SOUTH AUSTRALIA

Government of South Australia
Department for Energy and Mining

Hydrogen and Renewable Energy Act

Explanatory Guide to the Bill

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Acknowledgement of Country
As guests here on Aboriginal land, we acknowledge everything this department does impacts on Aboriginal country, the sea, the sky, its 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.

Date:	Comment:

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Introduction

South Australia has had enormous success to date in its energy transition and has reached nearly 70% variable renewable energy in 15 years. We are a leader in Australia and a celebrated case study globally. Our state's renewable resources - sun and wind - are among the best in the world, and combined with significant land resources, position our state to become a global leader in hydrogen and renewable energy supply and critical minerals processing.

The South Australian Government is committed to leverage these resources in an orderly, transparent, consultative manner which maximises social, environmental and economic benefits.

Renewable energy production in Australia will need to grow to 40 times its current capacity to help reach net zero emissions by 2050. Our early and continued investment in renewable energy generation—with over $20 billion in the pipeline—is attractive to businesses of all sizes, particularly if we can translate that abundance into cheaper energy and carbon-certified goods.

However, the state of play is constantly changing, and policies and regulation must continuously adapt. Both owners of land and investors are asking for greater policy and regulatory certainty in new and emerging sectors.

Development of new large-scale renewable energy projects will also impact on Aboriginal people's interests and cultural connections to their land. Informed and active participation of Aboriginal people is key to South Australia's renewable energy transformation and delivering greater self-determination.

The *Hydrogen and Renewable Energy Bill 2023* (HRE Bill) seeks to streamline project and land use approvals and increase the state's renewable energy production to safely meet energy and storage needs and reduce carbon emissions.

It includes a clear competitive tender process for designated land such as pastoral land and State waters, meaningful consultation for communities, prevents land-banking and holds industry to strong environmental standards and land rehabilitation requirements.

The "one window to government" process set out in the HRE Bill provides certainty from project conception to completion, for hydrogen and renewable energy producers, Aboriginal people, landholders and all South Australians alike.

This guide provides a clause-by-clause explanation of the draft HRE Bill, and the Department for Energy and Mining is now inviting you to have your say on the draft legislation.

What the Hydrogen and Renewable Energy Bill seeks to deliver

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 *Hydrogen and Renewable Energy Bill 2023* (the HRE Bill) seeks to enable an efficient, flexible, transparent, and consultative licencing 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 the Department for Energy and Mining (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.

A consistent, streamlined regulatory approach

Streamlining of land access and development application processes for significant projects is frequently raised by the energy sector as an area for improvement to reduce business costs and is essential in helping the state unlock the renewable energy and hydrogen transformation. Land access provisions established in the *Pastoral Land Management and Conservation Act 1989* (SA) (Pastoral Act) and other legislation, planning processes under the *Planning, Development and Infrastructure Act 2016* (SA) (PDI Act), and various environmental and heritage approvals under state and federal legislation require complex interactions with multiple regulators.

South Australia utilises a “one window to government” approach for mining activities under the *Mining Act 1971* (the Mining Act) and energy resource activities under the *Petroleum and Geothermal Energy Act 2000* (the PGE Act), with the regulatory systems consistently recognised as world-leading for regulatory efficiency and competitiveness.

DEM will now apply its expertise in operating “one window to government” regulatory frameworks to ensure the next phase of hydrogen and renewable energy development occurs in a safe, orderly, transparent, government-led manner that realises benefits to the entire South Australian community and the environment, and competitively assigns access to some of the state’s most prospective areas for renewable energy development.

Given the government’s aspirations to create a globally competitive large-scale hydrogen industry, it is important that consistent, state-wide regulatory processes will apply for hydrogen generation to ensure the safe and reliable performance of this emerging industry in the public’s interest.

The HRE Bill’s dedicated regulatory framework intends to provide the growing hydrogen generation and renewable energy sectors the same regulatory security and certainty as is currently provided by the Mining Act and PGE Act, where DEM is the lead agency responsible for coordinating all relevant state safety and environmental regulatory agencies and the respective legislative requirements. The framework seeks to:

- reduce regulatory barriers and streamline government services, improving security, certainty and efficiency for developers and proponents, and social and economic outcomes for communities.
- provide transparent processes and conditions, along with clear guidelines and policies to provide security of tenure, facilitating investment decisions and allowing projects to commence and progress through the development pipeline.
- unlock land access to pastoral land and State waters, ensuring benefit sharing with communities, and supporting economic, environment, and community outcomes.

Competitive access to pre-identified areas for renewable energy

Based on South Australia’s long experience in regulating mining and petroleum industries, it is well understood that secure land access and community support are critical for successful projects.

On pastoral land, State waters and any prescribed Crown land, a competitive licensing framework providing land tenure for renewable energy seeks to responsibly facilitate access and development, and ensure benefits are delivered for all South Australians and the environment. For other land tenures, including freehold land, proponents will need to secure access to land through direct agreement with landowners.

For the purpose of competitive tender licensing provisions, Release Areas will be determined by the Minister for Energy and Mining in consultation with the Ministers administering the Pastoral Act and the *Harbors and Navigation Act 1993* (as relevant). These areas of government-owned land, where clusters of large-scale renewable energy projects can be developed sustainably using economies of scale, will focus on pastoral land and State waters, while considering multiple factors including land use sensitivities.

The identification of these areas will be undertaken through a multi-criteria analysis process, including formal consultation requirements with co-regulators, native title parties and other landowners (including licence and lease holders) and impacted communities. Consultation will identify potential social, 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.

The pre-competitive analysis to establish Release Areas will ensure the most appropriate areas of pastoral land and State waters for renewable energy development are identified and released in consultation with native title parties and other landowners. This process will consider existing land uses, as well as environmental, heritage and cultural sensitivities.

Following the declaration of a Release Area, it will be open to a competitive tender process that will seek proponents with high calibre technical, financial and operational capabilities and which will provide successful proponent/s with exclusive access to undertake feasibility studies and exploration activities.

The draft HRE Bill legislates land access provisions, including:

- provisions for access agreements and notices of entry to owners of land.
- compensation requirements for deprivation of use of that land by existing landowners as a result of activities authorised under the HRE Act.
- formal dispute resolution mechanisms for licensees and landowners.

An “owner” of land includes a native title holder (as defined in the *Native Title (South Australia) Act 1994*), pastoral lessees, freehold landowners, Mining Act tenement holders, PGE Act licensees and any person who has statutory care, control or management of the land.

Prescribed Native Title roles and engagement process

Release Areas will largely be located on land where native title exists or might exist (“native title land”) and will often impact on Aboriginal people’s interests, activities and cultural and spiritual connections to their land.

The HRE Bill seeks to deliver Aboriginal advancement and autonomy to communities across South Australia, as benefits from projects will be shared with communities, and native title parties will have a formalised role in the decision-making processes for land access.

With the exception of a special enterprise licence, licences will not be able to be granted or renewed in relation to “native title land” that is the subject of a native title determination, or within a registered native title claim, unless the registered native title holders or claimants have consented to that grant or renewal in an Indigenous Land Use Agreement (ILUA) under the *Native Title Act 1993* (Cth) (Native Title Act).

- As ILUAs are voluntary agreements negotiated under, and subject to the provisions of, the Native Title Act, the draft 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 draft Bill.
- 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.

These principles align with the state’s commitment to a Voice to Parliament and Treaty.

Environmentally sustainable development

Proponents must undertake, consult on, and publish an Environmental Impact Assessment for all projects under the Act.

Proponents must properly manage and minimise:

- any activities which have actual or potential adverse environmental impacts;
- risk of significant long term environmental damage.

We are seeking your input into the criteria for the Environmental Impact Assessment.

Environmental Impact Assessments include the requirement for project proponents to prepare a Statement of Environmental Objectives setting out measurable environmental objectives. This statement is provided to the Minister for public consultation and approval alongside the Environmental Impact Report.

The HRE Bill also requires provisions for end of project life, meaning that the proponent must ensure effective decommissioning of infrastructure and proper rehabilitation of impacted land.

While current planning conditions associated with an approval under the PDI Act can require a decommissioning and rehabilitation plan, the intent is to enforce provisions such as these and requirements for financial assurance, through a single legislative framework under the HRE Bill. This will assist in coordinating and addressing longer term, potential risks for landowners hosting projects, where clean-up efforts are not being met or assets stranded at any stage by developers.

Introduction of licensing under the HRE Bill allows for the enforcement of decommissioning and rehabilitation measures, as is the case in the resources sector, to protect landowners, the environment, taxpayers, and the government.

Benefits for all South Australians

The HRE Bill seeks to enable a net benefit for all South Australians by:

- supporting South Australia's economic diversity and prosperity through a framework that supports different land use activities to occur on the same land where possible;
- ensuring development benefits local communities through partnerships, local employment, local business opportunities, decarbonisation of other economic sectors and energy security;
- ensuring access to the state's resources is granted only to those proponents willing to embrace coexistence with current land uses and deliver community and environmental benefits through their projects, in line with leading environment, social and governance (ESG) requirements; and
- ensuring all such projects, particularly large-scale hydrogen production and storage, meet high standards of safety.

Proponents must demonstrate:

- their willingness to engage and negotiate with communities, native title parties and other landowners across the entire project lifecycle;
- clear benefit sharing through social programs, support of local industry and employment, compensation or other economic benefits;
- environmentally sustainable and safe development.

What the Hydrogen and Renewable Energy Bill seeks to deliver

The HRE Bill proposes a new dedicated impact assessment framework for hydrogen and renewable energy projects across South Australia. By implementing a dedicated approach to hydrogen and renewable energy development, proponents can operate with certainty and transparency, utilising a fit-for-purpose framework that prioritises an efficient pathway for development.

The framework is designed to unlock the billions of dollars in investment on the State's pastoral land and State waters, deliver early engagement and consent provisions for native title parties, enable benefit sharing with Aboriginal communities, and provide protections and security to the environment, communities, and landowners.

This seeks to ensure that the next wave of hydrogen and renewable energy development occurs in an orderly, streamlined manner, while continuing to meet communities' expectations towards responsible development.

Please refer to **Attachment 1** to this Guide which provides a process map detailing the proposed Release Area process and the proposed licencing process under the Act.

The draft Bill provides for the following different licences:

Licence Type	Authorises:	Conditions	Licence duration
Hydrogen Generation Licence	Construction and operation of a commercial facility to generate hydrogen.		Determined by the Minister, with the ability to renew for a further term determined by the Minister.
Renewable Energy Feasibility Licence	Investigations to assess the feasibility of generating renewable energy. In relation to pastoral land, State waters and any prescribed Crown land, confers a right to enter and use land for this purpose.	A licence that relates to pastoral land, State waters or any prescribed Crown land may only be granted following a competitive tender process.	Up to 3 years, with the ability to renew for a further term of up to 3 years.
Renewable Energy Infrastructure Licence	Construction and operation of renewable energy infrastructure, such as wind turbines and solar panels. In relation to pastoral land, State waters and any prescribed Crown land, confers a right to enter and use land for this purpose.	A licence that relates to pastoral land, State waters or any prescribed Crown land may generally only be granted to the person who was granted a feasibility licence following a competitive tender process.	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, testing and data collection for renewable energy technologies. In relation to pastoral land, State waters and any prescribed Crown land confers a right to enter and use land for this purpose.		Determined by the Minister, with the ability to renew for a further term determined by the Minister.

Special Enterprise Licence	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. Confers a right to enter and use land for this purpose.	May only be granted if (a) the Governor is satisfied the enterprise it is of major significance to the economy and in the State's interests; and (b) the Minister and the applicant have entered into an agreement; and (c) the Governor has ratified the agreement.	Determined by the Minister, with the ability to extend the term as determined by the Minister.

What is not included under the HRE Act

The HRE Act will not cover:

- Small scale, localised renewable energy projects intended for domestic use
- Power transmission lines associated with the national and local electricity grids
- Electricity generation from non-renewable resources, including from hydrogen
- Transmission pipelines (already licenced under the PGE Act), vehicle or any other form of transportation of hydrogen (including maritime vessels)
- Renewable energy from geothermal sources as defined and licenced under the PGE Act
- Underground geological storage of hydrogen – this will be licenced under the PGE Act.

Consultation on the development of a Hydrogen and Renewable Energy Act

Consultation on the development of the HRE Act commenced with the release of the Issues Paper and was conducted over a three-month period from 7 November 2022 to March 2023. DEM gathered feedback using a combination of YourSAy surveys and forums, stakeholder meetings, 9 regional roadshows, engagement in Japan and Korea, an online webinar and Q&A.

In November 2022 and March 2023, South Australian government representatives, native title parties and other traditional owners met in Port Augusta for the South Australian Aboriginal Renewable Energy Forum (SAAREF). The shared knowledge, ideas and expertise from those participating in the Forum was integral to informing the development of the HRE Bill.

DEM received over 80 submissions in response to the Issues Paper. The views expressed were critical in assisting DEM to determine the way forward. The following key initiatives have been incorporated into the draft HRE Bill based on stakeholder feedback:

- The draft Bill establishes a licensing and regulatory framework for generating hydrogen for commercial purposes and the development of large-scale renewable energy projects, such as wind farms and solar farms, under a single Act to reduce red tape and regulatory duplication. These activities are referred to as “regulated activities” in the draft Bill, and regulated activities cannot be undertaken unless authorised by a licence.
- Based on feedback received from pastoralists, DEM is investigating the consultation requirements and criteria to be prescribed under the Act for both the release area and licensing stages to determine the role of pastoralists in the process. DEM will work with key stakeholders to further determine the involvement of pastoralists in the processes, including how to protect their rights and interests.
- Aboriginal groups provided feedback that the government must change frameworks to enable self-management and self-determination. DEM will continue to work with Aboriginal communities throughout development of the Act to ensure the framework can balance competing needs.
- Feedback received from the environmental protection and conservation sector was broadly supportive of the HRE Act framework, however sought greater protections for local environments and biodiversity throughout the state in response to development. DEM will investigate how to best incorporate environmental benefits into the Objects of the Act, to ensure the definition fits within the state’s broader environment legislation and informs responsible development of the sector. DEM will also consider how the selection criteria for release areas and competitive access to government-owned land can consider and appropriately weight local environmental benefits provided through projects. Ongoing consultation with relevant regulators and environmental groups will further inform these principles.
- Feedback from renewable energy developers indicated uncertainty around proposed data provision policies. In response, DEM is proposing to hold data confidentially for the life of the licence, only publicising data on the expiry of a licence with permission of the licensee, or in aggregate with no identifying information.

You can submit your survey response to the government’s YourSAy page at yoursay.sa.gov.au or provide your feedback via email to HRE@sa.gov.au.

Consultation closes 12 noon ACST on Monday 26 June 2023.

Guide to the Bill - Hydrogen and Renewable Energy Act Explanation

The *Hydrogen and Renewable Energy Bill 2023* proposes to establish the Act which:

- regulates renewable energy infrastructure and commercial hydrogen generation in South Australia;
- introduces amendments to other relevant Acts which facilitate a “one window to government” approach; and
- provides a consistent, transparent and streamlined regulatory framework for proponents, government and landowners.

Key clauses of the Bill are outlined and explained below.

Part 1—Preliminary

1—Short title

This details the formal citation/name for this Act.

2—Commencement

3—Objects

This is a formal clause for the purpose of stipulating the overarching objectives this legislation is required to achieve.

The proposed objects of the Act include:

- encouraging and maintaining competition for access to designated land such as pastoral land and State waters;
- enabling constructive engagement with Aboriginal people;
- maximising beneficial economic outcomes whilst minimising adverse environmental, social and cultural and heritage impacts; and
- ensuring the safe operation of hydrogen generation and storage facilities

4—Interpretation

A formal definition of all key terms referenced in the Act.

5—Application of Act

Stipulates that this Act is intended to have extraterritorial application insofar as the legislative powers of the State permit, although the licensing regime will only apply to hydrogen and renewable energy activities in so far as they are undertaken on land within the State or in State waters.

6—Interaction with other Acts

Part 2—Release area

7—Minister may declare release area

This clause specifies the requirements that the Minister must satisfy before declaring a release area within which competitive tenders for renewable energy exploration licence applications, in accordance with requirements detailed under Clause 13, can be called for.

Release areas subject to competitive tendering can only comprise of pastoral land, State waters and any other Crown land prescribed in the regulations.

Before declaring any release area on pastoral land, the Minister must consult and seek concurrence of the Minister responsible for the administration of the *Pastoral Land Management and Conservation Act 1989*; and in the case of any release area in State waters, the Minister responsible for the administration of the *Harbors and Navigation Act 1993*.

The Minister must also, before declaring any release area, give public notice of such intentions and consult with relevant stakeholders as will be prescribed in regulation, including other government agencies such as the Department for Environment and Water (DEW), the Aboriginal Affairs and Reconciliation Division (AARD), Planning and Land Use Services (DTI-PLUS); native title holders, industry and industry bodies; Electra Net and Australian Energy Market Operator).

8—Call for tenders for renewable energy feasibility licence

This clause details the requirements that a notice inviting applications for renewable energy feasibility licences within a declared release area must satisfy. Importantly, this clause specifies that the Minister must, in determining an application made in response to such an application, have regard to criteria prescribed in the regulations. Such criteria will include addressing the applicant's:

- proven ability to successfully negotiate land access agreements with native title holders and other landowners;
- work program in realising the renewable energy resource potential of the relevant release area;
- business model and plans regarding the exploitation of the renewable energy resource;
- experience and ability to deliver renewable energy projects and technical and financial credentials necessary for delivering such projects.

Furthermore, the regulations will prescribe that such criteria will need to be developed in consultation with native title holders within the relevant release areas. Subclause 8(5) allows for regulations to provide for the Minister to invite further applications for renewable energy

feasibility licences within a declared area. The purpose being to allow the Minister to call for applications outside the tender process should the:

- successful applicant granted the licence through the tender process subsequently be unable or unwilling to accept the REFL;
- Minister cancel the licence on non-compliance or breach of licence conditions; or
- the REFL be surrendered.

Part 3—Licensing

Division 1—Requirement for licence

9—Regulated activities

These stipulate the requirement for licencing under this Act of the following regulated activities:

- generating hydrogen for a commercial purpose (as defined under clause 4), and constructing, installing, operating, maintaining and decommissioning facilities for hydrogen generation and the surface storage of the generated hydrogen – note that underground storage of hydrogen is licenced and regulated under the PGE Act;

- exploring and exploiting renewable energy resources (as defined under clause 4), and constructing, installing, operating, maintaining and decommissioning of renewable energy infrastructure such as wind turbines, solar panels, power lines regulated under this Act and storage facilities such as batteries.

10—Requirement for licence

A licence authorising regulated activities will be required under this Act unless exempted from such authorisation under the regulations or by Ministerial determination. Such exemptions are intended to exclude from the Act any hydrogen generation and renewable energy projects which are not intended to be for commercial purposes or are strictly for domestic purpose only. Further details will be provided in the drafting of the regulations.

Division 2—Licence categories

Subdivision 1—Hydrogen generation licence

11—Hydrogen generation licence

Stipulates what activities a hydrogen generation licence (HGL) authorises, including the right to store hydrogen on the surface and to process the hydrogen into any form necessary for the primary purpose of transporting it to its final end use (for example, converting hydrogen

to ammonia or methylcyclohexane for pipeline transportation). Pipeline transportation of hydrogen or compounds of hydrogen will be separately licensed under the PGE Act.

A HGL does not confer a right to enter or use any land. Instead, the licensee is required to acquire a right or interest in the land sufficient to undertake the operations authorised by their licence.

In the case of native title land, the grant of a HGL must be authorised by an indigenous land use agreement (ILUA) where there is a determination of native title or a registered native title claim.

12—Term and renewal of licence

This clause stipulates that the term of a licence granted is determined by the Minister, to provide sufficient flexibility to tailor the licence term to the size and scale of the project. This clause also specifies the terms under which the Minister may renew a HGL.

Subdivision 2—Renewable energy feasibility licence

13—Renewable energy feasibility licence

Stipulates what activities a renewable energy feasibility licence (REFL) authorises. Clause 13 requires that the Minister must consult and seek concurrence of the Ministers for the Pastoral Act and Harbours and Navigation Act before granting a licence over the respective lands. This clause also requires that the Minister must be satisfied that before any grant of a licence on native title land that is subject to a native title determination or within the area of a registered native title claim, the grant is authorised by an ILUA. In respect of native title land that is not the subject of a native title determination or within a registered native title claim, the Minister will be required to be satisfied that the grant of the licence will be valid under the Native Title Act to the extent it affects native title.

A REFL confers a right to enter and use pastoral land, State waters and other Crown land prescribed by regulations. It is intended that the REFL co-exist with existing rights and interests in such lands, and that existing rights and interests may continue to be enjoyed wherever that is consistent with the authorised operations carried out pursuant to the licence. Otherwise, for other land tenures including freehold land, a REFL does not confer a right to enter and use land.

14—Term and renewal of licence

This clause specifies the maximum term of such a licence is 3 years and allows for licensees to apply to renew and the criteria that the Minister must take into consideration when deciding to grant any renewal.

Subdivision 3—Renewable energy infrastructure licence

15—Renewable energy infrastructure licence

This clause stipulates the activities authorised under a REIL. As is the case under clause 13 for REFLs, requires that the Minister:

- must consult and seek concurrence of the Ministers for the Pastoral Act and Harbours and Navigation Act before granting a licence over the respective lands; and
- must be satisfied that, before any grant of a licence on native title land that is subject to a native title determination or within a registered native title claim, the grant is authorised by an ILUA; and
- will be required to be satisfied that the grant will be valid under the Native Title Act to the extent it affects native title in respect of native title land that is not the subject of a native title determination or within a registered native title claim.

A REIL confers a right to enter and use pastoral land, State waters and other Crown land prescribed by regulations. It is intended that the REIL co-exist with existing rights and interests in such lands, and that existing rights and interests may continue to be enjoyed wherever that is consistent with the authorised operations carried out pursuant to the licence. Otherwise, for other land tenures including freehold land, a REIL does not confer a right to enter and use land.

A REIL will also be able to be granted for specific regulated activities associated with renewable energy generation, such as transmission lines and storage of the renewable energy, including batteries and pumped hydro. A grant for this purpose will not be subject to the competitive process that will normally precede the grant of REILs on pastoral land, State waters and other Crown land prescribed by regulations.

16—Term and renewal of licence

This clause specifies the term of a REIL is 40 years or any longer or shorter term determined by the Minister. It also allows for licensees to apply to renew the REIL and specifies what the Minister must take into consideration when deciding to grant any renewal.

Subdivision 4—Renewable energy research licence

The purpose of this Subdivision (clauses 17 and 18) is to authorise the following activities:

- Conducting preliminary investigations within or outside any declared release area to conduct activities of a temporary nature for the purpose of gathering data regarding a renewable energy resource.

- Researching the capabilities of technologies, systems or techniques for exploiting renewable energy resources.

Such a licence is expected to be utilised by the Minister to authorise department officers to undertake renewable energy resource surveillance work and to provide for research

institutions to enter land to test new technologies as required. A RERL has no relationship to an REFL or REIL and is independent to any REFL tender process.

A RERL confers a right to enter and use pastoral land, State waters and other Crown land prescribed by regulations. It is intended that the RERL co-exist with existing rights and interests in such lands, and that existing rights and interests may continue to be enjoyed wherever that is consistent with the authorised operations carried out pursuant to the licence. Otherwise, for other tenures including freehold land, a RERL will not confer a right to enter and use land.

17—Renewable energy infrastructure licence

18—Term and renewal of licence

Subdivision 5—Special enterprise licence

The object of this Subdivision (clauses 19 to 24) is to facilitate the establishment, development or expansion of hydrogen and renewable energy enterprises of major significance to the economy of this State by allowing greater security and flexibility of tenure and access to land.

The power to grant a special enterprise licence may be exercised as a last resort to enable appropriate enterprises to proceed where land access is not able to be agreed.

A special enterprise licence may be granted in relation to freehold and non-freehold land. It is intended that a special enterprise licence co-exist with existing rights and interests in land, and that existing rights and interests may continue to be enjoyed wherever that is consistent with the authorised operations carried out pursuant to the licence.

19—Object of this subdivision

20—Special enterprises

21—Concept phase

22—Special enterprise licence

23—Power to exempt from or modify Act

24—Existing licences

Division 3—Common provisions

Subdivision 1—Application for licence

The purpose of this Subdivision (clauses 25 to 28) is to stipulate all common requirements in relation to the application and grant of the various categories of licences provided for under this Act.

25—Application for licence

26—Notice of certain applications

27—Applications relating to areas within Murray-Darling Basin

28—Applications relating to areas within specially protected area

Subdivision 2—Grant of licence

29—Grant or refusal of licence application

Subdivision 3—Conditions of licence

30—Conditions of licence

This clause empowers the Minister to determine conditions on which the licence will be granted. In particular, subclause 30(2) to (4) requires the Minister to include specific conditions relating to:

- The licensee establishing an appropriate process during the term of the licence to ensure the eventual decommissioning of infrastructure and rehabilitation of land under the licence area is appropriately undertaken.
- Requirement for annual rent to be paid where a licence confers rights to enter and use land.
- Requirement for the licensee to provide holders of relevant interests in the land within the licence area with relevant information on an ongoing basis regarding the licensee's operations and activities.
- Requirement that the licensee furnish the Minister with a report on its operations in a form and times prescribed in the regulations. It is intended that the regulations will prescribe that such reports will detail the performance of the licensee against its approval conditions and the approved Statements of Environmental Objectives on an annual basis.

31—Work program

This clause stipulates the requirement as a mandatory condition under the relevant licence that the licensee must only carry out work in the licence area in accordance with an approved work program. The purpose of the work program is to ensure that work commitments made by the licensee as part of the licence application and grant process are fulfilled. This a common instrument used under the PGE Act and Mining Act to ensure that licensees fulfill the on-ground work commitments upon which the licence was awarded.

32—Access agreement

This clause requires that a holder of a REFL and REIL must, before undertaking authorised activities and operations, enter into a land access agreement with any pastoral lessee and any underlying resource tenement holder. This clause only applies to designated lands under the Act, being pastoral land, State waters and other Crown land prescribed by regulation; that is, it does not include landowners in relation to other land tenures including freehold land.

This clause also details:

- the matters an access agreement must address, including access to land protocols and compensation payable provisions; and
- dispute resolution mechanism through the Environment, Resources and Development Court (ERD Court).

Subdivision 4—Bond and security

33—Bond and security

This clause will empower the Minister to require a licensee to provide a bond and security in a form and value determined by the Minister. This will be a discretional decision based on policy consulted, established and published by the Minister.

Subdivision 5—Notice of commencement of operations

34—Licensee must give notice of commencement of authorised operations

The purpose of this clause is to allow the Minister and department to be informed and aware of operations happening on the ground. Similar provisions are available under both the PGE and Mining Acts.

Subdivision 6—Rent

35—Rent

This provision allows for the Minister to charge a rent on land where the relevant licence confers rights to enter and use land. That is, renewable energy licences on pastoral land,

State waters, and on any other Crown land prescribed by regulation, as well as special enterprise licences.

The rental calculation method will be prescribed in the regulations - these regulations will be consulted on prior to being adopted. The regulations may also provide that an amount or percentage of rent payable under this section is to be paid, at the prescribed times, into the Pastoral Land Management Fund under the *Pastoral Land Management and Conservation Act 1989,* given that permitting provisions for renewable energy projects will be removed from the PLMC Act.

Subdivision 7—Reporting requirements

36—Licensee to provide reports, information or material

This clause provides for reporting of data gathered under a REFL and the confidentiality requirements for such data – details of which are to be prescribed in the regulations that will be consulted on prior to adoption.

37—Licensee must report certain incidents

The purpose of this clause is to ensure that incidents that have impacted or have the potential to impact on safety of the operations, environmental matters, landowners or cultural sites are reported to the department to ensure that appropriate corrective and rehabilitation actions are taken and preventative measures are put in place to minimise the risk of the recurrence of such incidents.

Subdivision 8—Public liability insurance

38—Public liability insurance

Subdivision 9—Dealing with licence

39—Dealing with licence

This clause provides for the Minister to consent to any transfer, assignment or mortgage of the licence to ensure any incoming licensees have the technical capabilities and financial resources to carry out operations under the licence, and that any accrued liabilities to the Crown or any other liabilities associated to the licence are transferred to the transferee or assignee.

Subdivision 10—Change in control

40—Interpretation

The purpose of this clause is to require approval from the Minister before a change in controlling interest of a licensee.

This provision is to enable the Minister to have regard to the technical and financial resources of a person who proposes to begin to control a licensee, such that they are sufficient to enable the licensee to carry out operations under the licence.

This provision is in line with a similar approval regime that is proposed to be inserted into the PGE Act.

41—Approval of change of control of holder of licence

42—Offences

Subdivision 11—Suspension, cancellation and surrender of licence

43—Minister may suspend or cancel licence

This clause details the power the Minister has to suspend or cancel a licence and the processes that need to be followed. It also outlines the process for a licensee to follow when applying to surrender their licence and the options available to the Minister should the Minister decide to approve any such application.

44—Offences

Subdivision 12—Miscellaneous

45—Licence is not personal property for the purposes of Commonwealth Act

46—Exemption from stamp duty

Division 4—Environmental impact

The purpose of this Division of the Act is to ensure that regulated activities authorised under this Act are managed so as to minimise environmental impacts and ensure land adversely affected by regulated activities is properly rehabilitated. To achieve this, a two-stage environmental impact assessment and activity approval process, similar to the processes adopted under the PGE Act, is proposed.

Subdivisions 1 and 2 deal with Stage 1 of the environmental impact assessment.

Under this Act “environment” includes:

a) land, air, water (including both surface and underground water and sea water), organisms, ecosystems, flora, fauna and other features or elements of the natural environment; and

b) buildings, structures and other forms of infrastructure, and cultural artefacts; and

c) existing or permissible land use; and

d) public health, safety or amenity; and

e) the heritage, aesthetic, Aboriginal, social and cultural values of an area; and

f) the social or economic effects associated with regulated activities.

The two-stage environmental impact assessment under the HRE Act includes assessment and consideration of the above matters in relation to hydrogen and renewable energy project proposals.

This two-stage assessment will apply in place of the assessment and authorisation processes in the PDI Act.

There will remain scope for the Minister administering the PDI Act to declare a hydrogen and renewable energy project to be an “impact assessed development” for the purposes of that Act if it is considered to be of economic, social or environmental importance to South Australia. Impact assessed development is the highest level of development under the PDI Act. Where invoked, it will apply alongside the operation of the HRE Act, although provisions will be established in the final Bill to avoid unnecessary duplication.

In the context of this definition of Environment, the HRE Act prescribes the need for the licensee to undertake an environmental impact assessment of its proposed activities under the relevant granted licence(s).

The licensee’s environmental impact assessment process will follow similar provisions to that under the PGE and Mining Acts as per the following steps:

a. If an already gazetted Environmental Impact Report (EIR) and Statement of Environmental Objectives (SEO) does not already exist for the proposed activity and area, prepare an Environmental Impact Report (EIR) in accordance with the provisions to be detailed in the regulations.

b. On the basis of the EIR report, prepare a Statement of Environmental Objectives (SEO) detailing the measurable environmental objectives and assessment criteria that the licensee will be required to demonstrably achieve to ensure the risks identified in the EIR are being managed to as low as reasonably practicable.

c. A key requirement of the legislation is to ensure that when preparing the EIR and SEO the licensee must consult with all relevant stakeholders in accordance with a stakeholder consultation plan approved by the Minister.

d. The consultation plan will be required to include consultation with other government agencies prescribed in the regulations, that is, DTI-PLUS, Environment Protection Authority, DEW, Safe Work SA, Department of Health, AARD and others that may be added from time to time.

e. Once the licensee has prepared the EIR and SEO in accordance with the above, it must then be submitted to the Minister for assessment and approval and gazettal of the final approved SEO. This approval and assessment process will entail the Minister undertaking a mandatory 30 business day public consultation process as per requirements specified under clause 59: Consultation by Minister, on the submitted documents before making the final decision to approve.

f. Prior to undertaking the 30-business day public consultation, the Minister must assess these documents in consultation with other government agencies prescribed in the regulations, that is, as per point e. above. The Minister must also receive the concurrence of these other agencies prior to releasing these documents for the 30-business day consultation.

Subdivision 1—Preliminary 47—Objects

48—Environmental impact assessment criteria

Subdivision 2—Environmental impact report

49—Environmental impact report

Subdivision 3—Statement of environmental objectives

50—Statement of environmental objects

51—Approval of statement of environmental objects

52—Review of statement of environmental objects

Subdivision 4—Operational management plan

This Subdivision deals with Stage 2 of the environmental impact assessment.

<u>On-ground activity notification and approvals</u>

Once a relevant SEO is approved and gazetted, the licensee is required to submit an activity notification for the proposed activities. Such activities include the construction, operation,

maintenance and decommissioning of equipment and rehabilitation of land pertaining to all operations licenced under the HRE Act.

The aim of an activity notification is to ensure that:

- an operating management plan (OMP) is in place and prepared in accordance with the prescribed requirements under the regulations. The main purpose of an OMP is to demonstrate how the environmental objectives detailed in the approved and gazetted SEO will be achieved;
- the licensee provides all prescribed information about the operations and activities that will be conducted under the relevant licence; and
- all required notices of entry have been issued or access agreements are in place.

53—Operational management plan

54—Approval of operational management plan

55—Review of operational management plan

Subdivision 5—Scoping report

Where a project is likely to be a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), this Subdivision provides a mechanism to have the project assessed under the HRE Act or other State Act through an EPBC Act accredited or bilateral arrangement.

56—Interpretation

57—Application and object of Subdivision

58—Scoping report

Subdivision 6—Consultation

59—Consultation by Minister

The purpose of this clause is to require the Minister, in accordance with the requirements of this clause and any other prescribed requirements in the regulations, to undertake public consultation on submitted environmental impact reports and statements of environmental objectives. This clause also prescribes the Minister's obligations in relation to the publication of submissions received as a result of any such consultation.

Part 4—Entry to and use of land

60—Right of entry to land

61—Notice of entry

The purpose of this clause is to make provision for licensees to provide written notice to all relevant landowners of the licensee's intention to enter land and of the nature of the activities and operations the licensee intends to carry out.

A notice of entry is only required for the licences that confer rights to enter and use land, that is, REFLs, REILs and RERLs in relation to designated land, and SELs. In addition, it is only required where an access agreement or ILUA with the landowner does not exist.

62—Disputed entry

The purpose of this clause is to detail the dispute resolution process under the Act in the case that any entry to land is objected to following the giving of a notice of entry. This clause only applies to REFLs, REILs and RERLs in relation to designated land.

63—Compensation

As is the case under the Mining and PGE Acts, owners of land will be entitled to compensation for economic loss, hardship or inconvenience suffered by them because of operations undertaken by a licensee.

The clause contains matters that should be considered in determining the amount of compensation payable to an owner of land. Compensation will not be payable in relation to any value or potential value of petroleum or mineral resources contained in the land.

Compensation will only be payable for licences that confer rights to enter and use land; that is, REFLs, REILs and RERLs in relation to designated land, as well as SELs. In addition, compensation will be payable for owners of land upon which activities authorised by clause 67 are carried out.

As is the case under the PGE and Mining Acts, any dispute regarding compensation between the licence holder and the owner of land will be determined through the ERD Court.

64—Right to require acquisition of land

This clause allows for the case when an owner of land's use of their land is substantially impaired by activities under an SEL. It enables the owner to apply to the ERD Court for an order that their interest in the affected land be transferred to the relevant licensee under the HRE Act. This clause also provides for any such transfer to be effected on payment of compensation to the owner, based on market value of the land.

Part 5—Hydrogen and Renewable Energy Fund

65—Hydrogen and Renewable Energy Fund

The purpose of this clause is to allow the Minister to establish a fund, from monies from penalties paid in respect to penalties and expiation fees under the Act, for the main objective to further the objects of the Act as the Minister deems appropriate.

Part 6—Compliance and enforcement

Division 1—Powers of Minister

66—Minister may request information

This proposed clause stipulates the information and material gathering powers of the Minister and constraints, particularly regarding the public release of any such data/information, in exercising such powers. The public release of any data or information provided to the Minister under this section can only be done so in accordance with the requirements of the regulations.

67—Power to conduct assessment of renewable energy resources on land

The purpose of this provision is to grant rights for the Minister or a person authorised by the Minister to enter any land to assess renewable energy resources in the State. This provision also stipulates the requirements that must be followed in effecting any such entry to land for this purpose.

Division 2—Authorised officers

This Division stipulates the powers and requirements of authorised officers under the Act.

68—Appointment of authorised officers

69—Identity cards

70—Authorised investigations

71—Powers of entry and inspection for purpose of authorised investigation

72—Power to require information

73—Production of records

Division 3—Compliance and enforcement

The purpose of this Division is to provide for the Minister's compliance and enforcement powers, including powers to issue compliance and emergency directions and to undertake actions should any direction under this Division not be complied with.

74—Compliance directions

75—Emergency directions

76—Review of direction

77—Contravention of Act

78—Action if non-compliance occurs

Division 4—Miscellaneous

79—Enforceable voluntary undertakings

The purpose of this clause is to allow for the Minister to enter into a formal agreement (undertaking) with a licensee to rectify a contravention by the licensee of this Act similar to that available under the South Australian *Environment Protection Act 1993*. Where an undertaking is in effect, no proceedings for the contravention may be brought against the licensee.

Enforceable undertakings have been found to be very effective compliance enforcement tools, avoiding often protracted enforcement processes to prove guilt that, in terms of cost, regularly exceed the value of any final penalty. Also, the desired outcome of regulatory enforcement to rectify non-compliance can often be achieved through such an undertaking.

80—Civil remedies

This clause provides for the ERD Court upon application to restrain any person that has engaged in, is engaging or is proposing to engage in conduct that contravenes this Act.

81—Annual report

For the primary purpose of maintaining regulatory transparency, the purpose of this clause is to require the Minister to have a report prepared and published on the regulatory surveillance and enforcement activities during each year.

This provision is in line with regulatory requirements under the PGE and Mining Acts in South Australia.

Part 7—Offences and Penalties

This part stipulates what constitutes offences, including bodies corporate offences, time limits for commencement of criminal offences under the Act, and the maximum penalties for offences under the Act. This part also makes provision for civil penalties where the Minister is satisfied that a person has committed an offence under the Act. The requirements that the Minister must adhere to when proceeding down the civil penalty path are also stipulated in this part of the Act.

82—False or misleading statements

83—Offence relating to licence

84—Offences regarding authorised officers

85—Civil penalties

86—Additional orders on conviction

87—Continuing offences

88—Offences by bodies corporate

89—Time limits

90—Evidentiary provisions

Part 8—Appeals to ERD Court

91—Appeals to ERD Court

The Act will provide for appeals to the ERD court for various licencing and approval decisions made under this Act.

Part 9—Hydrogen and renewable energy register

92—Hydrogen and renewable energy register

The Act will provide for the Minister to establish and maintain a web-based register to make available prescribed information and reports, such as licence particulars and compliance reports. This will be similar to the licence and environmental registers required under the PGE Act.

Part 10—Miscellaneous

93—Delegation

94—Confidentiality

95—Exemptions

Where circumstances justify doing so, this clause provides for the Minister to grant exemptions to licence holders from complying with licence conditions and/or to persons from specified provisions under the Act. Exemptions can also be provided for by regulations.

96—Charge on property if debt due to Crown

This clause will allow for a charge on property to apply to the owner of property who is liable to pay a debt due to the Crown under the Act.

The intention is to have a statutory security so that the Crown has first priority over a licensee's property in the event of bankruptcy. This is an important provision that is intended to assist in mitigating against licensee bankruptcy claims resulting in unfunded environmental rehabilitation and decommissioning liabilities being passed on to the State in the case where debts to the Crown are not given first priority via statute ahead of other debtors. This clause is similar to provisions in other South Australian Acts.

97—Administrative penalties

98—Regulations and fee notices

Schedule 1—Related amendments

This schedule outlines the various consequential amendments that will need to be made to affect the implementation of the HRE Act.

Part 1—Amendment of *Pastoral Land Management Conservation Act 1989*

Part 2—Amendment of Planning, Development and Infrastructure Act 2016

The development assessment of future hydrogen and renewable energy projects requiring licencing under the HRE Act is proposed to be addressed through the processes and procedures in the HRE Act. This will be made possible through consequential amendments

to Part 12 of the PDI Act which will extend the special provisions that currently apply to mining matters to renewable energy matters.

As explained above, the intent is for the HRE Act environmental impact assessment and activity approval process to be similar to the assessment processes and procedures under the Mining Act and PGE Act.

Associated consequential and additional regulatory amendments will be drafted to support the assessment of hydrogen and renewable energy projects requiring licencing under the HRE Act. These may necessitate related regulatory amendments to the PDI Act. The general aim is to reflect any appliable and relevant regulations relating to development assessment under the PDI Act, as part of the HRE Act and its regulations.

Transitional provisions for existing projects

Transitional provisions will be established to avoid any unnecessary duplication and costs on the part of existing renewable energy operators and applicants who have completed and/or are already engaged in the assessment process under the PDI Act (or previously approved under the former *Development Act 1993*) for such projects.

For renewable energy project proposals for which Crown sponsorship is being currently sought or has been granted but where no development application has been lodged prior to the commencement of the HRE Act, transitional provisions will be established to facilitate assessment and licencing to occur under the new HRE Act.

For any hydrogen generation project proposals (including those seeking or having received Crown sponsorship), targeted provisions will be established for these projects to be licenced under the HRE Act.

Avoidance of duplication of certain procedures under other State and Commonwealth legislation

Provisions will be established in the final Bill to avoid unnecessary duplication of assessments and procedures under other legislation. For example, in circumstances where the environmental impact of hydrogen and renewable energy projects is still assessed under the PDI Act as contemplated by Part 12 of that Act, where major hazardous facility licences are required under the *Work Health and Safety Act 2012* (SA) with respect to HGL activities, and where EPBC Act approvals are required. These proposed provisions will seek to ensure that, where relevant, documents prepared under such Acts can be used for authorisation purposes under the HRE Act.

Further information

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