

Fact sheet: Energy and Public Land Legislation Amendment (Enabling Offshore Wind Energy) Act 2024 and pro forma licence

Offshore Wind Energy Victoria

Offshore Wind Energy Victoria (OWEV) created this fact sheet to inform stakeholders about the pro forma licence enabled by the Energy and Public Land Legislation Amendment (Enabling Offshore Wind Energy) Act 2024 (Enabling Act) enacted on 7 May 2024.

What does the Enabling Act do and why was it needed?

- Under the Commonwealth Offshore Electricity Infrastructure Act 2021 (OEI Act), offshore wind (OSW) developers have received feasibility licences and will conduct feasibility assessments on public land, both onshore and offshore, to support project planning and design, that will feed into the preparation of commercial bids into Victorian offshore wind auction.
- These assessments will guide the design and location of connection infrastructure needed to transport electricity generated by OSW projects to an onshore connection point, designated by VicGrid, and into the National Electricity Market (NEM) via the Victorian electricity grid.
- The Enabling Act amended public land and electricity legislation to allow OSW developers to conduct these site investigations in Victoria to determine the most appropriate location/s for OSW electricity infrastructure.
- It establishes a process for OSW developers by introducing licences that will grant OSW developers the right to access and occupy public land (on a non-exclusive basis), to conduct specified activities, subject to conditions attached to the licence.
- A consent under the *Marine and Coastal Act 2018* (MAC Act) is required for any activities taking place in marine and coastal crown land. This licence does not eliminate the need for a consent under the MAC Act for activities taking place in marine and coastal crown land.

What was amended?

- Various Acts govern the management of and access to different types of public land under the current legislative framework. The *Crown Land (Reserves) Act 1978* (Vic) (CLR Act) oversees land that is reserved for diverse public purposes, the *Forests Act 1958* (Vic) (Forests Act) regulates State forests, the *Land Act 1958* (Vic) (Land Act) regulates unreserved land, and the *National Parks Act 1975* (Vic) (National Parks Act) governs land designated as parks. Collectively, we will refer to these acts as the Public Land Acts.
- To connect OSW energy projects to the Victorian grid, infrastructure will cross land managed under one or more of these Acts. Each Act required amendments to enable consent under the relevant legislation.

- The Enabling Act created a new licence category under the CLR Act, Forests Act, and Land Act, and introduced amendments to the National Parks Act enabling licences to be granted in relation to the investigation of offshore electricity transmission infrastructure.
- The Enabling Act authorises the relevant Minister for Energy under the *Electricity Industry Act 2000* (Vic) (EI Act) to declare an 'offshore wind energy generation company'. The declaration will allow offshore wind developers to access public land similar to the way onshore generation companies currently can.
 - This declaration will be limited in scope, specifically to facilitate investigations or agreements to made concerning land under the National Parks Act, in limited circumstances.

Public land licences

- A licence under the Public Land Acts will provide a right to access and occupy (on a non-exclusive basis) public land to carry out feasibility activities, subject to conditions that are determined by the person granting that licence (typically the Minister or an authorised delegate). The conditions applying to each licence type will vary according to the nature of the activity that is authorised and the type of land to which the licence applies.
- The Minister will retain discretion to apply additional conditions on licences on a case-by-case basis, such as managing specific environmental or cultural sensitivities at locations.

Pro forma licence

- To assist industry and stakeholders understand how the Enabling Act will be implemented, OWEV has developed a pro forma licence outlining the rights and obligations expected of licence holders.
- The permitted purposes under the pro forma licence are:
 - assessing the desirability or feasibility of constructing or installing offshore electricity transmission infrastructure.
 - determining the optimal placement of connecting infrastructure; or
 - carrying out an activity for the purposes of obtaining a permit or consent (however described) required by or under any Act of Victoria or the OEI Act for the construction or installation of offshore electricity transmission infrastructure.
- Applicants for this licence will be required to provide a plan of the area to be licensed, and a Works Plan setting out the details of works or investigations that will take place in the licensed area.
- The plan of the area to be licensed should describe the geographical area that is to be investigated and should set out the boundaries of the area by using geographical coordinates and points to create a continuous polygon.
- The Works Plan will be a key document that the Victorian Government will use to measure compliance. The Works Plan should include details of the investigative works that will take place, including:
 - any tethered monitoring devices;
 - high resolution geophysical surveys;
 - geotechnical testing;
 - environmental impact assessments;
 - meteorological and oceanographic data collection;
 - cable route surveys;
 - grid connection studies;
 - coastal, seabed and marine archaeology; and any other feasibility or desirability testing works.
- A Works Plan may be amended if the licensee intends to undertake further works, but the amended Works Plan must be approved by the Victorian Government prior to further works occurring.

Who is eligible for the licence?

- OWEV expects that developers holding Commonwealth feasibility licence under the OEI Act will seek a licence and this is a matter that the decision maker must have regard to in deciding whether to grant a licence.
- OSW developers should be aware that a licence granted under the amendments made by the Enabling Act are applied for, considered, and granted separately to Commonwealth licences under the OEI Act.

- The timing and scope of these licences has been designed to complement the project planning activities of developers who hold a Commonwealth feasibility licence.
- OWEV advises applicants for a licence relating to a project in the Gippsland declared area, to consider the position of VicGrid's consolidated connection point for OSW projects to connect into the Victorian transmission framework.

What is in and out of scope?

- A licence granted under the Public Land Acts may incorporate any Victorian public land to the limit of Victoria's jurisdiction, including the seabed.
- This licence will not authorise the construction of any infrastructure.
- Permissible activities will primarily be limited to activities required to determine the feasibility and optimal location of offshore electricity transmission infrastructure. This may include, but is not limited to, activities such as:
 - ground surveys.
 - daytime and nocturnal surveys for native flora and fauna;
 - observing or taking photographs of relevant environmental matters; and
 - water and soil sampling and/or sub-surface excavations to understand geological conditions.
- OWEV has worked closely with the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) to develop a deed poll that sets out GLaWAC's expectations and would serve to address procedural matters under the *Native Title Act 1993*.
- OWEV continues to work with the Eastern Maar Aboriginal Corporation and Gunditj Mirring Traditional Owner's Aboriginal Corporation to develop a self-determined approach to addressing community expectations.

When will this take place?

- The Enabling Act was enacted in May 2024, however, the licensing provisions that will enable a licence to be granted have not yet commenced.
- OWEV is currently targeting commencement of the licensing provisions in December 2024 with a view to making the licence available for applications from January 2025.