



SUBMISSION

19 April 2024

Dr Paul Heithersay
Chief Executive
Department of Mining and Energy
11 Waymouth Street
ADELAIDE SA 5000
Via email: HRE@sa.gov.au

Dear Paul

Re: Submission to the draft Hydrogen and Renewable Energy Regulations 2024

I am pleased to submit this, Livestock SA's overarching submission designed to be reviewed in unison with the comprehensive feedback from our members who participated in the Hydrogen and Renewable Energy (HRE) Regulations consultation event in Port Augusta on 12-13 March 2024. It was good you could attend day 2 of the event.

As you are aware, Livestock SA is the peak industry organisation for South Australia's red meat and wool industries. There are over 5,200 sheep producing businesses and more than 2,700 beef cattle producing businesses in the state. With a membership of over 3,500 sheep, beef cattle and goat production businesses, we work to secure a strong and sustainable livestock sector in South Australia.

The red meat and wool industries are the backbone of South Australia's livestock and meat processing sectors, which contribute \$5.4 billion annually to the state and support 21,000 jobs.

Livestock SA is a member of Primary Producers SA (PPSA) and is the South Australian member of four national peak industry councils: Sheep Producers Australia, WoolProducers Australia, Cattle Australia and Goat Industry Council of Australia. Through PPSA and the Peak Councils, Livestock SA is also an indirect member of the National Farmers' Federation.

As expressed in our previous submissions to the development of the HRE Act, we commend the South Australian Government's proactive pursuit of low-cost renewable energy for our state. We also note and support the government's intent to roll out this initiative in a structured, transparent and consultative manner, with the aim of ensuring that social, economic and environmental benefits are secured equitably across stakeholders.

This HRE legislation is vitally important to our members and Livestock SA thanks the department for the extension granted to provide written feedback on the draft Regulations.

Background

Livestock SA notes with disappointment, that significantly few of the amendments we requested to the wording of the HRE Bill 2023 were included in the final, enacted legislation. Where possible, we ask that these shortfalls be addressed in the supporting Regulations.

Our members provide stewardship of the pastoral lands, which account for over 42 per cent of South Australia. This is also the geographic region selected for the majority of the HRE infrastructure roll out. Consequently, it is our pastoral members who will be most significantly impacted by this legislation, and we consider that their concerns still haven't been adequately addressed.

Livestock SA members include the holders of various forms of tenure, including freehold, various forms of Crown leasehold and pastoral lease holders. Under the HRE Act 2023, there is a clear imbalance between the rights of landholders and the rights of the proposed licensees.

We are firmly of the view that it is unjust and inequitable to deal with Crown lease or pastoral lease interests as being some form of 'inferior' tenure. The holders of such tenure have made and will continue to make investment and management decisions based on the reasonable notion that their tenure is practically equivalent to freehold title. That is particularly so, in relation to the development and construction of infrastructure on the land, as well as investment in strategies to reduce net carbon emissions from their livestock businesses.

The tendering process defined in the HRE Act removes the previous right of the pastoral lessee to freely negotiate with multiple Renewable Energy (RE) companies. As a result, it is possible (if not likely) that the loss of this competitive bargaining process will see further examples (to those we have been alerted to in the lead up to the introduction of the Act), of RE companies disadvantaging pastoral landholders over their freehold colleagues in compensation and remuneration negotiation.

DEM staff frequently refer to the *Mining Act 1971* as a 'template' for this legislation. Livestock SA remains cautious about this comparison as there is a clear difference between the assets that are being exploited. Mineral resources are finite, contained in the earth and are owned by the state for the benefit of all South Australians. By contrast, solar and wind resources are infinite, freely available and have no allocated ownership. In this latter case, RE proponents are paying for the right to access a landholder's property and permanently disrupt their business activities to harvest these naturally occurring resources. These resources are the same whether infrastructure is put in place to exploit them or not and will persist in the same capacity if the infrastructure is removed. The situation is significantly different to mining and should be treated as such.

In earlier discussions with DEM policy staff during and after the Bill had been enacted, Livestock SA was led to believe that the important issues left unaddressed in the Act would be satisfactorily resolved in the subsequent Regulations. This is imperative for our members, and yet is not evident in the draft Regulations.

Following the pastoralist workshop on the draft HRE Bill in Port Augusta on 14 June 2023, Livestock SA's submission to the draft Bill on 7 July 2023, the two-day workshop on these draft Regulations in Port Augusta on 12-13 March 2024 and this complementary follow up submission, the government has a thorough and intimate understanding of the issues that need to be addressed.

Livestock SA notes that page 18 of the 12-13 March 2024 Summary Report (draft, received on 10 April 2024) states: "*Detail captured from the workshop will inform the further development of the*

draft regulations and subsequent processes, guidance and supporting materials.” As such, this submission provides supporting not comprehensive feedback to the draft Regulations.

Acknowledgement of the Pastoral Land Management and Conservation Act 1989

Livestock SA notes that while the Pastoral Board is referenced as a ‘prescribed body’, the *Pastoral Land Management and Conservation Act 1989* is not referred to in the draft Regulations. Given that this is the legislation under which all pastoral landholders are required to operate their businesses and manage their land, we recommend this (and any subsequent replacement) be included.

Specifically - add *Pastoral Land Management and Conservation Act 1989* to the list of designated or prescribed Acts in the following sections of the Regulations:

Part 1 – Preliminary (page 2)

3 – Interpretation

(1) Designated Acts

Part 6 – Environmental impact (page 19)

29-Environmental impact assessment criteria

(2) Prescribed Acts

37- Referral of matter to prescribed body (page 27)

(3) In this regulation – prescribed Act

Recommendation

Add the *Pastoral Land Management and Conservation Act 1989* to the list of prescribed and designated Acts listed in the legislation.

Securing benefits for local communities and the pastoral zone

It is evident that the majority of the negative impact arising from the HRE implementation will be borne by the landholders in the pastoral zone and the regional and remote communities that live there. This includes but is not limited to disruptions to daily life and work, noise and dust pollution, the loss of landscapes and amenity, and damage to roads. Concurrently, many of these communities are the most disadvantaged when it comes to access to services and facilities, and while the landholders directly affected will be compensated via access agreements, it would be appropriate to ensure that the broader community also benefits. Consequently, we propose that the tendering process requires potential proponents to describe the community benefits they will deliver in their licensing proposal. A simple percentage of value retained or contributed to the region and the pastoral zone could be rated in assessment.

Livestock SA notes that if the release area licensed to the RE proponent comprises pastoral land [*Subdivision 9-Rent / 45 – Rent / (3) page 41*], the HRE Act requires the Minister to pay a ‘prescribed amount or percentage’ of rent received from the RE proponents into the Pastoral Land Management Fund. This value has not been prescribed in the Regulations and Livestock SA again requests confirmation of the prescribed value or percentage.

Our understanding of the Pastoral Land Management Fund is that there are restrictions on what the fund can be used for, and further provisions may need to be made to permit expenditure on those activities that these communities and local businesses (including producers, livestock and freight transporters, tourism operators) consider are the most important.

We support this payment in principle but seek clarity on its use and the process by which the pastoral communities and regional infrastructure most affected will be able to determine its expenditure. We recommend a formalised mechanism be put in place to ensure this occurs and to prevent these revenues being channelled into general revenue, which are primarily spent for the benefit of metropolitan residents.

Honour existing agreements between RE proponents and all landholders

Land access and compensation agreement negotiations have been occurring prior to and during the process to instal the new HRE legislation. These negotiations have since been completed to the satisfaction of both parties.

However, we have been advised by DEM that these agreements will be honoured under the incoming HRE legislation only if the Minister had already approved the project when the HRE Act was enacted. Concerningly, we are hearing allegations from some members that the Minister has delayed approving RE project applications, pending the announcement of the HRE initiative and subsequent legislation. We seek reassurance that these allegations are unfounded.

The government's refusal to honour access and compensation agreements made in good faith between RE companies and landholders before the introduction of this legislation will unfairly disadvantage pastoral lessees. Freehold land holder agreements cannot be nullified by the government, but pastoralists who have invested significant time and money, incurring legal fees and other costs in the process of negotiating an agreement which best suits their business and the land they farm, are expected to abandon these agreements. If these agreements apply to land which is later 'released' under the Act, there is the potential for landholders to lose (potentially permanently) an essential income stream which is unacceptable.

Recommendation

Specify in the Regulations that Access and Compensation Agreements (between landholders and RE companies) negotiated for projects lodged for Ministerial approval before the Act passed the South Australian parliament will be honoured.

More support required to ensure landholders make informed decisions and compensation is equitable and appropriate across the region and RE companies

Livestock SA notes that the legislation now includes measures to better inform our members involved in the HRE project process. Specifically:

- Increased funding to the Landholder Information Service (LIS).
- Free legal advice for landholders through the payment of 'reasonable' legal costs by the RE proponent.

However, we continue to have reservations about the ability of a small farming business (potentially supported by local lawyers without the necessary expert knowledge) to negotiate on a level footing with the professional legal team of a global RE company. Our members are also concerned that the appeals process will lean in favour of the RE proponent because the government has made it clear that the implementation of these projects is a high priority for the state. While these concerns may

of course be unfounded, the government will need to take steps to alleviate them by ensuring decisions are highly transparent and defensible.

Our members are seeking further information and guidelines to be made available to ensure the compensation being awarded to different landholders is equitable. If landholders discover through informal channels that their neighbour secured a significantly better deal than they did, it will cause unnecessary conflict and distrust within regional and isolated communities where mutual trust and support is critical.

Suggestions include:

- Industry benchmarks for typical compensation per wind turbine, solar panel, MW of power generation, km of new road, km of new poles and wires, area of other built facilities.
- A checklist of issues to consider in an Access Agreement and compensation negotiation.
- A list of possible compensation package features that could be included including (for example) access to carbon credits to inset into a livestock business.
- A checklist of appropriate expertise or qualifications that an appropriate lawyer should have to advise on HRE issues, or a list of HRE 'accredited' lawyers.
- Enabling and resourcing the Pastoral Board to also provide objective, accurate and evidence-based advice on HRE developments to pastoralists.
- Sufficient resourcing to enable LIS to employ appropriate expertise to advise on HRE project and legislative issues.
- LIS advice and appropriate lawyers need to be readily 'searchable' and easily accessible (many landholders will not have accessed this service before).

A decision-making checklist is an appropriate starting point for negotiations, but it is important that this does not attempt to guide a 'one size fits all' approach to access agreements or compensation. These negotiations will be highly dependent on many unique factors including enterprise type, short-, medium- and long-term business goals, business succession planning etc.

Livestock SA notes that the prescribed time for contract negotiations is only 2 months (Part 4 - Section 18, page 12). This is far too short, and 6 months would be appropriate. Pastoral activities are weather and livestock dependent, and there will be periods when landholders will not be available for discussions and this timing is not always predictable. Many stations are also remote, impassable after heavy rain and postal communications can be delayed. A 6-month window will provide opportunity for informed discussions and negotiations to be completed.

Rent payable to the government by RE companies remains opaque (Part 4, 22—Rent. Pp. 13-14). The impact of new rent arrangements on the financial benefits that can be negotiated through access and compensation agreements also remains unclarified. This must be addressed prior to negotiations commencing under a new framework and caps put in place to ensure government rental impacts are negligible or offset elsewhere.

Recommendations

- Increased funding for LIS to recruit HRE expertise.
- Guidance on appropriate legal services.
- Empowering the Pastoral Board to assist pastoralists in HRE matters.
- Benchmarks and checklist to support equitable compensation and access agreements.
- Transparent and defensible appeals process.
- Prescribed time for contract negotiations extended to 6 months.

- Develop framework that ensures government rent payments do not impact access and compensation agreement remuneration.

Clear and audited biosecurity responsibilities

South Australia's \$4.3 billion livestock industry is a key economic contributor to the state which supports 21,000 South Australian jobs across the red meat and wool industries. The accidental introduction of a disease such as Foot and Mouth Disease or Lumpy Skin Disease, has the potential to destroy our industry and regional communities who rely on it, overnight. Livestock SA supports modern biosecurity principles that biosecurity is a shared responsibility, and everyone has a legal biosecurity obligation.

To effectively manage the incursion of weeds, pests and diseases on the land they farm, SA pastoralists and landholders have been implementing biosecurity measures for decades. Incursions can detrimentally affect the farmed livestock, preferred fodder species and natural biodiversity of the area. Biosecurity risks increase significantly in line with the volume of traffic accessing the land. The release of weed seeds when land is broken will need pro-active management to prevent their spread and establishment. Weeds, pests and disease are also spread when water run-off and natural drainage routes change – every consideration needs to be given to existing flora and fauna of significance, as well as grazed land when environmental impact is being assessed and management plans developed.

It is imperative that the HRE proponents and their contractors effectively discharge their biosecurity duties. Biosecurity Plans that not only identify and understanding of risks, policies and procedures to be followed but also articulate how impacts are going to be managed are non-negotiable. Biosecurity responsibilities must be incorporated into all licencing, permit and agreement stages. The Department of Primary Industries and Regions SA (PIRSA) should be consulted on all elements of this work.

Livestock SA also recommends that all current (e.g. the *Livestock Act 1997*, *Dog Fence Act 1946*, and *Impounding Act 1920*) and pending biosecurity legislation (i.e. *SA Biosecurity Act (XXXX)*) be included in the list of 'prescribed' or 'designated' Acts under relevant parts of the Regulations. We also recommend that biosecurity is strengthened in the Regulations by including it in the following sections:

- Part 6, Section 31—Statement of environmental **and biosecurity** objectives
- Part 6, Section 32—Consultation on proposed statement of environmental **and biosecurity** objectives
- Part 6, Section 33—Review of statement of environmental **and biosecurity** objectives.

Recommendations

- Include all current and pending biosecurity legislation in the list of prescribed or designated Acts in the Regulations.
- Strengthen biosecurity in other areas of the Regulations with inclusions in Sections 31, 32 and 33.

Broader environmental assessments and compensation

Our members have significant concerns about the potential broader and unintended impacts of the HRE projects on the environment and the biodiversity it supports. Some have had unfortunate experiences with companies authorised to deliver projects in the pastoral zone under alternative legislation and we are keen to ensure that lessons are learned, and the necessary protections are

legislated, regardless of who owns the land or the access road under consideration. For example, if the Department for Infrastructure and Transport owns the road that the HRE proponent is utilising, environmentally sensitive development, maintenance and dust suppression must be agreed in advance and clear accountability allocated. Other government departments should attract the same penalties as private companies when contravening an agreement.

Potential impacts that should be considered and effectively managed include (but are not limited to):

- the movement and storage of surface water (existing or new, resulting from the project) e.g. a new dam could provide stock water if located appropriately
- existing or new water channels, creeks, rivers, dams
- underground water movement
- existing water tables and the potential changes resulting from the use of water by the project, or diversion of rainwater away from existing reliable water sources for bores, crops, pasture, etc.
- dust and dust suppression techniques (water must be of good quality)
- rubbish disposal.

The movement of water and the existing relationship between fresh water sources and the environment and wildlife are complex. Impacts are often felt a fair distance away, outside of the project area. HRE proponents must be explicitly required to consult with neighbouring landholders (in addition to those immediately affected) to ensure they are well versed with these relationships and dependencies, when assessing the potential environmental impact of their HRE project.

Furthermore, care needs to be taken to ensure that areas do not ‘fall between the cracks’ between geographic or project areas covered by different Environmental Impact Statements.

Under the proposed SA Biodiversity Bill 2024, any environmental damage must be compensated for. This is a proposal which Livestock SA supports and as a result, we recommend that the SA Biodiversity Act 2024 (once enacted) should be added to the list of ‘designated’ or ‘prescribed’ Acts in the Regulations.

Recommendation

Add the SA Biodiversity Act to the list of ‘designated’ or ‘prescribed’ Acts in the Regulations.

Consultation and communication

Livestock SA recognises that the government’s goal to secure transformational change to 100 per cent renewable energy generation by 2027 (recently brought forward from 2030) is a ‘flagship’ initiative, and that there is significant pressure on DEM to have the HRE legislative framework in place and subsequent RE projects breaking ground as quickly as possible.

However, a word of caution - this will be a period of significant change, opportunity and potential risk for our pastoral communities. If landholders are to feel heard and respected, government and RE proponents will need to engage in authentic dialogue with those affected (or potentially so) in a timely and appropriate manner. The notable absence of significant changes to the Act in response to initial feedback from our members has resulted in mistrust of the consultation process. This needs to be addressed. Communication needs to be seamless, honest and transparent if trust is to be rebuilt.

Balancing the loss with the potential gain for pastoral businesses is key. This needs to be considerably positive for the business(es) involved given the permanent imposition and disruption to business operations and loss of amenity a RE project will cause. Landholders need certainty and appropriate lead times to plan for negotiations, subsequent operational changes and budgetary considerations. They also need time to consider the future use of the land area affected at the end of the project and the surety of make good provisions.

Livestock SA notes that the Regulations (Part 3, Section 10—Consultation (3) on page 7) defines a ‘relevant person’ as (a) each owner of land within the proposed release area, etc. Given the concerns raised in this submission under **Broader environmental assessments, compensation**, we recommend that this definition be expanded to also include neighbouring landholders and those across which access will be required.

Our members would also like to see pastoral landholders identified as ‘prescribed’ persons for consultation (or similar) during the release area determination, licence application/renewal and environmental impact assessment process.

Finally, we note that native title owners are consulted at each step of the application process, which has the potential to extend the timelines unnecessarily. While we are not the most appropriate body to seek advice on this, we do question whether one thorough consultation with the relevant Native Title holders at the beginning of the process may suffice.

Summary

We thank the department for the opportunity to comment on the draft Regulations supporting the *Hydrogen and Renewable Energy Act 2023*, and for hosting the second face-to-face consultation for our pastoral members on 12-13 March 2024.

We understand that the world is decarbonising and there is an opportunity for our state to harness its enviable sun and wind resources to export green energy and increase the level of sophistication of other export opportunities, such as green steel. We also understand the degree of urgency from the government to put this legislative framework in place to reduce the possibility that investment will go elsewhere.

However, Livestock SA continues to have reservations around the apparent shortfalls in the draft Regulations with regards to its ability to effectively address the significant concerns raised by our members during the development of the Act. In particular, the inequitable treatment evident in the legislation between freehold and pastoral landholders and the lack of clarity and confidence provided to pastoralists that they will be able to negotiate a fair access and compensation agreement with a sole government appointed RE party.

We understand that the government has deliberately not been too prescriptive around processes for negotiating access agreements as it wishes to utilise the flexibility of various tools and guidelines from different legislative frameworks and processes to expedite and hopefully deliver the desired outcomes. However, the lack of greater clarity around process and certainty of outcomes means that government is essentially saying to landholders ‘just trust us’.

HRE investments will likely have 30-50 year time horizons, so it is essential that these issues are addressed if all parties are to benefit from what should be a policy and supporting legislative framework that delivers equitable and appropriate benefit to all. Failing to do so will likely see perverse outcomes materialise in the years ahead.

We welcome continued engagement throughout this process and look forward to meeting with you to discuss how the Regulations will be amended to resolve these continuing concerns.

Please contact the Livestock SA office on (08) 8297 2299 or via admin@livestocksa.org.au if you would like to discuss this submission further.

Yours sincerely



Travis Tobin
Chief Executive Officer