

26 June 2023

Hon Tom Koutsantonis MP
Minister for Infrastructure and Transport, Minister for Energy and Mining
Lodged by email to: hre@sa.gov.au

Dear Mr Tom Koutsantonis,

Response to Hydrogen and Renewable Energy Act - Draft Bill

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the South Australian Department of Energy and Mining's *Hydrogen and Renewable Energy Act - Draft Bill* (Draft Bill) published on 11 May 2023.

CEIG represents domestic and global renewable energy developers and investors, with more than 16GW of installed renewable energy capacity across more than 76 power stations and a combined portfolio value of around \$38 billion. CEIG members' project pipeline is estimated to be more than 46GW across Australia. CEIG strongly advocates for an efficient transition to a clean energy system from the perspective of the stakeholders who will provide the low-cost capital needed to achieve it.

Key Points

- CEIG commends the South Australian Government on its progress to transition the state's energy system to renewable energy.
- CEIG welcomes the focus of the Draft Bill to unlock billions of dollars in investment and welcomes in principle the intent for a "one window to government".
- However, CEIG is concerned that the intention to provide a 'streamlined' framework may result in energy transition delays through the implementation of new licensing steps, fees and uncertainty creating additional hurdles for project finance and may lead to higher costs of capital due to the uncertainty
- CEIG is concerned that the Draft Bill may result in lengthy processes that will reduce SA's attractiveness compared with other jurisdictions, slowing down investment in the State at a time when we need to accelerate the transition.
- CEIG requires greater clarity on the current unclear and uncapped licence fees and would like to see additional measures in place to safeguard the renewable energy sector from unilateral decisions by the Minister to cancel licenses.
- Furthermore, to reduce the time and significant resources for First Nations people to go through the ILUA process before project proponents can begin feasibility studies, CEIG is proposing that there may be a simpler, more efficient, agreement for access to do a feasibility assessment without the need for a detailed ILUA upfront.

- CEIG is seeking clarity on licences for projects in development and those that are operational as the Draft Bill has the potential to create new risks for project proponents including sovereign risk if existing projects are shut down. CEIG is proposing that current projects should bypass the feasibility license or merely require nominal approval, and further suggests that licenses for operational projects could either be discarded or transitioned to a simpler approval.

General Comments

CEIG commends the South Australian Government on its progress to transition the state's energy system to renewable energy.

CEIG welcomes the focus of the Draft Bill 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.”

CEIG welcomes in principle the intent for a “one window to government” legislative framework as it can be useful to provide a central service point for proponents to navigate the various regulatory licencing and approval processes. However, CEIG notes that it is unclear whether this is a problem that needs to be addressed and may duplicate processes that are already in place. For example;

- Freehold landowner protection: The Hydrogen and Renewable Energy Act Issues paper highlights that the land tenure processes, including on freehold land, are functioning well.
- Environment: Environmental impacts are managed via various pieces of legislation at the State level (including the *Native Vegetation Act 1991* which requires a ‘Significant Environmental Benefit’ for any vegetation clearance) and at the Commonwealth level via the *Environment Protection Biodiversity Act 1999*;
- Native title and engagement with Traditional Owner groups: Aboriginal heritage impacts are covered by the *Aboriginal Heritage Act 1988*.

Furthermore, CEIG recognises the importance of getting social licence right to accelerate the energy transition and acknowledges that the Draft Bill seeks to:

“ensure that any environmental, economic, public safety and social and cultural impacts associated with such developments are effectively addressed in line with Environmental, Social and Governance requirements”.

However, CEIG is concerned that the Draft Bill may result in lengthy processes that will reduce SA's attractiveness compared with other jurisdictions, slowing down investment in the State at a time when we need to accelerate the transition.

In addition, requiring data collected by project proponents to be provided to the State and disclosed in the event that the project does not proceed to the REIL phase, combined with the Minister's complete discretion in relation to transfer of licences, would essentially mean

a project holds little to no residual value to the developer should they wish not to proceed with the project. This increases the overall risk profile for anyone investing significantly in early-stage development in the state. This is appropriate on Crown land however, it remains entirely inappropriate on freehold land and impacts the attractiveness of investing in South Australia.

The remainder of our submission provides detail into why CEIG believes the proposed legislation (including the implementation of licence fees and the ability for the Minister to cancel a licence unilaterally) will have a negative impact for project finance and subsequently the investment of renewable energy in SA.

Reducing Energy Transition Delays

Despite the intention of the Draft Bill to provide a 'streamlined' framework, CEIG is concerned that the addition of new licensing steps on freehold land creates a lengthy process which will slow down renewable energy investment across the State and that the addition of a feasibility licence is a time-consuming process which appears to have little benefit for projects on freehold land. The process of applying for a licence, public display, review and response to submissions, and eventual decision by the Minister are all new steps during which no development activity can be progressed on the site.

Under the Draft Bill, CEIG notes that before any renewable energy feasibility licence on native title land is granted, an indigenous land use agreement (ILUA) must be held. It may take several years and significant resources for First Nations people to go through the ILUA process before project proponents can begin feasibility studies, which may find that the site is not appropriate. CEIG is proposing that there may be a simpler, more efficient, agreement for access to do a feasibility assessment without the need for a detailed ILUA upfront.

Furthermore, CEIG is concerned with what the Draft Bill means for operational projects or those currently in development. The Draft Bill provides little information on transition arrangements for projects currently in the development process, with development approval for example. CEIG proposes that current projects should bypass the feasibility licence as they have progressed beyond that stage or merely require nominal approval. For operational projects, CEIG is concerned that licenses may not be granted, if this were to happen there is a risk that projects may be shut down. To reduce the serious sovereign risk issue that this presents, CEIG is proposing for licenses for operating projects could be discarded or transitioned to a simpler approval with no additional obligations imposed for the licence.

Licence Fees and Bonds

CEIG is concerned that the Draft Bill provides no details as to how the licence fees will be determined which presents a challenge for the financeability of projects in South Australia and may lead to higher costs of capital due to the uncertainty. Furthermore, CEIG finds the concept of capturing a 'royalty fee' from a renewable resource such as wind and solar unusual, given that these are not finite resource.

CEIG notes that the introduction of a new license fee, as highlighted in the Table 2 of the Regulatory Impact Statement (RIS) for the Hydrogen and Renewable Energy Act, represents an unclear and uncapped increase in operational costs which presents increased risks and uncertainty to projects, and as such may impact their financeability.

The introduction of a new licence fee, which has no precedent in Australia, introduces additional complexities and uncertainties for project proponents in South Australia and may reduce the attractiveness of the State over other jurisdictions.

Furthermore, the introduction of a bond at the beginning of a project presents project finance risks whereby financiers will likely treat these bonds as non-recoverable, meaning they will become a deadweight on a project. Renewable projects have a 30-year warranted lifespan and extremely low operating costs, making them very unlikely to be removed before the end of their project life.

Although there is no mention of consumers being faced licence fees in the RIS, it can be expected that generators will recoup their costs by passing these costs on to consumers through higher wholesale prices. This could increase wholesale electricity prices in SA, further harming the competitiveness of the State over other jurisdictions.

CEIG requires greater clarity into the details of any licence fees imposed and as such is calling for clarification on:

- How licence fees are going to be determined and what are the limits of the fees?
- How will a project have certainty over ongoing costs at the time of investment?
- How will the scheme be applied retrospectively (operational, under construction and with development approval)?

Licence Cancellation

CEIG is concerned that the Minister could cancel a licence unilaterally, even during construction, as highlighted in subdivision 11 of the Draft Bill. This is likely to present a significant challenge for project finance due to increased risks and uncertainty.

Although the Draft Bill states that the “licensee will be allowed a reasonable opportunity to make good the contravention”, this is not sufficient to safeguard renewable energy developers from arbitrary ministerial decisions that could jeopardise the issuance, validity, and continuation of their licenses.

As such, CEIG proposes the following measures to be considered:

- To prevent subjective decisions, it is fundamental that the legislation outlines explicit, objective, and comprehensive grounds for license revocation. By doing so, the decision-making process becomes transparent, standardised, and fair.
- An independent regulatory body should be allocated with powers related to licensing, monitoring, and enforcing regulations within the renewable energy sector. This reduces the risk of political interference and provides developers with a sense of security in the regulatory process.
- The legislation should also guarantee a clear, accessible, and fair appeal process for all decisions related to licensing. This ensures that any decision made is subject

to further scrutiny and provides a channel for developers to challenge decisions they consider unjust.

- A notice period should be defined before any cancellation of a license. This provision would provide developers with sufficient time to rectify any issues, reducing the risk of sudden license cancellations.
- Ministers should be legally obligated to disclose the reasons for their decisions publicly. This degree of transparency can deter arbitrary decisions and foster a climate of trust and predictability.
- Any legislation should explicitly provide for the judicial review of ministerial decisions, offering an external check on the lawfulness and fairness of such decisions.
- In cases where license cancellation is inevitable, fair compensation should be required to mitigate the financial impact on the affected developers. The criteria for compensation should be explicitly defined in the legislation.

These proposed measures aim to create a more stable, transparent, and equitable regulatory environment for renewable energy developers. By ensuring clear guidelines and a fair process, we can build a more resilient and prosperous renewable energy sector.

CEIG thanks the South Australian Department for Energy and Mining for the opportunity to provide feedback on its Issues paper and looks forward to continued engagement on those issues. Our Policy Director Ms. Marilyne Crestias can be contacted at marilyne.crestias@ceig.org.au if you would like to further discuss any elements of this submission.

Yours sincerely,



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