



# South Australian Aboriginal Renewable Energy Forum 2

Status Report – 9 March 2023



# 1. The South Australian Aboriginal Renewable Energy Forum

Hosted by the Department for Energy and Mining, representatives from the South Australian Government, native title groups and other traditional owners came together at the first South Australian Aboriginal Renewable Energy Forum (SAAREF) in Port Augusta on 7 and 8 November 2022.

More than 70 people attended the two-day forum, including 59 representatives from Aboriginal organisations (see appendix).

Uncle Harry Dare provided the Welcome to Country and closed the meeting.

Guest speakers included:


- From the South Australian Government, the Hon. Kyam Maher MLC, Minister for Aboriginal Affairs and Attorney-General, and the Hon. Tom Koutsantonis MP, Minister for Energy and Mining, Dr Paul Heithersay, Chief Executive Officer, Department for Energy and Mining (DEM), Sam Crafter, Chief Executive Officer, Office of Hydrogen Power South Australia (OHPSA), and Alisha Green, Acting Director Strategy and Policy (DEM)
- Keith Thomas, Chief Executive Officer, South Australian Native Title Services
- Karrina Nolan, Executive Director, Original Power, Founder First Nations Clean Energy Network
- Jason Bilney, Barngarla Determination Aboriginal Corporation and Kym Thomas, Nukunu Wapma Thura (Aboriginal Corporation).

Over the two days, participants shared 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.

A tour of the Port Augusta Renewable Energy Park, south of Port Augusta, demonstrated how the site was developed and is operated, what it looks like and how it distributes energy into the nearby power grid.

The government and delegates committed to work together in good faith to develop the new Act, and to ensure that renewable energy projects deliver benefits for Aboriginal people, all South Australians, and the environment.



A key resolution was to reconvene the group at the next stage of developing the Hydrogen and Renewable Energy Act for a three-day forum to enable input for the drafting of the legislation.

## What we heard from the Minister for Energy and Mining

- Global warming is creating a different future
- South Australia is a leading renewable energy provider based on its world class renewable resources, an integrated clean energy network, strong community support, and a supportive investor environment. A more orderly process is needed to capitalise on these things and develop renewable energy projects on country.
- Acknowledgment that in the past Aboriginal people have not been included in important conversations about country. In developing new legislation for hydrogen and renewable energy, the South Australian Government wants to speak with Aboriginal people first and respectfully.

## What we heard from participants

- Communities that have dealt with renewable energy companies shared with the group their experiences, which demonstrated there is much room for improvement.
- The hydrogen and renewable energy industry will impact Aboriginal lives, community, and country. Participants inquired about the challenges for government and community and how these might be resolved.
- Human rights principles should be embedded in the Act.
- Government and Traditional Owners should work together to identify potential areas for renewable energy development and develop mutually agreed criteria and terms and conditions for licence applications to pick the best companies.
- Strong licensing, compliance, and enforcement mechanisms are key to ensuring the right companies are operating here and land is rehabilitated to pre-existing conditions.
- For Aboriginal people, economic rights sit in parallel with heritage rights.
- Aboriginal groups need funds, resources, and good legal advice for economic and cultural commitments.
- Capacity building and resourcing is needed to effectively engage in the new framework and with companies.

## Consultation so far

Consultation commenced with the first SAAREF on 7 November 2022 and continues.



The Hydrogen and Renewable Energy Act issues paper was released for public consultation on 17 November 2022. The paper proposed provisions for the Act to contain, and questions to shape the direction of the legislation.

- Public consultation occurred over a three-month period, comprising the government’s websites (including YourSAy), stakeholder meetings, eight regional roadshows, an online webinar and Q&A and a cross-section of industry, community, professionals, and interest groups. DEM received 82 submissions.

DEM has also met separately with the following:

- State Aboriginal Heritage Committee
- Nukunu Wapma Thura (Aboriginal Corporation)
- Kokatha Aboriginal Corporation
- Barngarla Determination Aboriginal Corporation
- First Nations of South Australia Aboriginal Corporation (with the Minister for Energy and Mining)
- Alinytjara Wilurara Landscape Board
- SANTS PBC forum.

DEM will meet with any interested Aboriginal groups on request.

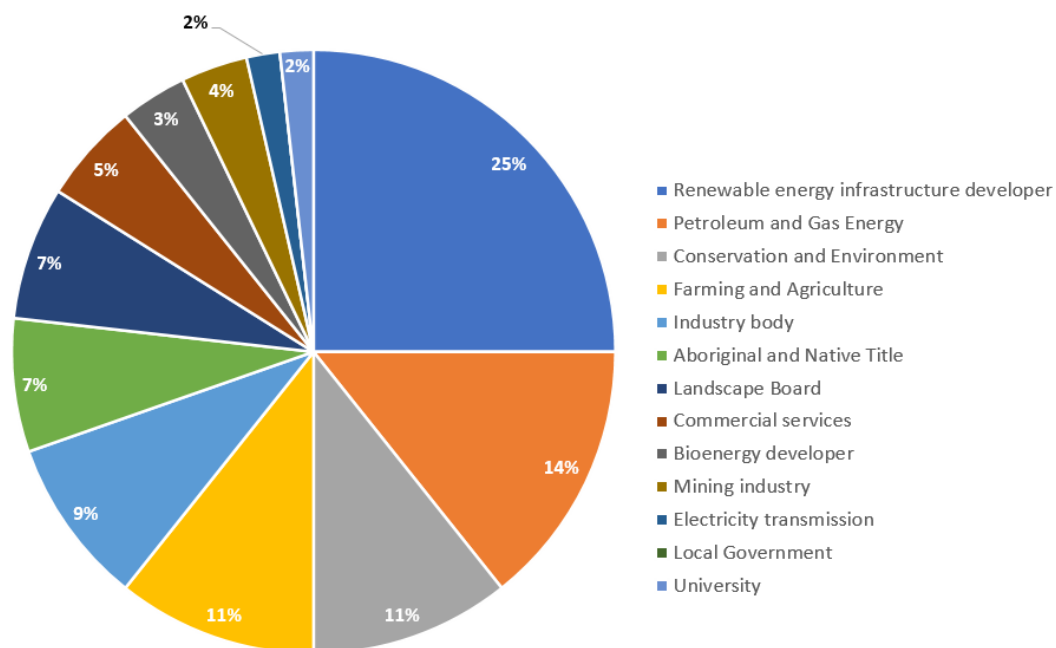
## Feedback

- Feedback from all parties generally supports a new framework for renewable energy and hydrogen development.
- Respondents noted that SA has a stronger focus on community, Aboriginal rights, and multiple land use than other jurisdictions, which is seen as critical to support social acceptance and Environmental and Social Governance requirements.
- Most respondents requested more detail to better understand how many of the proposed processes in the Act will function, including the process to identify priority areas and competitive tenure processes, and benefit sharing and Aboriginal involvement.
- Industry was generally not supportive of licensing for projects on freehold land or the release of data, with more work needed to refine the position and explain the rationale.
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**Figure 1: Sectors represented in consultation feedback**



### The Hydrogen and Renewable Energy Bill process and next steps

The comments from the forum and the submissions on the Issues Paper have been reviewed. Some matters raised are a question for government, some are matters to be resolved within the Aboriginal community and some are issues we need to resolve together.

Identified from the feedback so far:

- Key issues that need addressing now – (what needs confirmation now for the legislation, and questions for clarification).
- Issues that need continued work including regulation, policy, governance, capacity and capability.

DEM is working on drafting instructions for the Bill. Drafting instructions state the principal objectives to be achieved by the legislation, that is, what must be done and why it must be done, the rules required to make things works and how they interact with each other.

- Some matters will be set out in more detail in the regulations and guidance. Not every issue is dealt with in detail in the Bill. See table 1.



**Table 1**

Timing 2023	March to July	July to September	July to September	Ongoing	Post implementation
Key Issue	Act	Regulations	Guidance	Non regulatory	ILUA
Consultation	✓	✓	✓	✓	✓
Consent	✓	✓	✓	✓	✓
Cultural heritage	✓	✓	✓		✓
Equity	✓	✓	✓	✓	✓
Environment	✓	✓	✓		✓
Compensation	✓	✓	✓	✓	✓
Licencing	✓	✓	✓		
Agreement making	✓	✓	✓	✓	✓
Economic benefit	✓	✓	✓	✓	✓
Capacity building			✓	✓	✓

- It is intended that a Bill be introduced to Parliament by mid-2023. See table 2.
- DEM will shortly commence work on the processes needed for the identification of potential Renewable Energy Priority Areas (REPA), and criteria for competitive processes and licence terms and conditions.
- DEM is also working on the development of regulations, policies, and guidance material to support the commencement of the Act. Consultation will continue throughout this process

**Table 2**

Action	Timing
Aboriginal engagement commenced	7 November SAAREF 1 – and ongoing
General public engagement – Issues Paper and submissions	17 November 2022 to 10 February 2023
Prepare drafting instructions	December 2022 to March 2023
SAAREF 2	19 March – 21 March
Government approval of drafting instructions	Late March
Engage on draft Bill	March to April 2023
Introduce Bill to Parliament	By mid-2023
Draft Regulations and guidance	July – September 2023* *Subject to the passage of Bill
Concurrent consultation commencing with targeted native title groups on REPA process Designing REPA criteria and identifying initial areas Developing REFL selection criteria and competitive process	April - ongoing
Declaration of REPA: Finalising REPA land with native title group, describing parcels, and release for tender	October 2023** *Subject to passage of Bill
Grant of first licence	Subject to native title agreement

## Progress so far

- The issues raised in discussions and submissions have been divided into two categories: **Key Issues for resolution in the HRE Act** and **Capability building for Aboriginal communities**. The current thinking on some of the matters we have progressed is discussed below. Some of the more complex matters require further legal or other advice and further discussion and will continue to evolve throughout the development of the draft Bill and the consultation process.

## Key Issues for resolution in the Hydrogen and Renewable Energy Act:

### 1. Clarity and Consistency

*‘Government needs to be clear on how things should be done – descriptive in the law and how this legislation works with other Acts’*



- Current planning, conservation, and safety legislation will be retained and connected into a 'one window to government' licensing framework to ensure consistent regulation of the whole project life cycle, from feasibility studies to decommissioning and rehabilitation.
- DEM will act as a first port of call, helping proponents navigate the licensing and approval processes under all relevant legislation.

### Issues to keep working on

- The one window to government approach will allow us to set and maintain best practice principles and processes for Aboriginal engagement and participation. These can be designed and tested during the consultation for the development of the REPA process and in the regulations and guidance.

## 2. Aboriginal participation and consent

*'Processes to ensure Aboriginal engagement, participation, and consent must be embedded in the Act, informed by the principles of Free Prior and Informed Consent.'*

- REPAs on pastoral land will be jointly determined by the Minister administering the HRE Act, and the Minister administering the Pastoral Act after statutory consultation is undertaken to identify potential social, cultural, environmental, and economic impacts, including benefits and risks, and provide an opportunity for stakeholders to share thoughts on what renewable energy development can mean for them.
- DEM will engage directly with native title groups during this process. Consultation on the design of this process will commence at SAAREF 2 and continue throughout development of the Bill.
- The state will only host proponents willing to embrace coexistence with current landowners and users and deliver community and environmental benefits through their projects, in line with leading Environmental Social and Governance requirements. This will be part of the selection criteria project proponents are assessed against.

### Issues to keep working on

*'Partner with Aboriginal people to ensure the regulatory framework delivers net economic, environmental, and social benefits to Aboriginal communities and minimises cultural, spiritual and heritage impacts'*

- The way government and native title groups will work together to determine how the social, cultural, and environmental values for country will be determined and applied in the REPA process.

*This will be discussed further at SAAREF 2.*





### 3. Licensing

*‘Decision making for issue of a licence needs to be a collaborative one between Government and traditional owners.’*

- The REPA process for pastoral land and state waters, will determine where renewable energy projects can be developed and who gets the licence to undertake feasibility studies. This will resolve the issue of multiple people wanting the same parcel of land and enable Traditional Owners to have a say in who gets a licence.
- DEM will continue to consult on the specific criteria to be applied to the licensing process to ensure alignment with government objectives. Overall, criteria will address the:
  - operational, technical, and financial capacity of applicant including the capabilities/resources of the applicant to successfully engage, consult and coexist with all others who have rights within the same area
  - business model/plan of applicant and extent to which it serves the state’s renewable energy economy objectives
  - applicants’ ability to successfully negotiate and establish land use agreements with underlying landowners and Native Title and other Traditional Owners. Licensing provisions will provide new and updated protections to landowners during negotiation stages, as well as during construction and operation. Land access agreements, notices of entry, compensation, dispute resolution mechanisms, transparent licence conditions, and compliance activities will provide greater protections to landowners to preserve their rights and interests throughout a project.

*This will be discussed further at SAAREF 2.*

#### **Issues to keep working on**

- On-selling of agreements, concerns with the transfer of leases and licences between companies and implications for agreements, etc.

### 4. Benefit sharing

*‘Aboriginal economic development hardwired into legislation’*

It is proposed to develop a financial mechanism to share the future benefit of the value associated with access to natural resources within a particular area of the state.

#### **Issues to keep working on**

- The flexibility/ability for a benefit-sharing financial mechanism to be included in the regulations needs further discussion.
- Rent payments, shared on a legislated basis with the relevant native title group also contribution to licence fees, and decommissioning
- Additional arrangements for benefit sharing will be dealt with in ILUAs between Traditional Owners and licensees.

*This will be discussed further at SAAREF 2.*



## 5. Environment

*‘Strong Environmental Impact Statement with social and cultural heritage addressed’*

- Through ongoing consultation with relevant regulators, native title groups and environmental groups DEM will:
  - incorporate environmental benefits into the Act, to inform responsible development of the sector
  - develop selection criteria for REPAs and competitive access to government-owned land that appropriately weight local environmental benefits.
- Activities under the Renewable Energy Feasibility Licence stage will be managed the same way as any other resource exploration activities under a Program for Environment Protection and Rehabilitation (PEPR) or equivalent process.
- The planning assessment and consent process (including an EIS if required) under the *Planning, Development and Infrastructure Act 2016* will continue to apply for all activities at the infrastructure stage (REIL). This will feed into the HRE Act approvals in the form of an operations management plan providing the Minister for the HRE Act an opportunity to proactively engage, comment and have input into the assessment process and decision for all hydrogen and renewable energy projects.
- The HRE Act will contain financial assurance requirements (bonds) to ensure land is rehabilitated and returned to pre-existing conditions.

## 6. Native title process

*‘Economic independence, equity, “consultation” and negotiation: true negotiation, not consultation needs be included in the Act’*

*‘Embed agreement making in legislation who needs to be part of an agreement and when and the regulatory framework for that’*

- On areas where native title exists, the grant of a licence under the Hydrogen and Renewable Energy Act will often affect native title and be a future act for the purposes of the *Native Title Act 1993 (Cth)* (NTA).
- To provide certainty and security to both native title parties and proponents, it is proposed to provide that before a licence is granted in respect of native title land, consent must be obtained by the relevant native title holders (where there is a determination that native title exists) or registered native title claimants in an Indigenous Land Use Agreement registered under the NTA.

*This will be discussed further at SAAREF 2.*

## Issues to keep working on

- Support communities that are doing this for the first time. Support mechanisms need to be in resources, funding and education and development. Building opportunities to better their economic outcomes (ILUA).
- The processes that will apply in the event that parties are unable to conclude an ILUA (and not leave it to subordinate legislation or policy)
- Develop appropriate dispute resolution processes.
- The consequences for a breach of the terms of an ILUA.
- Government facilitate a 'best practice' agreement that justly compensates native title bodies – that other groups could aspire to (litmus test, precedent setting).

*This will be discussed further at SAAREF 2.*

## 7. Compulsory Acquisition

*“If an ILUA cannot be agreed, would the state use its power of compulsory acquisition? What does the Act propose in this regard.”*

- There are existing compulsory powers for specific purposes in other legislation, such as those in the *Harbors and Navigation Act 1993* and the *Electricity Act 1996*, that could potentially be used for particular renewable energy projects.
- The government's view is that such powers should only be used as a last resort in exceptional circumstances and respect native title holders/claimants' rights and interests.
- A new power is proposed to be included in the Hydrogen and Renewable Energy Act, allowing for the design of a best practice process to ensure that it is an option of last resort.
- These powers would apply equally to native title land and freehold land.
- These powers are not proposed to enable extinguishment of native title rights.

*This will be discussed further at SAAREF 2.*

## 8. Compensation

*‘Traditional owners need to be consulted even when development is on freehold land and compensation/shared/equity given’*

This requires further advice and consultation with stakeholders.

## 9. Code of conduct

*'Code of Conduct – need for stronger best practice principles to apply to proponents embedded in legislation'*

Best practice principles can be incorporated at various stages of the process including tendering, licensing and through the operational management plan and in guidance issued by DEM.

### Issues to keep working on

The First Nations Clean Energy Network has made a recommendation around best practice criteria for consideration at the licensing stage. They have also developed best practice principles for government and industry. These can form a base for further discussion as to what best practice looks like and how it can be incorporated throughout the process.

*This will be discussed further at SAAREF 2.*

## 10. Engagement

*'We need to develop guiding principles around engagement to support this process.'*

### Issues to keep working on

- Continuity of voices is needed for things to progress – comprising Aboriginal groups and government representatives = meaningful engagement
- DEM will seek further advice from native title groups on the decision-making structures for consultation to determine the first REPAs.

*This will be discussed further at SAAREF 2.*

## 11. Information sharing

*'A media campaign about government working with Aboriginal people to negotiate good legislation, a campaign that extols the virtues of Aboriginal people and documents this process.'*

- Information packs provided to the community to explain the legislation and meet with community to explain the issues paper.
- Appropriate information on climate change.

DEM is working on developing the information communities have requested. We will continue to promote the work we are doing together to the community, including through the media.

## 12. Economic development and benefit sharing

*‘Companies need to talk to the right people – the new Act needs to give the flexibility for benefit-sharing agreements to genuinely benefit and empower Aboriginal people towards economic development’*

- This requires further advice and consultation with stakeholders to finalise an approach.

### Issues to keep working on

- Identification of opportunities for the provision of goods and services by the Traditional Owners to potential large scale renewable energy infrastructure developments and facilities for generating hydrogen.
- Identification of job opportunities (and required skills development requirements to access job opportunities) likely to be available in large scale renewable energy infrastructure developments and facilities for generating hydrogen.
- Identification of pathways for members of the relevant Traditional Owner group to have greater access to affordable, clean energy generated from their lands and waters.
- Development of investment and economic development policies and tools to guide investment decisions and to support the Traditional Owner group achieve its long-term aspirations.
- Identification of opportunities and pathways for renewable energy infrastructure developments and facilities for generating hydrogen as a means for achieving other outcomes for Traditional Owners, including energy security and energy access, environmental stewardship, and cultural heritage protection.

*This will be discussed further at SAAREF 2.*

## 13. Capability building for Aboriginal communities

*‘Capacity and capability building for Aboriginal people is key to their participation’*

- The Department for Industry Innovation and Science (DIIS) is responsible for developing new and emerging sectors that are linked to existing sectors and/or require a combination of knowledge from existing sectors and enabling technologies.
- Through the Industry Capability Network (ICN), DIIS maintains a list of local businesses with the demonstrated capacity to meet the requirements of major international, national and local developers, and matches the businesses, their skills and their expertise with projects and developers.

- DIIS is currently mapping all the components of the supply chain for the hydrogen industry to identify the gaps in capability service provision and skills.
  - [Industry Capability Network South Australia • Department for Industry, Innovation and Science \(diis.sa.gov.au\)](https://diis.sa.gov.au)
  - [Hydrogen Supply Chains \(icn.org.au\)](https://icn.org.au)
- The Circle - First Nations Entrepreneur Hub has been established in partnership with the Australian Government and the South Australian Government.
- The Circle can assist the South Australian Aboriginal Business Sector with support to build business through increased connections, capacity, capability and confidence. The Circle team will work with businesses one-on-one, providing tailored business support, solutions and referrals to a range of experts and opportunities to meet their business needs.
  - [First Nations Entrepreneur Hub | First Nations Entrepreneur Hub \(thecircle.sa.gov.au\)](https://thecircle.sa.gov.au)

#### **Issues to keep working on**

Native title groups and Traditional Owners need to take the lead in determining how they can best share information, learnings and collaborate. DEM will work with native title groups and their communities to help identify how government can assist.

*This will be discussed further at SAAREF 2.*

## Appendix: Attendees SAAREF 1, 7-8 November 2022

Malyangapa

Tjayuwara Unmuru

Narungga National Aboriginal Corporation

Walka Wani Aboriginal Corporation

Nauo Native Title Claim

Wirangu and Nauo Aboriginal corporation

Ngadjuri Nation Aboriginal Corporation

Viliwarinha Yura Aboriginal Corporation

Yankunytjatjara Native Title / Aboriginal Corporation

Adnyamathanha Traditional Lands Association

Arabana Aboriginal Corporation

Antakirinja Matu-Yankunytjatjara Aboriginal Corporation

Barngarla Determination Aboriginal Corporation

Far West Coast Aboriginal Corporation

Nipapanha Aboriginal Corporation

Nukunu Wapma Thura Aboriginal Corporation

Kokatha Aboriginal Corporation

Gawler Ranges Aboriginal Corporation

Yandruwandha Yawarrawarrka Traditional Land Owners Aboriginal Corporation

Kaurna Yerta Aboriginal Corporation

Aboriginal Lands Trust

## Contacts

For further information on the HRE Bill please contact [DEM.Legislation@sa.gov.au](mailto:DEM.Legislation@sa.gov.au)



## Further information

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