Your strong and independent
voice for livestock producers

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SUBMISSION

7 July 2023

Mr Nick Smith
Executive Director - Growth and Low Carbon
Department for Energy and Mining
Level 12 / 11, Waymouth Street
ADELAIDE, SA 5000

Via email: hre@sa.gov.au

Dear Nick

Re: Submission to draft Hydrogen and Renewable Energy Bill 2023

I am pleased to submit this, our final submission during the consultation process on the draft Hydrogen and Renewable Energy Bill 2023 (the Bill) and thank you and your team for their flexibility in receiving our feedback.

Livestock SA is the peak industry organisation for South Australia's red meat and wool industries. There are over 5,200 sheep producers and more than 2,700 beef cattle producers 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.

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.

Livestock SA is a member of Primary Producers SA (PPSA) and is the South Australian industry representative body of four national peak industry councils: Sheep Producers Australia, Wool Producers Australia, Cattle Australia and Goat Industry Council of Australia.

Livestock SA notes renewable energy (RE) production in Australia will need to grow to 40 times its current capacity to help reach net zero emissions by 2050. A such, we commend the State Government for its commitment to leverage our enviable renewable resources (sun and wind) in an orderly, transparent, consultative manner to maximise social, environmental and economic benefits. We also note the government considers the best way to achieve this is through a 'one window to government' framework.

Livestock SA welcomes the opportunity to provide initial feedback on the Bill, as drafted for comment and released on 12 May 2023, which is important to our members.

Background

Livestock SA notes the Bill purports to provide an efficient, flexible, transparent and consultative licensing and regulatory framework for the roll-out of hydrogen generation and renewable energy infrastructure in South Australia. For the reasons set out in this submission, we have fundamental concerns regarding the equity for our members and efficacy of the proposed process.

Livestock SA members are the primary red meat and wool producers of this State. They provide stewardship of the pastoral lands, which account for over 42 per cent of South Australia and provide a very significant economic and employment benefit to the State. It is important that any scheme that is implemented in respect of hydrogen and renewable energy in South Australia properly recognises the long-established rights of landowners and landholders, including pastoral lessees.

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

As an initial comment, 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.

Concerningly, through our consultation with various parties we have been made aware that RE companies are already considering disadvantaging pastoral landholders over their freehold colleagues in compensation and remuneration negotiations. We understand the reasoning for this approach is due to the impending Bill defining a legislative requirement for RE companies to pay rent to the State Government for the use of Crown land and that there is no indication what the value of that rent may be. The indicative figures we have been advised of are material – up to 50 per cent less remuneration per hectare for solar panels and up to 40 per cent less per wind turbine. It is unacceptable that a pastoralist should be penalised in this way to off-set the RE company's required payments to government.

With the Bill also removing the current right of the pastoral lessee to freely negotiate with multiple RE companies (by the tending process), it is possible (if not likely) that the loss of this competitive bargaining process will see the above issue compounded further. It is imperative that these significant shortfalls are addressed in the Bill, and through the subsequent Regulations.

SPECIFIC ISSUES RAISED BY LIVESTOCK SA MEMBERS

For the purpose of this submission, unless specifically used otherwise:

- 'Landholder' refers to our members operating on freehold land, or various forms of Crown leasehold and pastoral lease holders; and
- 'RE companies' refers to prospective or established HRE operators i.e. proponents, holders of any type of licence under the Bill, or existing operators with established RE projects and infrastructure.

1. Objects of the Act

1.1 These are expressed in Section 3 (page 5). Livestock SA endorses the engagement with Aboriginal people set out in Section 3(d). We recommend that an additional objects of the Act be included to endorse a similar regard to the engagement with and benefit to the broader relevant rural and regional communities.

1.2 Object (b) should be expanded to read "to establish an equitable, effective, efficient, flexible and transparent regulatory framework…"

2. Definitions under the Bill

2.1 Under Section 9-Regulated activities (page 12), point (c) 'exploiting a renewable energy resource' is listed. As a consequence, a licence is needed to perform this on Crown Land (Section 10, page 13). The definition of 'exploit' under Section 4-Interpretation (page 6) in relation to a RE resource, defines (a) and (b) generating and storing 'energy'. Whilst the assumption is that 'energy' is referring to electricity, it is not explicit in the Bill and could include (for example) the digestible energy in grains, beef, etc. This needs amending.

2.2 We understand that the Bill does not intend to regulate the generation of RE by the pastoralist for their own use to support farm operations. This needs to be explicit in the Bill.

3. Hydrogen versus renewable energy

3.1 Livestock SA notes the State Government's desire to have legislation dealing with hydrogen, which is still a novel and evolving industry sector. However, it is less clear how this specifically relates to hydrogen and what benefit is achieved by including RE.

3.2 The intention of the Bill appears to be to also cover RE components, which will primarily comprise solar farms, wind farms and supporting infrastructure such as transmission lines and access roads. It is not clear what benefit is achieved by including these well-established RE sectors in the Bill.

3.3 The existing legislative arrangements regarding the generation of RE have worked satisfactorily for many years. It has worked successfully to allow landholders and RE companies to negotiate directly and to enter into commercial arrangements for the use of a landholder's property for solar farms or wind turbines. The fact that South Australia is leading the world in this field is confirmation of this success. This underlying process should continue.

3.4 The existing arrangement typically include the payment of:

3.4.1 An establishment fee;

3.4.2 An ongoing annual lease fee (often with an adjustment process) applicable over its duration;

3.4.3 A periodic payment calculated by a percentage of the value and quantity of power generated.

3.5 The Bill proposes to usurp this commercial relationship by providing RE companies with a right to access pastoral land, establish solar or wind farms and pay 'compensation' based on 'losses'

(being damage to land and loss of productivity or profits) rather than to properly recognise the true commercial basis of the proposal. The clear intention is to divert the benefits to the State and as already asserted, Livestock SA is already seeing evidence of this. In that regard it is akin to an exercise in compulsory acquisition.

3.6 The Bill proposes to treat the installation of wind and solar infrastructure in the same way as a mineral or petroleum resource under the ground, akin to what occurs under the Mining Act or the Petroleum & Geothermal Energy Act. There is a clear difference between the two, in that mineral resources under the ground remain owned by the State Government, whereas land is owned (in the case of freehold land) or leased long term (in the case of a pastoral lease) and affords the landholder particular rights and entitlements.

3.7 The Bill should not treat the installation of wind and solar farms in a manner that is different to the current legislative and commercial arrangements, whereby wind and solar farms can be established via a normal contractual arrangement between the RE company and the landholder.

4. Transition arrangements

4.1 There are numerous current instances of wind and solar farms operating pursuant to a private agreement between a landholder and an RE company. It is important that the Bill does nothing to supersede or usurp these perfectly satisfactory private arrangements and operations.

4.2 The Bill should specifically confirm the position with existing wind and solar farms and those which are currently in the process of development, whether through the approval/negotiation process or in construction. This should apply in any situation where there has been a bona fide commencement of such process. In particular, the Bill should:

4.2.1 preserve the status quo, and not erode the rights of either the RE company or the landholder; and

4.2.2 confirm the position of wind and solar farms currently under negotiation or proceeding through the approval process (under whatever current legislative requirements exist) or where construction has commenced but has not been finalised. The Bill should specifically deal with this issue and ensure measures are put in place which allows the wind or solar farm to proceed without any changes, to ensure the rights of both the RE company and the landholder are preserved, and that neither are disadvantaged by the introduction of the Bill.

5. The Mining Act

5.1 The regime for exploration and for extracting naturally occurring hydrogen (often referred to as ‘gold hydrogen’) may be akin to the regime in the *Mining Act 1971* (the Mining Act). However, in respect of the hydrogen generating facilities, whether utilising RE or otherwise, this is clearly the equivalent of a power station.

5.2 In any event, there are a number of measures in the Mining Act which afford greater protections to landholders, than the HRE Bill including:

5.2.1 The concept of exempt land and the need to obtain waivers for exempt land, and the processes surrounding this (see sections 9 and 9AA);

5.2.2 The provision of payment by a proponent for the reasonable costs of obtaining legal assistance in relation to the operation of the section (see section 9AA), noting however our comments below as to the quantum and manner of payment of the fees for receiving assistance, as well as the need for these payments to incorporate fees for professional advice, not just legal advice;

5.2.3 The payment of rent, particularly in relation to freehold land (see section 56M); and

5.2.4 The manner in which land can be entered upon, the notice that must be provided and the compensation payable (see Part 9). In particular, we note the requirements in respect of notice being provided (being 42 days) and the period for objecting (being 3 months).

6. Freehold land

6.1 Our understanding is that freehold land is included under the Bill, in that once an access to freehold land has been secured (either by an access agreement or purchase), the RE company must apply for a licence to operate through the framework identified in the Bill.

However, we have been advised that the current wording of the Bill would benefit from amendment as it appears to only apply to 'designated land', which does not include freehold land. If there is any doubt as to that issue, it must be immediately clarified. The consequence of this is that the relevant licences will not permit operations or activities to be undertaken on freehold land. The only exceptions to this appear to be in respect of a hydrogen generation licence, which is effectively for a hydrogen generating facility, or a special enterprise licence.

6.2 We consider the diagrammatic representation on the Department's website creates some confusion and needs to be reviewed. In the page marked 'Hydrogen and Renewable Energy Act licensing process' the process of licence application still appears to apply to freehold land under the note 'Applicant secures interest in the land'. While we believe the meaning of this to be that the RE company must secure an access agreement with the freehold landholder, or purchase the land before they apply for a licence, this is not clear in the Bill.

6.3 As noted above, it should be made explicit by the Bill whether freehold land is excluded or included from the operation of the Bill, save for a hydrogen generation licence and/or a special enterprise licence.

6.4 The Department has confirmed that freehold landowners have the right to veto any RE development on their land, and that the mechanism to enable this is via silence in the Bill with regards to their existing right under alternative legislation. This is insufficient. We recommend that this explicit right of freehold landholders to veto any proposal be included in the Bill.

6.5 A hydrogen generation licence or a special enterprise licence on the basis proposed (Subdivision 5, ss 19-24), should never apply to freehold land. There are numerous concerns with a hydrogen generation facility, or a special enterprise being potentially permitted on freehold land, including the following:

6.5.1 It takes away a landowner's entitlement to use their land without interference from another person or company.

6.5.2 A 'special enterprise' is not specifically defined, being left to a decision of the Governor on the basis that the enterprise (whatever that might be) is of major significance to the economy of the State and it is in the interests of the State to grant a special enterprises licence. There are two concerns with this:

6.5.2.1 No criteria whatever are specified as to what constitutes 'major significance'.

6.5.2.2 Why should such a decision be left to the Governor? This is highly irregular. It is inappropriate for the Governor to be performing what is properly the executive powers of the Minister, which is then subject to normal executive responsibility and parliamentary accountability.

6.5.3 Also of concern is that the Minister can set guidelines for the purposes of the subdivision (section 20(2)), meaning there is little to no scrutiny regarding the 'rules' in respect of a special enterprise. This is exacerbated by the broad and virtually unfettered powers given to the Minister in section 23 to exempt a special enterprise from compliance with a provision of the Act or to modify the application of a requirement of the Act.

7. The concept of 'designated land'

7.1 The definition of what land will be subject to the Bill is undefined and unsatisfactory. It includes:

"Crown land of a kind prescribed by the regulations for the purposes of this definition".

7.1.1 This entails a completely open category of Crown lands. It is open-ended, uncertain and unsatisfactory.

7.1.2 Any regime which allows the regulations to rope in various forms of tenure lacks any concept of certainty. This is classically a form of legislation which seeks to skirt around the parliamentary process and review.

7.1.3 It is not clear in the Bill if a HRE project can be established on a pastoral lease within the Woomera Prohibited Area. This needs to be explicit in the legislation.

8. Release area selection and consultation

8.1 Section 7 deals with the process by which a Minister can declare an area of land as a release area (provided it is designated land).

8.2 It is our understanding (Livestock SA member Q&A webinar 05/07/23) that it is the intent of the government to consult with pastoralists during 3 key stages of RE project development: release area identification, the assessment of selection criteria during the competitive tendering process, and also by the Minister before they make their final decision. However, this consultation with pastoralists will be prescribed in the Regulations.

The fact that the requirement to consult with pastoral lessees is not explicit in the Bill is of great concern. In the Bill, the only stated consultation requirements for pastoral land is with the Minister responsible for the administration of the *Pastoral Land Management and Conservation Act 1989* (section 7 (6)(b)). This is manifestly inadequate. Particularly given that pastoralists do not have the right of veto for the assessment of competitive tenders (for all RE licences), and licence renewals on their land.

8.3 The current proposed approach essentially treats a pastoral lessee as if they have no substantial interest in the land. This is plainly contrary to the historical nature of the pastoral lease, and its role in the development of the pastoral sector since the early days of the colony of South Australia. This position is reinforced by the very liquid and negotiable values of pastoral lease properties. It is a stable and enduring form of tenure. Consultation with the pastoral lessees should be mandatory and should occur before there is any proposed declaration.

8.4 We propose that the Bill state that consultation must occur with 'prescribed stakeholders' (or similar) and that the definition of prescribed stakeholders in the Bill include 'owner of land', which is already adequately defined under Section 4 – Interpretation (page 8). This explicit requirement to consult with owners of land should also be included in the Bill where decision-making around release areas, the assessment of competitive tenders and licence renewals are described.

8.5 A right to be 'consulted' is a very hollow right. Given the commercial nature of this interest, and the operational needs and imperatives applicable to these properties, there must be a requirement for negotiation and settlement of proper terms for access before any release area is declared.

8.6 Furthermore, there should be a requirement for consultation with the agencies responsible for overseeing the effective long-term management of the pastoral lands, as they have experience and expertise which will identify potential issues early and facilitate better decision-making and agreements. RE operators should have access to appropriate support and expertise from these agencies.

8.7 Areas that are of low value for pastoral, environmental or tourism value (e.g. decommissioned mine sites, marginal agricultural land) should be prioritised ahead of virgin land or productive pastoral land.

8.8 South Australia's 'clean and green' image is an important differentiation for our red meat and wool brand in the premium global marketplace and it is vitally important that the enthusiastic roll-out of HRE projects does not diminish natural environmental features of significance. We understand that the current legislative framework (i.e. the *Native Vegetation Act 1991* and the *Environment Protection and Biodiversity Conservation Act 1999*) will be relied upon to guide the decision-making around 'release areas' with respect to environmental sensitivities and that no additional reference will be included in this Bill. It will in effect be 'silent' on this. We urge the government to include an explicit requirement in the Bill to adhere to the requirements under these relevant Acts, perhaps in Section 6 – Interaction with other Acts (page 10).

8.9 Furthermore (and this may be addressed in the Regulations), it is not clear on how a pastoral lessee can put forward their property for a potential RE project when it is not within a preferred area for solar and or wind as per the map provided by the Department. This might

be the case if the lessee is keen to pursue the addition of an income stream from RE on their land and wishes to be proactive in securing a 'release area' label. (We are unclear if this is covered by the definition of *release area* (page 11, line 12-15).)

8.10 Livestock SA recognises the Department's wish to consult with our members in a way which suits them. Pastoralists have requested that any consultation should be face-to-face, on property, early in the proceedings and decision-making process, and take into account seasonal operational demands and priorities. Whilst we appreciate that this will be more costly, the benefits in long-term support and collaboration will be significant. Furthermore, whilst the Bill states the requirement for decisions to be published in the Gazette, this should be supported by direct communication with the pastoralists affected, including neighbouring properties.

9. Right to enter

9.1 It is our understanding (Livestock SA member Q&A webinar 05/07/23) that "no work can commence until an access agreement has been reached". However, this does not seem to be clear in the Bill and certainly does not appear to include the entering of land by RE developers to assess whether a declared area would suit their needs. We have been advised that the Bill (as presently drafted) essentially gives an RE company a right to enter any pastoral land without notice or the need to consult with the pastoral lessee when a licence is granted. This is the consequence of the granting of a hydrogen generation licence (section 11) and explicitly stipulated in respect of a renewable energy feasibility licence (section 13(1)(c) and (2)), a renewable energy infrastructure licence (section 15(1)(b) and (3)) and renewable energy research licence (section 17(1)(b) and (2)).

9.2 This completely ignores and overlooks the rights of the pastoral lessee and fails to recognise the activities undertaken on the land and what impact the proposed activities will have on those operations.

9.3 In addition, there are no provisions which enable a pastoral lessee to object to, or oppose, access to the land.

9.4 There should be a requirement for the pastoral lessee to be consulted and negotiated with and enable the pastoral lessee to object to access being granted.

9.5 Furthermore, there are extensive periods of time for the licence to be acted upon. This adds to stress and pressure on landholders, and it creates an unacceptable position of uncertainty. It will result in investment paralysis for pastoralists and have very real social impacts. There should be more certainty in terms of timing and whether the activity will actually proceed, so there is greater clarity for all involved.

9.6 The licence for access must remain subject to negotiation as to any use or exploitation beyond exploration.

10. Access and compensation

10.1 Section 32 of the Bill provides for Access Agreements. There are at least five issues which immediately arise:

10.1.1 It isn't clear why the Minister would be involved in mediating between the parties, as provided for in subsection (7). This is a highly unusual provision in legislation and creates an obvious disadvantage for the landholder.

10.1.2 No provision is made for the payment of compensation for the time and costs involved on the part of a landholder in having to negotiate with the RE company. This is important in circumstances where there is a significant asymmetry between the resources and expertise of the RE company and landholder, which is frequently the case.

10.1.3 Any agreement must include those issues of free commercial negotiation which presently apply in relation to the development of renewable infrastructure. Whilst we are reassured by the confirmation (Q&A consultation webinar 05/07/23) that the legal right to compensation "doesn't preclude pastoral lessees from being able to negotiate other benefits" similar to those secured by free-hold landholders, this needs to be explicit in the Bill. We propose that a definition of "compensation" be included in Section 4 – Interpretation, which is clear on its extension beyond the common understanding of recognition of loss, to include remuneration from the sale of the RE generated on their land.

10.1.4 If there is no agreement the matter can be referred to the ERD Court for a determination, but no criteria are set out as to what is or isn't to be considered, nor what criteria the ERD Court is to apply in order to make a determination on terms of access and compensation payable.

10.1.5 While this may not be the most appropriate place in the Bill to include it, we are concerned that there is no specific reference to biosecurity. Our industries generate $4.3 billion for the state economy every year and are directly responsible for 21,000 South Australian jobs. The potential for a RE company to inadvertently introduce pests and diseases to farming enterprises is significant to the individual enterprise profitability and the state and national industry. We understand that the expectation is to include the need for biosecurity adherence in terms and conditions of land access, we believe that explicit reference to the *Livestock Act 1997* (which will be subsumed into a new Biosecurity Act in the near future) should be included in Section 6 – Interaction with other Acts. Our expectation is that every RE company would develop and adhere to a strict Biosecurity Plan as part of their land access agreement and their general biosecurity duty.

10.2 Part 4 of the Bill deals further with access and compensation. There are a number of issues which arise:

10.2.1 Inadequate notice is provided for in section 62 of the Bill. The requirement for a RE company to only provide 21 days' notice, and for a landholder to have 14 days within which to object, is manifestly short of a reasonable period of time. This is particularly so in circumstances where, firstly, the proposed activities will likely be of substantial economic value and will have been planned for some time and, secondly, the landholder may be on holidays or similar or be in the middle of the busiest time of year for their agricultural activities, when the notice is received. This concern is exacerbated by the fact that typically the resources of the RE company will dwarf those of the landholder. Guidance should be taken from the Mining Act, which provides for 42 days' notice to be provided and 3 months for an owner to object.

10.2.2 Section 62 also fails to set out any basis upon which a person can object to entry (noting that it only applies to an RE licence, not a special enterprise licence), nor does it specify what matters the ERD Court should take into account when determining any dispute. Greater guidance should be provided in respect of these issues.

10.2.3 In terms of compensation pursuant to section 63, there should be a broader entitlement to compensation 'for any losses suffered' and the development of a detailed compensation framework. Whilst section 63 makes reference to compensation and the fact that it includes any damage caused to the land and any loss of productivity, the reference to considering 'any relevant matters' when determining the compensation payable is unnecessarily vague and unhelpful to both the RE company and the landholder when it comes to determining compensation. The Bill should identify what the entitlement to compensation will include, which is what occurs in some interstate legislation.

10.2.3.1 For example, consideration could be given as to whether the regulations specify that an entitlement to compensation will include, (and if not why), compensation for one or more of the following matters (and, conversely, whether any of these items are excluded from the compensation payable):

- the actual value of the subject land[1];
- any loss occasioned by reasons of severance, disturbance or injurious affection on a similar basis as that which is applicable in cases of compulsory acquisition;
- the loss of the commercial opportunity which is presently available to landholders in their dealings with renewable energy generators;
- maintenance and repair of access roads, stock routes, fences and other infrastructure;
- the relocation of dams, water points, fences and other infrastructure;
- impact on any remaining farming activities, including productivity loss, impacts on whole farm operations/rotations and yield loss;
- stock impacts (including consequential losses);
- biosecurity control matters;
- time spent by the landowner;
- Reduction in the availability of water at any level in the soil profile, ground water or aquifers required for natural pasture/crop growth to

[1] Livestock SA has received advice from two major rural land sales State Managers that there is no difference in demand or eventual sale price achieved between freehold land and leasehold land. If pastoral land and freehold land are side by side the buyers pay the same value regardless of the tenure.

support desired stocking rates via usual root access, supplementary irrigation or livestock needs;

- professional fees; and
- any other relevant matters.

10.2.4 In addition, a landholder should be entitled to recover reasonable professional costs (at normal commercial rates) and costs for their time. As presently drafted, section 63(3) is lacking in terms of an obligation being placed upon an RE company to pay compensation for costs a landholder incurs (it is a 'may' not a 'must'). The RE company should have a positive obligation and be required to meet these costs – it should not be forgotten that the pastoral lessee is having this situation forced upon them without any control over it. In this regard guidance should be taken from the recent amendments to the *Land Acquisition Act 1969*, which provides for professional fees of $10,000 and the potential for a solatium payment.

10.2.5 Section 63(6) and the potential loss of an entitlement to costs is inherently unfair and potentially punishes a landholder who is negotiating in good faith but doesn't accept what is ultimately determined to be a 'reasonable offer' of compensation. There are no criteria as to what is a 'reasonable offer' and it puts the landholder at a disadvantage. It puts additional pressure on the landholder to accept what has been offered, even when it might not be a reasonable offer. The landholder should be entitled to reasonable costs of bringing a matter before the ERD Court unless they have acted egregiously and in a manifestly obstructive manner. In other words, the bar is set too low.

10.2.6 The Department has clarified that whilst freehold landholders can negotiate access with multiple RE companies concurrently, pastoral lessees are limited to negotiating with just one. The very fact of a single licence holder fundamentally undercuts the rights, interests and expectations of pastoralists. It is difficult to understand why the State should so plainly advantage the energy generation sector in its dealings with the pastoral sector. We understand that it is the government's intent to include evidence of the RE company's ability to develop mutually beneficial relationships with landholders in the selection criteria during the competitive tending process. However, we do not consider this 'intent' and a framework which is designed to support 'negotiation in good faith' is robust enough to resolve the concerns of our members. Instead, we propose that it be explicit in the Act (possibly as a selection criteria which must be met) is that the pastoral lessees concerned have already reached agreement on compensation (in its broadest sense) with the RE company.

10.2.7 Section 63 also appears to exclude a hydrogen generation licence. It isn't apparent why a landholder who has their land used for the purposes of a hydrogen generation licence should not receive compensation for the land that has been lost or is no longer able to be utilised.

10.2.8 It is also not clear what the interrelationship is between sections 32 and 63. Section 32 deals with access agreements, but access agreements must deal with access and compensation that is payable. Section 63 deals solely with compensation. The processes do not appear to totally align between the two sections.

10.2.9 Additionally, unlike the Mining Act, there are no restrictions included in respect of 'exempt land'. The kind of operations proposed under the Bill are potentially just as likely as a mine to have an impact on a sensitive receiver, such as a house. The Bill should be amended to include provisions dealing with sensitive receivers and incorporate the notion of 'exempt land'.

10.2.10 There are also no provisions made for adjoining landholders to receive compensation. If a proposed area is directly adjoining them, an adjoining landowner may in fact be impacted more significantly than the actual person whose land is directly impacted by the licence. For example, if a facility or where activities are occurring is right next to the boundary of a parcel of land and has minimal impact on the landholder of that parcel, but there is a dwelling or activity on the adjoining land that will be significantly impacted by the facility or activities being undertaken.

10.2.11 As with section 32, it isn't clear why the Minister is involved in mediating between the parties, as provided for in subsection (7). This is a highly unusual provision in legislation, and one has to question whether the landowner/pastoral lessee would be at a disadvantage.

10.2.12 It has been noted that the Department intend to review how other Australian jurisdictions are compensating landholders for the installation of transmission corridors on their land to support the roll-out of RE projects. We look forward to learning the government's position on this and where compensation for the installation of land corridors will be covered in the Bill.

10.2.13 Our members cite instances where mining companies who have been granted access to routes owned by government which traverse their property have caused significant damage. Whilst we acknowledge that there is a compliance and enforcement framework within the Bill to address behaviour which contravenes access agreements, it appears that this is only via the Minister or (as a last resort) the RE courts. Our concern is that the process will be lengthy and that the damage significant before a resolution is reached. Landholders need to be able to access a 'helpline' or similar to address issues as they emerge and before they become a significant problem.

10.3 To date, government has not made any commitments towards providing funding for a service that can assist landholders understand and navigate the complex technical, legal and procedural processes that will result from the Bill. This must be addressed. The Landowner Information Service has proven to be a helpful resource for landowners and community members who have queries on resources exploration, mining and quarrying[2].

11. Adjoining landholders

11.1 Adjoining landholders should be notified and consulted with. There is no logical reason why they should be left out of the process, particularly for some of the types of facilities or activities contemplated by the Bill.

11.2 Similarly, it is essential that RE companies are monitored to ensure they actively manage the whole area under their lease and avoid unintended impacts on the neighbours.

[2] https://www.ruralbusinesssupport.org.au/what-we-do/lis/

11.3 Ideally, there should also be provisions incorporated into the Bill providing for potential compensation where adjoining landholders are impacted. The types of activities proposed have a much broader impact than just on the land itself[3].

12. Transfers and Renewal of Interests

12.1 Section 41 deals with the situation of change in control of the holder of a licence. Renewal or transfer of such interest must not take place without the adequate and reasonable involvement of the landholder. It is the landholder who is obliged to deal with the holder of a licence. The fact of that party's reasonable conduct cannot be assumed. Reflecting the law applicable to other lease or licence interests, it should be a matter which requires the consent of the landholder, which consent could not be unreasonably withheld.

13. Operational Management Plans ('OMP')

13.1 Section S3 – S5 deals with this issue. The development and application of an OMP is central to the reasonable and sustainable operation of this regime. The OMP provides the daily 'ground rules' for the relationship between the parties and the specifics in relation to the work occurring on this land. The landholder must be fully engaged in the formulation of the OMP. No OMP should be instituted without the negotiated agreement of the landholder. Similarly, the landholder must be consulted and involved in any review of an OMP.

14. Decommissioning

14.1 The rehabilitation of the site during the decommissioning phase of the project should return the land to a state which will effectively support whatever land use will follow. This should be completed in agreement with the landholder. Soil structure is destroyed during earth works and it is insufficient to remove infrastructure and back-fill holes with any available soil, if profitable grazing and environmental systems are to be sustained.

15. The role of Pastoral Board and other agencies under the Act

15.1 The Pastoral Board (appointed under the *Pastoral Land Management and Conservation Act 1989* ('Pastoral Act')) is responsible for ensuring the pastoral lands are competently managed and protected for future generations. It is supported in its role by other regulatory bodies including the Native Vegetation Council and SA Arid Lands Landscape Board. Yet there is no reference to the Pastoral Board (or other agencies) in the Bill, only the Minister responsible for the Pastoral Act. Given the collective expertise, experience and knowledge of the Pastoral Board members, Livestock SA considers that this omission needs to be rectified. Specifically:

15.1.1 The Pastoral Board needs to continue to have the full access required to effectively monitor the condition of the pastoral lands and ensure compliance. This should include the areas leased to and managed by RE companies.

15.1.2 It should be a requirement under the legislation for the Minister responsible for the Pastoral Act to consult with the Pastoral Board, before responding to any authorisation requests from the Minister responsible for the implementation of the HRE Act.

[3] Livestock SA understands that the construction of large scale RE projects result in 200 plus people interspersing and working on building the facilities for over 2 years.

16. Pastoral Land Management Fund

16.1 Livestock SA welcomes the proposal to divert a portion of the rents received from the RE companies to support the ongoing protection, restoration and maintenance of the pastoral lands. The active development of the pastoral zone to support a significant increase in RE projects will add additional pressure to the landscape and the agencies responsible for its upkeep.

16.2 We recommend that the government thoroughly consult with the relevant regional communities to determine the expenditure of the revenue raised to ensure it aligns with their regional development objectives. Where pastoralists are concerned, Public Access Routes and stock routes have been chronically underfunded for some time and producers are now being negatively impacted by the lack of PAR upgrades, completions and general maintenance.

16.3 There may also be an increase in the workload for the Pastoral Board and other agencies when their monitoring and compliance responsibilities extend to areas assigned to RE companies, in addition to pastoralists. Appropriate increases in funding to support this critical work would be appropriate.

17. Hydrogen and Renewable Energy Bill Pastoralist Workshop

17.1 Livestock SA notes the issues and ideas raised by our members at the Pastoralist Workshop in Port Augusta on 14 June 2023 and documented in the DEM Summary Report (June 2023). We ask that all items raised in the summary report also be considered as part of this submission.

It has become clear during the consultation process to date that considerably more effort is required to ensure landholders are better informed about changes the HRE Act will create. It is disappointing that the consultation timeframes seem to be contracting (3 months for the Issues Paper, but only 7 weeks for the draft Bill), which we would like to see reversed. The HRE Act will have wide-reaching and permanent implications for livestock businesses, and it cannot be rushed if we are to get it right.

In addition to the gross imbalance of resourcing between multi-national RE companies and family farming businesses, the current lack of awareness and understanding for landholders places them at a distinct disadvantage to the other party in negotiation processes and puts them at risk of poor outcomes being realised. We are pleased to hear that the Department has recognised the need for government to develop a suite of comprehensive support resources to assist our members in making informed decisions and welcome continued involvement in this work.

Given the gravity of some of the issues raised by our members, we would also welcome the opportunity to meet in person to discuss how their concerns have been addressed (or not) in the amended Bill before it is presented to parliament.

Yours sincerely

Travis Tobin
Chief Executive Officer