

GENERAL LICENSING AND PERMITS

Consultation on draft Hydrogen and
Renewable Energy Regulations

Information sheet

Hydrogen and Renewable Energy Act 2023



Introduction

The [Hydrogen and Renewable Energy Act 2023](#) (HRE Act) and regulations will facilitate and regulate hydrogen and renewable energy development in South Australia and the state's coastal waters. The regulations are in addition to the HRE Act's requirements, so should be read in conjunction with the HRE Act.

This information sheet outlines proposed regulations that establish general licence and permit requirements under the HRE Act.

This information sheet refers to proposed rent regulations. Please refer to the 'Rent' information sheet for more information.

Providing feedback

You are invited to provide feedback on any of the proposed regulatory matters contained in these documents. You can make submissions on [YourSay](#) or by emailing HRE@sa.gov.au. Submissions close on 15 April 2024.

General licensing and permits

The HRE Act will implement a state-wide permit and licensing framework for hydrogen and renewable energy projects. There are six types of licence and one permit under the Act:

- Renewable energy feasibility permit (on non-designated land) (REFP)
- Renewable energy feasibility licence (REFL)
- Renewable energy infrastructure licence (REIL)
- Renewable energy research licence (RERL)
- Hydrogen generation licence (HGL)
- Associated infrastructure licence (AIL)
- Special enterprise licence (SEL)

The HRE Act facilitates and regulates exploration for, and exploitation of, renewable energy resources. Section 4(1) of the HRE Act defines 'exploit' to mean generating or obtaining energy from the renewable energy resource, or storing, transmitting or otherwise conveying that energy, of or above the prescribed quantity of energy.

Regulation 3 requires prescription of an energy threshold, which shall be a nameplate capacity of five megawatts (MW).

Regulated activities

Section 12 of the HRE Act prescribes certain activities that occur within the state or coastal waters as ‘regulated activities’. No one may undertake a regulated activity unless they have a licence or permit under the Act or are exempted from authorisation.

During the HRE Act’s development, there was a policy decision to exclude certain activities from the application of the HRE Act that are otherwise regulated. For example, activities that already require authorisation under existing mining and energy legislation. This was communicated in the previous consultation materials and certain activities are expressly prescribed in section 12(2) of the HRE Act as not being regulated activities.

Consistent with this, the Department for Energy and Mining’s policy position is that, generally, the operation of South Australia’s electricity transmission network should be excluded from the definition of regulated activities under the HRE Act. However, certain categories of transmission infrastructure (for example, which have the primary purpose of transmitting energy obtained from renewable energy resources) will be regulated by the Act. This position is not currently reflected in the draft regulations but will be considered further during the consultation period.

Renewable energy feasibility permit

The REFP authorises construction and operation of infrastructure necessary to assess the feasibility of renewable energy projects, such as building meteorological masts. This permit only applies to areas of land that are not considered ‘designated land’ within the HRE Act (generally this means freehold land). A REFP can be issued for up to five years and renewed by application to the Minister.

Feasibility activities on non-designated land may only be undertaken where the permit holder has a right of interest in the land sufficient to carry out those activities. This will usually require the consent and approval of landowners.

Regulation 5 proposes that a REFP application must include, in addition to the requirements set out in section 8 of the HRE Act:

- general applicant details
- if the application is being made by more than one person, the interest or percentage share that each person will have in the permit
- a description of the proposed activities and a map of proposed activity location/s
- the technical, operational and financial capabilities and resources of the applicant to complete the proposed activities
- disclosure of certain legal contraventions (if any) in the previous five years, including in relation to regulated activities under the HRE Act
- any other information required by the Minister.

Before issuing the permit, regulation 6 proposes that the Minister must be satisfied that the applicant has the necessary technical qualifications, experience, operational capabilities and resources – as well as the financial capacity – to complete the proposed activities.

Regulation 7 proposes that, to renew the permit, the applicant must detail their performance under the previous permit. They must give reasons for renewing, including outlining proposed feasibility activities that the applicant intends to undertake during the renewal term and estimated expenditure. The applicant will also need to provide information regarding their financial position over the proposed renewal term and disclosure of certain legal contraventions (if any) in the previous five years.

Based on the information provided, the applicant will need to satisfy the Minister that they have the necessary technical, operational and financial capabilities and resources to undertake the feasibility activities authorised under the renewed permit (and that they have not committed certain legal contraventions within the previous five years).

Regulation 8 proposes that the provisions of the HRE Act set out in Schedule 1 of the Regulations also apply to REFPs.

General licence application requirements

Regulation 16 proposes to require the following general information in all licence applications:

- General applicant details and, if more than one applicant, the interest or percentage share that each person will have in the licence
- Details of the application area and map, including the size of the area
- Financial position of the applicant
- The applicant's technical qualifications and experience
- The applicant's operational capabilities and resources
- Disclosure of certain legal contraventions (if any) in the previous five years, including in relation to regulated activities under the HRE Act.

If the proposed licence is for an electricity plant with a generating capacity of more than five MW that will be connected to the state's power system, an energy generation compliance certificate from the Technical Regulator will be required.

Publication/notice

Regulation 17 proposes that, after granting or refusing a licence application or renewal, the Minister must publish the decision in the Gazette.

Negotiating access agreements

For renewable energy licences on designated land and AILs that confer a right to enter and use land, sections 41 and 42 of the HRE Act require the licence holder to have an access

agreement in place with pastoral leaseholders (if relevant) and prescribed landowners (if any) before operating on their land.

Regulation 18 proposes a two-calendar month period for negotiating access agreements, starting from the day 'initiation notice' is given to the relevant parties.

Notice of entry

Section 76 of the HRE Act sets out general notice of entry requirements for renewable energy licences, AILs (that confer a right to enter and use designated land) and SELs. More information can be found in the 'Land Access, Consultation and Transparency' information sheet.

Work program

Licence applications must include a work program. A work program provides a statement of the nature, extent and proposed scheduling of authorised operations that are proposed to be undertaken under the licence.

Regulation 20 proposes that, in addition to the requirements of section 4(1) of the HRE Act, a work program must also contain:

For a renewable energy feasibility licence

- How exploration data will be captured, stored, analysed, progressed, actioned and reported
- How and where construction will be undertaken, and the exploration equipment used for exploring renewable energy resources

For a hydrogen generation licence, a renewable energy infrastructure licence or a special enterprise licence

- An economic analysis of the proposed operations, including financial projections and available financial resources (see s 4(1)(c)(ii) of the HRE Act)
- An assessment of the expected net economic and social benefit to the state as a result of the proposed operations, including:
 - initiatives that will support the state energy system's short and long term security and stability, and
 - how the operations will create and maintain jobs, skills and training opportunities for young people, apprentices, Aboriginal and Torres Strait Islander Peoples, and people with a disability.

Notice of operations commencing

Regulation 21 proposes that, in their approved operational management plan (see sections 66-68 of the HRE Act), a licensee must specify the date when their authorised operations will begin.

Additionally, when the licensee knows the date on which their authorised operations will be completed, they must include this information in their annual report (see regulation 24).

If either date changes, the licensee must notify the Minister in writing within 10 days of commencing or completing authorised operations.

Renewal

The HRE Act establishes that the Minister must, before renewing a licence, be satisfied that the applicant has met the criteria prescribed by the regulations.

Regulation 19 proposes that before an HGL, REFL, REIL, RERL and AIL renewal can be granted, the Minister must be satisfied that the applicant has:

- provided a statement of performance for the previous term that includes all required information in relation to authorised operations
- provided a statement outlining the reasons for the renewal, including the proposed activities during the renewal term and estimated expenditure
- the necessary technical, operational and financial capabilities and resources to carry out the operations
- disclosed certain legal contraventions in the previous five years, including in relation to regulated activities under the HRE Act.

Rent

Section 45 of the HRE Act provides that rent must be paid to the Minister for renewable energy licences on government-owned 'designated' land and special enterprise licences. Details of this rental framework can be found in the 'Rent' information sheet.

Surrender

The HRE Act provides powers for the Minister to suspend or cancel licences in exceptional circumstances. Under section 55 of the Act, a licence holder can also apply to surrender their licence or a part of the licence area.

Regulation 23 proposes that the application to surrender must include:

- a statement and supporting evidence to show that outcomes and objectives under a statement of environmental objectives (SEO) have been achieved (and if not, reasons for this and proposed actions in the circumstances)
- evidence of completion of any required rehabilitation
- for a partial surrender, a description and map of the relevant areas to be surrendered and remaining
- the final annual and half yearly compliance reports
- details of consultation with landowners about licence surrender, rehabilitation or other work related to the surrender, including any issues raised by the landowner and how those will be addressed

- statutory declarations which provide:
 - that authorised operations have ceased
 - that there are no outstanding liabilities under the HRE Act
 - that all penalties, rents and fees under the HRE Act have been paid
 - that there is a plan in place for managing or transferring any outstanding matters or liabilities, if relevant
 - details of any current legal proceedings relating to the authorised operations.

Associated infrastructure licence

Section 23(5) of the HRE Act requires that before granting an AIL that will not confer a right to enter and use designated land within the licence area, the Minister must be satisfied that the applicant has met the prescribed regulatory requirements for the licence area that will enable the proposed operations to be undertaken.

Regulation 14 proposes that this will require the Minister to be satisfied that:

- if the licence will authorise construction, operation, maintenance and decommissioning of a port, wharf or jetty for importing or exporting hydrogen or renewable energy – the applicant holds, or will hold at the time the licence is granted, a port operating agreement under the *Harbors and Navigation Act 1993* over the proposed licence area, or
- in other cases – the applicant has, or will acquire, a right to or interest in the land included in the proposed licence area.

Regulation 3(2) also proposes that a direct air capture facility for carbon dioxide associated with hydrogen generation is included in the definition of ‘associated infrastructure activity’.

Special enterprise license

The SEL was designed to facilitate hydrogen and renewable energy enterprises of major significance to the state’s economy. A SEL may be granted over freehold land, non-freehold land and state waters.

Before seeking an agreement with the Minister about the grant of a SEL (as required under section 26 of the HRE Act), the proponent must first consult with the Minister about the proposed enterprise.

Regulation 15 proposes that an application for consultation must include:

- demonstration of the project’s major significance to the economy
- the enterprise’s proposed activities including maps and plans
- an outline of environmental impacts and proposed actions to address or manage them

- a statement of any efforts to obtain required authorisations, consents or other approvals from any landowners or registered Native Title claimants within the proposed licence area, including any mediation or dispute resolution
- (if required by the Minister) a description of reasonably expected community and local impacts and proposed steps to manage, limit or remedy any negative impacts and to facilitate or ensure positive impacts
- a statement of the applicant's technical, operational and financial capabilities and resources
- disclosure of certain legal contraventions (if any) in the previous five years, including in relation to regulated activities under the HRE Act
- details of any exemptions or modifications considered necessary under section 29 of the Act to enable the enterprise (noting that environmental impact reporting and compensation cannot be exempted or modified)
- any other information required by the Minister.

HRE register

Following a Ministerial declaration of a release area under section 10 of the HRE Act, regulation 11 requires the following information about that release area to be entered onto the HRE register:

- Boundaries
- Location
- Size in square kilometres.

Regulation 43 proposes that, for all HRE Act licences and permits, the following must be entered on the HRE register:

- Licensee or permit holder name
- Licence or permit term
- Licence or permit conditions
- Licence or permit area description
- Details of certain licence dealings including transfer, assignment, and whether it is held subject to a trust
- Any other information the Minister considers appropriate.

Under section 108 (4) of the HRE Act, the register will be made publicly available on a website maintained by the Minister.

Transitional provisions

Regulation 44 introduces a transitional provision proposing that if a person already has a development authorisation – for example, land access or agreement from the Pastoral Board – they may continue their development as agreed. If not, they must apply for authorisation through the HRE Act.

Fees

The following proposed fees under the HRE Act have been benchmarked against the *Petroleum and Geothermal Act 2000* and are intended to be reviewed in 12 months.

PROPOSED FEES UNDER THE *HYDROGEN AND RENEWABLE ENERGY ACT 2023*

Fee type	Proposed fee
Permit application fee	
Renewable energy feasibility permit (applies to non-designated land)	\$5,174
Permit renewal fee	
Renewable energy feasibility permit	\$2,588
Licence application fees	
Hydrogen generation licence	\$5,174
Renewable energy feasibility licence	\$5,174
Hydrogen generation licence	\$5,174
Renewable energy research licence	\$5,174
Associated infrastructure licence	\$5,174
Special enterprise licence (application phase)	\$272,318
Special enterprise licence (concept phase)	\$27,232
Application for a relevant licence made by an existing/new operator	\$0
Licence renewal fees	
Hydrogen generation licence	\$2,588
Renewable energy feasibility licence	\$2,588
Renewable energy infrastructure licence	\$2,588
Renewable energy research licence	\$2,588
Associated infrastructure licence	\$2,588
Annual fees	
Hydrogen generation licence	Minimum \$4376 or \$2,337 per km ² whichever is the greater
Renewable energy feasibility licence	Minimum \$4376 or \$5 per km ² whichever is the greater
Renewable energy infrastructure licence	Minimum \$4376 or \$50 per km ² whichever is the greater
Renewable energy research licence	\$4,376
Associated infrastructure licence	\$4,376 or \$2,189 per km ² whichever is the greater for a permanent activity, or \$4,376 in any other case

Special enterprise licence	\$4,376 or \$50 per km ² whichever is the greater
Other prescribed fees	
Approval for change in control of a licence holder	\$2,588
Expiation fee	\$1,000
Deferment, variation or reduction in the work to be carried out under an approved work program	\$2,588
Alteration of licence area	\$2,588
Dealing with licence	\$2,588
Certificate from the Technical Regulator	\$402

*Fees may be subject to increase from 1 July 2024.

** A relevant licence granted under transitional provisions will be subject to a three-year waiver of annual licence fees.