Australian Government

Offshore renewables environmental approvals



OEI Act and EPBC Act requirements and sequencing

The Australian Government has established a legislative framework to enable offshore infrastructure projects[1] to be undertaken in Australian Commonwealth waters (>3 nautical miles from shore, extending to the boundary of Australia's exclusive economic zone). This guidance has been developed to explain the requirements of, 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 offshore renewables 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 new offshore renewable energy infrastructure or technologies.

There are four key Commonwealth entities responsible for administering licensing and regulatory processes for offshore infrastructure projects in the Commonwealth offshore area. Each entity has independent processes and requirements that must be adhered to for a project to proceed:

Department of Climate Change, Energy, the Environment and Water
(DCCEEW) is responsible for supporting the Minister for Energy in area identification and declaration processes for offshore renewable energy.

The National Environmental Protection Agency
(National EPA) is responsible for supporting the Minister for the Environment by implementing the EPBC Act in relation to impacts to Matters of National Environmental Significance (MNES) and other national environmental or heritage matters. This includes assessing proposals to determine whether they can proceed and, if approved, undertaking compliance and enforcement actions.

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 under the OEI Act.

Director of National Parks (DNP)
Is responsible for protecting and conserving biodiversity and other natural, cultural and heritage values of Australian Marine Parks. All activities within Australian Marine Parks require an authorisation by DNP under the EPBC Act. Where activities are planned outside Australian Marine Parks, but could impact upon values, the DNP

1. OEI Act section 8

should be consulted.

This guidance highlights for proponents and other interested parties the key licensing and approval steps to support efficient primary environmental approval processes for offshore infrastructure activities[2] undertaken in Australian Commonwealth waters.

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 proponents take 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.

Proponents should be aware that activities undertaken wholly in state or territorial coastal waters (<3 nautical miles from shore) may require approval under the EPBC Act and advice should be sought from the relevant agency.

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

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



2. OEI Act section 8

The legal framework

The OEI Act entered into force on 2 June 2022 and, in combination with supporting regulations, 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 are subject to approval requirements under environmental legislation, including the EPBC Act administered by the National EPA. 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*.

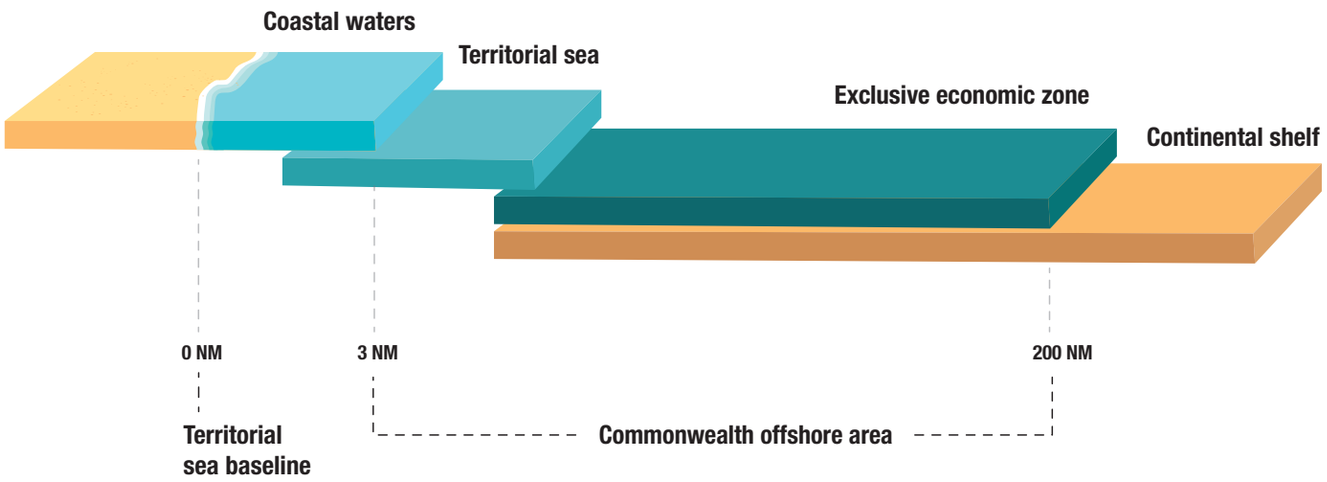
Australian Marine Parks account for 45% of the Commonwealth offshore area. All activities within marine parks require an authorisation by DNP under the EPBC Act.

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 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 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 effect a streamlined approach to administering relevant EPBC Act post-approval requirements and DNP post-approval authorisation requirements where they exist through these management plans.

Australian Maritime Zones



3. OEI Act section 10 | 4. OEI Act section 11



The OEI Act allows for the following legal instruments:

Area declarations
Made by the Minister for Energy in the Commonwealth offshore area and 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 may be granted 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 may be granted 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 for Energy.

Research and demonstration licences
Authorise the licence holder to conduct research relating to the feasibility or capabilities of, or demonstrate the capabilities of, a technology, system or process.

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

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 in terms of assessment timeframes and licensing periods. This should be considered 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 in the Commonwealth offshore area, 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 Minister for Energy declaring an area (as defined in the OEI Act) suitable for offshore renewable energy infrastructure.

Prior to the area declaration, the Minister for Energy will publish a notice on the DCCEEW website. The notice will specify the area being considered for future licensing for a minimum of 60 days and will invite submissions from the public on the proposed area

After undertaking necessary consultations, considering submissions and having regard to Australia's international obligations in relation to the area, the Minister for Energy 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 for offshore windfarm environmental impact assessment under the EPBC Act[5], including potential interactions with Australian Marine Parks 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 Australian Marine Parks will need to ensure that activities are allowable and consistent with the relevant Australian Marine Parks management plan, including relevant prescriptions and International Union for Conservation of Nature (IUCN) zones[6].

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 Australian Marine Parks management plans and IUCN zones.

5. nationalepa.gov.au
6. parksaustralia.gov.au/marine/parks/
7. EPBC Act—Environment assessment process (nationalepa.gov.au/epbc)
8. Matters of National Environmental Significance: Significant Impact Guidelines 1.1 (nationalepa.gov.au/epbc)
9. Submitting a referral under the EPBC Act (nationalepa.gov.au/epbc)



2. Feasibility licences

Following an area declaration, the Minister for Energy 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 in the licence area and subsequently apply for a commercial licence for the project.

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

Activities that are likely to have a significant impact on MNES require assessment by DCCEEW under the EPBC Act. These activities include commercial-scale offshore renewable energy infrastructure developments such as offshore wind farms and may also include early stage field studies, investigations and surveys that inform the feasibility of these commercial-scale projects.

It is a project proponent's responsibility to undertake a self-assessment[7] to decide whether a proposed project, whether that is a commercial-scale offshore renewable energy infrastructure development or early stage activity to assess the feasibility of a commercial development, is likely to have a significant impact on MNES[7].

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 for assessment under the EPBC Act.

Proponents are encouraged to request a pre-referral meeting with the National EPA at this stage to discuss approach and timing[8]. 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 action.

It is recommended EPBC Act referrals for offshore renewables are submitted only after a feasibility licence under the OEI Act has been granted.

Environmental assessments under the EPBC Act require significant government and proponent resources. Referring an offshore renewables project under the EPBC Act in Commonwealth waters, without a feasibility license and/or prior to an area being declared for future development is likely to lead to:

- diverting government and proponent resources to projects that may not proceed, and
- the need to vary proposals and associated delays.

Section 67A of the EPBC Act prevents the taking of any part of a referred action before that action has approval. Any referrals for early stage feasibility works and preliminary surveys that may inform environmental impact assessment for commercial projects should be split out from the commercial development[9].

Other actions that may have an impact on MNES and where no authorisation is required under the OEI Act should be referred under the EPBC Act as a separate action.

As an example: An applicant proposing vessel-based surveys to be conducted prior to the grant of a feasibility licence is recommended to refer their action under the EPBC Act separate to construction, installation and operation activities.

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 Minister for the Environment (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.

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 guidance material on the National EPA's website[10].

As indicated in the EPBC Act Environment Assessment Process, the Minister for the Environment 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 Australian Marine Parks, the National EPA will consult with DNP during the assessment process.

Proponents are prohibited from taking a controlled action without the Minister for the Environment having given approval under Part 9 of the EPBC Act[11]. At the end of the assessment process, the Minister for the Environment will decide whether or not a proposed project will be approved. The Minister for the Environment may also include conditions of approval. Conditions may include, requirements for certain environmental outcomes to be met.

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 4 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 4 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.

Director of National Parks Marine Park Authorisations

Any part of an offshore infrastructure project proposed within Australian Marine Parks require authorisation by DNP, which is separate to requirements under Parts 7 and 9 of the EPBC Act.

10. EPBC Policy Statement - Staged Developments - Split referrals: Section 74A of the EPBC Act (nationalepa.gov.au/epbc)

11. 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.

The DNP may authorise allowable activities through a permit, class approval, activity licence or lease in accordance with Australian Marine Parks network management plans[12].

DCCEEW will consult with the DNP about referrals for projects that have potential to impact Australian Marine Parks, 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 Australian Marine Parks. If authorisations are required these should be sought by proponents prior to undertaking any activities that may impact on Australian Marine Parks 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 under the OEI Act for the construction, installation, operation, maintenance and decommissioning of offshore renewable energy infrastructure and offshore electricity transmission infrastructure in the Commonwealth offshore area.

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 is 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[13] 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 apply for a commercial licence for the offshore infrastructure project.

5. Commercial licences and transmission and infrastructure licences

A commercial licence under the OEI Act 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.

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

13. OEI Act section 8.

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 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 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.

Project commencement and operation

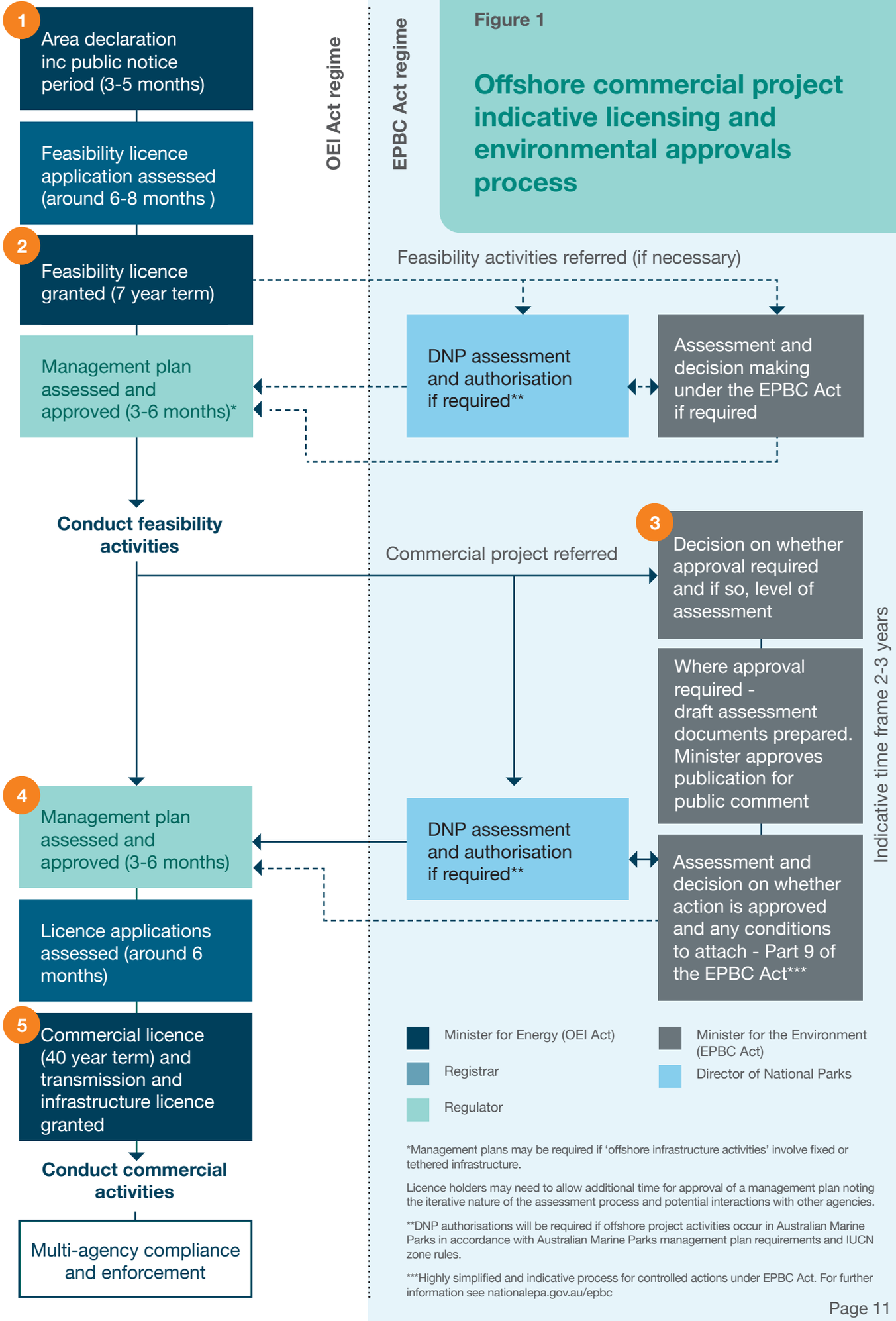
When all required licences and approvals under the OEI Act have been granted, approvals under the EPBC Act have been obtained, and any other relevant Commonwealth, state and territory requirements have been complied with, the project may commence. Licence holders are required to remain compliant with 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 for assessment 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 the National EPA in relation to compliance with EPBC Act requirements under a management plan and will cooperate with the National EPA 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, the National EPA and the DNP (where applicable) also have compliance monitoring and enforcement responsibilities.

Figure 1

Offshore commercial project indicative licensing and environmental approvals process



*Management plans may be required if 'offshore infrastructure activities' involve fixed or tethered infrastructure.

Licence holders may need to allow additional time for approval of a management plan noting the iterative nature of the assessment process and potential interactions with other agencies.

**DNP authorisations will be required if offshore project activities occur in Australian Marine Parks in accordance with Australian Marine Parks management plan requirements and IUCN zone rules.

***Highly simplified and indicative process for controlled actions under EPBC Act. For further information see nationalepa.gov.au/epbc



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.**

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 involving fixed or tethered infrastructure 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.

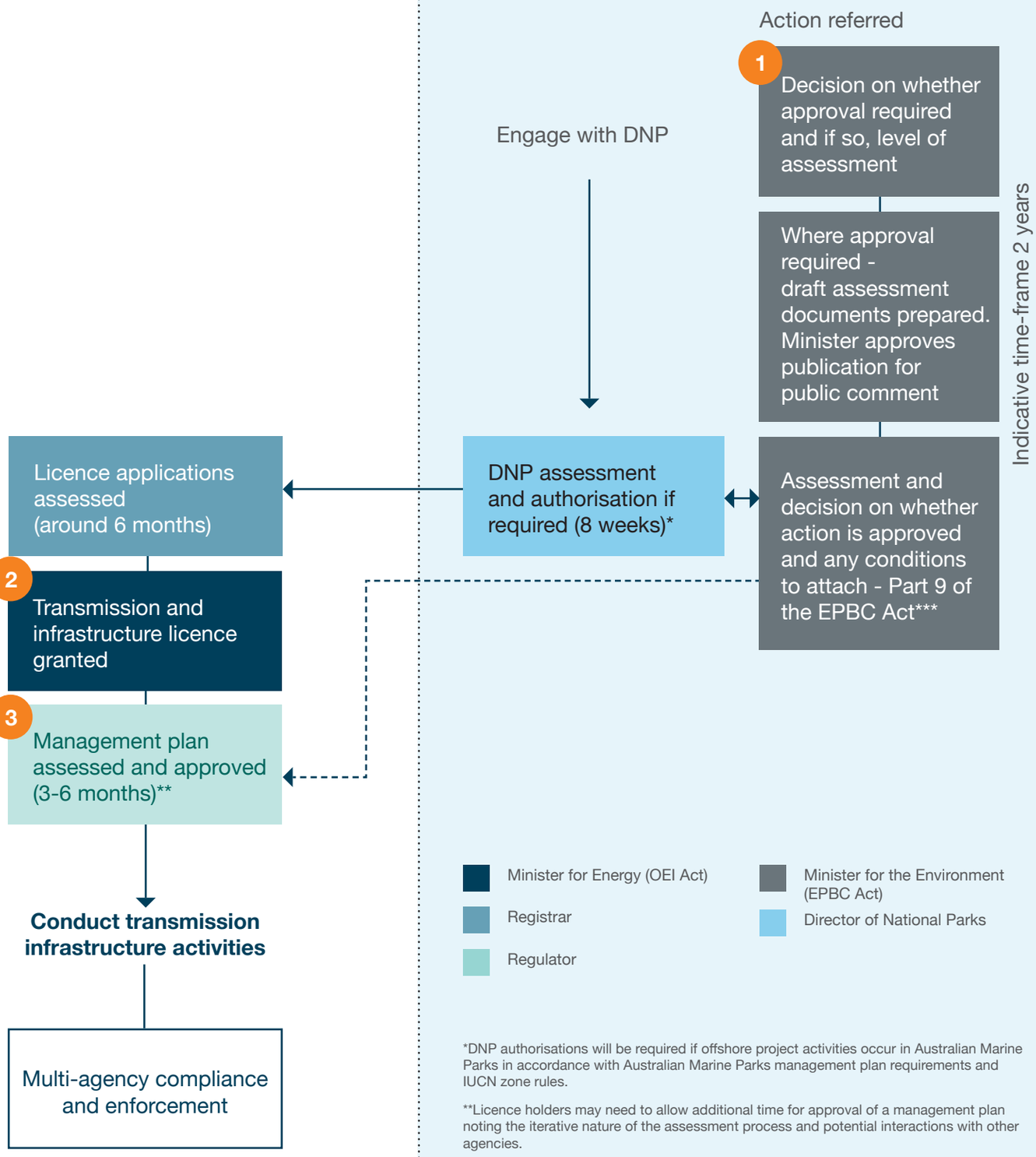
Please refer to information provided in the previous offshore infrastructure projects section for further guidance on requirements under the EPBC Act and Australian Marine Parks management plans, transmission and infrastructure licences, management plans required under the OEI Act and project commencement and implementation.

EPBC referral → Transmission infrastructure licence → Management plan submission

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. For standalone transmission infrastructure projects that do not require fixed or tethered infrastructure to be installed in order to assess feasibility it is recommended that EPBC Act and DNP requirements are met before applying for a transmission and infrastructure licence. A pre-referral meeting with the National EPA is recommended to discuss the implications and potential for overlapping referrals to occur.

Figure 2

Transmission infrastructure project indicative licensing and environmental approvals process



*DNP authorisations will be required if offshore project activities occur in Australian Marine Parks in accordance with Australian Marine Parks management plan requirements and IUCN zone rules.

**Licence holders may need to allow additional time for approval of a management plan noting the iterative nature of the assessment process and potential interactions with other agencies.

***Highly simplified and indicative process for controlled actions under the EPBC Act. For further information see nationalepa.gov.au/epbc



Research and demonstration projects

Research and demonstration licences authorise research into, or demonstration of, new offshore renewable energy infrastructure or offshore electricity transmission infrastructure on a small or pilot scale, 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 Minister for Energy over an area that is within a declared area.

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

ⓘ **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 Australian Marine Parks management plans, management plans required under the OEI Act and project commencement and implementation.

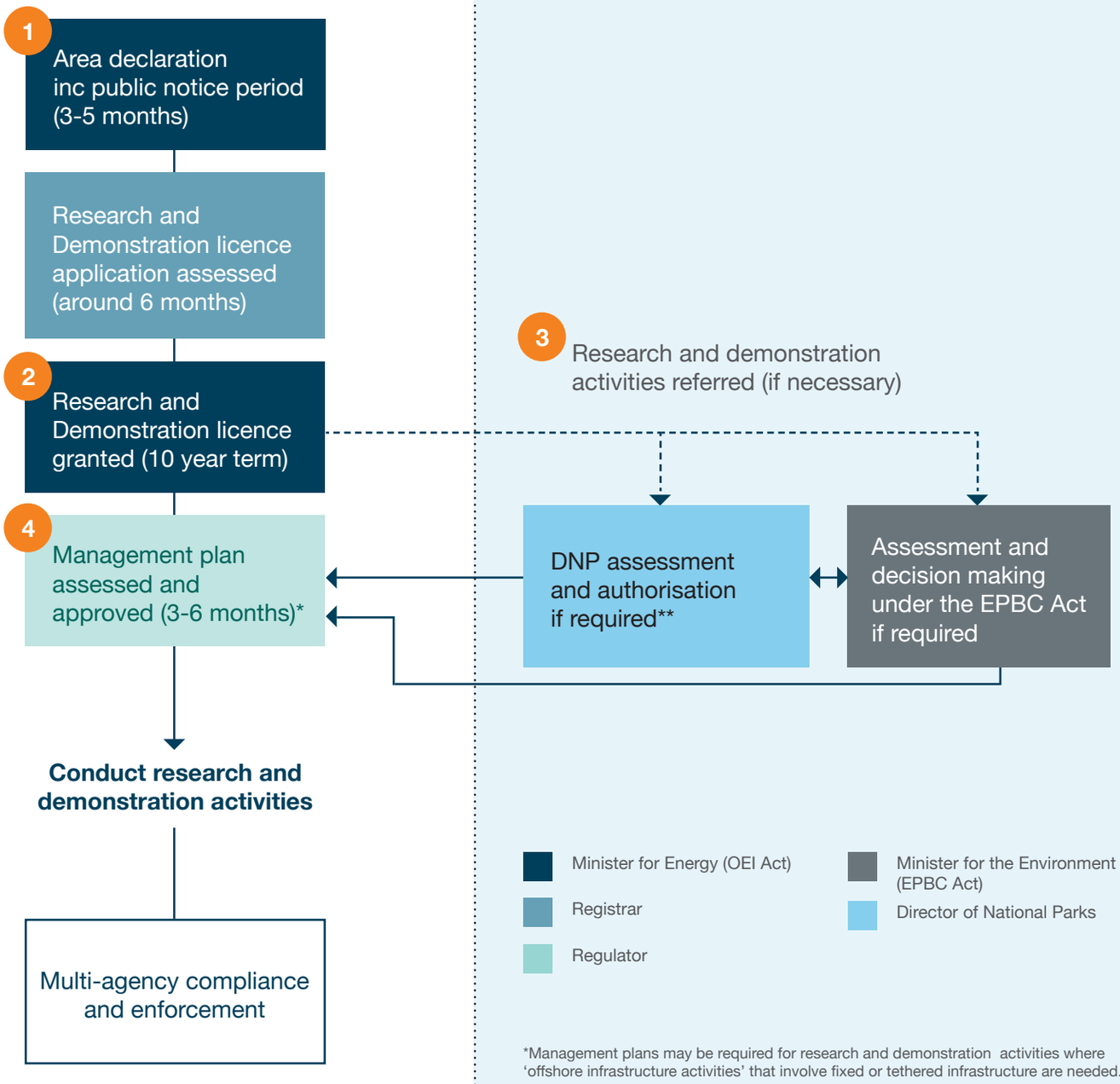
Proponents should note, if the research and demonstration project is successful and they wish to continue on to a commercial project, they will need to apply for and be awarded a feasibility licence as a necessary prerequisite to a commercial licence.

All infrastructure brought into the research and demonstration licence area must be removed by the end of the research and demonstration licence.



Figure 3

Research and demonstration project indicative licensing and environmental approvals process



*Management plans may be required for research and demonstration activities where 'offshore infrastructure activities' that involve fixed or tethered infrastructure are needed.

Licence holders may need to allow additional time for approval of a management plan noting the iterative nature of the assessment process and potential interactions with other agencies.

**DNP authorisations will be required if research and demonstration activities occur in Australian Marine Parks in accordance with Australian Marine Parks management plan requirements and IUCN zone rules.

Further information

The Department of Climate Change, Energy, the Environment and Water: Adaptation and Future Industries Division (OEI Act matters)

dcceew.gov.au

Contact: offshorerenewables@dcceew.gov.au

National Environmental Protection Agency

nationalepa.gov.au/epbc

The Director National Parks

parksaustralia.gov.au

The Offshore Infrastructure Registrar

nopta.gov.au/offshoreregistrar

Contact: offshoreelectricity@nopta.gov.au

The Offshore Infrastructure Regulator

oir.gov.au

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Federal Register of Legislation

legislation.gov.au

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