

Hydrogen and Renewable Energy Policy Team
Department for Energy and Mining
By email: hre@sa.gov.au

26 June 2023

Dear Hydrogen and Renewable Energy Policy Team,

RE: Submission to the exposure draft of the *Hydrogen and Renewable Energy Act*

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the SA Government on its exposure draft of the *Hydrogen and Renewable Energy (HRE) Act*.

ALCA is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Please note that ALCA is happy for this submission to be published in full.

ALCA's submission to the previous consultation on the Hydrogen and Renewable Energy Act Issues Paper can be found online at: <https://alca.org.au/alca-submission-on-south-australias-proposed-hydrogen-and-renewable-energy-act/>.

Summary

ALCA is strongly supportive of efforts to address and mitigate climate change, noting that it is a key threat to South Australian nature and biodiversity.

However, **we need to balance our collective response to the climate crisis with our collective response to the nature crisis and seek to optimise our response to both crises**. In practice, this means ensuring that we choose environmentally appropriate locations for large-scale HRE developments by avoiding protected areas (i.e. areas protected for long term conservation), biodiversity hotspots, biodiversity corridors that are critical for connectivity, and the priority landscapes for conservation.

The challenge

Whilst the nature crisis is less well-known than the parallel, albeit interconnected, climate crisis, it is just as serious for our society and economy. A recent report has confirmed Australia's trajectory towards the collapse of ecosystems¹ and we have seen the largest documented decline of biodiversity than any other continent in the world².

More broadly, according to the World Economic Forum:

“Humanity has already wiped out 83% of wild mammals and half of all plants and severely altered three-quarters of ice-free land and two-thirds of marine environments. One million species are at risk of extinction in the coming decades – a rate tens to hundreds of times higher than the average over the past 10 million years....”

¹ See: Bergstrom et. al, 'Combating ecosystem collapse from the tropics to the Antarctic', *Global Change Biology*, 2021; <https://onlinelibrary.wiley.com/doi/10.1111/gcb.15539>

² See: DCCEEW; <https://www.dcceew.gov.au/environment/biodiversity/conservation>

*Human societies and economies rely on biodiversity in fundamental ways. ...over half the world's total GDP – is moderately or highly dependent on nature and its services.*³

Using the same methodology, **approximately half of Australia's GDP has also been demonstrated as having a moderate to very high dependence on nature**⁴.

The scale and devastation that the unfolding nature crisis will have upon our collective wellbeing will dwarf all but the very biggest issues facing our nation and will rival them in importance. As per the British Government's Dasgupta Review:

*"We are facing a global crisis. We are totally dependent upon the natural world. It supplies us with every oxygen-laden breath we take and every mouthful of food we eat. But we are currently damaging it so profoundly that many of its natural systems are now on the verge of breakdown."*⁵

The key findings of the Federal Government's 2021 State of Environment Report highlight the seriousness of the nature crisis as specific to Australia:

*"Overall, **the state and trend of the environment of Australia are poor and deteriorating** as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction. Changing environmental conditions mean that many species and ecosystems are increasingly threatened. Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years.*

*...Our inability to adequately manage pressures will continue to result in species extinctions and deteriorating ecosystem condition, which are reducing the environmental capital on which current and future economies depend. **Social, environmental, and economic impacts are already apparent.**"*⁶

Indeed in 2021, Australian scientists confirmed evidence that already 19 of Australia's ecosystems have either collapsed or are collapsing⁷.

Again, to be clear, ALCA is strongly supportive of efforts to address and mitigate climate change, noting that protecting, managing and restoring nature is one solution already at hand that is ready to be scaled.

ALCA and its members therefore stand ready to combine our collective information and knowledge to avoid and to minimise the destruction of our natural environment from HRE developments, and to work with the government and HRE developers to help rebuild environmental resilience into South Australian landscapes. Our recommendations below seek to strengthen the processes in the HRE Act that would help to ensure that unnecessary environmental destruction is avoided or otherwise minimised.

³ See: World Economic Forum, *Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy*, January 2020; <https://www.weforum.org/reports/the-global-risks-report-2020>

⁴ See: Australian Conservation Foundation, *The nature-based economy: How Australia's prosperity depends on nature*, September 2022; <https://www.acf.org.au/how-australias-prosperity-depends-on-nature>

⁵ See: p1, Dasgupta, P. *The Economics of Biodiversity: The Dasgupta Review*, HM Treasury, Government of the United Kingdom; <https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review>

⁶ See: Government of Australia, 2021 State of Environment Report; <https://soe.dcceew.gov.au/overview/key-findings>

⁷ As above, n2

Recommendations

1. Explicitly exclude protected areas

This was the key recommendation of ALCA's submission to the HRE issues paper.

Protected areas – geographically-defined areas for the long-term protection of nature – should not be infringed upon by the Act and should be explicitly prevented from being able to be included within Renewable Energy Priority Areas (REPAs) (and by extension, designated areas relating to licences). Protected areas have a clear internationally and nationally adopted legal definition. Allowing the Act to operate – even theoretically – within protected areas would be seriously at variance with Australia's international commitments⁸ and with the South Australian Government's commitments to the National Reserve System, as articulated within Australia's Strategy for the National Reserve System 2009-2030⁹.

Whilst ALCA's focus is upon land – and we defer to the recommendations of expert marine conservation organisations that may submit – in principle, the same considerations should be extended to marine protected areas.

It should be noted that any ability to intrude into protected areas – areas protected for long-term conservation – will likely raise considerable concern within the South Australian community who are very supportive of protecting our nature and which could threaten the social licence of HRE developments.

Recommended legislative amendments:

New definition under section 4:

***protected area* means an area of land under legal protection for the long term conservation of nature;**

Expanded section 7(2):

- (2) A declaration under subsection (1):
- (a) may specify the renewable energy resource in respect of which the area is declared; **and**
 - (b) **must not declare any area of land that contains a protected area either in whole or in part.**

2. Avoid priority landscapes for conservation

Collectively and alongside government environment departments, ALCA and its members possess the data that identifies priority landscapes for conservation, the corridors that are critical to conserve to maintain connections for biodiversity across the landscape, and biodiversity hotspots. ALCA and its members are keen to work with government to combine our data and its conclusions to ensure that REPAs (and licence areas / designated areas) are selected appropriately to avoid these conservation priorities wherever possible.

Legislatively, this means ensuring that the relevant government bodies – especially the Department of the Environment and Water (DEW) and the Native Vegetation Council (NVC) – are prescribed bodies for consultation on declared areas (i.e. REPAs) under the regulations, and are granted powers of direction in licence application processes. It also means ensuring

⁸ See: <https://www.cbd.int/>; with particular reference to the 2022 Kunming-Montreal Global Biodiversity Framework agreement: <https://www.cbd.int/gbf/>

⁹ See: <https://www.dcceew.gov.au/sites/default/files/documents/nrsstrat.pdf>

that the environment sector – and especially those organisations that undertake on-ground conservation at scale – should also routinely be consulted, even if they are not listed as prescribed bodies.

Recommended legislative amendments:

As per Recommendation 6 below.

3. Utilise regional planning to set overarching priorities within landscapes, including conservation

Regional planning is a tool that seeks to identify and map the mosaic of land-use priorities across a landscape – for example, agriculture, infrastructure and water supply, conservation, mining, other development activities, and social and cultural uses – and is very well-suited to provide the planning context for determining draft REPAs for further stakeholder and public consultation.

As per the Federal Department for Climate Change, Energy, the Environment and Water (DCCEEW):

“Regional plans... provide clear guidance on areas for protection, which areas are appropriate for development and which areas need caution. The plans... provide information and support decisions about where projects should and should not happen.”¹⁰

There may be opportunities for Federal support to fast-track new regional plans for priority areas in northern South Australia (or elsewhere), noting that the Federal Government has already announced pilot regional plans with New South Wales¹¹ and with Queensland¹².

As noted in Recommendation 2 above, ALCA and its members can combine its data with DEW to create an updated and more nuanced profile of priority landscapes for conservation, the corridors that are critical to conserve to maintain connections for biodiversity across the landscape, and biodiversity hotspots or key biodiversity areas.

ALCA also notes the overlap that a fast-track of regional planning would have with DEW’s ambitions to undertake more comprehensive biodiversity mapping of the State – in DEW’s Agency Statement within South Australia’s 23-24 Budget Papers, the Labor Government’s election commitment to undertake a wilderness inventory is restated as a Target for 2023-24, namely: “[to u]pdate the wilderness inventory and commence wilderness assessments of priority areas”¹³.

4. The definition for environment is misleading and needs to be substantially tightened

The definition adopted by the Act for ‘environment’ is broad and beyond an ordinary definition for the environment. Specifically, the inclusion of buildings, structures, public amenity, and the economic effects related to activities under the Act is unrelated to nature, and clarity to this definition would be required to assist in delivering a ‘net environmental benefit’. The definition should thus be tightened so as to focus on our natural environment.

¹⁰ DCCEEW, Government of Australia; <https://www.dcceew.gov.au/environment/epbc/epbc-act-reform/regional-planning>

¹¹ See: <https://minister.dcceew.gov.au/plibersek/media-releases/regional-plans-transform-environmental-protection>

¹² See: <https://statements.qld.gov.au/statements/96756>

¹³ p144, *South Australian 2023-24 Budget Papers*, Agency Statement Volume 2; https://www.statebudget.sa.gov.au/data/assets/pdf_file/0011/914177/2023-24-Agency-Statements-Volume-2.pdf

Alternatively – but not preferably – instances of ‘environment’ should be replaced with ‘built and natural environment’ (for example, ‘net built and natural environmental benefit’) so as to avoid any inadvertent greenwashing.

5. The Act should revert to the original, more standard development application approach

From an environmental perspective, the current South Australian development application process is imperfect. However, it does provide greater certainty and clarity regarding environmental process and outcomes than the mining resource approach now adopted in the *HRE Act*. The *HRE Act* now puts the environment as a much later consideration in the development process rather than an earlier (even if not always early enough) consideration under South Australia’s ordinary development application processes. It should be noted that the environmental impact report process prescribed in the proposed *HRE Act* needs significant strengthening if it is to replace the current approach.

ALCA recommends that the Act be reframed to adopt existing development application processes, as originally signalled by the government.

6. The Native Vegetation Council (NVC) and Department of Environment and Water (DEW) should be prescribed bodies for consultation and be provided with powers of direction

This recommendation is interrelated with Recommendation 2 above.

Given the role of the NVC in deliberating on native vegetation clearance applications which will inevitably result from developments on crown lands, they should be prescribed bodies under the regulations for consultation when determining of release areas (i.e. REPAs), and given powers of direction relating to the grant of licences. This would help to avoid deleterious outcomes from unsuccessful native vegetation clearance applications at a late stage in a development process, simply because release areas or licence areas that were wholly inappropriate for clearance had been granted without regard for these environmental considerations.

As the information-holder of priority landscapes for biodiversity conservation, it may be appropriate that DEW should also be consulted. Whilst it is possible for the NVC to draw upon DEW for information, it would be an unwieldy approach and thus better to have both bodies prescribed for consultation.

Giving both these bodies powers of direction in relation to licences under the Act would again help avoid deleterious and unintended outcomes from environmental considerations coming too late to the development process.

Recommended legislative amendments:

That the Department responsible for the environment portfolio and the Native Vegetation Council be listed as prescribed bodies for consultation on declared areas (i.e. REPAs) under the regulations.

That the Department responsible for the environment portfolio and the Native Vegetation Council be granted powers of direction relating to licences under the regulations.

7. Likely affected leaseholders should be prescribed parties for consultation

Crown land leaseholders – especially, but not only pastoral leaseholders – should be prescribed parties for consultation on declared areas (i.e. REPAs) in the regulations.

From a conservation perspective, ALCA are concerned that leases acquired in the pastoral estate for conservation but which have yet to become protected areas (such as via a Heritage Agreement) would have no input into the decision on REPA release areas, and could have release areas issued over their leasehold.

ALCA also recognises and supports the importance of guaranteeing that all likely affected landholders have input into a decision-making process that may involve land under their care and control.

Recommended legislative amendments:

That leaseholders likely to be affected by a declared area (i.e. REPA) be prescribed parties for consultation under the regulations.

8. Public consultation on REPAs

In order to ensure the broader views of the community – including, but not only the environment sector – are taken into account in the areas under consideration for REPAs, the Minister should undertake a public consultation when considered release areas.

Recommended legislative amendments:

Expanded section 59:

(d) a release area considered suitable by the Minister for declaration

9. Ministers for the *Pastoral Land Management and Conservation Act 1989*, the *Harbors and Navigation Act 1993*, and *Marine Parks Act 2007* should have powers of concurrence related to their respective domains

The current relegation of the Ministers responsible for South Australia's pastoral estate, harbors and navigation, and marine parks, is an abrogation of their powers. The subsequent potential for the referral of a dispute to the Governor-General is a complicated approach to governance which can be overcome by providing these Ministers powers of concurrence. If two Ministers within the same Government do not agree on release areas and the grant of licences, then there is likely to be concerns about the desirability – and durability – of the outcome a Minister responsible for the *HRE Act* may be seeking to deliver.

Recommended legislative amendments:

All instances of 'consult with the Minister' (i.e. s(7)(4)(a) and (b); s13(2)(a); s(15)(3)(a); s17(2)(a); and s28(1)) are replaced with 'seek concurrence with the Minister'. Consequentially, delete all occurrences of referral to the Governor (i.e. s7(5); s15(4); and s17(3)).

10. The exercise of executive power should not be exempt from the Act

In order to safeguard the integrity of the act – and any legislative guarantees it provides to our natural environment – section 23 which grants the Minister powers to exempt themselves from the Act should not be granted. South Australia's system of democratic government relies on executive government being subject to statutory law at all times.

Recommended legislative amendments:

Remove section 23 of the Act.

11. Require a review of the Act

Given the novel – and as yet, untested – approach adopted by the Government to HRE developments on government land, it is prudent to undertake a review of the Act at least once after its commencement. ALCA recommends that a review be completed no later than 5 years after the Act gains assent.

Recommended legislative amendments:

Add in a new provision requiring a review of the Act (including its objects) within 5 years of the Act's commencement.

12. Publicly consult on regulations before their promulgation

Given the great importance of the regulations to on-ground outcomes – including on-the-ground environmental outcomes – the government should release an exposure draft of the regulations under the HRE Act for consultation, and conclude that consultation prior to their promulgation.

Thank you again for the opportunity to contribute to the South Australian Government's consultation on the exposure draft of the HRE Act. ALCA and its members look forward to engaging further with the government to maximise the outcomes for South Australian nature alongside the efforts to address climate change.

Australian Land Conservation Alliance

Annex: About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia. Our fifteen members are:

- Arid Recovery
- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nature Foundation
- Odonata
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)
- World Wildlife Fund – Australia

ALCA member land conservation efforts have influenced over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$280 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spill-over effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.