

# Hydrogen and Renewable Energy Act

## Facts for Native Title groups and Traditional Owners

A Hydrogen and Renewable Energy Act (HRE Act) is being proposed to licence and regulate the entire lifecycle of hydrogen and renewable energy projects in South Australia.

Development of the State's renewable energy resources will impact on Aboriginal country and people's spiritual and cultural connections with land and waters. A supportive framework is needed to ensure Aboriginal people are at the forefront of the renewable energy transformation and have a leading role in decision-making.

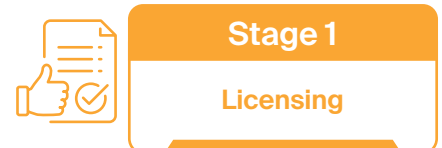
After considering the feedback received from consultation on the Issues Paper, as well as the South Australian Aboriginal Renewable Energy Forums held in November 2022 and March 2023, we have now drafted the Hydrogen and Renewable Energy Bill 2023 (HRE Bill). Once again, we are seeking your input.

## The regulatory framework

The HRE Bill aims to “enable engagement with Aboriginal people to ensure the regulatory framework ... maximises beneficial economic, environmental and social impacts and minimises adverse cultural and heritage impacts on Aboriginal people”.

The Bill establishes a licensing and regulatory framework for generating hydrogen for commercial purposes and developing renewable energy projects, including hydrogen generation plants, wind farms and solar farms. These activities are referred to in the HRE Bill as “regulated activities”. A licence will be required to undertake a regulated activity.

The licensing framework in the HRE Bill consists of three stages:



[yourSAy.sa.gov.au/hrebill](https://yourSAy.sa.gov.au/hrebill)

Certain requirements of the HRE Act will be outlined in regulations, guidelines and Ministerial determinations. These include detailing how the government, Native Title groups and Traditional Owners will work together to identify potential areas for renewable energy development and develop mutually agreed competitive licensing criteria to determine which companies are able to access the State's resources.



## Stage 1 - Licensing

For renewable energy projects, a competitive licensing process will apply to areas where wind and solar resources are able to be developed sustainably. This includes areas of pastoral land, State waters and certain Crown land.

These areas – called “release areas” in the HRE Bill – will be identified in a declaration made by the Minister for Energy and Mining (Minister).

Before making a declaration, the Minister will undertake consultation in a manner that is prescribed by regulations. Under the regulations, it is intended that consultation with Native Title groups will be required to ensure Native Title rights and interests and Aboriginal heritage are appropriately recognised and protected.

Renewable energy licences provide rights to enter and use land within release areas. It is intended that existing rights and interests continue to be enjoyed wherever that is consistent with the authorised operations carried out under the licence.

For other land tenures, including freehold land, proponents will need to secure access to land through direct agreement with landowners.

The Department for Energy and Mining (Department) plans to hold another South Australian Aboriginal Renewable Energy Forum to seek further feedback on these documents.

The HRE Bill provides the following different types of licences.

### **Renewable energy feasibility licence (feasibility licence)**

- Authorises investigations to assess the feasibility of generating renewable energy.
- A licence that relates to pastoral land, State waters or certain Crown land (“release areas”) may only be granted following a competitive tender process.
- The licence holder has an exclusive right to apply for a renewable energy infrastructure licence.
- May be granted for a term of up to 3 years, with the ability to renew for a further term of up to 3 years.

### **Renewable energy infrastructure licence (infrastructure licence)**

- Authorises the construction and operation of renewable energy infrastructure, such as wind turbines and solar panels.
- A licence that relates to pastoral land, State waters or certain Crown land (“release areas”) may generally only be granted to the person who was granted a feasibility licence following a competitive tender process.
- May be granted for a term of 40 years, or such other time as determined by the Minister, with the ability to renew for a further term determined by the Minister.

### Renewable energy research licence (research licence)

- Authorises research, testing and data collection for renewable energy technologies.
- May be granted for a term determined by the Minister, with the ability to renew for a further term determined by the Minister.

### Hydrogen generation licence

- Authorises the construction and operation of a facility to generate hydrogen for commercial purposes.
- May be granted for a term determined by the Minister, with the ability to renew for a further term determined by the Minister.
- Land access needs to be secured through direct agreement with landowners.

### Special enterprise licence

- Authorises a “special enterprise” comprising the construction and operation of a commercial facility to generate hydrogen and/or renewable energy infrastructure, such as wind turbines and solar panels.
- A hydrogen or renewable energy enterprise is a “special enterprise” if: (a) the Governor is satisfied it is of major significance to the economy of the State and it is in the interests of the State to grant a special enterprise licence; and (b) the Minister and the applicant have entered into an agreement for the grant of the licence; and (c) the Governor has ratified the agreement.
- Provides rights to enter and use land for the “special enterprise”.

## Consultation

An “owner” of land in the HRE Bill includes a Native Title holder as defined in the *Native Title (South Australia) Act 1994* (Native Title Act).

The Minister will be required to notify owners of land and relevant local councils of a licence application (except an application for a special enterprise licence) and seek public comment on the application before making a decision.

The Minister must consider any comments received when deciding whether or not to grant an application and, if so, the conditions on which a licence should be granted.

## Native Title process

On areas where Native Title exists or might exist (“Native Title land”), the grant of a licence under the HRE Act will often affect Native Title.

With the exception of a special enterprise licence, licences under the HRE Act will not be able to be granted or renewed on Native Title land without the consent of either the relevant registered Native Title body corporate or registered Native Title claimants. Consent is provided through an indigenous land use agreement (ILUA) under the Native Title Act.

As ILUAs are voluntary agreements negotiated under, and subject to the provisions of the Native Title Act, the HRE Bill does not prescribe what matters an ILUA must deal with. The government will develop guidelines to support leading practice engagement and negotiations that maximise economic opportunities for Aboriginal people in line with the objects of the Act.

In relation to Native Title land that is not the subject of a Native Title determination, and that is not within a registered Native Title claim, the grant or renewal of a licence will need to be valid under the Native Title Act to the extent the grant or renewal affects Native Title.

### Feasibility and research licences & ILUAs

The Department has received some feedback that negotiating an ILUA for the grant of a feasibility licence or a research licence may be unnecessarily complex and time consuming given the limited nature of the activities undertaken under those licences.

In some cases, the requirement for these licences to be consented to through an ILUA would go over and above the requirements that would otherwise apply in the Native Title Act. In these circumstances, if supported by Native Title groups, a clause could be added to the HRE Bill allowing consent to be given through a less formal agreement than an ILUA.

In other cases, existing Settlement ILUAs might already allow for the grant of these types of licences. Settlement ILUAs are agreements entered into by the State and Native Title holders as part of the negotiated resolution of a Native Title claim. It is possible that the grant of a feasibility or research licence might be authorised under one or more of these ILUAs.

### Questions for feedback

- (a) *Should a clause be included in the draft Bill allowing the grant of a renewable energy feasibility licence and a renewable energy research licence to be consented to in a less formal agreement than an ILUA in circumstances where an ILUA would not otherwise be required under the Native Title Act?*
- (b) *In what circumstances (if any) would Native Title groups be content for a feasibility or research licence to be granted if the grant is permissible under an existing Settlement ILUA?*

### Feasibility licence and exclusive right to apply for an infrastructure licence

The holder of a feasibility licence will have the exclusive right to apply for an infrastructure licence. The Department has received some feedback that the Minister should be satisfied the preferred applicant for a feasibility licence is in a position to negotiate appropriate benefits in relation to the future development of a renewable energy resource, and is committed to doing so, before granting a feasibility licence.

A clause has been included in the HRE Bill requiring the Minister to be satisfied of matters that will be specified in guidelines before granting a feasibility licence. This intends to allow specific criteria to be developed according to the needs of different Native Title groups. The Minister will need to be satisfied that these criteria have been met before granting a feasibility licence.

### Question for feedback

- (a) *Is there support for a clause requiring the Minister to be satisfied of matters specified in guidelines before granting a feasibility licence?*

## Special enterprise licence

The purpose of a special enterprise licence is to enable hydrogen and renewable energy projects of major significance to the economy of the State. A special enterprise licence may be granted in relation to both freehold and non-freehold land.

The power to grant a special enterprise licence may be exercised to allow projects to proceed where land access is not able to be agreed. In other words, a special enterprise licence may be granted without the consent of Native Title holders and other landowners.

It is intended that a special enterprise licence co-exist with existing rights and interests in land, and that existing rights and interests continue to be enjoyed wherever that is consistent with the authorised operations carried out under the licence.

In recognition of the non-consensual nature of a special enterprise licence, the following measures have been included in the HRE Bill to provide protections to Native Title holders and other landowners:

- The operation of the part of the HRE Act that deals with special enterprise licences will be subject to guidelines issued by the Minister. The guidelines will include notice and consultation requirements and matters that the Minister must consider when considering an application for a special enterprise licence. The guidelines will be developed in conjunction with Native Title holders and other landowners.
- A proponent who is seeking agreement with the Minister must, as a first step, initiate consultation with the Minister by an application. If the Minister advises the proponent that the matter may proceed, the proponent will be entitled to make an agreement with the Minister in relation to the grant of a special enterprise licence.
- Before ratifying an agreement between the Minister and a proponent, the Governor must be satisfied an enterprise is of significance to the economy of the State and it is in the State's interests to grant a special enterprise licence.
- Native Title holders and other landowners will be entitled to compensation in relation to the grant of a special enterprise licence.

## Dealing with licence

Before approving certain dealings with a licence, the Minister must comply with requirements that are prescribed in regulations. It is intended that, within the regulations, there will be a requirement to notify Native Title holders of any proposed dealing and for Native Title holders to have an opportunity to provide advice to the Minister.

## Compensation

Native Title holders and other landowners will be entitled to receive compensation for any economic loss, hardship or inconvenience suffered by them as a result of operations carried out under a licence. The amount of compensation is to be determined by agreement (e.g. an ILUA) or, if agreement is not able to be reached, by the Environment, Resources and Development Court.



**Stage 2- Environmental impact assessment**

## Environmental impact

Under the HRE Bill, the term “environment” includes “cultural artefacts” and “the heritage, aesthetic, Aboriginal, social and cultural values of an area”.

Proponents will need to prepare an environmental impact report (EIR) setting out measurable environmental objectives for all projects under the Act. Proponents will also need to develop a statement of environmental objectives (SEO), based on information provided in the EIR, to be approved by the Minister.

Both the EIR and SEO are to be developed through an open, consultative process that will be detailed in regulations. These documents will also be publicly available so that anyone can see what is required of a licensee in terms of its environmental performance.

The criteria against which the environmental impact of projects is to be assessed will be developed by the Minister and published in the Government Gazette. As part of consultation on the HRE Bill we are seeking your input into the development of these criteria and what they should include.

### Question for feedback:

- (a) *What type of matters should be included in the criteria for assessing the environmental impacts of projects?*

## Aboriginal Heritage Act 1988

*The Aboriginal Heritage Act 1988* (Aboriginal Heritage Act) will continue to apply to all projects under the Act. There must be no impact to Aboriginal sites, objects or remains unless authorised under the Aboriginal Heritage Act.

If an ILUA deals with Aboriginal heritage in an area to which the agreement relates, an application may be made to the Minister for Aboriginal Affairs to approve the ILUA under Division A2 of the Aboriginal Heritage Act.

In addition, Aboriginal heritage will be protected through rigorous environmental protection provisions in the HRE Bill outlined above.





### Stage 3- Operational management plan

Before commencing any operations under a licence, a licensee must have an approved operational management plan. The operational management plan must specify how the operations under the licence will be managed, including how the SEO will be complied with.

## Other provisions

The HRE Bill also includes:

- Processes for a person who is dissatisfied with a decision of the Minister to grant a licence or to approve an SEO or operational management plan to appeal the decision to the ERD Court.
- New financial assurance requirements to ensure land is rehabilitated and returned to pre-existing conditions.
- Full cost recovery for government services through appropriate licence fees and charges.
- Fit-for-purpose compliance and enforcement powers.
- Establishment of a Hydrogen and Renewable Energy Fund comprising money that can be used for purposes related to the objects of the HRE Act, including the protection and preservation of Native Title and Aboriginal heritage in South Australia.

## Land rights land

Changes would need to be made to the *Aboriginal Lands Trust Act 2013*, the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* and the *Maralinga Tjarutja Land Rights Act 1984* to enable licences to be granted under the HRE Act in relation to land held under these Acts.

The government does not propose to make any changes to land rights Acts until after the HRE Act comes into operation. The Department will work with the Aboriginal Lands Trust, Anangu Pitjantjatjara Yankunytjatjara and Maralinga Tjarutja in relation to any changes.

## Where can I go for more information?

Information about the proposed Hydrogen and Renewable Energy Act can be found at [Hydrogen and Renewable Energy Act - Draft Bill | YourSAy](#)

You can have your say via the website above or can provide your feedback via email to [HRE@sa.gov.au](mailto:HRE@sa.gov.au).

The consultation period closes on Monday 26 June 2023.

Feedback will be considered and will be used to inform a Bill that will be introduced to Parliament later this year.

The Department is committed to meeting with Native Title groups and other Traditional Owners to continue engagement on the HRE Bill. If you would like to invite the Department to a meeting with your organisation or discuss other ways of providing a submission, please contact Andrew Moll, Principal Policy Advisor (Native Title & Engagement) at [andrew.moll2@sa.gov.au](mailto:andrew.moll2@sa.gov.au) to arrange a suitable time.

### 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.



Government of South Australia  
Department for Energy and Mining