

Hydrogen and Renewable Energy Act

Facts for pastoral lease holders

The South Australian Government is making a once-in-a-generation investment to leverage our world leading renewable wind and solar resources and develop a renewable energy and hydrogen generation industry.

We are proposing fit-for-purpose legislation to govern and sustainably grow this pivotal sector, delivering benefits for all South Australians.

A Hydrogen and Renewable Energy Act (HRE Act) is proposed to licence and regulate the entire lifecycle of renewable energy projects and the generation of hydrogen, working in partnership with Native Title groups as coexisting landowners, as well as other Traditional Owners.

After incorporating and considering feedback gathered from the previous consultation on our Issues Paper, a Bill has been drafted and we are once again seeking your input.

This information sheet describes key issues of interest to pastoral lease holders (lessees). A detailed Guide to the Bill is also available.

What we heard

Feedback received from lessees was supportive of the introduction of an orderly, competitive process for determining access to pastoral land. Lessees reported that the current system of liaising with multiple developers is costly and time intensive, and they welcomed a framework that streamlined the process.

Pastoral lease holders indicated they would like to have prescribed consultation processes in place when determining release areas and granting of licences, to ensure impacts to pastoral activities and their views as primary users of the land are considered. Further, lessees have sought to ensure their existing rights are not compromised through the development of large-scale renewable energy and hydrogen projects, and the land is protected throughout the process.

Lessees also advised they require quality information and support to underpin their participation in any new framework and to ensure the protection of their rights.

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Government of South Australia
Department for Energy and Mining

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How do these changes affect me?

The introduction of an orderly, government-led process for renewable energy and hydrogen development will ensure that all South Australians can share in the benefits of the multi-billion-dollar transformation. A fit for purpose framework is an opportunity to improve outcomes for landholders, Aboriginal and local communities, the environment, and the entire state.

The *Pastoral Land Management and Conservation Act 1989* (the Pastoral Act) is proposed to no longer regulate large scale renewable energy development on pastoral land. Amendments are proposed to the Pastoral Act to remove existing licensing provisions for wind farms, and to support the implementation of the HRE Act.

The HRE Act will provide the framework for licensing renewable energy and hydrogen projects on pastoral land, and for interactions between a licensee and a pastoral lease holder relating to land access.

Multiple land use

The HRE Bill maintains the government's commitment to multiple land use, continuing to recognise all other overlapping legal rights over the same land, including pastoral leases.

Comparison of frameworks

The HRE Bill proposes to provide lessees with greater protection and security by improving the land access, agreement making, dispute resolution and compensation framework.

	Pastoral Act	HRE Bill
Strategic identification of suitable pastoral land that can support renewable energy	No	Yes. The release area process will ensure that only pastoral land suitable for hosting renewable energy will be developed.
Competitive assessment of applicants against public selection criteria	No	Yes. The HRE Bill proposes to provide public criteria to competitively assess applications against, ensuring the state only hosts the best proponents and projects.
When access agreement required	Before grant of licence.	Before conducting operations .
Content of access agreement	Access to the land or infrastructure on the land by the pastoral lessee / tenement holder.	Access to the licence area by the parties AND compensation payable by the licensee.
Good faith negotiations	Yes	Yes ERD Court may refuse to make determination if no reasonable attempt to negotiate.
Ministerial mediation	Yes	Yes
ERD Court's power to determine agreement	Determination in relation to access to the land by the pastoral lessee / tenement holder.	Determination in relation to access to the licence area by the parties AND compensation payable by the licensee.

	Pastoral Act	HRE Bill
Express provision for variation	No	Yes
Condition of licence to comply with access agreement	No	To be considered
Disputes about compliance with access agreement brought to ERD Court	Yes	Yes
Compensation payable to pastoral lessee / tenement holder	No. Equitable amount paid from Fund to pastoral lessee, but no entitlement to other payment or compensation from licensee. No provision made for compensation or other payment to tenement holder.	Yes. Access agreement to deal with compensation payable by licensee.

Role of the Minister administering the Pastoral Act

The HRE Bill proposes the Minister administering the Pastoral Act will retain specific roles in key decision-making processes:

- Before declaring any release area on pastoral land, the Minister must consult and seek joint approval of the Minister for the Pastoral Act
- Before granting a Renewable Energy Feasibility Licence over pastoral land, the Minister must consult the Minister for the Pastoral Act
- Before granting a Renewable Energy Infrastructure Licence over pastoral land, the Minister must consult and seek joint approval of the Minister for the Pastoral Act.

Release area process

Release 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, such as pastoral lessees) and impacted communities. This process will consider existing land uses, as well as environmental, heritage and cultural sensitivities.

It is intended that the regulations will prescribe that the Minister must, before declaring a release area, give public notice of such intentions and consult with relevant stakeholders. This will include impacted pastoral lessees and will provide an opportunity for early communication of key issues. This consultation will also help inform the criteria prescribed for the call for tenders within the release area, and the terms and conditions that will be applied to licences in the release area.

Land access, agreement making and compensation

Before undertaking authorised activities and operations, a licensee must enter into a land access agreement with any pastoral lessee. The draft Bill includes details about:

- the matters an access agreement must address, including access to land protocols and compensation payable provisions
- compensation for economic loss, hardship or inconvenience suffered by them because of operations undertaken by a licensee; and
- dispute resolution mechanisms through the Environment, Resources and Development Court.

Compliance, enforcement and rehabilitation

The draft Bill includes fit-for-purpose compliance and enforcement powers to support the effective regulation of projects throughout their operation, as well as new financial assurance requirements to ensure land is rehabilitated and returned to pre-existing conditions at the close of a project.

Pastoral Land Management Fund

An amount or percentage of rent payable may be paid into the Pastoral Land Management Fund, with amounts to be determined together with the Minister for the Pastoral Act, to ensure ongoing conservation and improvement of the pastoral land.

Information and support

The Department would like to collaborate with the pastoral sector regarding the information and support required for pastoral lessees to participate effectively in the processes contained within the draft Bill. This includes pursuing an expansion of the Landholder Information Service to include the Hydrogen and Renewable Energy Act.

How can I provide feedback?

You can submit your survey response to the government's YourSAY page at www.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.

Acknowledgement of Country

As guests on Aboriginal land, the Department for Energy and Mining (DEM) acknowledges everything this department does impacts on Aboriginal country, the sea, the sky, its people, and the spiritual and cultural connections 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.



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