23 June 2023

SUBMISSION ON THE PROPOSED SOUTH AUSTRALIAN *HYDROGEN & RENEWABLE ENERGY ACT 2023*

The Clean Energy Council ('**the CEC'**) welcomes the opportunity to make a submission on the exposure draft (10 May 2023) of the South Australian *Hydrogen and Renewable Energy Bill* ('**the proposed Act'**).

The CEC is the peak body for the renewable energy industry in Australia. We represent and work with over 1,000 of the leading businesses operating in the solar, onshore and offshore wind, storage and renewable hydrogen. We are committed to accelerating Australia's clean energy transformation.

South Australia is already leading Australia's renewable energy transition, with 71 per cent of electricity produced in the state coming from variable renewable energy sources in 2022 and with an aspiration to reach 100 per cent net renewable energy by 2030. The state also has the competitive advantage of vast regions with both strong wind and solar resources in pastoral lease areas, making it an attractive state to champion renewable hydrogen production and become a clean energy superpower.

The CEC welcomes the introduction of a regulatory framework for hydrogen production, providing certainty and confidence for the emerging green hydrogen sector. We generally support the proposed provisions around definitions and licensing, based on the provisions previously outlined in the *Petroleum and Geothermal Energy Act 2000 Amendment Bill*.

We are also supportive of a framework to access pastoral lease land, as recommended in the SA Productivity Commission's Renewable Energy Competitiveness Report. The proposed regulatory framework is largely appropriate, with some issues requiring more design with industry, such as Renewable Energy Priority Areas (**REPAs**), licence terms and decommissioning.

Our key feedback is that **the proposed licence scheme should only apply to "designated land" and should not apply to freehold land or perpetual lease land.** Such a scheme is unnecessary for this land tenure type and risks creating a significant disincentive to project development in the state. Further, as discussed in more detail below, the licensing regime set out in the proposed Act is not fit for purpose for use on freehold land and perpetual lease land that will not be subject to the competitive tender process which has been designed for release areas within "designated land", given that it provides for the grant of a licence before the preparation of an environmental impact assessment.

Renewable energy projects in South Australia have been developed on freehold land in an orderly manner for more than two decades, and the state's planning and approval processes have been considered clear, predictable, efficient and value for money.

In 2022, the SA Productivity Commission (**SAPC**) identified the impact of increased setbacks, processing errors and delays within the bureaucracy as barriers to renewable energy investment

in the state.[1] The proposed licensing scheme for freehold land does not address these issues, but instead creates additional processes and administrative burdens for a developer to comply with compared to the current system. Many of these processes are duplicative and are likely to only extend project development timeframes and increase costs, which is not in the interests of South Australia's competitiveness for renewable energy investment.

Application of the proposed process to freehold land will be unacceptable on social licence grounds

Furthermore, not only do we regard the proposed system to be unnecessary and less efficient for projects on freehold land, but we note that it also does not *practically* work in such a way that would meet community expectations.

Referring to the process diagram outlined below we can see that proponents would be required to apply for and obtain an Infrastructure Licence for either pastoral or freehold land *prior to* lodging their environmental and planning applications for assessment by the State Government.

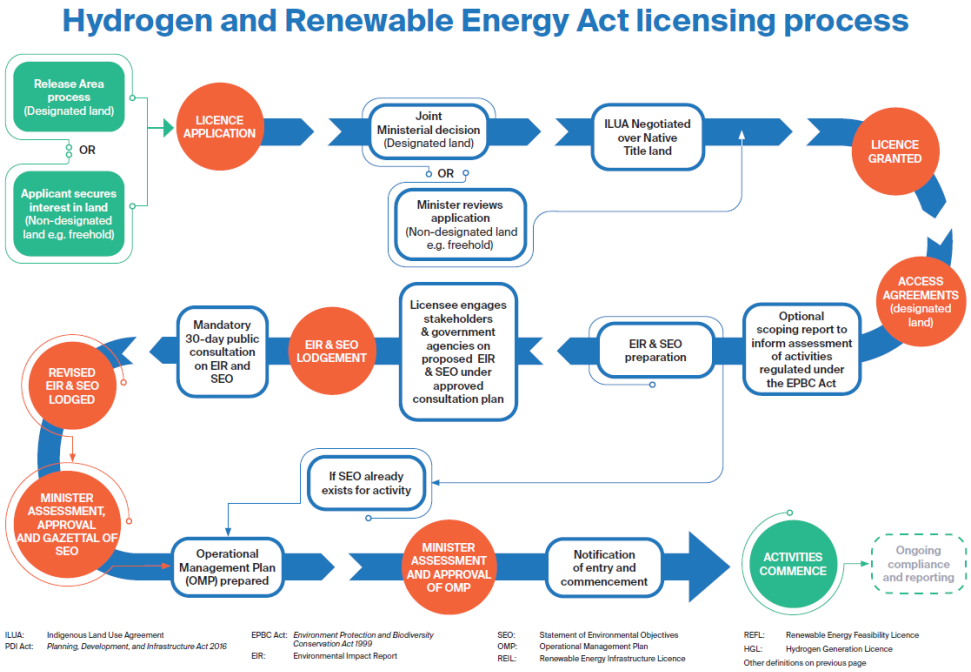

Figure 1 - Source: https://yoursay.sa.gov.au/hrebill - process diagram

While this process may be suitable for pastoral land, where tenure for private entities to enter state-controlled land would not otherwise exist, we believe that it would be regarded by the community as wholly unsuitable for projects on freehold land. It may appear to communities to run counter to due public process for the State Government to award an Infrastructure Licence for a project which has not yet been the subject of an environmental and planning assessment.

[1] Renewable-Energy-Competitiveness-Final-Report-Website-Version.pdf (sapc.sa.gov.au)

This leads to the key question by the Clean Energy Council and its members, which is *what value does the new licencing regime add for projects on freehold land?* We can see none. Projects will continue to be required to go through the usual environmental and planning process. It will simply add additional steps to the process, lengthening development timeframes and increasing project uncertainty. We do not believe that these outcomes reflect the State Government's intentions to streamline assessment processes and position South Australia as an attractive location to invest.

Other feedback

For licences on pastoral land, the CEC provides some further feedback in relation to the proposed Act:

I. **Feasibility licence duration** – The three-year licence duration proposed for the Renewable Energy Feasibility Licence is insufficient and the CEC recommends a duration of five years.

II. **Sequence of securing a Feasibility Licence and an ILUA** – The proposed Act requires that Indigenous Land Use Agreements are in place prior to a feasibility licence being granted. As such, even simple survey works (which often precede more intrusive works such as the installation of met masts by some time) can only be carried out after the ILUA is in place. We note that the process of negotiating an ILUA requires goodwill and trust between the parties, and that the process typically takes years. We believe that being required to make this investment prior to having had the opportunity to ascertain the feasibility of the site through relatively non-intrusive site surveys risks wasting the time of Traditional Owners and proponents, and undermining the efforts to build trust and goodwill. We therefore recommend that an additional category of licence be introduced for prospecting activities (a 'Prospecting Licence') which would allow for proponents to undertake unintrusive site survey activities – such as environmental surveys – without the requirement for an ILUA. Proponents who wished to move to the next stage of feasibility testing (such as erecting met masts for wind resource monitoring) would be required to have an ILUA in place.

    In order to support a more efficient and equitable negotiating process, we would also encourage the State Government to provide additional funding support to native title bodies to enable them to increase their capacity to engage with proponents on Indigenous Land Use Agreements.

III. **Infrastructure Licence and ILUA requirement** – The proposed Act requires that ILUAs also be in place for the grant of an Infrastructure Licence over native title land. While the CEC is supportive in principle of the State Government's encouragement of agreement making with Traditional Owners, we note that there are consent pathways for electricity transmission lines to connect to the electricity grid under section 24Ka of the Native Title Act, which do not involve an ILUA, and which provide greater certainty for proponents. We note that the inconsistencies between the two Acts would likely create uncertainty for proponents.

IV. **Perpetual Lease land –** The proposed Act does not specify whether this land will be "designated land" or not, and the explanatory papers that have been released to support the consultation on the proposed Act do not address this matter. We submit that perpetual lease land should be excluded from "designated land" and preferably should be excluded from the operation of the Act in the same way as freehold land. If perpetual lease land is "designated land", the Infrastructure Licence grants tenure and authorises the activities. If it is not "designated land" (but subject to the Act), the Infrastructure Licence grants authorisation for the activities only, and the licensee must negotiate their own land access arrangement with the perpetual lessee and obtain Ministerial consent. Given that an Infrastructure Licence is a statutory licence that (we expect) will not be capable of being registered on the title to the land

at the Lands Titles Office, it is likely that it will also not be possible to register a mortgage over an Infrastructure Licence on the title. Further, a statutory licence is subject to the legislation being changed or repealed, and so does not give tenure that is as secure as a registrable interest in land. A lease granted by a perpetual lessee would be registrable (as would be a mortgage over that lease) and thus we consider that it would be a preferable form of tenure as it provides greater investor certainty. As such, it would be preferable for perpetual lease land to not be "designated land".

V. **Appeals to the ERD Court** – We note that the current wording in Part 8, section 91(2), would allow *any* person to make an appeal to the ERD Court. We note that this should be limited to the applicant or the licensee as the case may be.

VI. **Decommissioning security –** The proposed Act also mandates provisions for end-of-project life, ensuring proper decommissioning and land rehabilitation. We understand that the proposed Act aims to enforce decommissioning and rehabilitation requirements through a single legislative framework, addressing potential risks and coordinating efforts for landowners hosting projects. The CEC considers that entering into a financial security mechanism to ensure rehabilitation of land impacted is appropriate in general. We note however that the costs for decommissioning and rehabilitating a renewable energy generation site is difficult to estimate for these long-life assets as there is no experience of decommissioning in Australia and the costs are dependent on a range of factors including location of the plant, recycling and waste management options and markets. It is important that securities put in place are appropriate in both timing and magnitude, so as not to unduly burden the project with additional costs, particularly at start up.

VII. **Fees** – We encourage the State Government to ensure that fee setting balances the rights of the State to deliver a reasonable return on the leasing of pastoral land with the need to attract an emerging green hydrogen industry which already faces an uphill climb to make itself cost-competitive with fossil-based gas and other molecule fuels.

VIII. **Benefit sharing** – The CEC actively champions the inclusion of benefit sharing programs in all utility-scale projects, which should be tailored to the project context and community needs. In 2019 we released a Guide to Benefit Sharing Options for Renewable Energy Development which outlines a wide range of models and options for benefit sharing that could be considered by communities and proponents. These include initiatives such as community enhancement funds, neighbour benefit programs, sponsorships and grants, local employment and procurement programs, and community co-investment or co-ownership. We would urge the State not to pre-define the structure and quantum of a benefit sharing program, noting that this should be determined by proponents in consultation with the local community at the time in which the project is developed, and depending on the specific community/ies affected.

Conclusion

The Clean Energy Council offers its strong support for the introduction of the proposed hydrogen regime in South Australia, and the renewable energy elements of the proposed Act to pastoral land and state waters to enable renewable energy projects to be appropriately developed on/in state-controlled land and waters, subject to the State taking on board our above feedback regarding the implementation detail.

However, we strongly restate our opposition to the extension of the renewable energy licensing regime to freehold land, noting that it will not streamline processes for projects on this land, but simply increase the steps, timeframes, risk, uncertainty and cost associated with new project development (and likely lead to significant community backlash given the pre-grant of licences before environmental impact assessments are carried out).

The renewable energy sector has previously provided this feedback to the State Government and we urge you to take account of it in finalising the draft Bill.

Please do not hesitate to contact me should you require to discuss the content of this submission, or refinements to the Bill.

Yours sincerely,

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