subsection 11(2) or 14(2).

42 Advice given by the Registrar

- (1) In considering a licence application, 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.
- (2) To avoid doubt, this section applies to an application for a feasibility licence in relation to which the Minister is considering making a determination under subsection 11(2) or 14(2).

Subdivision C—Procedural fairness

43 Proposed decision to refuse application

- (1) This section applies if, on application, the decision maker proposes to make a decision:
 - (a) not to offer to grant a licence (other than a feasibility licence); or
 - (b) not to extend the end day of a licence; or
 - (c) not to vary a licence; or

- (d) not to transfer a licence; or
 - (e) not to consent to the surrender of a licence; or
 - (f) not to approve a change in control of a licence holder.
- (2) For the purposes of this section, the **decision maker** is:
- (a) for a decision covered by any of paragraphs (1)(a) to (e)—the Minister; or
 - (b) for a decision covered by paragraph (1)(f)—the Registrar.
- (3) The decision maker must give the applicant written notice of the proposed decision.
- (4) If the decision maker is the Minister, the notice may be given to the applicant by the Registrar.
- (5) The notice must:
- (a) set out the decision maker’s reasons for the proposed decision; and
 - (b) invite the applicant to make a written submission about the proposed decision; and
 - (c) specify the period within which the submission must be made.
- (6) The specified period must be reasonable having regard to the circumstances.
- (7) Any submission made in response to the notice must be given to the Registrar.
- (8) The decision maker must take the submission into account in deciding whether to make the proposed decision.

44 Notice of refusal decision

If a decision maker makes a decision mentioned in subsection 43(1), the decision maker must give the applicant written notice of the decision and the reasons for the decision.

Note: The Minister may delegate to the Registrar the function of giving notices under this section (see section 303 of the Act).

Part 3—Fees

45 Application fees

For the purposes of subsection 189(2) of the Act, the following table sets out amounts of fees for dealing with certain applications made under the Act.

Application fees		
Item	Kind of application	Amount of fee
1	Application for a feasibility licence	\$300,000
2	Application for a commercial licence	\$350,000
3	Application for a research and demonstration licence	\$300,000
4	Application for a transmission and infrastructure licence	\$300,000
5	Application to extend the term of a licence	\$36,500
6	Application to vary a licence	\$36,500
7	Application to transfer a licence	\$35,500
8	Application for approval of change in control of licence holder	\$35,500
9	Application to surrender a licence	\$22,500

46 Applications taken to have been made only if fee paid

For the purposes of paragraph 189(5)(a) of the Act, an application mentioned in section 45 of this instrument is taken to have been made only if the fee for dealing with the application has been paid.

Part 4—Payment of offshore electricity infrastructure levy

47 Payment of levy

- (1) This section is made for the purposes of subsection 190(1) of the Act.
- (2) An amount of offshore electricity infrastructure levy that is payable for a particular period is due and payable 30 days after the beginning of the period.

Note: For kinds and amounts of offshore electricity infrastructure levies, see the *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022*.

Levies to be paid to Registrar or Regulator

- (3) Offshore electricity infrastructure levies must be paid as follows:
 - (a) annual licence levy to the Registrar;
 - (b) annual compliance levy to the Regulator;
 - (c) annual Commonwealth levy to the Registrar.

48 Refunds of levy

- (1) This section is made for the purposes of subsection 190(2) of the Act.
- (2) If an amount of offshore electricity infrastructure levy is overpaid, the person to whom the levy was paid must refund the amount by which the levy was overpaid.
- (3) For the purposes of this section, overpaid levy includes the following:
 - (a) levy overpaid in error;
 - (b) levy overpaid because a licence was held for less than the period for which the levy was paid;
 - (c) levy overpaid because part of a licence area became a vacated area during the period for which the levy was paid.

Part 5—Other provisions

49 Datum provisions

For the purposes of paragraph 9(2)(a) of the Act, the position on the surface of the Earth of a point, a line or an area is to be determined by reference to the Geocentric Datum of Australia as defined in Gazette No. 35 of 6 September 1995 (GDA94 geocentric data set).

50 Pre-existing infrastructure

For the purposes of paragraph 309(3)(b) of the Act, offshore renewable energy infrastructure or offshore electricity transmission infrastructure constructed, installed or commissioned for the purpose of operating, maintaining or repairing (including by replacement) pre-existing infrastructure is to be treated as pre-existing infrastructure.