



Government
of South Australia

Department for
Energy and Mining

Hydrogen and Renewable Energy Act Draft Bill

Consultation Report



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Introduction

On 11 May 2023, the Department for Energy and Mining (DEM) launched public consultation on the draft Hydrogen and Renewable Energy Bill (the draft HRE Bill). The draft HRE Bill was developed in response to feedback received from public consultation on the Hydrogen and Renewable Energy Act Issues Paper (the Issues Paper).

Public consultation was conducted over a 6-week period closing on 26 June 2023. Consultation on the draft HRE Bill was supported by documents; the Explanatory Guide to the HRE Bill, the Hydrogen and Renewable Energy Act Process Diagram, and the Draft Regulatory Impact Statement. In addition to these documents, DEM created fact sheets specifically to address the interests of pastoral lease holders and native title groups and traditional owners.

Replicating the commitment to genuine, meaningful engagement on the Issues Paper consultation from November 2022 to February 2023, YourSAy surveys and Forums, targeted stakeholder meetings, regional information roadshows, an online webinar and Q&A were the platforms utilised for stakeholder participation.

A dedicated workshop for the pastoral community was also held on 14 June 2023 in Port Augusta to support quality engagement with the government on the draft Bill.

Throughout consultation, department officials met with an extensive range of industry, community, Aboriginal groups, environmental groups, and other interested stakeholders. Overall, DEM received over 130 submissions on the draft HRE Bill.

This report provides a summary of the key themes of feedback received and how they have been considered in further drafting of the Bill.

Background

The unprecedented scale of transformation and demand for access to pastoral land and State waters requires a fit-for-purpose approach to enable the state to deliver outcomes to balance the interests of multiple stakeholders and owners of land and build long-term prosperity for the benefit of all South Australians and the environment.

The proposed HRE Act seeks to enable an efficient, flexible, transparent, and consultative licensing and regulatory framework for hydrogen generation and renewable energy infrastructure in South Australia. The “one window to government” legislative framework intends to:

- licence and regulate the entire lifecycle of renewable energy projects and the generation of hydrogen, recognising that Aboriginal participation in decision-making is central to South Australia’s clean energy future
- maintain the government’s commitment to multiple land use, continuing to recognise all other overlapping legal rights over the same land (for example, pastoral leases, mining tenements and licences)
- maximise the benefits for all South Australians and the environment, whilst ensuring that any environmental, economic, public safety and social and cultural impacts associated with such developments are effectively addressed in line with environment, social and governance requirements
- expedite the development of the state’s hydrogen sector and support delivery of the Hydrogen Jobs Plan
- deliver investment certainty and security and unlock the pipeline of renewable energy projects.

South Australia’s leading practice “one-window-to-government” approach to regulation will provide a central service point for industries recognised for their strategic and significant contribution to the State’s present and future economy and overall wellbeing. With DEM as a first port of call, proponents will be helped to navigate through the various regulatory licensing and approval processes under all relevant legislation.



ENGAGEMENT APPROACH

Following the meaningful feedback solicited through engagement undertaken for the Issues Paper, the engagement approach for the draft HRE Bill has implemented similar objectives.

As part of a strategic engagement approach, DEM implemented previous objectives to:

Objective	How DEM addressed objective
Facilitate participation of and partnerships with Aboriginal communities	<p>Following the success of the inaugural South Australian Aboriginal Renewable Energy Forum (SAAREF) in November 2022, further consultation with Aboriginal stakeholders took place at the second SAAREF, held between 19 and 21 March 2023.</p> <p>SAAREF continued discussions on the development of the Act, including identifying solutions to the issues raised during Issues Paper consultation.</p> <p>A further online webinar for Aboriginal stakeholders and rights holders was delivered during the consultation period for the draft HRE Bill.</p>
Ensure stakeholder understanding of the provisions and scope of the proposed Act to provide meaningful feedback	<p>To facilitate broad involvement, DEM created:</p> <ul style="list-style-type: none"> • Explanatory Guide to the Bill • Hydrogen and Renewable Energy Act process diagram • Draft Regulatory Impact Statement • Fact Sheets for pastoral lease holders and native title groups and traditional owners • Public webinar delivered and recorded for viewing on demand.
Empower stakeholder voices	<p>Facilitating feedback via a number of mechanisms:</p> <ul style="list-style-type: none"> • YourSAy • Regional roadshows • Pastoralist workshop • Online public webinar and Q&A • Targeted stakeholder meetings and webinars • Webinar for government co-regulators • Dedicated email inbox to receive feedback and queries.
Identify and respond to stakeholder concerns, ideas, and queries	<p>Following the closure of consultation, all feedback was reviewed, analysed and where appropriate, incorporated into the final Bill for introduction to Parliament.</p> <p>Identified key areas of stakeholder concern and addressed them throughout the Bill drafting process.</p>
Build ongoing trust and relationships	<p>Provided an open, transparent and extensive consultation process.</p>

INTERNAL GOVERNMENT CONSULTATION

The internal government consultation process was conducted concurrently with public consultation, involving a number of agency meetings and a targeted online webinar. On 8 June 2023, DEM hosted an online webinar tailored for the needs of co-regulatory agencies. The webinar was well attended by government employees from agencies including the Department for Environment and Water (DEW), the Department of Primary Industries and Regions South Australia (PIRSA), the Department for Trade and Investment (DTI), the Department for Industry, Innovation and Science (DIIS), the Environmental Protection Agency (EPA), the Department for Infrastructure and Transport (DIT) and the Office of Hydrogen Power South Australia (OHPSA). Attendees were encouraged to ask questions throughout the webinar.

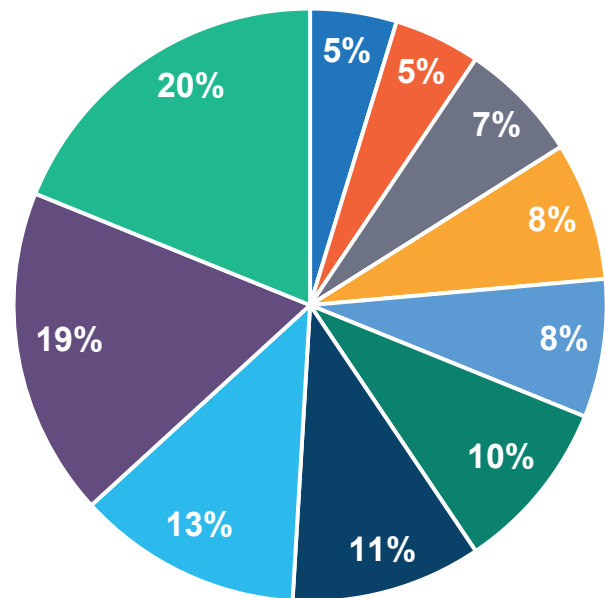
Submissions received from departments across government impressed the importance of an orderly, government-led process to regulate large-scale hydrogen and renewable energy projects in South Australia. Co-regulatory agencies assisted in the drafting of the environmental impact assessment and referral provisions in the Bill, which will enable detailed referrals to be prepared in the Regulations. Feedback received contributed to the final Bill.

DEM is committed to working with departments across government to ensure the interests of multiple sectors are considered in the development of the Regulations.

YOURSAY

A YourSAY web page was created and launched on 11 May 2023 at the opening of public consultation on the draft HRE Bill. The success of the YourSAY page launch and content is reflected in over 2,300 page views between 11 May and 26 June 2023.

To capture feedback, DEM created a survey through YourSAY which was broken down into Questions 1 to 10, representing Parts 1 through 9 of the draft HRE Bill and Question 10 representing the topic of transitional provisions for comment.



- Compliance and enforcement
- Entry to and use of land
- Transitional provisions
- Licensing
- Hydrogen and renewable energy register
- Appeals to ERD Court
- Hydrogen and Renewable Energy Fund
- Offences and penalties
- Release Areas
- Preliminary

Figure 1 Statistics generated through YourSAY identified 'Part 3 - Licensing' as the most responded to.



DEM created bespoke documents targeted at specific stakeholder groups, assisting them to gain a more meaningful understanding of the draft HRE Bill. Figure 2 shows the number of downloads each document received during the consultation period, the 'draft Hydrogen and Renewable Energy Bill' being the most downloaded.

The success of this platform is also reflected in the 28 survey responses and 31 feedback comments DEM received through YourSAy. All feedback received through YourSAy has been analysed and contributed to the final Bill.

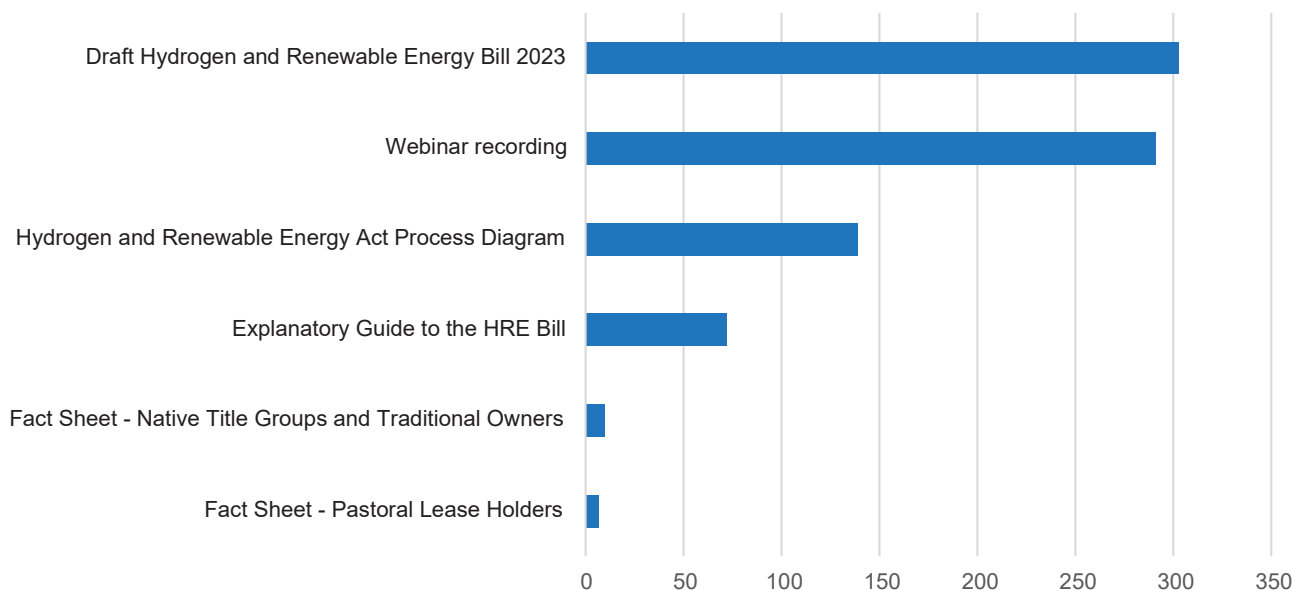


Figure 2 Number of downloads of YourSAy materials.

SOUTH AUSTRALIAN ABORIGINAL RENEWABLE ENERGY FORUMS

In November 2022 and March 2023, DEM hosted the South Australian Aboriginal Energy Forums (SAAREF). SAAREF brought together South Australian government representatives, native title groups and other traditional owners to share information, ideas, and expertise with a view to:

- learning more about the growing renewable energy and hydrogen sector in South Australia
- strengthening relationships based on understanding, respect, and early engagement
- discussing the development of new legislation to regulate renewable energy projects on country
- understanding the issues and challenges impacting Aboriginal groups
- discussing opportunities for Aboriginal people and government to work together on the development of renewable energy in South Australia

- driving better collaboration between stakeholders, to improve management of impacts and provide benefits and opportunities determined by Aboriginal people.

Issues raised at both SAAREFs have proved critical to creating a Bill that respects Aboriginal rights and interests, accompanied by strong policies to drive collaboration and strengthen relationships with Aboriginal communities.

Native title and traditional owner groups will continue to play an integral role in regulation and policy development, and in the identification of potential release areas under the new framework.

PASTORALIST WORKSHOP

On 14 June 2023, DEM hosted a workshop and information session in Port Augusta for the pastoral and farming community. The workshop brought together over 30 representatives including pastoralists as well as representatives from Livestock SA, the Arid Lands Landscape Board, the Pastoral Board, Rural Business Support, and government. Attendees participated in a number of presentations, Q&A sessions, and dedicated activities designed to elicit feedback and responses on key elements of the draft HRE Bill. The workshop also featured a presentation from DEW on changes to the *Pastoral Land Management and Conservation Act 1989* (the Pastoral Act) to accommodate conservation and carbon farming activities.

Participation at the Hydrogen and Renewable Energy Bill Pastoralist workshop was a key opportunity to hear directly from those developing the draft HRE Bill and ensure perspectives and input from pastoralists was considered in the development of the legislation. Detail captured from the workshop will also inform the development of the Regulations, however pastoralists will be directly engaged again to assist in developing the Regulations. Engagement with pastoralists will also be critical to the identification of potential release areas under the new framework.

ONLINE WEBINAR & MEETINGS

On 7 June 2023, DEM hosted an online webinar with Q&A session. The webinar was broadcast live and recorded and published on the DEM website for those who could not attend the live broadcast. A collaboration of two DEM representatives and one OHPSA representative made up the panel who presented on the design of the draft HRE Bill, release areas and key regulatory stages and licences in the draft HRE Bill. A formal presentation was followed by a Q&A session.

The webinar has been viewed over 290 times via YouTube. The webinar is available online at the [DEM Hydrogen and Renewable Energy Act site](#).

REGIONAL ROADSHOWS

Throughout June 2023, DEM representatives engaged with regional communities at various targeted locations across the State. This engagement was integral to meeting engagement objectives to:

- Ensure stakeholder understanding of the provisions and scope of the proposed Act to provide meaningful feedback
- Empower stakeholder voices
- Build ongoing trust and relationships.

Modelled around the success of the Issues Paper regional roadshows, DEM representatives conducted informal 'drop in' style booths to encourage local communities to engage and learn more about the draft HRE Bill.

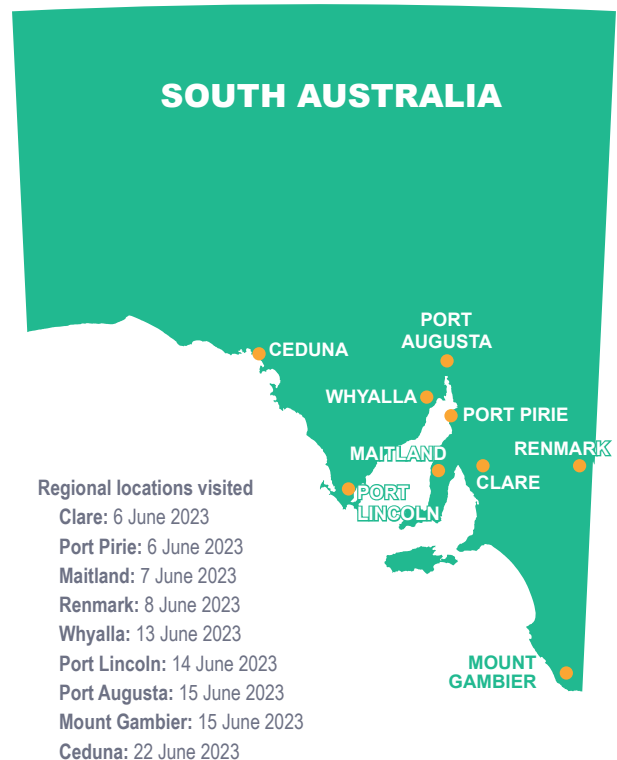


Figure 3 Regional roadshows map.



KEY THEMES ARISING FROM SUBMISSIONS

The quality and quantity of submissions DEM received is reflective of the significance of this flagship legislation. In addition to the YourSay responses, over 70 pieces of written feedback were submitted. It is clear from the vast range of stakeholders who submitted detailed and supportive feedback that South Australians have a vested interest in nurturing a growing hydrogen and renewable energy industry. Figure 4 shows the range of submissions demographics.

The following key themes raised during the consultation process were relevant to informing the final Bill, and in some cases have led to policy adjustments.

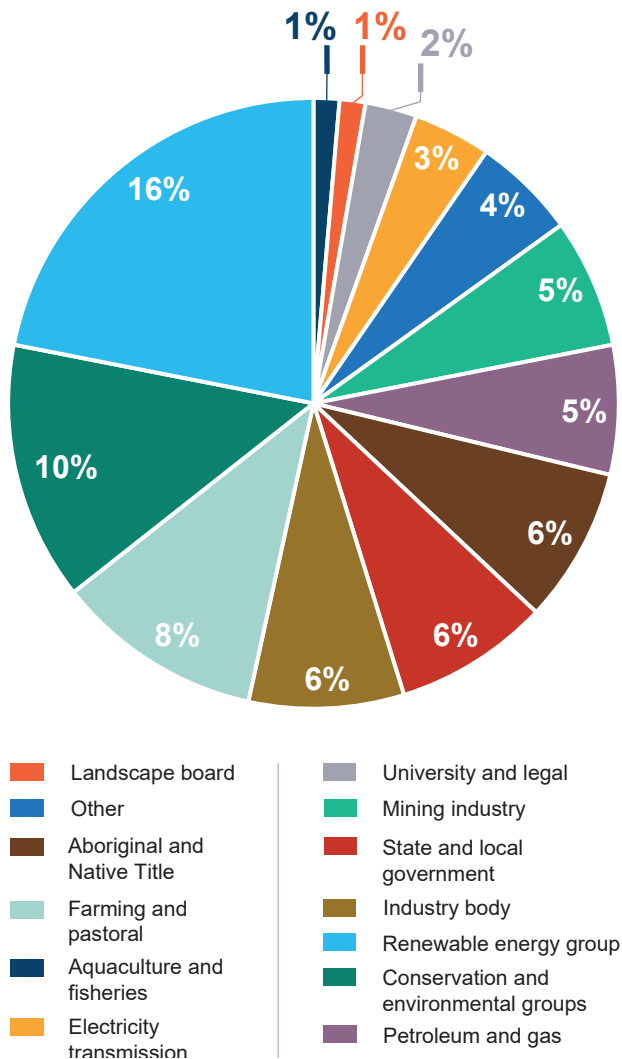


Figure 4 Submissions were received from a wide variety of stakeholders.

GENERAL FEEDBACK

General feedback has centred primarily around economic growth in the regions, and the positive impacts that large-scale hydrogen and renewable energy projects will have in South Australia. The public continued their support for this flagship piece of legislation and were deeply conscious of the government’s efforts to combat climate change.

EXPAND THE SCOPE OF THE ACT

Feedback received proposed the HRE Act scope expands beyond regulating renewable energy and hydrogen generation, to capture more activities associated with HRE Act licences. This has been implemented in the Bill, through the creation of an Associated Infrastructure Licence.

LICENSING TERMS AND SEQUENCING

Overall, feedback received was supportive of the proposed licensing framework, many submissions strongly encouraging the “one window to government” framework.

Feedback indicated that the renewable energy industry would like to see the length and term of a feasibility licence extended beyond the 3 years proposed in the draft HRE Bill. The final Bill provides that feasibility licences may be granted for a term up to five years at the Minister’s discretion, and up to seven years in State waters.

Feedback indicated that feasibility licences are unsuited to activities conducted on freehold land. The investigation stage on freehold land will now be replaced with a non-exclusive permit allowing fixed structures and will include options for enforceable conditions.

Feedback on the draft Bill from landowner groups, conservation groups and industry noted that granting a licence before impact assessments are completed may undermine social acceptance. Noting this, the impact assessment stage has now been embedded within the licence application and assessment process. This process includes preparation of an Environmental Impact Report (EIR) and Statement of Environmental Objectives (SEO), plus optional scoping to inform the assessment of activities regulated under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (Cth).

NATIVE TITLE REQUIREMENTS

Following feedback from some native title groups and industry that more flexibility would be beneficial, clauses have been included in the Bill allowing the grant of licences to be consented to in a less formal agreement than an indigenous land use agreement (ILUA) in circumstances where an ILUA would not otherwise be required under the *Native Title Act 1993* (Cth). The form of that consent will be at the discretion of the relevant native title group and be valid under the *Native Title Act 1993* (Cth).

SPECIAL ENTERPRISE LICENCES

Feedback was received that further explicit provisions were required to provide protections to native title holders/claimants and other landowners.

The Bill makes clear that the power to grant a special enterprise licence is intended to be exercised as a last resort following the proponent taking specified steps to seek all necessary approvals of landowners. Measures incorporated are considered to provide appropriate procedural guarantees to freehold landowners and native title holders/claimants alike and at the same time allow the government to exercise a non-consensual power that encroaches upon private rights in the State interest (but without permanently acquiring them).

SUPPORT FOR PASTORALISTS

Feedback received through submissions was consistent with the discussions at the dedicated pastoralist workshop. This detailed report is available separately on the DEM website.

The Bill enhances pastoralists current rights under the *Pastoral Land Management and Conservation Act 1989* by providing improved access agreement conditions and strengthening dispute resolution mechanisms. The Bill establishes the principle that licensees must limit the impacts of the renewable energy project to have least detriment to the interests of the pastoralist and least damage to the land.

Before any activities can begin, licensees will need to enter into an access agreement with affected pastoralists. The access agreement must address access to the licence area and infrastructure in the licence area during the exploration and construction, installation, operation and decommissioning of infrastructure. Access agreements must also address compensation that is payable to the pastoralist resulting from entry to and use of their lease.

Feedback suggested further benefits should be included in the access agreement provisions in the Bill, however the Bill does not limit what can be included in an agreement, with pastoralists free to negotiate with licensees on other matters as they see fit.

In line with feedback, and to further support pastoralists and other landowners, the government-funded independent Landowner Information Service will be extended to cover renewable energy activities.



ENVIRONMENTAL PROTECTION

Feedback from the environmental protection and conservation sector was generally supportive of the policies within the draft Bill. A suggestion was made that in order to maintain the balance between environmental protection and a rapidly growing hydrogen and renewable energy sector, the Minister for Energy and Mining and the Minister for Environment should make concurrent decisions at certain stages of the release area and licensing stages.

The concurrent decision-making roles for the Minister for the *Pastoral Land Management and Conservation Act 1989* and the *Minister for the Harbors and Navigation Act 1993* have been retained and clarified. The Bill now includes referral provisions to ensure expert advice from co-regulatory agencies, including DEW and the EPA, is sought during environmental impact assessment processes.

DEM will work closely with relevant regulatory and conservation bodies to develop the Regulations and to identify potential release areas under the new framework.

PROTECTED AREAS

Feedback was received from environmental stakeholders seeking clarity about whether protected areas were included in the definition of designated land, and therefore able to be included in release areas for competitive tender under the new framework. To provide clarity, the definition of designated land has been amended to exclude protected areas, defined as terrestrial protected areas (*National Parks and Wildlife Act 1972* and *Wilderness Protection Act 1992* collectively), the Arkaroola Protection Area as identified in the *Arkaroola Protection Act 2012* and restricted access zones and sanctuary zones, declared in accordance with the *Marine Parks Act 2007*.

MULTIPLE LAND USE

Feedback recommended that alternative measures to support constructive coexistence between resources tenement holders and HRE licence holders would be preferable than an access agreement arrangement.

The Bill now introduces a notice of entry mechanism for resource tenements. It also introduces consequential amendments to recognise HRE licence holders within Mining Acts.

TRANSITIONAL PROVISIONS

The interest shown throughout consultation on transitional provisions signified the importance of establishing a clear method for determining how hydrogen and renewable energy projects will transition after the commencement of the HRE Act.

As part of targeted consultation with industry groups, DEM released a draft document on the DEM website outlining proposed transitional provisions to provide the certainty and security needed by the sector. Consultation on transitional provisions closed on 11 August 2023.

Feedback received related to the timing of transition for projects at various stages of development, construction and operation.

REVIEW PROVISIONS

Feedback was received that regular review provisions are required to ensure the HRE Act remains fit for purpose in a changing environment. The Bill now contains a review clause requiring the Minister to review the Act five years after commencement, and every five years after that.

FREEHOLD LAND

Feedback received demonstrated there were misunderstandings about the application of this framework to freehold land.

It is critical to be very clear, on freehold land, proponents will need to secure access to land through direct agreement with landowners. This preserves current arrangements where freehold landowners are in control of who can enter their land and under what circumstances and conditions.

CONCLUSION

In general, feedback received throughout the consultation period has been supportive of the draft HRE Bill. Public consultation has revealed overall support for an organised and government-led regulatory and licensing framework for the hydrogen and renewable energy sector.

All feedback to date has helped to shape the final Bill and will also be utilised to inform the initial preparation of Regulations accompanying policies. Should the HRE Bill successfully proceed through parliament, the next opportunity for South Australians to provide feedback will be on the Hydrogen and Renewable Energy Regulations.



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Acknowledgment of Country

As guests here on Aboriginal land, we acknowledge everything this department does impacts on Aboriginal country, the sea, the sky, it's people and their spiritual and cultural connection 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.