



Australian Government

Offshore renewables environmental approvals



June 2022

OEI Act and EPBC Act requirements and sequencing

The Australian Government has established a legislative framework to enable offshore infrastructure projects¹ to be undertaken in Australian Commonwealth waters (>3 nautical miles from shore). This guidance has been developed to explain the requirements and interactions between the *Offshore Electricity Infrastructure Act 2021* (OEI Act) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) licensing and environmental approvals processes. The guidance is part of a suite of guidance prepared by the Australian Government to support proponents.

This guidance is separated into three parts to explain the primary environmental approvals pathways under the EPBC Act and licensing requirements for three offshore infrastructure project types under the OEI Act:

Commercial projects

Wind farms, wave generation, solar, tidal or other forms of renewable energy generation projects. These projects may or may not also include transmission infrastructure as needed.

Transmission infrastructure projects

Electricity transmission cable projects and renewable energy product pipeline projects, without an associated offshore energy generation component.

Research and demonstration projects

Conducting research into or demonstrating the viability of offshore renewable energy infrastructure or technologies.

1. Section 8 of the OEI Act defines 'offshore infrastructure project' as meaning:

- a) The offshore renewable energy infrastructure or offshore electricity transmission infrastructure that is, or is to be, constructed, installed, commissioned, operated, maintained or decommissioned under the licence;
- b) Any activities that are, or are to be, carried out under the licence in the licence area by or on behalf of the licence holder;
- c) Any activities that this Act requires to be carried out in the licence area by or on behalf of the licence holder.

There are five key Commonwealth agencies responsible for administering licensing and regulatory processes for offshore infrastructure projects in Australian Commonwealth waters. Each agency has independent processes and requirements that must be adhered to for a project to proceed:

Department of Industry, Science, Energy and Resources (DISER) Is responsible for supporting the Minister for Energy in area identification and declaration processes.

Offshore Infrastructure Registrar

(the Registrar) is responsible for providing advice to the Minister responsible for the OEI Act and administering licences.

Offshore Infrastructure Regulator

(the Regulator) is responsible for management plan assessments and post-approval compliance and enforcement.

Department of Agriculture Water and the Environment (DAWE)

environmental Approvals Division (EAD) is responsible for implementing the EPBC Act in relation to impacts to Matters of National Environmental Significance (MNES) and other national environmental or heritage matters, including assessing proposals and supporting the Minister for the Environment in determining authorisation requirements and post-approval compliance and enforcement.

Director of National Parks (DNP)

Is responsible for managing Australian Marine Park (AMP) values, including authorisation requirements where activities may occur within or impact upon AMP values, and post-approval compliance and enforcement.

This guidance highlights for proponents and other interested parties, the key licensing and environmental approval steps and indicative timing to support efficient primary environmental approval processes for offshore infrastructure activities.

Where there are requirements under legislation for timing and the order of steps in an assessment process, this is highlighted in the text and process diagrams. It remains the responsibility of proponents to assess the relative merit and risk of selected approaches to approvals pathways. Further information or advice regarding any proposed approach to an approvals process should be sought from the relevant agency. Indicative timeframes have been provided where possible however these will be influenced by the time taken by proponents to complete documentation and meet requirements for key steps in the process. It remains the responsibility of proponents to ensure they comply with all legal requirements in relation to their projects.

Government agencies will work together to identify opportunities to further align and streamline processes where possible over time.

This guidance does not cover other OEI Act approval requirements in relation to work health and safety, infrastructure integrity, financial security and decommissioning.



The legal framework

The OEI Act entered into force on 2 June 2022 and, in combination with supporting regulations², sets out the requirements that apply to the construction, installation, commissioning, operation, maintenance and decommissioning of *offshore renewable energy infrastructure*³ and *offshore electricity transmission infrastructure*⁴ (offshore infrastructure).

The OEI Act has been designed to operate in conjunction with other applicable regulatory regimes. Specifically, *offshore infrastructure activities*⁵ are subject to environmental approval requirements under environmental legislation, including the EPBC Act administered by DAWE. Approvals under the EPBC Act are required if the activity is expected to have a significant impact on a matter protected under Part 3 of the EPBC Act, including the environment of the Commonwealth marine area. Additional Commonwealth approval requirements will depend upon the location and nature of activities and can include requirements under the *Environmental Protection (Sea Dumping) Act 1981* and the *Underwater Cultural Heritage Act 2018* which are also administered by DAWE.

Australian Marine Parks account for 45% of Commonwealth waters. Activities occurring within, or that could impact upon, AMP values require authorisation by the DNP under the EPBC Act.

Similarly, activities occurring within or that could impact upon the Great Barrier Reef Marine Park, require authorisation from the Great Barrier Reef Marine Park Authority (GBRMPA) under the *Great Barrier Reef Marine Park Act 1975*.

Applicable State and Territory legislation varies by jurisdiction and the degree to which individual project infrastructure intersects with State and Territory coastal waters and lands. Proponents will need to seek all required approvals and licences under relevant Commonwealth and State or Territory legislation before any offshore infrastructure activities can occur. Proponents are encouraged to engage with Commonwealth and relevant state or territory authorities early in the planning stages, particularly where an *offshore infrastructure project*⁶ may result in infrastructure being constructed across multiple jurisdictions.

The OEI framework allows legislative requirements to be met efficiently and effectively during project implementation through licences and management plans administered by the Registrar and the Regulator respectively. The relevant Commonwealth Government agencies are working together to affect a streamlined approach to implementation of relevant EPBC Act post approval requirements and DNP post approval authorisation requirements where they exist through these management plans.

2. Supporting regulations are planned for establishment throughout 2022

3. *Offshore Electricity Infrastructure Act 2021* Section 8

4. Ibid. | 5. Ibid | 6. Ibid



The OEI Act allows for the following legal instruments:

Area declarations

Made by the Minister for Energy in the Commonwealth offshore area are a necessary pre-requisite for feasibility licences, commercial licences and research and demonstration licences to be granted within the declared area. A transmission and infrastructure licence does not require an area declaration.

Feasibility licences

Authorise the licence holder to assess the feasibility of an offshore infrastructure project and apply for a commercial licence for the project. The licence remains in force for seven years.

Commercial licences

Authorise the licence holder to carry out a commercial project for the purposes of exploiting renewable energy resources. Commercial licences remain in force for 40 years.

Transmission and infrastructure licences

Authorise the licence holder to store, transmit or convey electricity (which may or may not be from renewable sources) or a renewable energy product. The term of a transmission and infrastructure licence is determined by the Minister.

Research and demonstration licences

Authorises research into and demonstration of offshore renewable energy infrastructure or offshore electricity transmission infrastructure over the short term (~10 years).

All licences have the possibility of being extended beyond the initial term at the discretion of the Minister.

Before an offshore infrastructure project can proceed, it must meet the requirements of the OEI Act and all relevant Commonwealth and State and Territory environmental requirements.

Licences issued under the OEI Act are separate to approvals under the EPBC Act and State and Territory requirements and approval under one Act does not guarantee approval under another.

Timings differ between regulatory processes both in terms of assessment timeframes and licensing periods. This should be taken into account by proponents when applying for approvals and in ongoing management of approvals and licences.

Approvals processes

Commercial projects

Commercial projects are likely to include offshore infrastructure installation in Commonwealth waters, as well as associated transmission infrastructure that may cross into state or territory waters to transport electricity or other renewable energy products to land.

The licensing and environmental approvals process for commercial projects can be simplified down to five main regulatory process steps. ⓘ Refer to Figure 1 for more details.



1. Area declarations

For commercial projects, the approvals process commences with the Energy Minister declaring an area (as defined in the OEI Act) suitable for offshore renewable energy infrastructure.

Prior to the area declaration, the Minister will publish a notice on the DISER website that specifies the area being considered for future licensing under the OEI Act for a period of at least 60 calendar days and will invite submissions from the public.

After undertaking necessary consultations, considering submissions and having regard to Australia's international obligations in relation to the area, the Minister may declare an area suitable for offshore renewable energy infrastructure.

Declared areas need not be continuous, may overlap other existing and proposed future uses of the Commonwealth offshore area and may be subject to conditions that may apply to the whole area, or locations within an area. An area declaration remains in force until a date specified in the declaration (if any) or until it is revoked. A declared area may also be varied subject to requirements under the OEI Act.

In selecting proposed offshore infrastructure project locations within declared areas, proponents should consider a range of factors.

These may include preliminary assessment of site suitability, existing marine uses and users in and around the proposed location and key environmental factors, including potential interactions with AMPs and MNES under the EPBC Act. Considering these factors allows proponents to assess project viability and potential complexity, sensitivities and constraints in the environmental approvals process early in their planning process. It may also support proponents demonstrating project viability at later stages of the licensing process.

Projects that are proposed within AMPs will need to ensure that activities are allowable and consistent with the relevant AMP management plan prescriptions and International Union for Conservation of Nature (IUCN) zones⁷. Proponents should also consider their ability to manage the project risks and impacts to avoid, minimise or mitigate adverse impacts to MNES and comply with relevant AMP management plans and IUCN zones.

Proponents should exercise caution in planning and referring proposed projects under the EPBC Act where the proposed project location is in an area that has not yet been declared under the OEI Act.

Obtaining environmental approvals under the EPBC Act (and other relevant state and commonwealth legislation) provides no guarantee that a proposed project location will be included in a declared area or that a proponent will be successful in obtaining a relevant OEI Act licence in the area.



2. Feasibility licences

Following an area declaration, the Minister may issue an invitation to apply for feasibility licences. Feasibility licences authorise the licence holder to assess the feasibility of a proposed commercial offshore infrastructure project and subsequently apply for a commercial licence for the project. Proponents are encouraged to begin preparing feasibility licence applications following an invitation to apply in accordance with guidance and advice provided by the Registrar.

Feasibility licence applications are assessed by the Registrar through a competitive process based on merit criteria outlined in the OEI Act and supporting regulations. Feasibility licences can only be granted in a declared area, or in part of a declared area and for activities that are consistent with conditions that may apply to the declared area.

3. EPBC Act approvals

It is a project proponent's responsibility to undertake a self-assessment to decide whether or not a proposed project is likely to have a significant impact on MNES^{8,9}. Proponents should consider proposed activities in all phases of the project including site selection (e.g. geophysical and geotechnical surveys), feasibility, construction, operation and decommissioning of their proposed commercial project.

Proponents should assess the potential impacts of the proposed project activities, including potential significant impacts on the environment in a Commonwealth marine area (as defined in the EPBC Act), in determining whether to refer the proposed activities or whole project to DAWE for assessment under the EPBC Act. Proponents are encouraged to request a pre-referral meeting with DAWE at this stage to discuss approach and timing¹⁰. Transmission infrastructure required for a commercial project may be included in an EPBC Act referral for the whole commercial project, or in some cases may be referred as a separate action¹¹.

Proponents should note that obtaining EPBC Act approvals prior to area declarations and/or being granted a feasibility licence provides no guarantee that relevant licences will be granted in relation to the project under the OEI Act.*

8. EPBC Act—Environment assessment process (awe.gov.au)

9. Matters of National Environmental Significance: Significant Impact Guidelines 1.1 (awe.gov.au)

10. [Submitting a referral under the EPBC Act - DAWE](#)

11. EPBC Policy Statement - Staged Developments—Split referrals: Section 74A of the EPBC Act (awe.gov.au)

*There is no legal impediment to proponents referring an action prior to an area declaration being made or securing a feasibility licence, however proponents do so at their own risk.

When proponents make a referral under the EPBC Act, the whole project (referred to as an ‘action’), including all offshore infrastructure activities, should where possible be included for consideration and decision making under the EPBC Act^{12 13}. When referring an action, all available information about the proposed action, and measures that are proposed to avoid, minimise or mitigate potential impacts on MNES should be included to inform a decision by the Environment Minister (or delegate) on whether or not the proposed action is a controlled action, not controlled action ‘particular manner’ or clearly unacceptable. Any action that is determined to be a controlled action will require further assessment and approval under the EPBC Act before it may proceed.

Any action that is determined to be clearly unacceptable may be revised and resubmitted by the person proposing the action for further consideration under the EPBC Act.

The key steps to the referral and decision-making process under the EPBC Act are illustrated in **Figure 1** for offshore infrastructure projects.

The process shown in **Figure 1** outlines a simplified and indicative assessment of a project that has been declared a controlled action, with an assessment by Environmental Impact Statement (EIS)/ Public Environmental Review (PER). For advice on EPBC Act assessment processes refer to the guidance material on DAWE’s website¹⁴. As indicated in the EPBC Act Environment Assessment Process, the Environment Minister may decide on another assessment method to assess the project. Decisions on the assessment approach under the EPBC Act will be dependent on many factors including the nature and scale of the impacts, the complexity of the issues and the degree of certainty with which impacts can be predicted. If the project referral indicates potential environmental impacts on AMPs, DAWE will consult with Parks Australia during the assessment process.

Proponents are prohibited from taking a controlled action without the Environment Minister having given approval under Part 9 of the EPBC Act¹⁵. At the end of the assessment process, the Environment Minister will decide whether or not a proposed project will be approved. The Environment Minister may also include conditions of approval. Conditions may include, restrictions on the scope of the project or certain activities, or the inclusion of management measures to avoid or mitigate potential impacts. Outcomes of the EPBC Act assessment process, including any conditions applied to an approval, must be satisfactorily addressed by proponents in management plans required under the OEI Act (outlined in detail at Step 5 of the approvals process in **Figure 1**). Project activities cannot commence unless all required licences under the OEI Act have been granted, EPBC Act approval requirements have been met and OEI Act management plans have been approved.

As the approved management plans under the OEI Act (discussed in Section 5 of this guidance) are subject to a five yearly review process, based on environmental performance and reporting requirements, there is ongoing potential for management plans to be revised to reflect new information and support adaptive environmental management to ensure environmental best practice is maintained with regard to MNES over the life of the approval.

12. EPBC Act—Environment assessment process (awe.gov.au)

13. EPBC Policy Statement - Staged Developments—Split referrals: Section 74A of the EPBC Act (awe.gov.au)

14. EPBC Act—Environment assessment process (awe.gov.au)

15. At the time of publishing this guidance there were no declarations made by the Minister that actions do not need approval under Part 9 of the EPBC Act relevant to offshore infrastructure projects.

Director of National Parks Marine Park Authorisations

Commercial projects, including associated transmission infrastructure, that occur within, or are outside of an AMP but may impact upon the values of AMPs require authorisation by the DNP, which is separate to requirements under Parts 7 and 9 of the EPBC Act.

The DNP may authorise allowable activities through a permit, class approval, activity licence or lease in accordance with AMP network management plans¹⁶. DAWE will consult with the DNP about referrals for projects that have potential to impact AMPs, however proponents are encouraged to also consult directly with the DNP early in the planning process if project infrastructure (including associated transmission infrastructure) may impact an AMP. If authorisations are required these should be sought by proponents prior to undertaking any activities that may impact on AMPs and prior to seeking transmission infrastructure and commercial licences under the OEI Act. DNP authorisations are generally issued after an EPBC Act project approval. If authorisations are issued by the DNP (including associated conditions), measures should be included in the OEI management plan to support compliance with the DNP authorisation.

4. Management plans

Management plans are required for the construction, installation, operation, maintenance and decommissioning of offshore renewable energy infrastructure and offshore electricity transmission infrastructure. A management plan needs to be submitted by the feasibility licence holder and assessed and approved by the Regulator before a commercial licence can be granted under the OEI Act.

The management plan should contain all measures to support compliance with OEI Act requirements, as well as demonstrate that the manner in which activities are to be undertaken in accordance with relevant conditions and requirements related to EPBC Act approvals, DNP authorisations and other legal requirements.

If feasibility licence activities include the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure as defined under the OEI Act, a management plan is required to be approved by the Regulator before licence holders can commence those feasibility activities. For clarity, this includes fixed or tethered infrastructure that is used to assess the feasibility of exploiting a renewable energy resource.

If the management plan for a proposed commercial project is approved, the holder of a feasibility licence may then be granted a commercial licence for the offshore infrastructure project (once all licence application requirements are met).

5. Commercial licences and transmission and infrastructure licences

A commercial licence enables a licence holder to carry out an offshore infrastructure project (commercial project) in the licence area for the purpose of exploiting renewable energy resources. The licence authorises activities including the construction, installation, commissioning, operation, maintenance and decommissioning of offshore renewable energy infrastructure.

A commercial licence can only be granted to the holder of a feasibility licence and can only be granted within an area that is a declared area. The commercial licence area must be continuous, entirely within the Commonwealth offshore area, within the area covered by the feasibility licence and must not overlap any other commercial or feasibility licence. The commercial licence needs to be consistent with any conditions that apply to the declaration.

16. Access and Use | Australian Marine Parks (parksaustralia.gov.au)

If the commercial project includes associated offshore electricity transmission infrastructure, for example an export cable that extends beyond the boundary of a commercial licence in the offshore area, a transmission and infrastructure licence will also be required under the OEI Act. The purpose of a transmission and infrastructure licence is to provide for the licence holder to assess the feasibility and to store, transmit, or convey electricity or a renewable energy product in, or through, the licence area. A transmission and infrastructure licence authorises the licence holder to construct, install, commission, operate, maintain and decommission offshore renewable energy infrastructure or offshore electricity transmission infrastructure in the licence area, so long as there is a management plan and activities are conducted in accordance with that plan and the licence. The management plan covering offshore electricity transmission infrastructure under a transmission and infrastructure licence, may be the same management plan covering an associated offshore infrastructure project under a commercial licence, if all licences are held by the same licence holder.

The regulations prescribe the process for applying for a transmission and infrastructure licence and outline merit criteria for applicants. Transmission and infrastructure licences can be granted in one or more areas within the Commonwealth offshore area (do not have to be continuous) and can overlap with other licence areas, as long as activities do not unduly interfere with the activities of the holder of the other licence. The transmission and infrastructure licence area is not required to be within a declared area, nor is there a requirement for a transmission and infrastructure licence holder to be a feasibility licence holder or a commercial licence holder, so the timing of the application and approval process is flexible depending on project development timing.

6. Project commencement and operation

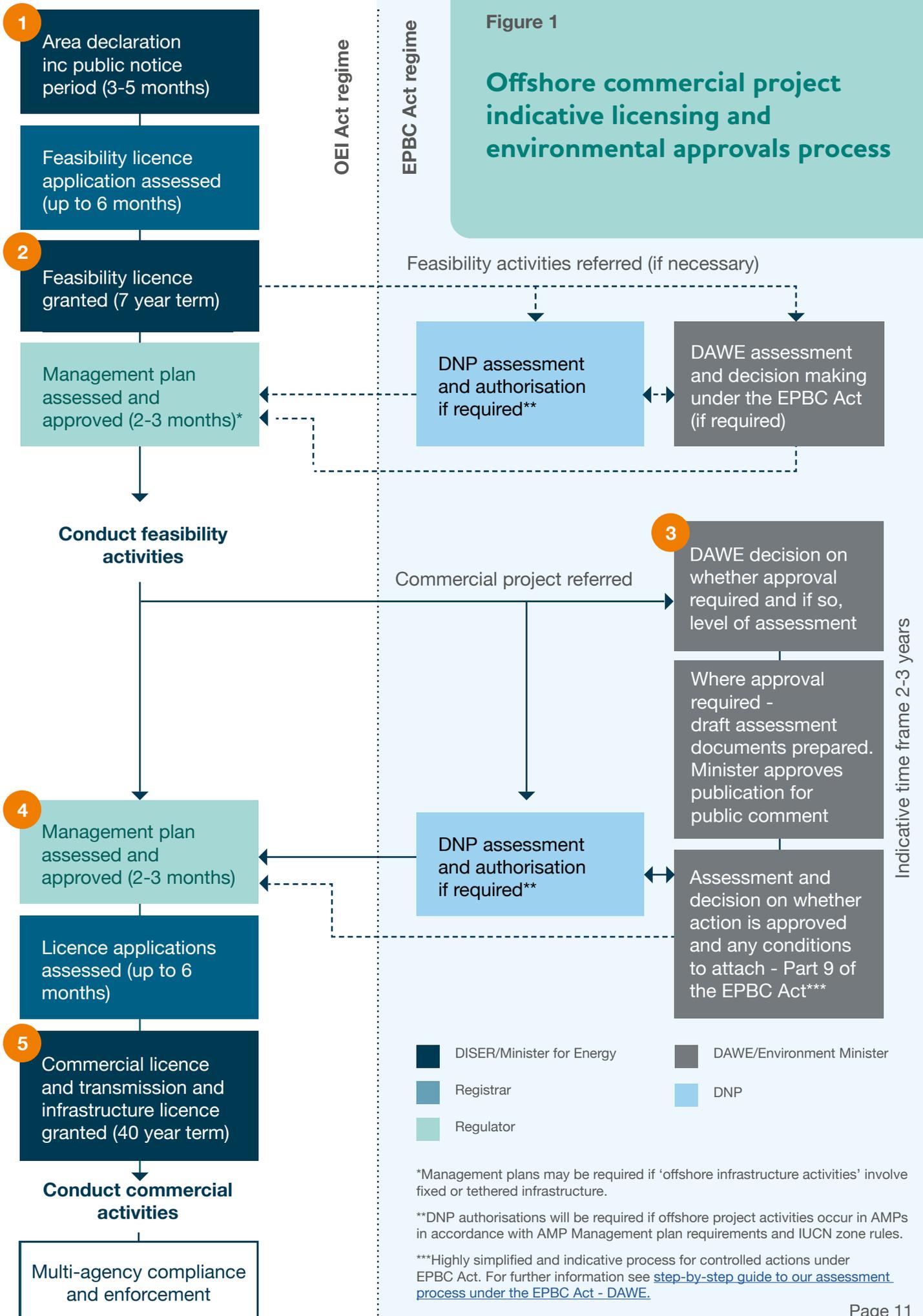
When all required licences and approvals under the OEI Act have been granted, approvals under the EPBC Act have been obtained, and any other relevant Commonwealth, State and Territory requirements have been complied with, the project may commence. Licence holders are required to remain compliant with the merit criteria, approved management plan, the conditions of their licence, the provisions of the OEI Act and associated regulations, and any other requirements that apply to their activities under the EPBC Act, DNP authorisations or other relevant laws.

Management plans are required to be reviewed and submitted for assessment to the Regulator at least once every five years throughout the life of the project. The Regulator will undertake post-approval compliance monitoring and, where non-compliance is identified, may take enforcement actions. The Regulator will share information with DAWE in relation to compliance with EPBC Act requirements under a management plan and will cooperate with DAWE on enforcement actions as necessary. The Regulator may also share information with the Registrar in relation to compliance with the merit criteria and licence conditions.

For actions approved under the EPBC Act, DAWE and the DNP (where applicable) also have compliance monitoring and enforcement responsibilities.

Figure 1

Offshore commercial project indicative licensing and environmental approvals process



Transmission infrastructure projects

Transmission infrastructure projects that do not include an energy generation component in the Commonwealth offshore area, may involve storing, transmitting or conveying electricity, which may or may not be generated from a renewable resource, or a renewable energy product. Transmission and infrastructure activities are authorised by a transmission and infrastructure licence under the OEI Act, EPBC Act approvals and DNP authorisations if applicable, as well as other applicable Commonwealth and State/Territory approvals. It is the proponent's responsibility to determine if their project, including any site selection survey activities (such as geotechnical and geophysical surveys) require referral under the EPBC Act and require DNP authorisation. The licensing and environmental approvals process for transmission infrastructure projects can be simplified down to three main regulatory process steps.

 Refer to Figure 2 for more details.

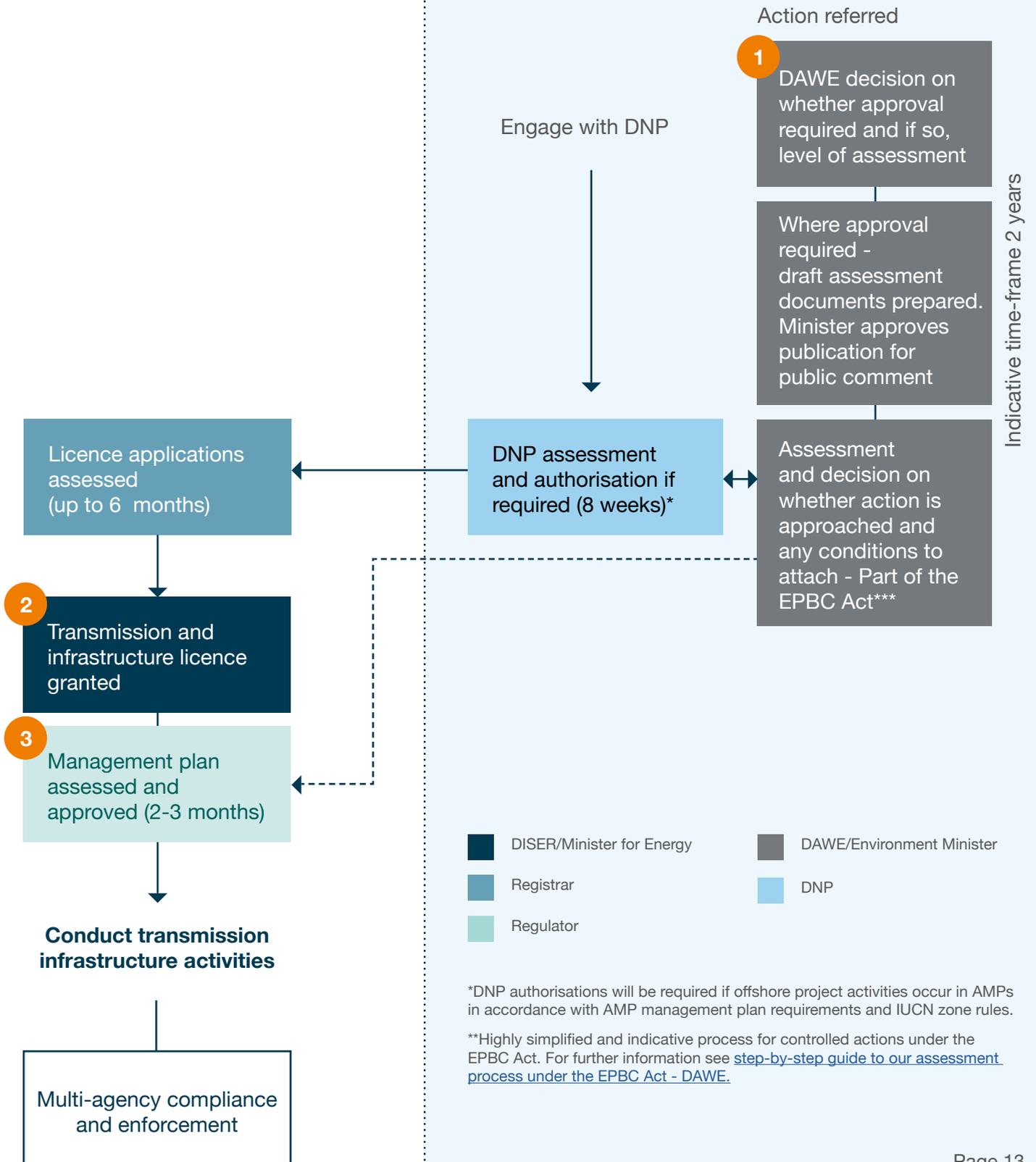


Transmission and infrastructure licences are not restricted to declared areas under the OEI Act. Therefore, there is no need for proponents to wait for an area declaration before addressing EPBC Act and DNP requirements relevant to their selected site. It is recommended that EPBC Act and DNP requirements are met before applying for a transmission and infrastructure licence.

Following the granting of a transmission and infrastructure licence, a management plan will need to be submitted by the licence holder and approved by the Regulator before activities can commence. If EPBC Act approval and DNP authorisations are required and issued (including associated conditions), measures should be included in the OEI management plan to support compliance with those approvals. Please refer to information provided in the previous offshore infrastructure projects section for further guidance on requirements under the EPBC Act and AMP management plans, transmission and infrastructure licences, management plans required under the OEI Act and project commencement and implementation.

Figure 2

Transmission infrastructure project indicative licensing and environmental approvals process



Research and demonstration projects

Research and demonstration licences authorise research into, or demonstration of, offshore renewable energy infrastructure or offshore electricity transmission infrastructure, but do not authorise the construction or operation of commercial-scale offshore energy generation or transmission infrastructure.

A research and demonstration licence holder can construct, install, commission, operate, maintain and decommission offshore renewable energy infrastructure or offshore electricity transmission infrastructure in the licence area, so long as there is a management plan for the licence and activities are conducted in accordance with the management plan and conditions of the licence.

Research and demonstration activities are authorised by a research and demonstration licence under the OEI Act, EPBC Act approvals (if necessary), DNP authorisations if applicable as well as other applicable Commonwealth and State/Territory approvals. Research and demonstration licences can only be granted by the Energy Minister over an area that is within a declared area. The research and demonstration licence area must be continuous, entirely within the Commonwealth offshore area, and can overlap with other licences as long as research and development activities would not unduly interfere with the activities of the holder of the other licence.

The licensing and environmental approvals process for research and demonstration projects can be simplified down to three main regulatory process steps.

i Refer to Figure 3 for more details.

Following area declarations and proponent site selections, it is recommended that proponents submit applications and are granted research and demonstration licences before seeking approvals under the EPBC Act and DNP authorisations if necessary.

After the necessary EPBC Act approvals and DNP authorisations are granted, proponents should submit management plans to the Regulator for assessment and approval. Once the management plan is approved, research and demonstration activities can commence.

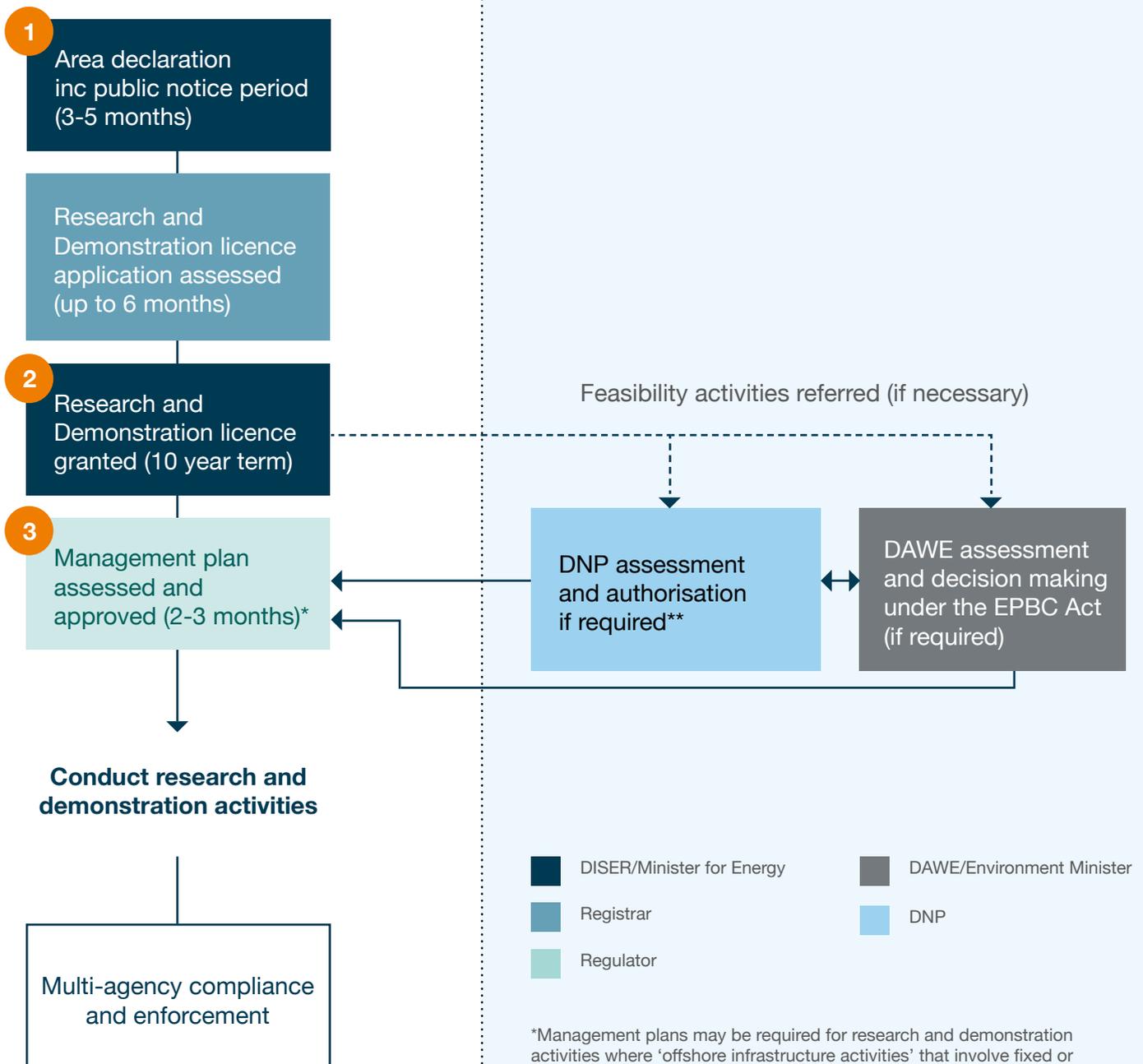
Please refer to information provided in the commercial projects section for guidance on requirements under the EPBC Act and AMP management plans, management plans required under the OEI act and project commencement and implementation.

Proponents should note, if the research and demonstration project is successful and they wish to continue on to a commercial project, they will need to seek a feasibility licence as a necessary pre-requisite to a commercial licence.



Figure 3

Research and demonstration project indicative licensing and environmental approvals process



Further information

The Department of Agriculture Water and the Environment:

awe.gov.au

The Director National Parks:

awe.gov.au

The Department of Industry Science Energy and Resources:

industry.gov.au

The Offshore Infrastructure Registrar:

nopta.gov.au

The Offshore Infrastructure Regulator:

oir.gov.au

Federal Register of Legislation:

legislation.gov.au

Glossary of terms

AMP	Australian marine parks
DAWE	Department of Agriculture Water and the Environment
DISER	Department of Industry Science Energy and Resources
DNP	Director of National Parks
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
GBRMPA	Great Barrier Reef Marine Park Authority
IUCN	International Union for Conservation of Nature
MNES	Matters of national environmental significance
OEI Act	<i>Offshore Electricity Infrastructure Act 2021</i>