



# SUBMISSION ON THE PROPOSED SOUTH AUSTRALIAN HYDROGEN AND RENEWABLE ENERGY ACT

10 February 2023

*DEM.Legislation@sa.gov.au*

---

## Introduction

The Clean Energy Council (**CEC**) welcomes the opportunity to make a submission on the proposed South Australian Hydrogen and Renewable Energy Act (**the proposed Act**).

The CEC is the peak body for the clean energy industry in Australia. We represent and work with over 1,000 of the leading businesses operating in solar, on-shore and offshore wind and storage, as well as 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 renewable energy sources in 2022 and with an aspiration to reach 100% 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.

We commend the South Australian Government's plan to provide a streamlined and appropriate framework for renewable energy, while promoting environmental and community benefits, including effective consultation with and benefits for First Nations communities.

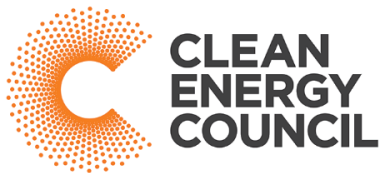
We are however concerned that the proposed Act's ambitious attempt to provide a single-window regulatory framework for a range of technologies over different land tenure types, as laid out in the issues paper, presents serious uncertainties for renewable energy developers and risks the state becoming a much less attractive place to develop renewable energy. The information provided in the issues paper is also very high level, and we consider that there are many questions that need to be determined before a bill can be drafted. For this reason, we consider that the proposed Act requires reconsideration and in-depth industry consultation prior to the drafting of the bill.

## General feedback

### 1. The licensing scheme should not apply to freehold land

The CEC welcomes the introduction of a regulatory framework for hydrogen production, providing certainty for the hydrogen industry. We generally support the proposed provisions and definitions around definitions and licensing, based on the provisions 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 (see Appendix 1). However, we note that it is currently unclear how the proposed regulatory system would interact with the Commonwealth *Offshore Energy Infrastructure Act*.



Our key feedback is that **the proposed licence scheme should not apply to freehold land**. Such a scheme is unnecessary for this land tenure type and risks creating a significant disincentive to project development.

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, frequent processing errors and delays within the bureaucracy as barriers to renewable energy investment in the state.<sup>1</sup> The proposed licensing scheme for freehold land does not address these issues, but instead creates more bureaucratic 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 cause additional delays, as well as result in additional costs that may not have been accounted for in the financing of the project. These unnecessary delays ultimately go against the proposed objectives of achieving climate targets.

A licensing scheme for freehold land also creates significant uncertainty and risk for existing projects, with no clarity as to how such a scheme would be applied retrospectively and how existing projects might maintain the right to operate.

Furthermore, the proposed scheme does not seem to offer any benefits to developers seeking to develop on freehold land, as opposed to other states such as NSW, which runs competitive tender processes to offer Long-Term Energy Service Agreements.

The proposed licensing scheme for freehold land poses a significant risk for the South Australian economy as developers may be less inclined to invest in the state due to it being too complex and costly, particularly for smaller players, and we strongly recommend that the licensing scheme does not apply to freehold land.

## **2. The Government should continue to assess and approve projects while the proposed Act is being developed**

The establishment of the proposed Act is likely to take a substantial amount of time, when considering the legislation of the proposed Act, developing processes to administer the proposed licensing, and selecting and determining REPAs. The South Australian Government cannot afford to delay and stall hydrogen and renewable energy development if it is seeking to reach its targets and become a clean energy superpower. To ensure that the continued development of renewable energy in South Australia is not delayed in the meantime and investment pushed interstate due to uncertainty, we strongly recommend that a short-term interim process be developed for pastoral land and state waters to allow the Government to continue assessing and approving projects that are being put forward.

## **3. The proposed Act should avoid duplication**

While the CEC welcomes a clear regulatory framework for hydrogen and projects on pastoral land and in state waters, we are concerned that the proposed Act may create duplicative processes and costs that will reduce the state's investment competitiveness. For example, the proposed Act should avoid duplicating obligations that are already included in the conditions of approval for projects under

---

<sup>1</sup> [Renewable-Energy-Competitiveness-Final-Report-Website-Version.pdf \(sapc.sa.gov.au\)](https://www.sapc.sa.gov.au/reports/renewable-energy-competitiveness-final-report-website-version.pdf)



development authorisations (and planning consents) granted under the *Planning, Development and Infrastructure Act 2016*.

We recommend that any potential duplication be carefully considered and avoided when drafting the proposed Act.

We provide detailed responses to the questions in the issues paper in the Appendix below.

Thank you for the opportunity to provide feedback on the Proposed Act. We look forward to working with the South Australian Government to draft a bill that benefits renewable energy developers, communities and the South Australian economy.

**For further information:**

**For renewable energy project matters**

Dr Nicholas Aberle  
Policy Director – Energy Generation & Storage  
Clean Energy Council  
[naberle@cleanenergycouncil.org.au](mailto:naberle@cleanenergycouncil.org.au)

**For green hydrogen matters**

Anna Freeman  
Policy Director – Decarbonisation  
Clean Energy Council  
[afreeman@cleanenergycouncil.org.au](mailto:afreeman@cleanenergycouncil.org.au)

## Appendix 1

Issue	Questions	CEC response
<p><b>1. Objects of the Act</b></p> <p>The objects will explain the purpose of the Hydrogen and Renewable Energy Act and provide the context for reading the provisions of the Act.</p> <p>The proposed objects are to:</p> <ul style="list-style-type: none"> <li>• create an effective, efficient and flexible licensing and regulatory framework for the feasibility, construction and maintenance of large scale renewable energy infrastructure</li> <li>• create an effective, efficient and flexible licensing and regulatory framework for the construction, operation and maintenance of facilities for generating hydrogen</li> <li>• encourage and maintain an appropriate level of competition for access to pastoral lands and state waters for renewable energy and hydrogen development</li> <li>• partner with Aboriginal people to ensure the regulatory framework delivers net economic, environmental and social benefits to communities and minimises cultural, spiritual and heritage impacts</li> </ul>	<p><i>Are the proposed objects considered suitable for the proposed regulatory and licencing framework under the Hydrogen and Renewable Energy Act?</i></p> <p><i>Are there any important matters that have not yet been addressed in the proposed objects?</i></p>	<p>The CEC considers that the following object:</p> <ul style="list-style-type: none"> <li>• 'support the achievement of: <ul style="list-style-type: none"> <li>• the targets in Part 2 of the Climate Change and Greenhouse Emissions Reduction Act 2007 (SA)</li> <li>• competitively priced and reliable renewable energy supply for South Australia</li> <li>• local employment and supply chain development through the South Australian Industry Participation Policy</li> <li>• economic development of a green hydrogen sector for South Australia, including exports</li> <li>• economic development of other strategically important net zero industries for South Australia'</li> </ul> </li> </ul> <p>should be one of the first objects of the Proposed Act, as this is the reason for the development of renewable energy and hydrogen projects in the state.</p> <p>We consider that '<b>net environmental benefit</b>' should encapsulate:</p> <ul style="list-style-type: none"> <li>• adhering to the EPBC Act and implementing management plans where necessary,</li> </ul>

Issue	Questions	CEC response
<ul style="list-style-type: none"> <li>• facilitate a net environmental benefit from activities licenced under the Act, including promoting, as appropriate, practices to eliminate waste and restore biodiversity</li> <li>• establish appropriate consultative processes involving all relevant government agencies and ministers in the establishment of suitable renewable energy areas and the licensing processes</li> <li>• establish appropriate processes and mechanisms to facilitate multiple and sequential land use outcomes (eg. Native Title, agriculture, mining and mineral exploration, tourism, fisheries, forestry etc).</li> <li>• protect the public from risks inherent in the regulated activities under the Act</li> <li>• support the achievement of:               <ul style="list-style-type: none"> <li>• the targets in Part 2 of the Climate Change and Greenhouse Emissions Reduction Act 2007 (SA)</li> <li>• competitively priced and reliable renewable energy supply for South Australia</li> <li>• local employment and supply chain development through the South Australian Industry Participation Policy</li> <li>• economic development of a green hydrogen sector for South Australia, including exports</li> <li>• economic development of other strategically important net zero industries for South Australia.</li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>• offsetting biodiversity where clearing is unavoidable,</li> <li>• minimising the impacts on highly productive agricultural land and</li> <li>• exploring opportunities to integrate agricultural production, and minimising waste from projects where possible.</li> </ul> <p>However, the “net environmental benefit” concept should also take a more wholistic view of the positive impact of the clean energy produced by the project when determining whether a project is a ‘net benefit’ to the environment, rather than simply localised impacts. Specifically, each renewable energy project is an essential contribution to replacing fossil fuel generation, serving to reduce greenhouse gases and minimise the impacts of climate change – including the widespread environmental degradation that climate change will bring.</p>

Issue	Questions	CEC response
<p><b>2. Renewable energy definition</b></p> <p>The proposed definition of renewable energy is: “energy derived from a source that is not depleted when used.”</p>	<p><i>Does the proposed definition adequately define renewable energy?</i></p>	<p>The Clean Energy Council is supportive of this definition.</p>
<p><b>3. Renewable Energy Priority Areas (REPAs)</b></p> <p>For the purpose of competitive tender licensing provisions in the proposed Act, REPAs are proposed to be jointly determined by:</p> <ul style="list-style-type: none"> <li>the Minister administering the Act</li> <li>the Minister administering the Pastoral Land Management and Conservation Act</li> <li>with a co-decision making role for the native titleholder.</li> </ul> <p><b>REPAs would relate to government-owned land</b>, focusing on pastoral land and state waters.</p> <p>Factors for consideration in identifying these areas will include:</p> <ul style="list-style-type: none"> <li>Native Title &amp; Aboriginal heritage</li> <li>current government policies and priorities pertaining to both existing land use over which the REPA is to be applied and also renewable energy and hydrogen economy aspirations</li> <li>wind and solar resource data</li> <li>existing and required infrastructure including electricity and gas transmission, roads, port, water and other relevant infrastructure</li> <li>conservation land uses and threatened species management</li> </ul>	<p><i>Is the concept of utilising REPAs to identify and prioritise the locations for competitive land access tendering process for the granting of relevant renewable energy licences considered suitable?</i></p> <p><i>What other factors should be considered in the identification of REPAs?</i></p> <p><i>Who should be consulted during the REPA identification process and at what points?</i></p>	<p><b>Ministerial determination</b></p> <p>We disagree that REPAs should be jointly determined by both Ministers as both Ministers have competing interests which may lead to delays in the process. We consider that REPAs should be determined by the Minister administering the Act, in consultation with (rather than jointly with) the Minister for Pastoral Land, and in the case of REPAs in state waters, the Minister responsible for state waters.</p> <p><b>REPAs</b></p> <p>The first point of call when determining where to investigate a potential REPA should be AEMO’s proposed renewable energy zones for South Australia and the AEMO’s anticipated needs for grid augmentation.</p> <p>The Government should also consult with industry about where they intend to develop projects, which can inform when and where REPAs will be determined. This could be done through an EOI process (similar to what the Tasmanian Government process for identifying and prioritising their Renewable Energy Zones).</p> <p>We recommend that the process for identifying and determining REPAs be as efficient as possible, and that multiple REPAs can be determined simultaneously.</p>

Issue	Questions	CEC response
<ul style="list-style-type: none"> <li>current economic land uses and rights to use land (including pastoral, mining, petroleum, agriculture, forestry, fisheries, maritime, tourism).</li> </ul>		<p>There are also opportunities to make REPAs more attractive for development, similar to what has been achieved in the Renewable Energy Zones in other states. For example, the state Government should guarantee associated infrastructure including transmission infrastructure.</p> <p>Proximity to national parks and areas of environmental significance should also be considered.</p>
<p><b>4. Renewable energy projects</b></p> <p>Renewable energy projects intended to be covered in the proposed Act will include energy generated from:</p> <ul style="list-style-type: none"> <li>wind</li> <li>solar</li> <li>wave energy</li> <li>biomass</li> <li>microalgae</li> <li>energy storage technologies</li> <li>all activities incidental to renewable energy generation, such as battery storage, associated facilities and infrastructure, other than those exempted as stipulated in the following section in this paper</li> <li>any other activity that generates renewable energy as defined by this Act.</li> </ul>	<p><i>What other forms of renewable energy should be covered in this Act</i></p>	<p>We suggest that the definition of renewable energy projects <b>should</b> align with the <i>Renewable Energy (Electricity) Act 2000</i> (Cth), Section 17 for consistency.</p> <p><b>Storage</b></p> <p>While battery storage is an essential complement to the transition to renewable energy, it is not technically a renewable energy project. There is already insufficient storage investment due to NEM regulations and pricing mechanisms, as identified in the SAPC’s report (Finding 7)<sup>2</sup>, and we consider that a licensing requirement could result in the development batteries in South Australia being even more uncompetitive.</p> <p>For this reason, the Government should consider approaches that ensure battery storage projects, which have much smaller local impacts, are not inappropriately delayed. This could take the form of either (a)</p>

<sup>2</sup> [Renewable-Energy-Competitiveness-Final-Report-Website-Version.pdf \(sapc.sa.gov.au\)](https://www.sapc.sa.gov.au/~/media/2022/06/2022-06-20-RE-Competitiveness-Final-Report-Website-Version.pdf)

Issue	Questions	CEC response
		<p>excluding large-scale batteries from the Act or (b) including provisions in the Act that allow for a faster and more straight-forward process in recognition of the lower impacts of these projects.</p>
<p><b>5. What is not covered</b></p> <p>The Hydrogen and Renewable Energy Act will not cover:</p> <ul style="list-style-type: none"> <li>• electricity generation licensing regime under the Electricity Act, which is administered by the Essential Services Commission of South Australia</li> <li>• renewable energy generation projects that may be exempted by the Minister administering the Act on a case by case basis. The Hydrogen and Renewable Energy Act is not intended to regulate smaller scale, localised renewable energy projects.</li> <li>• power transmission lines associated with the national and local electricity grids</li> <li>• power stations</li> <li>• transmission pipelines (already licenced under the Petroleum and Geothermal Energy Act), vehicle or any other form of transportation of hydrogen (including maritime vessels)</li> <li>• renewable energy from geothermal sources</li> <li>• underground geological storage of hydrogen – this will be licenced under the Petroleum and Geothermal Energy Act</li> </ul>	<p><i>What other renewable energy activities or resources should not be covered in this Act?</i></p> <p><i>Should a minimum threshold be applied to electricity generated for renewable energy projects that would require licensing under the proposed Hydrogen and Renewable Energy Act? If so, what nameplate capacity in mega-watts electric (MWe) is appropriate?</i></p> <p><i>Should any exemption for licensing under the Hydrogen and Renewable Energy Act be solely left to the discretion of the Minister administering the Act? If so, what should the Minister</i></p>	<p>We consider that 5MW is a reasonable threshold as it aligns with several other regulatory frameworks.</p> <p>We reiterate our strong position that the licensing scheme should not apply to freehold land.</p> <p>It's unclear on the Government's intentions, but we would be particularly concerned about any proposals for a licensing regime to be applied retrospectively to existing renewable energy generation assets. We would encourage the State Government to clarify this matter , as the proposal to apply licensing obligations on existing assets will create a great deal of uncertainty for operators and owners.</p>



Issue	Questions	CEC response
	<i>take into consideration when exercising such discretion?</i>	
<p><b>6. Hydrogen generation</b></p> <p>The following definition is proposed:</p> <p>'...generating hydrogen includes any operation or process by which hydrogen is generated, such as—</p> <ul style="list-style-type: none"> <li>a. Electrolysis; or</li> <li>b. Steam methane reformation;</li> </ul> <p><b>but does not include—</b></p> <ul style="list-style-type: none"> <li>c. Operations for the recovery of hydrogen from the ground, licenced under the Petroleum and Geothermal Energy Act 2000; or</li> <li>d. Operations or a process of a kind excluded from the ambit of this definition by the regulations to be established under the Hydrogen and Renewable Energy Act.</li> </ul> <p><b>Incidental activities</b></p> <p>Furthermore, a reference to a regulated activity for the generation of hydrogen includes all operations and activities reasonably necessary for, or incidental to, that activity such as (for example)—</p> <ul style="list-style-type: none"> <li>a. constructing, operating, maintaining, modifying or decommissioning a facility</li> <li>b. surface storage</li> <li>c. water treatment and disposal</li> </ul>	<i>Is this definition for hydrogen generation fit for purpose?</i>	The CEC is supportive of this definition.

Issue	Questions	CEC response
<p>d. processing and converting of hydrogen into any form for the explicit purpose of transportation and/or distribution (such as ammonia or liquid organic hydrogen carriers such as methylcyclohexane).</p>		
<p><b>7. Hydrogen generation activities excluded from Act</b></p> <p>It is proposed that the Act only include hydrogen generated for a prescribed commercial purpose and <b>not</b> hydrogen generated at the domestic level or as part of research or pilot testing equipment or new technologies.</p> <p>The following definition of a “prescribed commercial purpose” is proposed:</p> <p>Generating hydrogen for a prescribed commercial purpose means generating hydrogen—</p> <ul style="list-style-type: none"> <li>a. for the purposes of export; or</li> <li>b. for use in manufacturing; or</li> <li>c. for wholesale distribution; or</li> <li>d. as part of a process of generating electricity for sale or supply to customers; or</li> <li>e. for any other purpose prescribed by the regulations for the purposes of this definition,</li> </ul> <p><b>but does not include—</b></p> <ul style="list-style-type: none"> <li>f. generating hydrogen for the purpose of research or pilot testing; or</li> <li>g. generating hydrogen for a purpose excluded from the ambit of this definition by the regulations</li> </ul>	<p><i>Is this inclusion and exclusion from the ambit of the proposed Act for hydrogen generation still fit for purpose?</i></p>	<p>We agree that it is fit for purpose.</p>
<p><b>8. Renewable Energy Feasibility Licence</b></p>	<p><i>Should such a licensing process only apply to</i></p>	<p><b>Applicability to land tenures</b></p>

Issue	Questions	CEC response
<p>The primary purpose of a REFL is to provide access to relevant land to undertake approved testing and evaluation programs to establish an understanding of the relevant renewable energy resource.</p> <p>A REFL will be granted:</p> <ul style="list-style-type: none"> <li>• through a competitive acreage release process for REPAs</li> <li>• for a term determined by the Minister administering the Act, aimed to prevent land banking and ensure projects progress to the next stage</li> <li>• with a defined size of licence area</li> <li>• on the basis of work program and against published criteria: <ul style="list-style-type: none"> <li>○ maximising understanding of one or more renewable energy resource</li> <li>○ technical and financial capacity of applicant, including operational capability</li> <li>○ business model or plan of applicant and how it serves the state's renewable energy objectives</li> <li>○ Native Title, Aboriginal heritage and environmental matters</li> <li>○ local economic benefit and Aboriginal procurement through an Industry Participation Plan</li> <li>○ power supply agreements and offtake criteria, as applicable</li> </ul> </li> </ul>	<p><i>Renewable Energy Priority Areas (REPAs), or should there be a provision to allow for such licences to be granted elsewhere outside REPAs?</i></p> <p><i>Should the Hydrogen and Renewable Energy Act be more specific regarding the maximum size of REFL areas?</i></p> <p><i>Should a specific minimum or maximum term for REFLs be specified in the Hydrogen and Renewable Energy Act, and if so how long?</i></p> <p><i>Should such a term be subject to automatic renewal and/or extension and How should the licensee amend the conditions of the license based on technology and/or area?</i></p> <p><i>Are the proposed selection criteria sufficient for the purpose of ensuring a</i></p>	<p>The REFL process should only apply to Crown land (<b>not freehold land, see reasons above</b>), which is consistent with the Government's intention that REFLs will be granted for REPAs (which relate to government owned land).</p> <p>The CEC notes however, that there is a risk that by restricting the licensing process to REPAs, many projects could be delayed if the determination of REPAs themselves takes a long time, or if a REPA process commences but does not reach a final decision to create the area.</p> <p>We recommend that potential REPAs be identified at a very early stage, to indicate to developers where the REPA determination process will occur (and therefore subject to a competitive process).</p> <p>However, we suggest that there be a separate process to allow for developers to identify and apply for a REFL for an area that is not considered to be a potential REPA, but may still be appropriate for development. Competitive acreage releases should only apply within the REPAs.</p> <p><b>Licence terms</b></p> <p>Terms for REFLs should be decided on a case by case basis (particularly because the feasibility time differs for different technologies eg offshore wind and pumped hydro require longer feasibility times) and should include an option to renew if the proponent can demonstrate the reason for delay in applying for REIL.</p>

Issue	Questions	CEC response
<p>After a fixed period (nominally 5 years) a portion of REFL area will need to be surrendered and made available for re-release REFL can be extended or cancelled at the discretion of the Minister.</p>	<p><i>competitive allocation of REFLs is achieved?</i></p> <p><i>Are the above provisions for renewing and cancelling the REFLs appropriate for the purpose of ensuring that the natural renewable energy resource(s) within a relevant REPA will be effectively and efficiently developed?</i></p> <p><i>Is there support for a fit for purpose financial assurance requirement at the licensing stage?</i></p>	<p><b>Criteria</b></p> <p>The granting of a REFL should take into consideration the status of any negotiations and agreements that have already been made with Native Title groups and/or pastoralists, as significant time and work may have already been invested.</p> <p>'Power supply agreements and offtake criteria, as applicable' should not be included in the criteria for REFL as this would not apply until after feasibility studies are satisfied.</p> <p><b>Land surrender</b></p> <p>We consider that the requirement to surrender a portion of land should be at the discretion of the Minister and should take into consideration whether there have been reasons for delay in applying for a REIL, as well as whether the project is making adequate progress and still intends to use the full licence area. We note that the requirement to surrender land may result in proponents applying for REFLs that are larger than their scope of work to mitigate the risk of loss of land, which in turn reduces the number of projects that may be under active development. The surrender of land may also result in loss of opportunity to be used as they are not the right size/location for a different project. In other words, a small parcel of land between other projects may be impractical for any future project, thus reducing the energy production potential of the REPA.</p>

Issue	Questions	CEC response
		<p><b><i>Overlapping applications</i></b></p> <p>The Proposed Act should include a process for instances where applications for REFL areas overlap. In the first instance, the applicants should be given the opportunity to try and negotiate. Applicants should have some visibility over the extent of the overlap, to avoid the risk of an inefficient process whereby insufficient amendments are made by both applicants and / or excessive amendments lead to the creation of redundant corridors where there is no development at all and are insufficient to be utilised for other future purposes. There should also be a process for when a resolution cannot be reached and the merit criteria are equal – for example a financial offer can be made by the applicants. The Federal guidelines for assessing Feasibility Licences for offshore wind projects provides a reasonable framework for managing overlap in application areas. Transparent and ideally quantifiable merit criteria should be developed to support this process.</p>
<p><b>9. Renewable Energy Infrastructure Licence (REIL)</b></p> <p>The primary purpose of a REIL is to provide necessary land tenure to construct, operate, maintain and undertake all incidental activities necessary for generating renewable energy.</p> <p>Components of a REIL:</p> <ul style="list-style-type: none"> <li>intended for commercial scale renewable energy projects</li> </ul>	<p><i>Should the Hydrogen and Renewable Energy Act be more specific regarding the maximum size of REIL areas, or leave it to the Minister’s discretion on a case-by-case basis?</i></p> <p><i>Are the issues specified above, which the selection criteria must address, sufficient to ensure a</i></p>	<p>The maximum size of REIL areas should be decided on a case-by-case basis, and should be a function of the scale and nature of the project being proposed.</p> <p>Onshore wind and solar farms generally have expected lives of 25-30 years, whereas an offshore wind farm has a life span of around 40 years and hydro up to 100 years. Therefore, REIL terms should also be determined on a case-by-case basis based on the lifetime of the project,</p>

Issue	Questions	CEC response
<ul style="list-style-type: none"> <li>• automatic right for the holder of the REFL (above) over the same area to apply for a REIL subject to satisfying selection criteria</li> <li>• grant of REIL will be based on the pre-requisite REFL including technology, design and commercial feasibility</li> <li>• size of a REIL to be determined by the Minister</li> <li>• 30-year terms with renewal provision (to include construction, operations and decommissioning).</li> <li>• Ministerial power to revoke a licence</li> </ul>	<p><i>competitive allocation of REILs is achieved?</i></p> <p><i>Should a specific minimum term for REILs be stated in the Hydrogen and Renewable Energy Act, and if so, how long? Should such a term be subject to automatic renewal or extension after the term expires?</i></p> <p><i>Are the above provisions for renewing or extending and cancelling the REILs appropriate for ensuring that the renewable energy resource(s) within a relevant Renewable Energy Priority Area will be effectively and efficiently developed?</i></p>	<p>with additional years to accommodate construction and decommissioning time. An option to renew should also be included.</p>
<p><b>10. Hydrogen Generation Licence (HGL)</b></p> <p>A HGL will authorise the licensee to —</p>	<p><i>Should the maximum size of HGL area be greater than 5 km<sup>2</sup>, or leave it to the Minister's</i></p>	<p>The maximum size of a HGL area should be decided on a case-by-case basis.</p> <p>There should not be a minimum term assigned for HGL licence and it should be determined on a case-by-case basis.</p>

Issue	Questions	CEC response
<ul style="list-style-type: none"> <li>establish and operate a site, which must not exceed 5 km<sup>2</sup> in area, at a location specified in the licence for the purposes of generating hydrogen for a prescribed commercial purpose; and</li> <li>establish and operate facilities and systems associated with generating hydrogen for a prescribed commercial purpose; and</li> <li>undertake any other activities that may be associated with, relevant or incidental to, generating hydrogen for a prescribed commercial purpose</li> <li>A HGL will be granted for a term determined by the Minister who also has the power to extend or cancel a HGL.</li> <li>An HGL licensee will be required to acquire an interest in the land over which the HGL applies eg. an easement, land purchase or lease.</li> </ul>	<p><i>discretion on a case-by-case basis to determine the size?</i></p> <p><i>Should a minimum term be assigned to a HGL, or should it be left to the Minister's discretion as currently proposed?</i></p>	
<p><b>11. Other licences</b></p> <p><b>Associated Activity Licence (AAL)</b></p> <p>Licence to allow licensee to construct any facilities, any other infrastructure or undertake any activities which are related or incidental to the primary purpose of the above licence categories.</p> <p>Eg for a REIL, the construction, operation and maintenance of batteries to store the electricity should it not be possible to house such a facility within the REIL area.</p> <p><b>Research and demonstration licence (pre-feasibility)</b></p>	<p><i>Is there a requirement or support for an Associated Activity Licence for renewable energy or hydrogen generation?</i></p> <p><i>Is there a requirement or support for a Research and Demonstration Licence for renewable energy or hydrogen generation?</i></p>	<p>We support an AAL for Crown land, but not for freehold land.</p> <p>While we support an AAL, the planning approval should cover the activities in both the REIL/REFL and the AAL to avoid the need for a separate approval process at a later stage.</p>

Issue	Questions	CEC response
<p>An additional licence type is proposed for research and development of renewable energy and hydrogen technologies, which would:</p> <ul style="list-style-type: none"> <li>authorise research, testing and data collection for renewable energy technologies</li> <li>be granted through direct application</li> <li>be granted for a fixed term (&amp; possible extension)</li> <li>be granted anywhere within the state and not limited to Renewable Energy Priority Areas and may overlap existing licences</li> </ul>		<p>We do not support a research and demonstration licence as it could result in excessive red tape, and make innovation harder. These types of projects should be allowed to proceed to planning approval without the need for an initial licence.</p>
<p><b>12. Environmental impact assessment process (Stage 2)</b></p> <p>The licensee must then undertake an environmental and social impact assessment of its proposed activities under the relevant granted licence(s).</p> <p>Under the new regulatory framework, it is proposed the planning assessment and consent process under the Planning, Development and Infrastructure Act will continue to apply and it is proposed that the output of that process will feed into the Hydrogen and Renewable Energy Act approval and compliance requirements.</p>	<p><i>Are there any comments regarding the proposal to continue with the current environmental impact assessment process called for under the planning consent provisions of the Planning, Development and Infrastructure Act?</i></p> <p><i>Are there circumstances where a different approach to environment impact assessment is required, for example precinct development? What could this approach look like</i></p>	<p>We are supportive of continuing with the current environmental impact assessment process.</p>



Issue	Questions	CEC response
<p><b>13. On-ground activity approvals (Stage 3)</b></p> <p>The final approval stage requires a licensee to apply to the Minister administering the Act for approval to commence on-ground activities.</p> <p>The licensee must demonstrate how the proposed activities will be deployed that the planning consent conditions will be achieved and how it will engage and address any landholder concerns.</p>	<p><i>Are there any comments regarding proposed activity notification process?</i></p>	<p>This section appears to unnecessary and duplicative of Stage 2. The development authorisation process for infrastructure under the <i>Planning, Development and Infrastructure Act 2016</i> already incorporates provisions for the preparation of construction environmental management plans, operational environmental management plans and final layouts and specifications and approval of these plans prior to commencement of works. We suggest that Stage 3 is removed to avoid unnecessary duplication.</p>
<p><b>14. Land within a REPA</b></p> <p>There will continue to be requirements for an applicant for a licence to enter into access agreements with the pastoral lessee, and the holder of a resources tenement. Under the framework, an owner of the land will be defined as any person who holds an interest, estate, licence, lease or tenement over the land, including Native Title.</p> <p>All owners of land will have rights under the Hydrogen and Renewable Energy Act including:</p> <ul style="list-style-type: none"> <li>• notification before entry to land</li> <li>• dispute resolution processes, with Ministerial powers for mediation and resolution, or for passing to Warden’s Court or Environment, Resources and Development Court</li> <li>• compensation for deprivation, impairment, damage or consequential loss of use of the land.</li> </ul>	<p><i>Are there any changes or inclusions to the above provisions for entry to land within a REPA and Hydrogen and Renewable Energy Act landowner rights?</i></p>	

Issue	Questions	CEC response
<p><b>15. Freehold land</b></p> <p>There will be no changes to the rights held by owners of freehold land. Owners of freehold land will continue to determine access to the use of their land at their discretion, and any competition will be managed by the landowner and not the state.</p> <p>The Act will require a proponent who applies for a licence (REFL, REIL and HGL) over freehold land to acquire an interest in that land, either by purchasing the land or by access agreement with the freehold landowner.</p>	<p><i>Is it agreed that rights of freehold landowners are preserved for access to their land as above?</i></p> <p><i>How could traditional owners benefit from development on freehold land?</i></p>	<p>We agree.</p> <p>There are several ways that local First Nations communities can benefit from renewable energy projects, including employment, procurement by the project proponent of goods/services from First Nations business, and community benefit sharing arrangements. The Clean Energy Council is working on a guide for engagement, participation and benefit sharing for local First Nations communities.</p>
<p><b>16. Native Title</b></p> <p>Court determinations have confirmed the existence of Native Title in relation to most pastoral land in South Australia.</p> <p>It is understood that a Native Title agreement in the form of an Indigenous Land Use Agreement between the Native Title party, government and the company will apply.</p>		<p>We understand that this would only apply in areas where there is Native Title land (ie not freehold land).</p> <p>The Proposed Act should allow for multi-participant ILUAs, as there may be multiple projects across a single Native Title claim, making the ILUA process quite a burden for Traditional Owners to negotiate through with multiple proponents at the same time.</p>
<p><b>17. Data reporting</b></p> <p><b>Renewable energy</b></p> <p>For a Renewable Energy Feasibility Licence, it is proposed that:</p> <ul style="list-style-type: none"> <li>a licensee will be required to submit monthly reports to the state government of daily energy generation (such as mega-watt-hours, MWhr)</li> </ul>	<p><i>Are the data types, data levels and submission timeframes suitable?</i></p> <p><i>Are there any further data that should be reported to the state government?</i></p>	<p>Reiterating our position that projects on freehold land should not be subject to licensing, we consider that it would be inappropriate for projects on freehold land to be subject to data reporting as the state has no right to benefit from the data collected on that land.</p> <p>The issues paper notes that the justification for the collection of data is so that resource data can be shared if a project does not go ahead. Therefore, we submit that the proposed Act should <b>reflect that projects</b></p>

Issue	Questions	CEC response
<ul style="list-style-type: none"> <li>For wind farms, it is proposed to provide generation data and wind speed data for each wind turbine</li> <li>the state government will hold this data confidentially for six months before public release.</li> </ul> <p><b>Hydrogen</b></p> <p>It is proposed that a licensee who generates hydrogen be required to submit monthly reports to the state government of daily hydrogen generation volumes (such as kilograms). The state government will hold this data confidentially for six months before public release.</p> <p><b>Other technical reports</b></p> <p>It is proposed that a licensee under the Act who prepares <b>any other technical report in connection with an activity conducted under the licence furnish a copy of that report to the state government within two months.</b> Non-interpretive analytical data and field survey data will be released publicly after a confidentiality period of two years.</p>	<p><i>Is a six-month confidentiality period before public release of reported data suitable?</i></p>	<p><b>on Crown land should only be required to release data if the project does not go ahead</b>, in alignment with the Government’s justification for this provision.</p> <p>Furthermore, the justification of avoiding ‘wasting funds’ where a project does not progress does not support the proposed obligation for monthly generational and wind speed data reports. It is unclear why the state requires this data, or how it would benefit from such an administratively burdensome obligation for proponents.</p> <p>We consider that, where a project is constructed and operated, it may be appropriate for proponents to provide their data at the end of life of the project once it is decommissioned.</p> <p>Appropriate market-based compensation should be provided to proponents for the release of data, so that projects are not penalised for operating on Crown land. Furthermore, we suggest that any reporting requirements should be aligned to the existing AEMO reporting requirements that to avoid collating two sets of data with different parameters and reporting periods.</p> <p>We strongly disagree that hydrogen projects be required to submit monthly reports for public release. We query the basis on which the state should have access to this data.</p>

Issue	Questions	CEC response
		<p>The requirement for access to technical reports is too broad. Businesses should not be required to share commercial in confidence information about running their operation.</p>
<p><b>18. Fees, charges and benefit sharing</b></p> <p>Licencees will be required to pay appropriate licence fees and charges to recover the cost of services including services from co-regulatory agencies.</p> <p>Licence fees will be required annually and for individual transactions. Amounts will be prescribed in regulations and consulted on.</p> <p><b>Rent</b></p> <p>An annual rent will be payable to the Crown for renewable generation licences over government-owned land and will be determined by the area of the land and in accordance with the Valuation of Land Act 1971.</p> <p>From the annual rent, it is proposed that payments will be made to the Pastoral Land Management Fund.</p> <p>The government will work with the Office of the Valuer-General to commission scenario modelling on the associated liabilities arising from the application of land-use codes.</p> <p><b>Benefit sharing</b></p>	<p><i>Is there any concern regarding proposed cost recovery for government service via licence fees?</i></p> <p><i>Is there any concern regarding proposed rent for renewable energy infrastructure licences on government-owned land?</i></p> <p><i>What are the key principles that should underpin the development of a mechanism that equitably shares the benefit of the value associated with access to natural resources within a particular area of the state?</i></p>	<p>Fees should be reasonable and meet the purposes of cost recovery for compliance monitoring by the Government only.</p> <p>We agree with the rent provision.</p> <p>We note that developers are already required to pay an ESCOSA electricity generation operations licence fee annually and recommend that this additional cost is taken into account when determining appropriate rent and licence fees to ensure that cost competitiveness is not impacted. We suggest that any rental payments should be nominal to retain South Australia's competitive advantage against other states and territories.</p> <p>Although benefit sharing may be a criteria, the type of benefit sharing should not be prescribed but should be tailored to the community that it</p>

Issue	Questions	CEC response
<p>a mechanism will be developed to share the future benefit of the value associated with access to natural resources within a particular area of the state.</p> <p>The mechanism will only be implemented once the industry reaches an appropriate stage of maturity where it is capable of generating a sustainable income stream.</p> <p>The mechanism will be prescribed, subject to consultation, in associated regulations.</p>	<p><i>When should the mechanism be introduced and what represents an appropriate stage of industry maturity?</i></p>	<p>is benefiting. There are several types of benefit sharing, including community enhancement funds, neighbour agreements, scholarships and more.</p>
<p><b>19. General provisions of the Act</b></p> <p>As relevant, it is proposed that all existing general provisions for exploration and production licences as under the <b>Mining and Petroleum and Geothermal Energy Acts</b> will also apply to these licences, including:</p> <ul style="list-style-type: none"> <li>• data and reporting requirements, including annual compliance reports, incident reports</li> <li>• landowner rights to compensation</li> <li>• landowner notifications and rights to object</li> <li>• bond and security payment</li> <li>• requirement for licensees to have adequate operational, technical and financial resources</li> <li>• Ministerial approval requirements for registrable dealings under the various licences</li> <li>• in the event of a licensee going bankrupt, the Crown has first right to any debt recovery</li> <li>• consolidating powers of the Minister for multiple licences</li> </ul>	<p><i>Are there any other general provisions that should be included?</i></p>	<p><b>Decommissioning, rehabilitation and financial security</b></p> <p>The CEC is supportive of a decommissioning scheme for renewable energy infrastructure to provide peace of mind and certainty to all stakeholders that all relevant infrastructure will be removed at the end of a project's life.</p> <p>We note however that in some cases, the removal of certain aspects of the infrastructure, including the foundations of wind turbines, the cabling onshore or the inert, sub-sea transmission cables for offshore wind could present a higher environmental risk than leaving them in-situ.</p> <p>The financial security scheme must be carefully designed to ensure that it does not place an unreasonable and unmanageable upfront financial burden on new projects, which will act as a significant disincentive to applying for a licence and potentially increase the cost of supplying electricity. The Government can avoid this scenario by aligning decommissioning payments with a project's operational earnings.</p>

Issue	Questions	CEC response
<ul style="list-style-type: none"> <li>• general requirements for operations (such as fitness-for-purpose assessments)</li> <li>• Minister’s power to carry out work</li> <li>• surrender, suspension or cancellation of licence</li> <li>• extension of timelines for the submission of data or activity notifications and reporting requirements etc.</li> <li>• extension of term or reinstatement of licence</li> <li>• notice of grant etc of licence</li> <li>• interference with regulated activities</li> <li>• safety net provisions</li> </ul>		<p>One possible model would be a financial provisioning requirement that ratchets up slowly over time, featuring low payments in the early years of operation (when debt repayments are highest), increasing during the asset’s operation such that the full cost of decommissioning would be set aside by the later years of the asset’s life. This approach would smooth the total cost over the project’s life and allow the provisioning to be funded by cash-flow from the asset rather than being an upfront lump-sum equity contribution.</p> <p>We look forward to working with the Department on the detail as it considers the financial security requirements.</p> <p><b>Office of the Technical Regulator</b></p> <p>It is currently unclear how the obligations to the Office of the Technical Regulator apply under the proposed Act. We consider that this proposed Act is an opportunity to remove these obligations to avoid duplication with AEMO’s System Strength Impact Assessment Guidelines.</p>