



**The Department of Climate Change, Energy, the Environment and Water  
– application for authorisation (AA1000662) for industry collaboration  
to resolve overlapping feasibility licence applications in declared  
offshore renewable energy generation areas**

**Interim authorisation decision**

**20 March 2024**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000662 lodged by the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on 15 March 2024.
2. This application relates to the granting of feasibility licences in declared offshore electricity generation areas under the *Offshore Electricity Infrastructure Act 2021* (the **OEI Act**) and the *Offshore Electricity Infrastructure Regulations 2022* (the **OEI Regulations**).
3. There are currently 2 declared offshore electricity generation areas – Gippsland and Hunter – where the feasibility application process is well advanced. Given the importance of supporting the development of renewable energy infrastructure and to address perceived risks by industry participants about their role in this process, the ACCC has moved quickly to assess this request for interim authorisation.
4. Authorisation is sought on behalf of DCCEEW, the Offshore Infrastructure Registrar (**the Registrar**) and certain bodies corporate applying for feasibility licences for offshore electricity infrastructure. Specifically, authorisation is sought to extend 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 for Climate Change and Energy (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 **Feasibility Licence Applicant Parties**). Together, these 2 groups are referred to as the **Parties**.

5. The ACCC grants interim authorisation to the Parties for the Proposed Conduct (as defined at paragraphs 30 to 32) insofar as it relates to:
  - a. The area declared in the *Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022 (Gippsland declared area)*; and
  - b. The area declared in the *Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023 (Hunter declared area)*in relation to Division 1 of Part IV and sections 45, 46 and 47 of the *Competition and Consumer Act 2010 (Cth)* (the **Act**).
6. Interim authorisation is granted to prevent delays in feasibility licence processes that have already commenced.
7. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

## **Background**

8. 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 OEI Regulations.
9. The OEI Act provides for 4 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), which 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 (for example, 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.
10. DCCEEW's application relates to feasibility licenses only.
11. The process to build offshore renewable energy infrastructure, such as offshore wind farms, takes several years. Once a proposed area is identified, the Minister seeks public feedback and submissions. The Minister may declare an area if they are satisfied that

the area is suitable for offshore renewable energy infrastructure. If an area is declared, developers can apply for a feasibility licence to advance investigations to inform an individual project proposal within that area.

12. There are 6 areas identified<sup>1</sup> for offshore wind development in Australian Commonwealth waters.<sup>2</sup>
13. The Minister declared an area off Gippsland, Victoria, as suitable for offshore renewable energy on 19 December 2022.<sup>3</sup> The declared area off Gippsland covers approximately 15,000 square kilometres. It is offshore of Lakes Entrance in the east, to south of Wilsons Promontory in the west.<sup>4</sup>
14. The Minister declared an area in the Pacific Ocean off the Hunter, New South Wales, as suitable for offshore renewable energy, including offshore wind on 12 July 2023.<sup>5</sup> The declared area off the Hunter covers 1,854km<sup>2</sup> and extends from offshore of Norah Head in the south, to Port Stephens in the north.<sup>6</sup>
15. Once the Minister has declared an area, an invitation to submit a feasibility licence application is issued.<sup>7</sup> Feasibility licence applications were accepted for proposed projects within the Gippsland and Hunter declared areas in 2023.<sup>8</sup> The Registrar leads the assessment of all applications against criteria set out in the [OEI Regulations](#) and makes recommendations to the Minister.
16. Under feasibility licence application processes, applicants submit proposed licence areas (defined by coordinates), which might unintentionally overlap. Applications for feasibility licences 'overlap' if they cover wholly or partly the same geographic area. Licences cannot be granted to overlapping applications, as a final feasibility licence area must be exclusive from other areas.<sup>9</sup>
17. Where the licence area proposed in one feasibility licence application overlaps with the proposed licence area in another, the OEI Regulations set out a process for those businesses to share information and reach agreements to resolve overlaps in the first instance by revising and resubmitting their applications.

#### *Stages in the feasibility licence application process*

18. Pursuant to the OEI Regulations, the Minister may invite eligible persons to apply for a feasibility licence. Applications must meet the merit criteria set out in section 34 of the OEI Act and expanded upon in section 26 of the OEI Regulations.
19. 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.

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<sup>1</sup> Being the declared areas of [Gippsland](#), Vic; [Hunter](#), NSW; and the recently declared [Southern Ocean](#) region, Vic and SA; and the 3 identified priority areas of [Illawarra](#), NSW; [Bass Strait](#), Tas; and the [Indian Ocean](#) off Bunbury, Western Australia.

<sup>2</sup> See the Department of Climate Change, Energy, the Environment and Water: <https://www.dcceew.gov.au/energy/renewable/offshore-wind/areas>

<sup>3</sup> *Offshore Electricity Infrastructure (Declared Area OEI-01-2022) Declaration 2022*

<sup>4</sup> 'Gippsland, Victoria declared offshore wind area', the Department of Climate Change, Energy, the Environment and Water: <https://www.dcceew.gov.au/energy/renewable/offshore-wind/areas/gippsland>

<sup>5</sup> *Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023*

<sup>6</sup> 'Hunter, NSW declared offshore wind area', the Department of Climate Change, Energy, the Environment and Water: <https://www.dcceew.gov.au/energy/renewable/offshore-wind/areas/hunter>

<sup>7</sup> 'Guideline: Offshore Electricity Infrastructure Licence Administration – Feasibility Licences, In relation to the Offshore Electricity Infrastructure Act 2021' Version 2, August 2023 at [4.2.1].

<sup>8</sup> In respect of the Gippsland proposed project area, feasibility licence applications were open from 23 January to 27 April 2023. In respect of the Hunter proposed project area, feasibility licence applications were open from 8 August 2023 to 14 November 2023.

<sup>9</sup> Section 33(4)(b) of the OEI Act.

20. Where a licence area proposed in one feasibility licence application overlaps with the licence area proposed in another feasibility licence application of equal merit, sections 11 to 13 of the OEI Regulations set out a process for feasibility licence applicants to resolve overlaps by revising and resubmitting their applications, at the invitation of the Registrar.
21. In particular, section 11 of the OEI Regulations provides that the Minister may determine that a group of 2 or more applications forms an 'overlapping application group' if each application overlaps at least one other application in the group; the licence area forms a continuous area; the Minister considers all of the applications in the group to be of equal merit;<sup>10</sup> and the Minister is satisfied that if not for the overlap, a feasibility licence could be offered in relation to each of the applications.
22. 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 such a determination has been made, and invite the applicants to revise and resubmit their applications to remove the overlap by a date specified by the Registrar in the notice. DCCEEW advises that progression through the overlap resolution process is projected to take 5 to 6 months, from the issuing of invitations by the Registrar 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.
23. As well as the date for revised applications to be re-submitted, the notice must set out the following information for each other applicant with an overlapping feasibility licence application:<sup>11</sup>
  - 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.
24. The notice may also include such other information as the Registrar considers reasonable about the overlapping applications, and about other applications that cover areas adjacent to, or nearby the overlapping area.<sup>12</sup>
25. DCCEEW strongly encourages members of overlapping application groups to collaborate with each other to resolve overlaps by revising and resubmitting their applications.<sup>13</sup>
26. Revised and resubmitted applications must be made in accordance with section 13 of the OEI Regulations. Amongst other things, section 13 requires that the Registrar is satisfied that a revised application is, so far as is reasonably possible, substantially similar to the original application, and that it 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

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<sup>10</sup> Section 11(3) of the OEI Regulations provides that in considering the merit of an application the Minister must have regard to a number of factors, including the technical and financial capability that the applicant is likely to have to carry out the proposed commercial offshore project, and the likely viability of the proposed commercial offshore infrastructure project.

<sup>11</sup> Section 12(3)(b) of the OEI Regulations.

<sup>12</sup> Section 12(3)(c), (d) of the OEI Regulations.

<sup>13</sup> Explanatory statement, OEI Regulations.

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.

27. 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 2 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.

### **The Proposed Conduct**

28. The application for authorisation relates to industry participants, in response to an invitation by the Registrar, collaborating for the purpose of revising and resubmitting applications for feasibility licences under the OEI Act to remove an overlap (or overlaps).
29. The proposed conduct for which authorisation is sought is set out in paragraphs 30 to 32 of this decision and is referred to as the **Proposed Conduct**.
30. Specifically, DCCEEW seeks authorisation for the Feasibility Licence Applicant Parties to:
  - a. communicate; and/or
  - b. propose agreements; and/or
  - c. enter into agreements; and/or
  - d. give effect to agreements,

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

- a. authorisation is sought for the Proposed Applicant Conduct to be engaged in by the relevant Feasibility Licence 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
- b. authorisation is sought for any communications between relevant Feasibility Licence 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 Feasibility Licence Applicant Parties have applied for or would propose to be the subject of revised and resubmitted applications; and
- c. authorisation is sought in relation to any agreements proposed, entered into or given effect to between relevant Feasibility Licence 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).

31. 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 Feasibility Licence 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.
32. DCCEEW does *not* seek authorisation for any meetings, collaboration, information exchange, or other discussions or agreements between the Parties that goes beyond the intention of the overlap resolution provisions described in sections 11 to 13 of the OEI Regulations, and the Registrar's invitation to revise and submit applications under section 12 of the OEI Regulations.
33. Authorisation is sought for 3 years, until 15 March 2027. DCCEEW submits that it is currently focused on the feasibility licensing rounds in Gippsland and Hunter declared areas, which it expects to complete by late 2024.<sup>14</sup> The Southern Ocean Area was recently declared and the licensing round for that area is not expected to be completed until mid-2025. Three other priority areas have been identified as possible for future OEI declaration, which are currently undergoing Ministerial consideration, following public consultation. DCCEEW anticipates that feasibility licensing rounds will be completed for all 6 prioritised areas by 2026, assuming no more areas are identified, and invitations are not re-opened for existing declared areas.

#### *Rationale for the Proposed Conduct*

34. DCCEEW advises that due to the high level of interest in limited declared areas, overlapping feasibility applications are likely in every licence round, and have been received in each of the processes being conducted in Gippsland and Hunter.
35. Without the Proposed Conduct, DCCEEW submits that the revision of overlapping applications will lack the necessary precision, coordination, and overall effectiveness, leading to a higher likelihood of further overlaps or failure to resolve the original overlap. Where overlapping applications remain following a revision process, the Minister may need to take the additional step to run a 'financial offer process', which results in only one applicant (with the highest offer) being granted a licence in an overlapping area. DCCEEW submits that taking the additional step to run a 'financial offer process', would

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<sup>14</sup> The licensing round for the recently declared Southern Ocean area will commence in July 2024 and is not expected to be completed until mid-2025.

delay the granting of feasibility licences by an additional 2 months, including a further 30 days for applicants to submit financial offers.

36. Therefore, DCCEEW submits the Proposed Conduct is likely to result in more feasibility licences being granted in a timely manner, as well as reduce delays, inefficiencies and the overall cost of development for proposed offshore wind projects. DCCEEW submits that if overlaps can be resolved prior to the financial offer process, a larger number of licence holders will have the ability to progress to the commercial licence phase. DCCEEW submits that *'greater competition in the commercial phase would, all things equal, encourage lower electricity prices, greater reliability, innovation, and would contribute to Australia's emissions reduction targets to a larger extent'*.<sup>15</sup>

### **The authorisation process**

37. Feasibility licence applicants in each declared area are competing for limited space within which to secure a feasibility licence. The Proposed Conduct involves competing licence applicants collaborating to resolve overlaps in licence areas including potentially agreeing to remove overlaps and therefore avoiding participation in the financial offer process. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act.
38. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

39. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in some, or all, of the Proposed Conduct while the ACCC assesses the substantive application.
40. DCCEEW requested interim authorisation to enable the Parties to commence engaging in the Proposed Conduct for the Gippsland declared area and the Hunter declared area only. The feasibility licence application processes for these 2 areas are underway and DCCEEW advises that:
- the Minister, with advice from the Registrar, is in the process of considering applications for feasibility licences in the Gippsland declared area and anticipates determining overlapping groups in mid-March 2024, following which invitations to revise and re-submit would be issued and the overlap resolution process commenced, and
  - the Minister is expected to be briefed on applications for feasibility licences in the Hunter declared area in May 2024, with overlapping licence groups being determined in July 2024, following which invitations to revise and resubmit would be issued and the overlap resolution process commenced.
41. DCCEEW advises that 37 applications for feasibility licences were received in the Gippsland declared area, and 8 feasibility licence applications were received in the Hunter declared area.
42. DCCEEW submits that in the event the Minister determines there are overlapping feasibility licence application groups in the Gippsland and Hunter declared areas, interim

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<sup>15</sup> DCCEEW application for authorisation AA1000662, 15 March 2024, p. 9.

authorisation will prevent delays in the resolution of the overlapping applications. DCCEEW considers this will promote certainty to those applicants participating in these 2 processes and may avoid the need to progress to the financial offer process in Gippsland and the Hunter, which in turn, would likely result in fewer feasibility licenses being granted in a declared area. This would ultimately result in fewer participants potentially progressing to the commercial licence phase and therefore, fewer competitors in the supply of offshore electricity.

43. As an immediate example, DCCEEW advises that if interim authorisation is granted to the Proposed Conduct, an additional 3 feasibility licences could be granted in the Gippsland licensing round.

### **Consultation**

44. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation. This is due to the urgent nature of the DCCEEW's request for interim authorisation to avoid any delays in ongoing processes for resolving overlapping feasibility licence applications in the Gippsland and Hunter declared areas.
45. The ACCC is now seeking submissions on the substantive application for authorisation and will further examine the public benefits and detriments likely to result from the Proposed Conduct during that consultation process. Details regarding how to make a submission are available on the [ACCC's authorisations public register](#).

### **Reasons for decision**

46. In granting interim authorisation, the ACCC considers that:
  - The feasibility licence application processes under the OEI Regulations in the Gippsland and Hunter declared areas are well progressed and there is urgency for an interim authorisation to provide certainty around the scope and nature of direct engagement with and between licence applicants participating in the process to revise and resubmit their applications to address overlaps.
  - The Proposed Conduct (as limited to the Gippsland and Hunter declared areas) relates to the granting of feasibility licences only, during which licence holders will be carrying out long-term exploratory and scoping work for the potential development of offshore renewable energy resources (it does not extend to granting more permanent commercial licenses). If authorisation is not ultimately granted, the ACCC considers that while the granting of feasibility licences as a result of the Proposed Conduct may have an affect on the related markets for commercial development and energy supply, this is likely to be pro-competitive and unlikely to be detrimental.
  - Interim authorisation of the Proposed Conduct (as limited to the Gippsland and Hunter declared areas) is likely to avoid delays in resolving overlapping feasibility licence applications, and likely to result in a public benefit from having more feasibility licences granted. In turn, this is likely to result in more applications for commercial licenses that could result in more competitors in the supply of offshore energy in Australia.
  - The scope of the Proposed Conduct (as limited to the Gippsland and Hunter declared areas) is narrow and only initiated at the direction of the Offshore Infrastructure Registrar, and information shared between the Parties is limited to that necessary for the purpose of resolving overlapping areas in feasibility licence applications.



- Any likely detriment from the Proposed Conduct is further mitigated by how the processes will operate in practice, whereby the OEI Regulations require revised applications for feasibility licences to be substantially similar to the original application.

#### **Reconsideration of interim authorisation**

47. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.