South Australian Chamber Of Mines & Energy

26 June 2023

Mr Michael Malavazos
Director, Engineering Operations
Energy Resources Division
Department for Energy and Mining

Via email: HRE@sa.gov.au

Dear Mr Malavazos

The South Australian Chamber of Mines and Energy (SACOME) is the leading South Australian industry association representing the resources and energy sector, the powerhouse of the State's economy.

At the outset, SACOME wishes to emphasise our members' commitment to decarbonisation and achieving Net Zero, which is reflected in our Climate Change Policy. SACOME welcomes the opportunity to provide comment on the draft Hydrogen and Renewable Energy Act Bill 2023 (the Bill).

To inform its submission, SACOME has consulted relevant member companies, noting that more substantive comment will be provided when draft Regulations are produced. SACOME welcomes the Government's undertaking to produce these draft Regulations either prior to or concurrently with a settled Bill for introduction, and thanks the Department for their constructive engagement on this reform.

Background

SACOME reiterates it broadly welcomes the policy intents of the Bill, including to streamline the licensing process and operate as a 'one window to Government'; and to treat energy projects on a level playing field. In our original submission, SACOME highlighted the following issues:

- The regulatory framework needs to be simple;

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- Need for an agnostic approach for potential hydrogen projects;
- Data reporting obligations; and
- Decommissioning requirements.

SACOME notes improvements have been made to the scope of the project following consultation on the Issues Paper, and particularly welcomes confirmation that:

- Planning approvals will be undertaken under the auspices of this Act, rather than the *Planning, Development and Infrastructure Act 2016* (the PDI Act), which is in line with the stated intention of a 'one window to Government';
- The amendment of the objects clause (cl 3) to support the 'economic development of a hydrogen energy industry', as opposed to singling out one source of hydrogen; and
- The scope of the proposed data reporting obligations has been pared back, with the Department committing in writing to maintain the confidentiality of said data for the life of the licence and publishing at the expiry of the licence only with the consent of the licensee.

These three changes are in keeping with SACOME's initial feedback. This submission focusses on the following matters:

1. Application of the Bill to freehold land
2. Hydrogen and Renewable Energy Fund
3. Third party appeals
4. Indigenous Land Use Agreements
5. Fees, bond and security, rents
6. Transitional provisions and Regulations

1. Application of the Bill to freehold land

The Bill sets up a clear licensing framework for hydrogen and renewable energy projects over pastoral lands, State waters and Crown lands (as prescribed); however, there is little

clarity regarding its application to freehold land, or land already designated to be released for some other purpose, such as petroleum release areas.

While the Bill makes clear that freehold land will not be land over which Release Areas are gazetted (i.e. they are not defined as *designated land* in cl 4), the delineation of obligations and rights for stakeholders is not clear.

Initial advice from the Department suggests that licensing requirements would continue to apply where relevant, but SACOME would welcome unambiguous details in this regard to provide proponents – and landholders – with certainty. For example, SACOME understands that whilst renewable energy projects on freehold land would not be subject to the consultation process that has been identified for Release Areas, or indeed as is currently the case for projects assessed under the PDI Act, it is proposed consultation with parties affected by the development would occur during the Environment Impact Report (EIR) (although cl 49 is silent on the same).

Given EIRs are proposed to be conducted after the grant of the licence, it begs the question as to whether impacts on adjoining land will be taken into consideration in the final approval of a project – and, if not, whether this represents genuine consultation, or it is the licence per se that is worth little to a proponent without an EIR.

SACOME further understands from the Department that it is intended existing projects on freehold land will be grandfathered, which we welcome.

2. Hydrogen and Renewable Energy Fund

Cl 65 of the Bill establishes the Hydrogen and Renewable Energy Fund, which is to be established for the purposes of: environmental research and protection; Aboriginal heritage conservation; matters that further the objects of the Bill; and to fund any other programmes or outcomes as prescribed by the Regulations.

SACOME recognises the importance of this Fund in driving better environment outcomes.

In determining the disbursement of monies, SACOME recommends the Government consult widely, including with large gas users and producers.

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3. Third party appeals

Cl 91(2) of the Bill allows *a person dissatisfied* to appeal to the Environment, Resources and Development Court regarding possible decisions enumerated in cl 91(1), principally relating to licensing.

This appeal right goes far beyond similar appeal rights in the *Mining Act 1971* and the *Petroleum and Geothermal Energy Act 2000*, allowing in its presently drafted form any member of the public to appeal. It is a retrograde change from the current regulatory framework under the PDI Act, which removed third party appeals from the previous model under the *Development Act 1993*, and which had presented barriers for approvals for renewables projects.

Given the objects of the Bill are to facilitate hydrogen and renewable energy projects, and create economic benefits for the State, third party appeals only serve to undermine business certainty.

SACOME has been advised by the Department that this is a drafting error, and it is intended similar appeal rights – a connexion to the application – to the above Acts will apply. SACOME welcomes this.

4. Indigenous Land Use Agreements (ILUAs)

The Bill has as one of its objectives:

> *To enable engagement with Aboriginal people to ensure the regulatory framework in this Act maximises beneficial economic, environmental, and social impacts and minimises adverse cultural and heritage impacts on Aboriginal people* (cl 3(d)).

Early engagement and consultation with Aboriginal people is emphasised throughout the Bill.

SACOME notes that an ILUA is required for both a Renewable Energy Feasibility Licence and Renewable Energy Infrastructure License on Native Title Land prior to the Minister authorising the same.

In the case of a Feasibility Licence, the operations authorised by the licence are relatively low impact. Accordingly, proponents should have the capacity to enter into alternative arrangements, consistent with *Native Title Act* obligations and in keeping with the objects of the Act.

In the case of Renewable Energy Infrastructure Licences, which is a logical corollary to the Feasibility Licence and with a higher impact, an ILUA would be appropriate, noting that s 24KA of the *Native Title Act* is commonly relied on for transmission lines that connect generation to the grid.

5. Fees, bond and security, rents

Cl 25(e) of the Bill stipulates that an application for a licence must be accompanied by the prescribed fee.

Cl 33 states the Minister *may* require applicants or licensee holders to pay bond or security, the value of which would be determined by the Minister.

Cl 35 states that rent is payable to the Minister in respect of renewable energy licences as they fall on designated land and special enterprise licences, with an amount to be determined in the Regulations.

While the majority of these costs would be released with the draft Regulations, SACOME would welcome the release of all costs, including factors to be taken into consideration in evaluating the quantum of the bond or security that is to be paid.

6. Transitional provisions and Regulations

There are no transitional provisions contained within the Bill for comment. SACOME has been advised that DEM has committed to consulting on these.

It is unclear for existing projects and projects currently being assessed what their obligations in relation to the Act would be, and the process by which exemptions could be granted. Significant projects, such as the Moomba Electrification Project, are currently in advanced stages of approval and the Bill is silent on whether existing approvals would be preserved in the event licensing would thereafter fall under the proposed Act. While

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SACOME understands grandfathering – at least for extant projects – is being considered – SACOME would welcome certainty on this as soon as possible.

Moreover, much of the detail regarding the practical application of the Act will be contained within the Regulations (such as the prescribed requirements for Release Areas and applications for tenders, fees, decommissioning requirements, and general exemptions). SACOME again thanks the Government for their commitment to release draft Regulations shortly and we will be providing further substantive comment at this time.

SACOME thanks the Government for the opportunity to provide this submission.

Yours sincerely

Rebecca Knol
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South Australian Chamber of Mines & Energy