



Hydrogen and Renewable Energy Act

Australian Hydrogen Council

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Submission to the Department of Energy and Mining (SA)

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Introduction

The Australian Hydrogen Council (AHC) is the peak body for the hydrogen industry, with over 100 members from across the hydrogen value chain. Our members are at the forefront of Australia's hydrogen industry, developing the technology, skills and partnerships necessary to ensure that hydrogen plays a meaningful role in decarbonising Australian industry.

AHC welcomes the development of legislation to create 'one window into government' for the state's hydrogen developers. Aligning approvals and land use legislation will help South Australia to realise its hydrogen ambitions and provide certainty for investors seeking to develop hydrogen and/or renewable energy opportunities in the state.

We note that the new legislation will leverage approvals processes currently used in South Australia which have served industry, and community well for some time. Using these existing processes will ensure that robust consultative frameworks are developed to enable hydrogen to gain and maintain social license in South Australia.

AHC makes the following comments with respect to the issues for discussion outlined in the Issues Paper.

Issue 1 – Objects of the Act

AHC considers that the proposed objects of the Act are suitable. We believe that low emissions hydrogen has a role to play in assisting Australia to reduce greenhouse emissions. However, in order to fulfill this role, industry, government and the community must come together to enable a hydrogen industry to establish itself for the benefit of all. The proposed objects note the key considerations of these stakeholders and should establish a pathway to a sustainable hydrogen sector.

In order to best achieve the stated objectives, the Act should avoid imposing unnecessary obligations on industry. These include amending elements of the regulatory framework which are currently fit for purpose, duplicating regulatory requirements and adding costs or uncertainty where it does not currently exist. Suggestions relating to these issues are contained in responses to issues below.

Issue 2 – Renewable energy

In the interest of national harmonisation, AHC consider that the definition of renewable energy could be aligned with the Federal *Renewable Energy (Electricity) Act 2000* definition of *eligible renewable energy sources*. The extent to which this is a matter of importance will however be evident once draft legislation is released for consultation and AHC will provide further views at this time.

Many proponents are seeking to establish hydrogen production in a number of Australian jurisdictions. Harmonising definitions and processes across jurisdictions will hasten the pathway toward the industry becoming commercially sustainable and sharing economic as well as environmental benefits with all Australians.

We note that jurisdictions are undertaking work with regard to the development of Renewable Energy Zones and urge South Australia to engage in these processes to further streamline approval processes.

Issue 3 – Renewable Energy Priority Areas (REPA)

AHC considers that the use of REPAs to identify and prioritise locations for competitive land access tendering provides a mechanism to maximise the mutual benefits of land access allocations. This will ensure that industry and the community share the positive outcomes of any development.

We note that mechanisms should exist to grant REFLs over pastoral land outside REPAs. Member experience suggests that pastoralists and native title holders in these areas are able to negotiate competitive terms and a further state run competitive process is not required in these instances.

Issue 4 – Renewable energy projects

In line with our comment in relation to issue 2, AHC considers that there may be benefit in aligning the scope of the Act with the definition of *eligible renewable energy sources* in S17 of the Federal *Renewable Energy (Electricity) Act 2000*. We note that this would likely require amendment to the *Petroleum and Geothermal Energy Act* which currently covers geothermal-aquifers.

Issue 5 - What is not covered

Noting previous comments relating to nationally consistent definitions of renewable energy, AHC generally agree with the list of exclusions from the Act.

Issue 6 – Hydrogen generation

AHC agrees with the proposed definition to the extent that it does not exclude other potentially viable forms of hydrogen production technology.

Issue 7 - Hydrogen generation activities excluded from the Act

The approach to excluding hydrogen generation activities from the Act appears to be a pragmatic approach to ensuring that testing and domestic use does not need to be licensed.

Issue 8 – Renewable Energy Feasibility Licence (REFL)

AHC considers that the process used to grant REFL provides sufficient certainty for proponents of potential hydrogen projects while maintaining a degree of government control to prevent land banking. We note that an REFL can be extended at the Minister's discretion and consider that the development of criteria to guide Ministerial decision making could be specified in regulation to add greater transparency to the process.

It is not clear from the Issues Paper how the release of REPA land will be conducted. AHC considers that the competitive processes to acquire a REFL should be concurrent rather than staged to ensure that proponents who are seeking a REFL on a particular piece of REPA land will have certainty that they will not have to wait until the REPA is released and can engage in planning and preliminary work in a timely manner.

Issue 9 – Renewable Energy Infrastructure Licence (REIL)

AHC supports the approach to REILs as outlined in the issues paper.

Issue 10 – Hydrogen Generation Licence (HGL)

AHC supports the approach to HGLs as outlined in the issues paper however we consider that the Minister should have discretion to issue an HGL with an area of greater than 5km² upon application by the applicant.

Issue 11 – Associated Activity Licence (AAL)/Research and Demonstration Licence

AHC considers that AALs and Research and Demonstration Licences may be required to support the broader regulatory approach to approvals outlined in the *Hydrogen and Renewable Energy Act*.

Issue 12 – Environmental impact assessment process (Stage 2)

AHC supports the proposal to align environmental impact assessment requirements with existing processes and does not consider that a hydrogen specific approach is required.

Issue 13 – On-ground activity approvals (Stage 3)

AHC considers that gaining social licence from the community is every bit as crucial as a licence gained under a legislative framework. Consultation with stakeholders should be thorough and meaningful and consider impacts on stakeholders outside the immediate REPA who may be impacted by the conduct of licensed activities. Such groups could include residents and businesses who may be impacted by construction activities (eg, increased traffic volumes on local roads) or parties who use adjoining land for recreational purposes.

Issue 14 – Land within a Renewable Energy Priority Area (REPA)

AHC supports the approach outlined in the Issues Paper.

Issue 15 – Freehold land

AHC supports maintaining current arrangements with respect to freehold land and believe that the provisions of the Hydrogen and Renewable Energy Act should not apply.

Issue 16 – Native Title

AHC acknowledges the stewardship of First Nations people over Australian land encourages their participation in Australia’s transition to net zero emissions. We would be pleased to work with traditional owners and the South Australian government if there is a role for us to do so.

Issue 17 – Data reporting

AHC considers that sharing information is vital in order to establish a clean hydrogen industry. We are concerned however, that the approach to data reporting outlined in the Issues paper may disincentivise investment.

We appreciate that the free provision of information will facilitate the development of the industry by reducing costs for subsequent proponents, however this approach does not recognise the costs borne by the initial proponent in collecting the relevant data.

We consider that any data provided to government should be in respect to State owned land only; not publicly released until either a decision not to proceed with a development has been made, or the facility has been decommissioned; and be aligned with existing data provision requirements, eg, AEMO or where data sharing is a condition of any grant funding provided.

Issue 18 – Fees, charges and benefit sharing

AHC is keen to see a thriving clean hydrogen industry establish itself in Australia. As outlined in the Issues Paper, concessions may be required until such time as the industry is self-sustaining. We consider that the imposition of a benefit sharing mechanism once the industry is established recognises pre-commercial nature of the hydrogen industry but charts a course towards a future where clean hydrogen production can benefit the broader community.

Similarly, the imposition of rent levied at market value prior to the industry reaching commercial sustainability will act as a disincentive to investment. This may see proponents seek to locate hydrogen production facilities outside South Australia. We consider that rental payments under REILs or HGLs should be a nominal amount to allow the industry to develop.

Conclusion

AHC supports the development of legislation to provide for an all-inclusive approach to land use and planning approvals for the purposes of hydrogen and renewable energy generation. The proposed approach seeks to leverage existing processes where possible to minimise disruption to developers, and has identified and addressed issues with the current regulatory framework to reduce barriers to investment.

We note that the process is intended to provide potential proponents with certainty around approvals and consequently we consider that it should be made clear that the provisions of the Act will not be made retrospective. The South Australian Government can provide further certainty by outlining transitional provisions to bridge the gap between the current arrangements and those of

the Act. AHC suggests that these provisions should include an assurance that the grant of any licence (including the competitive allocation of REFLs) under the Hydrogen and Renewable Energy Act will take into account agreements that have already been executed. This includes existing agreements with pastoral lessees and relevant parties relating to Native Title. We further consider that REFLs granted on a non-competitive basis due to existing exclusivity agreements, revert to competitive tender when the current agreements cease.

As an additional transitional arrangements we recommend that the State continue to grant access to proponents under S49J of the *Pastoral Land Management and Conservation Act 1989*, where agreements are in place with pastoralists. This will allow for initial investigations to occur in line with current processes. S49J licences can be converted to REFLs at the commencement of the new Act.

Crucially, the processes to be governed by the Act ensure that all community stakeholders are appropriately engaged in decision making about land which belongs to all South Australians.

We look forward to continuing to engage on this matter.

If you wish to discuss any element of this submission in further detail, please contact Joe Kremzer, General Manager, Policy on 0413 266 081 or email jkremzer@h2council.com.au.