

LAND ACCESS, CONSULTATION AND TRANSPARENCY

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 its coastal waters. The regulations are in addition to the HRE Act's requirements so should be read in conjunction with the HRE Act.

With the significant interest in renewable energy projects on freehold land, government-owned pastoral lands and state waters, the government has committed to developing a sustainable industry through a 'one window to government' licencing and regulatory system. It aims to ensure multiple land use, land access and consultation provisions deliver fair outcomes for Aboriginal Peoples, landowners, communities and other pre-existing land rights holders.

Under the HRE Act, proponents must engage with stakeholders throughout the life of the project. These stakeholders are also provided opportunities to provide formal submissions on proposed projects at specific points during licence application, operations and closure.

Licensing provisions in the HRE Act provide protections for Native Title groups through a native title agreement, and for landowners through a land access agreement, notices of entry, compensation, dispute resolution mechanisms, transparent licence conditions and compliance activities.

The proposed regulations establish a consultation process to de-risk potential projects to ensure they can be delivered in line with community, environment and landowner expectations.

The HRE Act also provides transparency through publication of key documents to allow stakeholders to make informed decisions.

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.

Landowners under HRE

Section 4 of the HRE Act defines owner of land to include, over the relevant land:

- a person who holds a registered estate or interest that gives them immediate possession of the land
- native title holders
- a person who lawfully has the care, control or management of the land
- the lawful occupier of the land

- a pastoral lease holder
- a resources tenement holder
- an aquaculture lease or licence holder under the *Aquaculture Act 2001*
- any other person stipulated by the regulations.

Release areas

Before land is determined as a release area, the department will work with Native Title groups, pastoral lease holders, other landowners, government agencies and regulators to identify appropriate areas of land for designation as a release area. Regulation 9 proposes that the Minister must:

- publish, in a local newspaper and on a website, the area of land proposed to be declared
- invite submissions on the proposed release area and allow at least 30 business days for submissions (or 10 business days if the notice is issued before 2 June 2024).

Regulation 10 proposes that the Minister must consult with the following people for the specified period about the area of land identified in the notice:

- all landowners within the proposed release area
- a recognised Aboriginal Representative Body under the [Aboriginal Heritage Act 1988](#) in respect of the land within the proposed release area
- all councils within the proposed release area
- if any part of the proposed release area falls outside of council areas—the Outback Communities Authority established under the [Outback Communities \(Administration and Management\) Act 2009](#).

Licence applications

For all licence applications, other than a special enterprise licence (SEL), and renewals, the Minister must publish the decision to grant or refuse the application. Regulation 17 proposes to require that the Minister publish the decision in the Gazette.

Scoping reports

Section 70 of the HRE Act establishes a scoping scheme that is designed to provide proponents with an opportunity to work with the government to get an early, greater understanding of government and community expectations, as well as the project's scope and necessary level of environmental assessment. It aims to provide greater certainty for all parties on timelines, approval pathways and technical assessments. Scoping is voluntary but may be required by the Minister.

Regulation 35 proposes that scoping will apply to a hydrogen generation licence (HGL), renewable energy infrastructure licence (REIL), associated infrastructure licence (AIL) and SEL.

Section 71(7) of the HRE Act requires consultation on a scoping report. Regulation 35(2) proposes that the proposed consultation plan must:

- include a list of all identified landowners, traditional owners under the *Aboriginal Heritage Act 1988* and government agencies
- indicate the consultation start date, proposed method of engagement and how the licensee intends to respond to relevant issues raised during consultation
- focus the engagement on the environmental objectives, assessment criteria and methods for managing and controlling potential consequences
- identify all relevant parts of the environmental impact report that will be consulted on
- comply with any other Ministerial requirement.

After consultation, the licensee must prepare a consultation report setting out:

- who was consulted
- any concerns raised
- any steps taken or proposed to address those concerns.

Environmental impact report

Section 61(4) of the HRE Act requires consultation on a proposed environmental impact report. Regulation 30(5) proposes that the applicant must present a consultation plan for approval that:

- includes a list of all identified landowners, traditional owners under the *Aboriginal Heritage Act 1988* and government agencies
- describes the proposed method of engagement and how the licensee intends to respond to relevant issues raised during consultation
- focuses the engagement on the environmental objectives, assessment criteria and methods for managing and controlling potential impacts
- identifies all relevant parts of the environmental impact report that will be consulted on
- allows public submissions, if relevant.

Consultation on proposed statement of environmental objectives

Section 63(3) of the HRE Act requires the applicant to consult on the proposed statement of environmental objectives.

Regulation 32 proposes that the licensee must prepare a consultation plan that:

- includes a list of all relevant landowners, traditional owners under the *Aboriginal Heritage Act 1988* and affected government agencies
- indicates the consultation start date, proposed method of engagement and how the licensee intends to respond to relevant issues raised during consultation
- focuses the engagement on the environmental objectives, assessment criteria and methods for managing and controlling potential consequences
- identifies all relevant parts of the environmental impact report that will be consulted on
- complies with any other Ministerial requirement.

After consultation, the licensee must prepare a consultation report setting out:

- who was consulted
- any concerns raised
- any steps taken or proposed to address those concerns.

Consultation by Minister

Section 72 of the HRE Act requires the Minister to hold a public consultation process on all environmental impact reports, statements or revisions of environmental objectives and scoping reports.

Regulation 36 proposes to require that, as soon as possible after receiving the above documents, the Minister must notify each owner of land and council within the licence area and, if any part of the proposed licence area falls outside of council land, the Outback Communities Authority.

Before approving or rejecting a statement of environmental objectives (or revised statement), it is proposed that the Minister must publish a notice:

- describing the land to which the statement relates
- specifying where the application for approval may be inspected
- inviting written submissions on the statement within a specified period.

At the conclusion of these consultation processes, the Minister must provide copies of all submissions to the applicant and may require the applicant to prepare a report addressing the issues raised during consultation.

Neither the submissions nor responses can be kept confidential.

The Minister does not have to consult if the statement or revision of environmental objectives is rejected before publication.

Operational management plan

Regulation 34 proposes that the operational management plan must detail the applicant's proposed mechanisms for consulting and communicating with external parties about authorised operations.

Notice of entry

Section 76 of the HRE Act requires that, at least 42 days before entering designated land to conduct their authorised operations, holders of a renewable energy licence (REL), associated infrastructure licence (AIL) (if it confers a right to enter and use land) and special enterprise licence (SEL) must give the landowner written notice that they intend to enter the area and describe the authorised operations they intend to conduct. For an SEL, this also applies to non-designated land.

If an access agreement or a native title agreement has been negotiated, a notice of entry is not required. Access agreements must be negotiated with pastoral lessees (see s 76(4)). The HRE Act requires a native title agreement for RELs granted in respect of native title land and for AILs granted in respect of native title land if they provide a right to enter and use designated land.

Regulation 38 proposes that a notice of entry must include:

- name and contact details of the licensee and, if different, the contact person
- a description, location and duration of the planned activities
- reasonable information on anticipated consequences of the activities, and proposals for managing those consequences, to allow any occupier of land to make an informed decision about the potential impact of the activities
- details of each landowner's rights to object to entry and compensation as included in section 78 and 79 of the Act
- how and where to raise concerns or issues.

Notice of commencement of operations

Separate to any notice of entry requirements, section 77 of the HRE Act requires certain permit and licence holders to give written notice to a resources tenement holder within the permit or licence area at least 42 days before commencing authorised operations in that area. This requirement applies to the holder of a:

- renewable energy feasibility permit
- hydrogen generation licence
- renewable energy infrastructure licence
- renewable energy research licence
- AIL (that does not confer a right to enter and use designated land).

The regulations will prescribe the required form of written notice, consistent with the notice of entry requirements above.

Objections

Section 78 of the HRE Act enables a person who has received a notice of entry (other than in respect of an SEL), or a notice of commencement of operations, to object within 42 days of receiving the notice. The Minister may attempt to mediate between the parties to arrive at mutually satisfactory terms for entry and authorised operations.

Regulation 30 proposes a maximum period of two months to initiate or attempt to initiate dispute mediation before either party may take the matter to the Environment, Resources and Development (ERD) court.

Multiple land use and exempt land

South Australia's multiple land use framework aims to create clear and transparent processes for multiple and sequential land use to deliver fair outcomes for all relevant parties. It aims to recognise the importance of land ownership, existing rights and timely engagement.

To ensure the state achieves maximum benefit from both mineral resources and hydrogen and renewable energy projects, the HRE Act included related amendments to exempt land provisions under section 9 of the *Mining Act 1971* to provide that exploration and mining activities cannot occur within a prescribed distance of hydrogen and renewable energy infrastructure.

This exemption can be waived if the HRE permit or licence holder agrees to waive this right and reaches an agreement with the explorer or miner about compensation and conditions of entry.

To give effect to this provision, the draft Mining (Exempt Land) Amendment Regulations 2024 propose an exempt land distance of 25 metres from hydrogen and renewable energy infrastructure such as wind turbines, meteorological masts and solar farms.

Surrender on application

If a licence holder applies to surrender their licence or a part of the licence area, Regulation 23 proposes that they must show evidence that they have consulted with an owner of land within the licence area about the surrender and any rehabilitation or other work that needs to be carried out before surrendering. This report must include any issues raised by the landowner and how they have been, or will be, addressed.

Reportable and immediately reportable incidents

Regulation 28(5) and (6) propose that reportable or immediately reportable incident reports may be made public with the approval of the Minister, having consulted with the relevant licensee and ensuring that commercially sensitive information is not publicly disclosed.

Retention, use or release of reports, information or material

Section 46(3) of the HRE Act enables the Minister to retain, use or release any report, information or material provided by the licensee. Regulation 27 proposes that these documents may be retained by the Minister but not released publicly during the designated period.

The designated period is proposed to be any continuous licence period (under one or more licences).

With the licensee's consent, the Minister may make aggregated information or material publicly available.

HRE Register

Regulation 43 proposes the documents that must be published on the HRE Register for all HRE Act licences and permits. See the General Licencing information sheet for more details.