



5 Milner Street,
Hindmarsh SA 5000

Phone: (08) 7127 4630

Fax: (08) 82319773

Website:

www.ncssa.asn.au

Hydrogen and Renewable Energy Act Engagement
Department for Energy and Mining
GPO Box 320, Adelaide SA 5001
Submitted via email to: hre@sa.gov.au

Thursday 29 June 2023

Re: Hydrogen and Renewable Energy Act - Draft Bill

To whom it may concern,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to provide this submission to consultation on the development of a Hydrogen and Renewable Energy Act - Draft Bill 2023 (the Bill), and the extension in time to do so.

Since 1962, the NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and the management of protected areas.

As per its submission of 16 February 2023 in response to the Issues Paper dated November 2022, the NCSSA supports a rapid transition to renewable energy to address the climate crisis and, in principle, supports a streamlined system for managing the full lifecycle of large-scale hydrogen and renewable energy projects in South Australia.

However, the NCSSA is deeply concerned that **the Bill as drafted will not provide adequate protection for South Australia's biodiversity.**

Biodiversity is all the variety and variability of life, including our precious plants and animals that are already declining at an alarming rate,¹ and which could be put at further risk by this large-scale, industrial transition to renewable energy. Whilst all forms of renewable energy are better for nature than fossil fuels, renewable energy projects will inevitably have impacts on the natural environment,² which in some individual cases are unacceptable.

To address this risk, mechanisms must be inserted into the Bill for **avoiding impact on biodiversity**, particularly at the crucial initial site selection stage, as well as criteria outlined for refusing proposals that pose unacceptable risk to biodiversity.

¹ <https://www.epa.sa.gov.au/soe-2018>

² [Shift to renewable energy must protect nature, says clean energy coalition | WWF \(panda.org\)](https://www.panda.org/shift-to-renewable-energy-must-protect-nature-says-clean-energy-coalition)

Put simply, it's critical to "site renewables right"³ to avoid perverse, unwanted negative biodiversity impacts, and changes to the Bill are needed to achieve this.

Elsewhere in Australia, the placement of renewable energy projects in sensitive, biodiverse areas has led to serious conflict and loss of social licence to operate.^{4,5} Already in South Australia, more than 7000 hectares of native vegetation – precious habitat for our wildlife – has been approved for clearance to make way for solar and wind farms.⁶ Such a loss is unacceptable when this infrastructure could be located elsewhere, in areas without native vegetation cover.

South Australia must strive to maintain its place as the national renewable energy leader but also demonstrate how large and rapid renewable energy development can be achieved without the further loss of biodiversity.

The NCSSA therefore strongly urges the following changes to the Bill:

1. Insert an object regarding the intent to avoid the loss of biodiversity

It is crucial that an object be inserted that specifically spells out the intention to avoid negative impacts on biodiversity from authorised operations, as follows:

“to avoid damage to biodiversity and ecosystems from authorised operations, particularly by avoiding sensitive, biodiverse areas when siting renewable energy infrastructure”

The NCSSA does not support an approach suggested by the current Object 3(f):

“to facilitate net environmental benefit from authorised operations”

... where the 'net environmental benefit' of any given proposal could be determined by 'trading off' damage to biodiversity against anticipated benefits such as reduced emissions and/or social or economic benefits, given the unique and irreplaceable nature of biodiversity and its critical importance to human wellbeing.

The NCSSA therefore believes that Object 3(f) should be deleted.

If, following a careful site selection process to avoid sensitive, biodiverse areas, a process is needed for deciding between different proposals for the same site (for example, if either a solar farm or a wind farm could be developed at a given site), then the Bill could set out criteria for comparing the anticipated impacts of the full range of proposed developments for any given site against each other.

2. Amend definitions to ensure clarity regarding key terms.

Amend the Bill's definition of 'environment.'

Section 4 (2) of the Bill defines '*the environment*' in an overly expansive manner, encompassing an extensive range of social, economic and cultural elements. The NCSSA understands that this is to facilitate the consideration of 'net environmental benefit'. As stated above, the NCSSA believes this is an inappropriate approach.

³ <https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/site-wind-right/>

⁴ [Chalumbin Wind Farm project near World Heritage rainforest draws protesters in Far North Queensland - ABC News](https://www.abc.net.au/news/2019-07-11/chalumbin-wind-farm-project-near-world-heritage-rainforest-draws-protesters-in-far-north-queensland/5541144)

⁵ <https://npansw.org.au/campaigns-2/protect-our-parks/kosciuszko-national-park/snowy-2-0/>

⁶ <https://www.environment.sa.gov.au/topics/native-vegetation/consultations>

The NCSSA therefore recommends revising as below to constrain the definition to the natural environment:

A reference in this Act to the environment includes—

- (a) land, air, water (including both surface and underground water and sea water), organisms, ecosystems, flora, fauna, biodiversity and other features or elements of the natural environment; and*
- (b) buildings, structures and other forms of infrastructure, and cultural artefacts; and*
- (c) existing or permissible land use; and*
- (d) public health, safety or amenity; and*
- (e) the heritage, aesthetic, Aboriginal, social and cultural values of an area; and*
- (f) the social or economic effects associated with regulated activities.*

Alternatively, part (a) of the existing definition could be removed and a separate definition could be added for biodiversity. If this approach is adopted, it is recommended that the internationally recognised definition of biodiversity, as adopted by the Convention on Biological Diversity in Article 2, is used, as follows:

‘the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems.’⁷

The intended outcome would be to separate out considerations of potential impacts of renewable energy infrastructure on biodiversity from other ‘environmental’ concerns and ensure that the Bill prioritises firstly avoiding impact on biodiversity, then stipulates criteria for inappropriate impact on biodiversity that allows for proposals to be refused. These steps should be prior to considerations of any regime for ‘mitigating’ residual impacts on biodiversity or ‘trading off’ outcomes against each other.

Insert a specific definition of ‘protected areas’, and exclude them from development.

In order to create a framework which facilitates environmentally appropriate locations for large-scale hydrogen and renewable energy (HRE) developments, areas protected for conservation must be explicitly excluded from any developments.

‘Protected areas’ include National Parks but also a range of other tenure types and protection regimes. They are geographically-defined and set aside for the long-term protection of nature, collectively forming Australia’s National Reserve System.⁸ Allowing renewable energy developments within protected areas would be at odds with South Australia’s international⁹ and national conservation commitments.¹⁰

Unfortunately, existing protection provisions under relevant statutes, such as the *National Parks and Wildlife Act 1972* (NPW Act), which establishes South Australia’s parks and reserves network, would **not preclude** renewable energy developments in all circumstances. For example, a Minister could amend a park management plans to ‘envisage such a land-use’, and/or the provisions of the *Planning, Development and Infrastructure Act 2016* could be used to ‘override’ protections provided by the NPW Act, as has been the case in previous

⁷ Convention on Biological Diversity, <https://www.cbd.int/>.

⁸ <https://www.dcceew.gov.au/environment/land/nrs>

⁹ See: <https://www.cbd.int/>; with particular reference to the 2022 Kunming-Montreal Global Biodiversity Framework agreement: <https://www.cbd.int/gbf/>

¹⁰ [Strategy for Australia's National Reserve System 2009-2030 - DCCEEW](#)

examples of proposed developments in protected areas, such as Flinders Chase National Park.¹¹

Therefore, to ensure unwanted, negative impacts on biodiversity are avoided, protected areas need to be explicitly excluded from Release Areas and, by extension, designated areas relating to licences as part of this Bill.

The NCSSA suggests the following definition of ‘protected areas’ for exclusion from development:

protected area means an area of land or waters under legal protection for the long-term conservation of nature, and which is not suitable for inclusion in Release Areas or other licenses for development under this Act.

Excluding protected areas would be a strong first step toward avoiding unwanted, negative impacts on sensitive, biodiverse areas from renewable energy developments, however, further provisions are needed, as outlined below.

3. Ensure Release Areas are appropriately located to avoid biodiverse areas.

The most effective way to mitigate environmental risk potentially created by HRE projects is to ensure that Release Areas (RA’s) occur in appropriate locations of low biodiversity sensitivity. The NCSSA recommends that provisions be inserted that explicitly rule out locating renewable energy developments in sensitive, biodiverse areas, including protected areas, as per point 2 of this submission.

However, as noted by the Secretariat for the Convention of Biological Diversity, given that a large proportion of the world’s biodiversity **does not fall within legally protected areas**, there is a need to identify and safeguard areas of biodiversity importance, irrespective of their legal status.¹²

The SA Government has recognised the need to extend our protected area network and is currently undertaking a **‘wilderness assessment’** to determine areas with wilderness quality that require protection. This work needs to be inform the selection of Release Areas, together with information on critical habitat for threatened species, the presence of ecological communities at risk of extinction, areas highly suitable for ecological restoration (such as wetland environments) and areas important for connectivity and/corridors.

The NCSSA notes the current process of collaboration between DEM and the Department of Environment and Water (DEW), together with others, to apply multi-criteria analysis mapping to site selection for Release Areas, and that this provides an opportunity to identify areas of high biodiversity value to be avoided.

This is an important step and one the NCSSA supports, however, further engagement with members of the environmental non-government sector, particularly through the Conservation Council of SA as the State’s peak body, is recommended to facilitate the process of area identification and to leverage additional data and local knowledge.

Similar analysis should also be extended to **freehold land**, since refusal of developments on the grounds of biodiversity sensitivity is needed for all tenures, not just those subject to the Release Area process as this will only apply to ‘designated’ Crown land and waters.

Importantly, specific analysis of sensitive, biodiverse **marine environments** is also required to guide site selection for offshore wind developments in state waters. Areas protected under the *Marine Parks Act 2007* need to be excluded in the same way that terrestrial parks

¹¹ <https://www.conservation.sa.gov.au/protecting-flinders-chase>

¹² *Best policy guidance for the integration of biodiversity and ecosystem services in standards*, [cbd-ts-73-en.pdf](#)

should be excluded, but planning needs to extent further than that so that other areas of high conservation value, such as feeding, breeding, calving and migratory areas, are avoided.¹³

4. Return to more of a ‘Development Application’ approach

The NCSSA recommends that the Bill be amended to adopt more of a land-use development approach rather than primarily a “prohibit and authorise” mining approval approach, since this new regime is essentially regulating a change in land-use which could be undertaken at a range of sites, not the exploitation of mineral deposits that are constrained to one specific location.

This need not necessitate large changes to the Bill, but rather the creation of explicit links to existing mechanisms under the *Planning, Development and Infrastructure Act 2016*, such as considering proposed ‘release areas’ and licence areas against existing overlays and zones that outline policies for envisioned, acceptable developments in given areas and create important triggers, such as the consideration of native vegetation clearance controls under the *Native Vegetation Act 1991* **early in the site selection process.**

5. Strengthen decision-making process from a biodiversity protection perspective

It is critical that those responsible for protecting biodiversity in South Australia are engaged early and at all appropriate decision-making stages in this new regime.

The NCSSA recommends amending the proposed decision-making processes to avoid unwanted, negative biodiversity impacts by:

- a. Requiring the agreement (concurrence) of the Environment Minister (without resorting to recourse to the Governor General) at all critical decision-making stages, including for establishing release areas and granting both feasibility and infrastructure licences.

This role should be identified as the Minister responsible for the *National Parks and Wildlife Act 1972* and the *Marine Parks Act 2007*. These Acts directly align with responsibilities for biodiversity protection for South Australia’s land and sea, a role which is separate from responsibilities under the *Pastoral Land Management and Conservation Act 1989*.

The NCSSA notes that responsibility for the *Pastoral Land Management and Conservation Act 1989* was transferred to the Minister for Agriculture in the past and had only recently returned to the Environment Minister. Whilst the need for concurrence with the Minister responsible for the pastoral lands is also supported, from the NCSSA’s perspective, it is critical this Bill ensures that the Environment Minister, responsible for biodiversity protection, has concurrence due to the potentially high risk to biodiversity from authorised operations.

- b. Ensure relevant decision-making bodies under existing legislation that protect biodiversity, such as the Native Vegetation Council under the *Native Vegetation Act 1991*, have power of direction on proposed release areas and licences to prevent developments with unacceptable impact.

¹³ <https://vnpa.org.au/winds-of-change-sustainable-energy-needs-sustainable-planning/>

- c. Outline criteria that stipulate unacceptable biodiversity impact so that any proposed developments that would breach those criteria can be refused.
- d. Insert a requirement at the Feasibility Licence stage for detailed review of the likely biodiversity impact of any envisaged development and assess this review against criteria for unacceptable impact.

6. Use the Fund to support much needed, large-scale restoration of biodiversity

The NCSSA notes the Bill proposes a Hydrogen and Renewable Energy Fund for penalties and other monies collected under the Bill.

The NCSSA wishes to emphasise the urgent need to undertake large-scale restoration for biodiversity in South Australia, and particularly the need to restore specific ecosystems to avoid future extinctions, such as the woodlands and grasslands of the Mount Lofty Ranges, which have been extensively cleared since European settlement. This need was clearly identified in the Malinauskas Government's election platform, which included \$1m in funds for restoration in the Mount Lofty Ranges. Whilst welcome, this funding is not adequate to achieve the desired outcome of large-scale restoration.

The NCSSA therefore advocates for the implementation of a 'nature-positive levy' across the renewable energy industry as regulated by the Bill to create a **future fund** that could be used to achieve South Australia's nature-related policy objectives, including meeting restoration targets and avoiding future extinctions of plants and wildlife.

These levy payments could be made into, and managed from, this Hydrogen and Renewable Energy Fund, or the Native Vegetation Fund under the *Native Vegetation Act 1991*, and directed towards large-scale restoration for biodiversity in South Australia.

If you would like to clarify or discuss this submission please contact Julia Peacock, Nature Advocate, on 0400 277 423 or via email at julia.peacock@ncssa.asn.au.

Thank you again for the opportunity to provide input to this Bill. The NCSSA looks forward to an amended Bill that better addresses biodiversity protection to ensure nature protection sits alongside our efforts to address climate change.

Yours sincerely,



Kirsty Bevan
CEO