

Obtaining a right to access designated land to explore for renewable energy resources in South Australia

Introduction

As of 11 July 2024, approvals for development of new hydrogen and renewable energy projects in South Australia will need to be sought via the licensing and approvals processes under the *Hydrogen and Renewable Energy Act 2023* (HRE Act) and the *Hydrogen and Renewable Energy Regulations 2024* (HRE Regulations). The responsibility for administering the HRE Act sits with the Department for Energy and Mining (DEM).

Under the HRE Act there are different pathways for seeking approvals of renewable energy infrastructure activities depending on whether the proposed development is on designated land (land under pastoral lease, state waters and other Crown Land (where determined by regulation)) or non-designated (i.e. freehold) land.

This information sheet sets out the licensing and approvals pathway for designated land, with flowcharts providing more detailed process steps for the various stages. It should be read in conjunction with the HRE Act, associated Regulations and relevant determinations made by the Minister (ensuring the latest versions are being referenced) and should not be a substitute for obtaining independent advice.

Process for obtaining an exclusive right to apply for a renewable energy feasibility licence over designated land

The state government controls when designated land is opened up to renewable energy activities. The HRE Act prescribes a two-stage process to open up an area of designated land to renewable energy development.

1. Declaration of release area

An area of designated land is declared a release area suitable for renewable energy development as per the requirements of section 10 of the HRE Act and regulations 9 & 10.

Declaration of a release area aims to ensure that future renewable energy development is strategic, sustainable, takes into consideration the interests of landowners (including native title holders, pastoral lessees, resource tenement, and aquaculture lease and licence holders), supportive of regional development objectives. Specific information is prepared to support consultation on each proposed release area.

2. Call for tenders

Part or all of a release area is opened for tender. Applicants make a tender application for an exclusive right to apply for a Renewable Energy Feasibility Licence (REFL) within area open for tender in accordance with the requirements under section 11 of the HRE Act and regulation 12.

The subsequent open tender process provides applicants with the opportunity to submit competitive tenders with the aim of developing large-scale renewable energy projects within the release area.

In calling for tenders under section 11(1) of the HRE Act, the notice published in the Gazette may specify criteria prescribed by the HRE Regulations against which applications will be assessed.

Successful applicants are granted an exclusive right to apply for a REFL under section 17 of the HRE Act

The key steps for the declaration of a release area and for the call for tenders process are shown in Figures 1 and 2.

Information on current release area and call for tender processes, and on declared release areas, will be made available on the [release areas and calls for tender](#) section of the DEM website. Please refer to the separate guidance material prepared by DEM in respect to the tender process and selection criteria when tenders commence.

Figure 1 Key Steps in the release area process

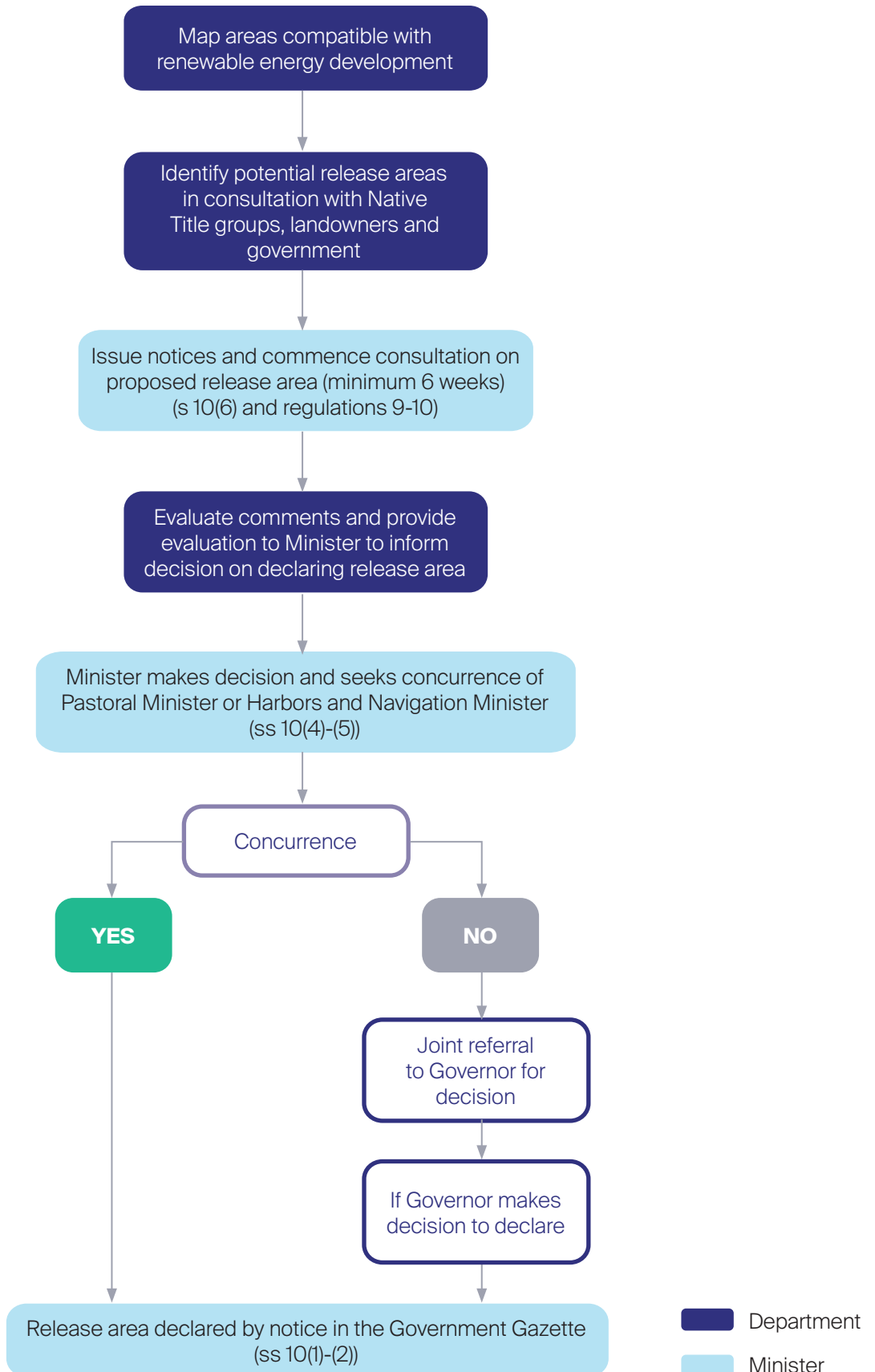
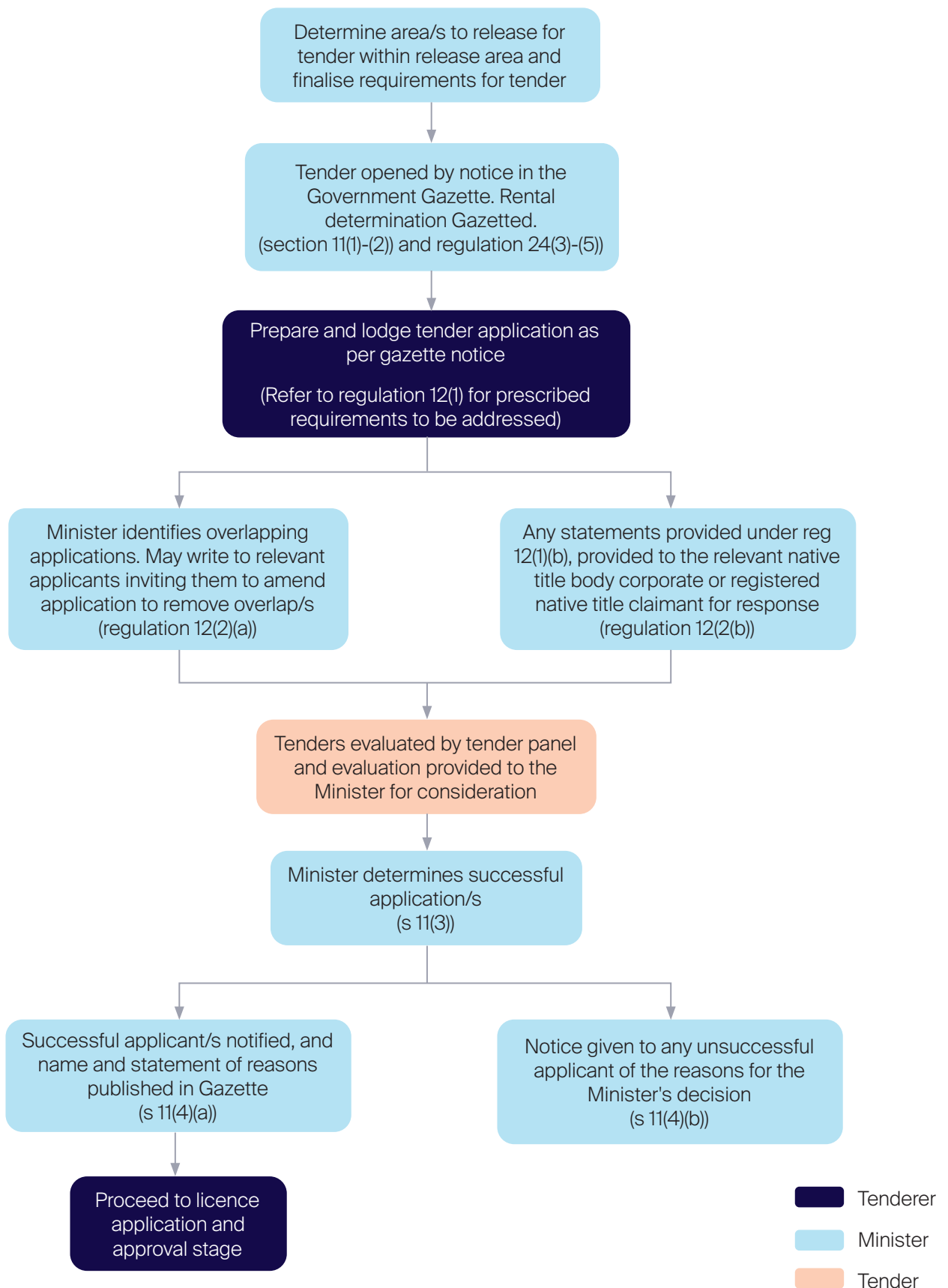


Figure 2 Key steps in the call for tenders process



Applying for a REFL and other approval requirements

This section provides an overview of the process requirements and sets out the key steps in the process for successful tenderers to:

- apply for a REFL and
- meet other requirements necessary for them to undertake exploration and feasibility activities in respect to renewable energy resources on designated land.

The key elements of the process are:

REFL APPLICATION

Information provided as per standard HRE Act and Regulation requirements for a REFL.

APPROVAL OF STATEMENT OF ENVIRONMENTAL OBJECTIVES (SEO)

Requires evidence that an SEO adopted by regulation applies to the proposed activities OR preparation of an environmental impact report (EIR) and SEO, and approval of a consultation plan for targeted consultation on both EIR and SEO.

GRANT OF REFL

Subject to meeting the requirement for having a native title agreement in place which authorises the grant of the REFL (where the proposed licence area comprises native title land), an approved work program and an approved SEO.

Prior to grant, where the proposed licence area comprises pastoral land or South Australian waters, the Minister is also required to:

- consult with the Minister responsible for administering the *Pastoral Land Management and Conservation Act 1989*; and/or
- seek the concurrence of the Minister responsible for administering the *Harbors and Navigation Act 1993*.

PRE-COMMENCEMENT REQUIREMENTS

Includes approval of operational management plan, negotiation of access agreements, and notices of entry (where required).

The following sections step out the key approval requirements in flowcharts. While all processes are shown, some approvals may have minimal or different requirements, such as:

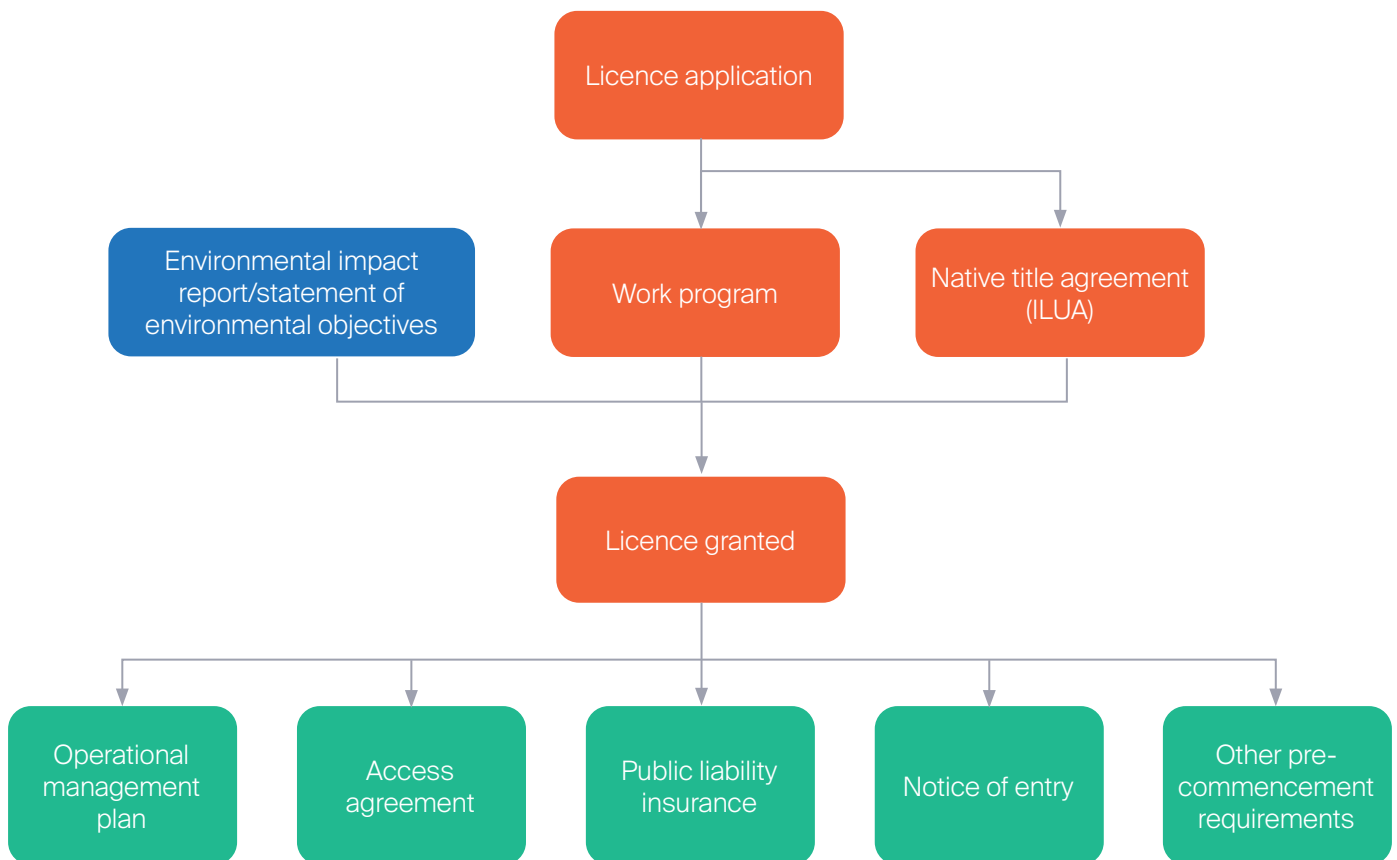
- where no changes are required to the work program following the tender process, or
- if a generic SEO exists that applies to the proposed activities is prescribed in the regulations.

The flowcharts should be read in conjunction with the HRE Act and associated regulations ensuring the latest versions are being referenced.

Overview of key licensing and pre-commencement process requirements

The following flowchart provides an overview of key licensing and approval requirements for REFLs. It shows which key approval requirements occur together and how they can interrelate, demonstrating that some of the processes can be undertaken in parallel. Proponents should determine the way they want to proceed with approvals that is appropriate to their circumstances, noting the dependencies.

Figure 3 Key approval requirements – REFL designated land



It is recommended that proponents submit a licence application as early as possible. Doing so assists DEM with planning and scheduling its regulatory activities and one window to government engagement.

It is important to determine any other statutory requirements under local, state or Commonwealth legislation that may apply in addition to those required by the HRE Act. DEM can provide an entry point and facilitate discussions with other government agencies to support navigating other processes.

Licence application and approval

A REFL provides the licensee with the right to:

- explore renewable energy resources in the licence area and assess the feasibility of exploiting identified renewable energy resources; and
- construct, install, operate, maintain and decommission renewable energy infrastructure for the purposes of exploring a renewable energy resource within the licence area.

If granted, a REFL provides the licensee with a right to enter and use land within the licence area for the

purposes of conducting operations authorised by the licence. This right is subject to meeting pre-commencement requirements (refer to the pre-commencement section following).

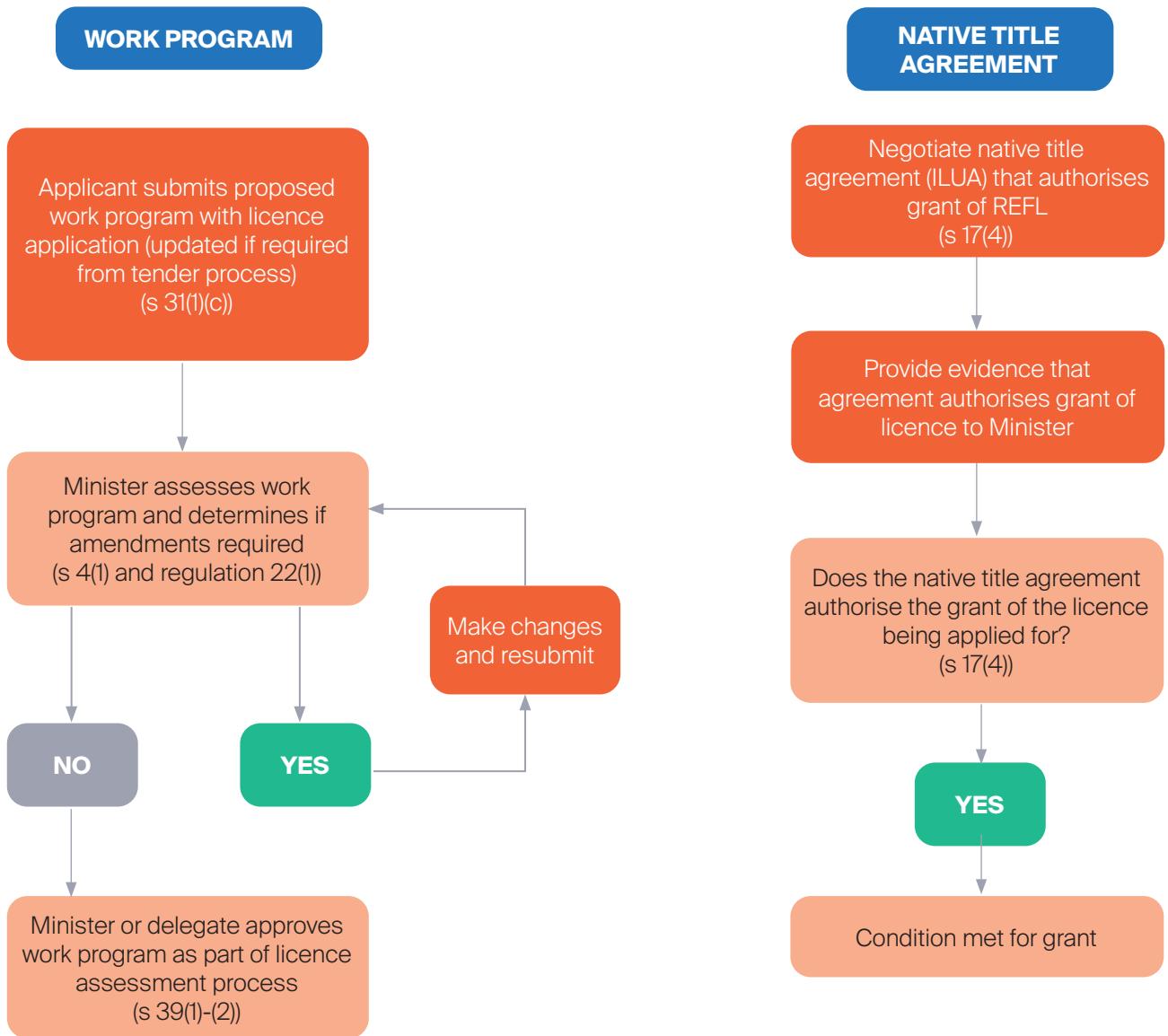
The Minister may grant a REFL for a term of up to 7 years over South Australian waters and up to 5 years in any other case. The Minister also has the power to grant a renewal for up to a further 3 years.

Under the HRE Act, rent is payable to the Minister in respect of a REFL of an amount determined in accordance with the HRE Regulations paid on an annual basis in arrears. Please refer to the relevant determination when gazetted.



NOTE: The Minister may require the applicant for a license or a licensee to enter into a bond. The grounds for requesting this are set out in s 43(1). If requested of an applicant for a licence by written notice, not meeting this requirement may result in the Minister refusing the licence application. (s 43(3))

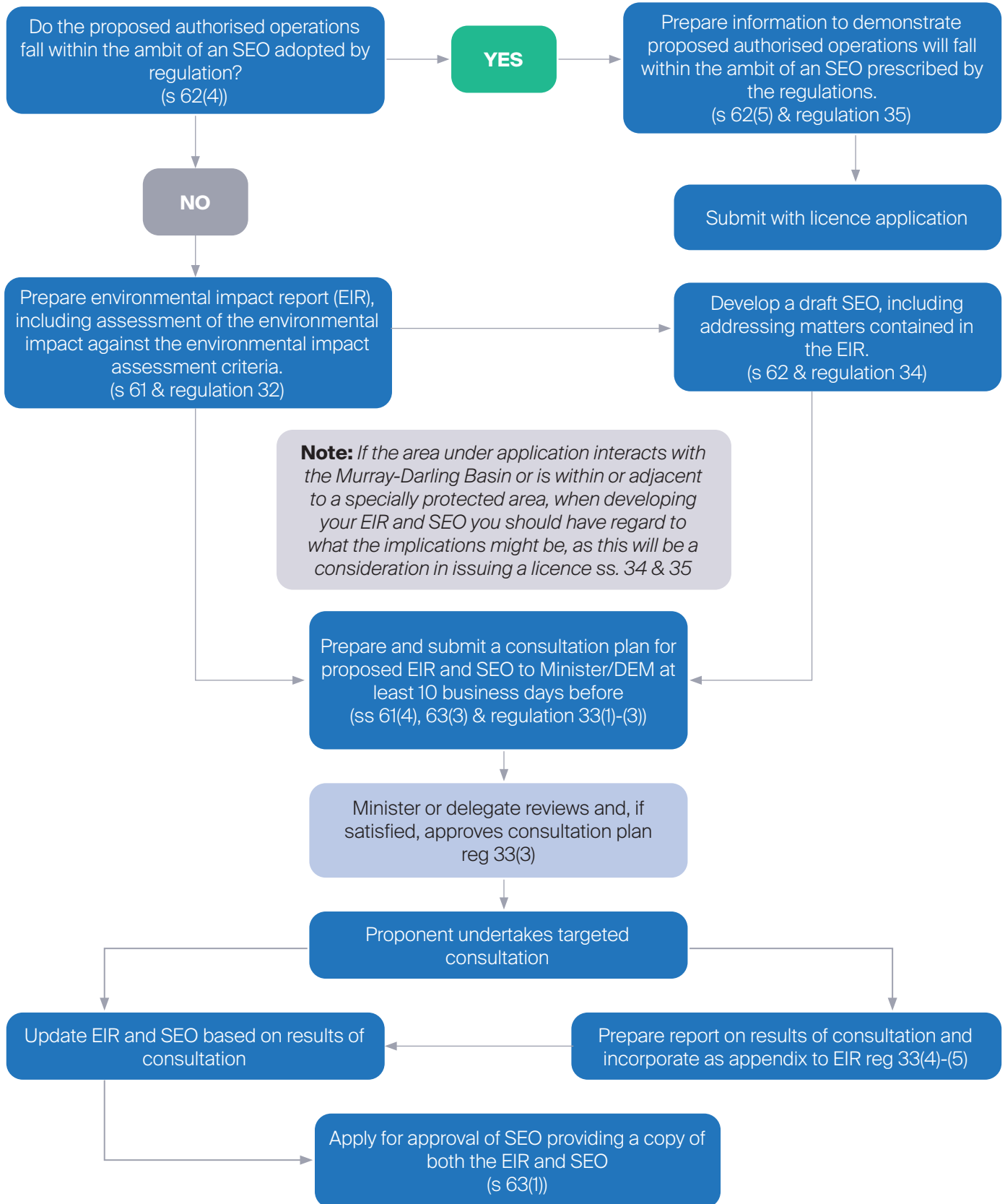
Licence application - updated work program and native title agreement

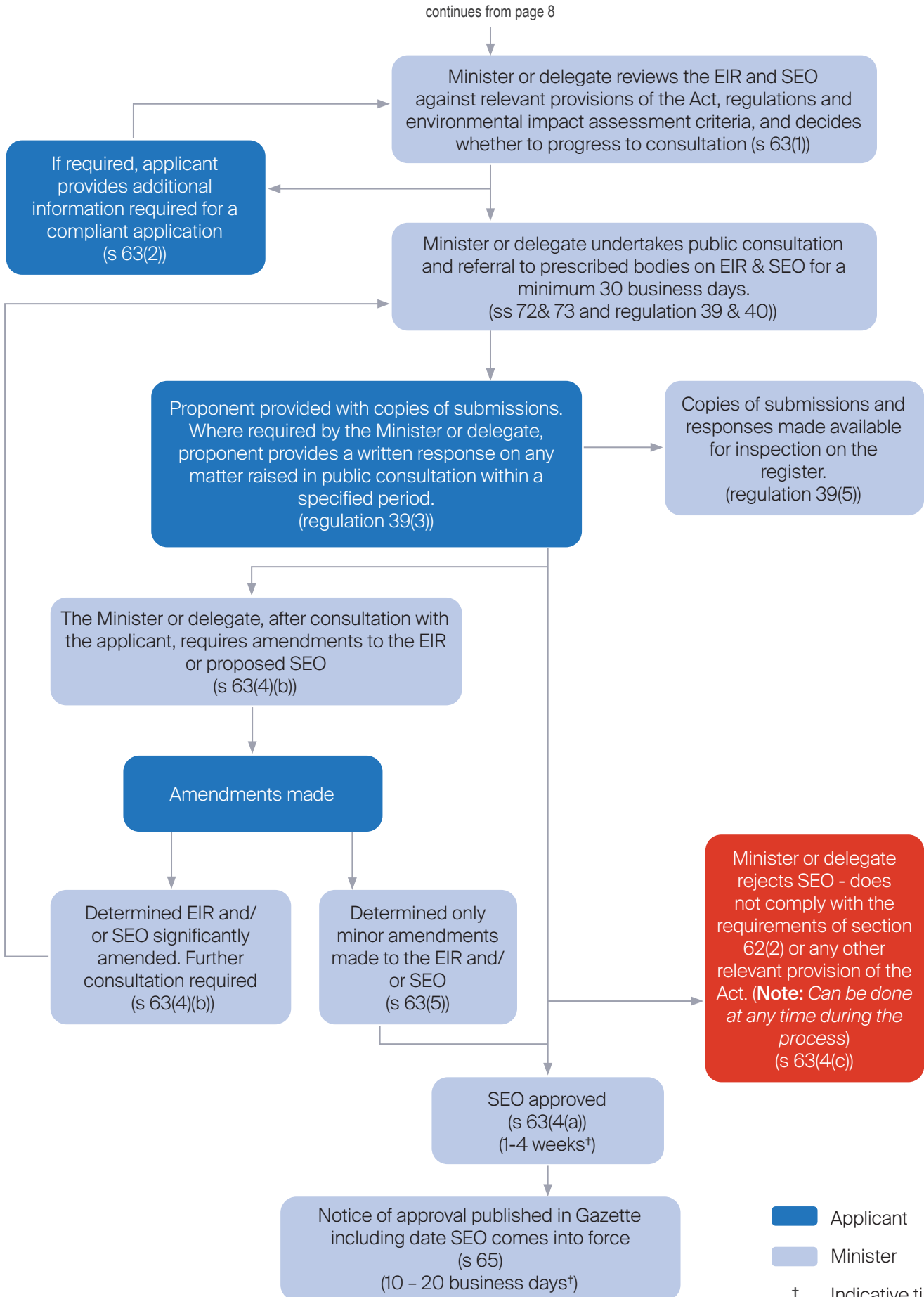


Applicant
 Minister

Approval Statement of Environmental Objectives (SEO)

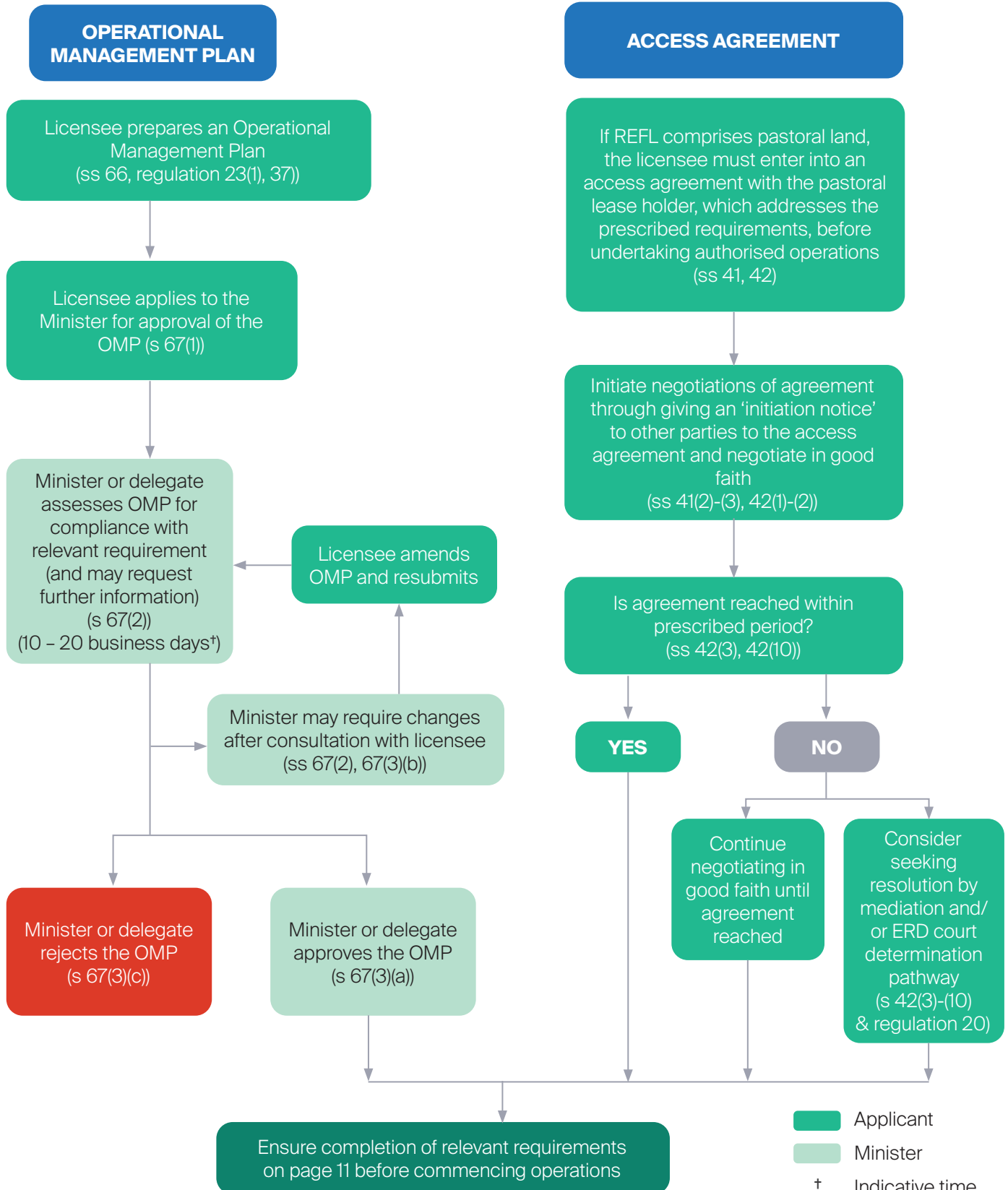
As per section 62(1) of the HRE Act, the Minister must not grant a licence unless an approved SEO in respect of the proposed authorised operations is in force.

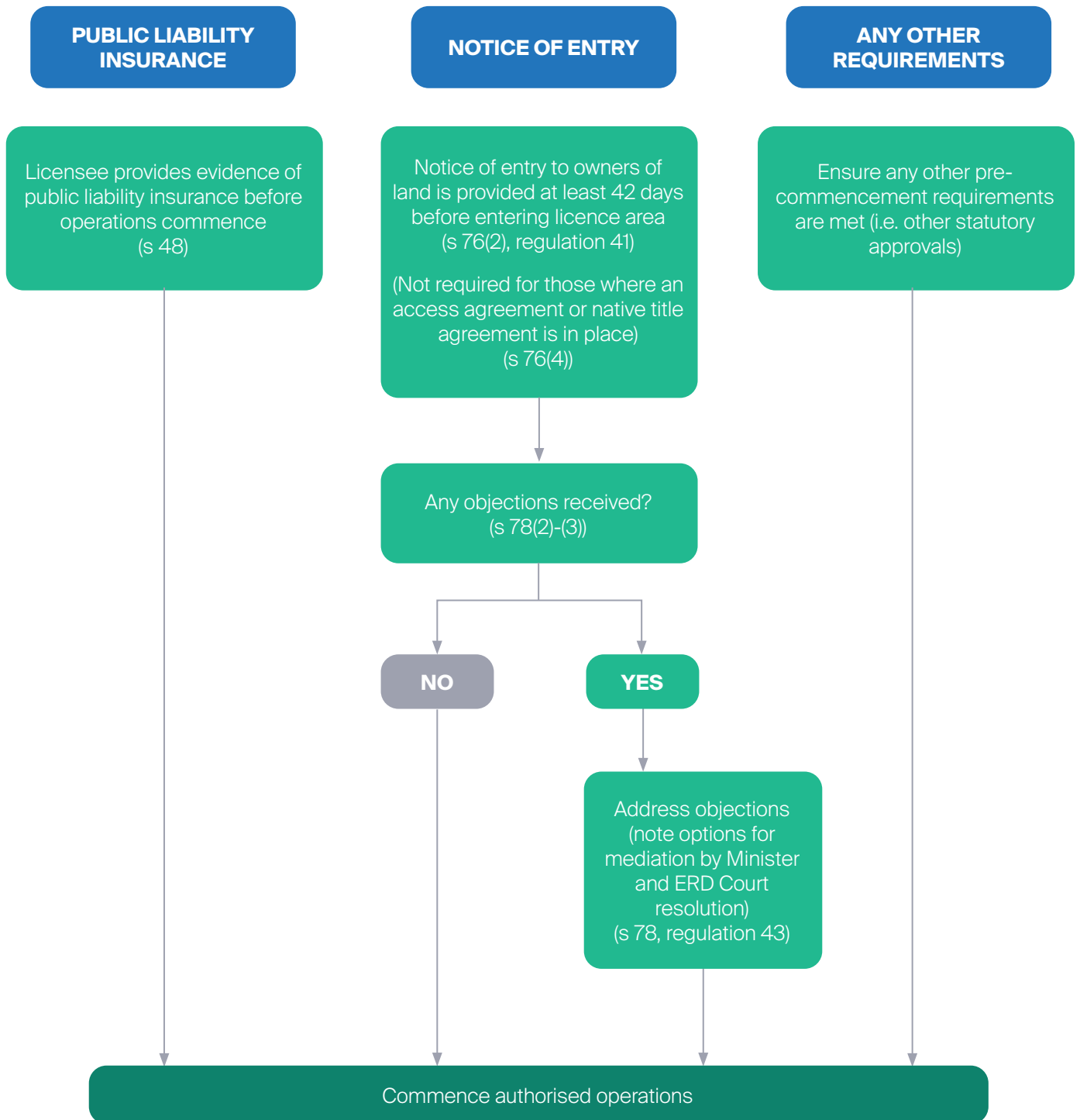




Pre-commencement requirements

To note, the key requirements to comply with pre-commencement are shown from page 10 to 11. The licence holder needs to ensure all relevant requirements are met prior to commencement.





Applicant

Further information, lodgement and reporting

DEM can be contacted about licensing and approval requirements, lodgement of documents for approvals and meeting of reporting obligations as per the following:

DEM Energy Licensing: DEM.ERDLicensing@sa.gov.au

- Enquiries about, and applications for the approval of, licences and permits
- Licence reporting obligations (Part 5 of regulations, excluding incident reports)

DEM Energy Regulation: DEM.EnergyRegulation@sa.gov.au

- Enquiries about, and applications for the approval of:
 - consultation plans
 - statements of environmental objectives and environmental impact reports
 - operational management plans
- Incident reporting (regulation 30)

General information on the HRE Act is also be found at:

www.energymining.sa.gov.au/industry/hydrogen-and-renewable-energy/hydrogen-and-renewable-energy-act

FURTHER INFORMATION

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GPO Box 618, Adelaide SA 5001

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E DEM.ERDLicensing@sa.gov.au
DEM.EnergyRegulation@sa.gov.au

www.energymining.sa.gov.au

ACKNOWLEDGEMENT OF COUNTRY

As guests on Aboriginal land, the Department for Energy and Mining (DEM) acknowledges everything this department does impacts on Aboriginal country, the sea, the sky, its people, and the spiritual and cultural connections which have existed since the first sunrise. Our responsibility is to share our collective knowledge, recognise a difficult history, respect the relationships made over time, and create a stronger future. We are ready to walk, learn and work together.

Disclaimer. *While every attempt has been made to ensure that the information in this document is accurate, the requirements for individual circumstances may vary. As such this document should be used for guidance purposes only. Applicants are advised to seek independent advice tailored to their individual circumstances to ensure they identify and address, where applicable, Federal, state and local government approvals required for their specific project.*



Government
of South Australia
Department for
Energy and Mining