23D078

29 June 2023

Have YourSAy
DEM.legislation@sa.gov.au

Re: Hydrogen and Renewable Energy Act

Dear Sir Madam,

Please accept this letter as our submission to the proposed Hydrogen and Renewable Energy Act in South Australia.

I appreciate this letter is a little late (the final day being 26 June 2023), however the consultation process has been condensed and the magnitude of what is being proposed is so substantial that it has required considerable thought.

In its current form, the South Australian Dairyfarmers' Association (SADA) cannot support the proposed law. So that our position is clear it is not because of a drafting issue in the circulated bill, but rather the fundamental challenge that the laws present to land holders who hold land defined as prescribed land.

The first observation that the proposed law reaches far beyond the government's ambitions for Hydrogen. This is an ambition which we support, however, this proposed law is an attempt to reduce sunshine and wind to the same form of ownership as the Crown's residual rights in minerals.

Hitherto, the sun which has fallen on the land or the wind which has moved across the land has been free and if a land holder chose to harness this source of energy it has been there for the taking. For all practical purposes sunshine and wind are infinite resources.

The proposed law is constructed in the following way.

1. The Government creates a "release area" on prescribed land,
2. Once so described the Government calls for tenders for project developments,
3. A proponent can then bid to build a wind farm/solar farm on land in that Release Area,
4. The Government then issues a licence (one of several forms of licence) to the proponent,
5. The proponent then proceeds in accordance with the terms of the licence using the unilateral powers of entry that the licence and the Act provide. In that instance the land holder may receive compensation but has no final say in the nature of the intrusion,
6. If the proponent's activities are so impactful, they may be obliged to acquire the land.

In reality, a land holder is nothing more than a hapless passenger in the process where the land that they occupy is in a release area.

Land holders such as pastoralists have been exploiting those resources for around 150 years. They have been doing so by obtaining and storing energy from the sun in the grasses and herbage that grow on land through the process of photosynthesis and then converting, storing and conveying that energy in the form of meat, milk and other products using the renewable energy from the sun.

South Australian Dairyfarmers' Association Inc
U5 780 – 802 South Road, Glandore SA 5037
Ph: 8293 2399 Fax: 8293 8886 Email: sada@sada.asn.au
ABN: 70 250 523 225

Now those land holders are being told that their process of energy capture is subordinate to other processes which are defined in the same broad way in the proposed Bill.

While we appreciate the response will be that there is a process which needs to be followed as outlined in the circulated draft bill, the truth is that the notion of rights exerted by the Crown over sunshine and wind is fundamentally wrong.

Sunshine and wind are infinite resources. Up until now if a land holder sought to develop a renewable energy source they could make arrangements to capture that source and to do whatever was needed to be done to develop such a project. In fact, as outlined above, that is exactly what they have been doing for more than a century.

This proposed law simply removes the right of land holders to be involved in the process. They will be pushed aside by the Crown in the same fashion if the Crown found minerals under their land.

Sunshine and wind are not minerals. They exist on all land in South Australia. As Professor Samantha Hepburn of Deakin University has declared,

> "*Contrast this with renewable energy like the wind or sunlight. Sunlight and wind are intangible, they can't be touched or handled, and therefore can't be owned in the same way as minerals*."[1]

She adds later in the same article the observation that,

> "*It is not feasible to impose ownership rights upon emancipated resources such as wind and solar, which lack any tangible or defined presence. It is, however, possible to develop a regulatory framework that further incentivises the implementation of renewable projects. For example, a framework where farmers receive significant government subsidies for endorsing wind farm development would encourage the expansion of this fledgling industry."*

These resources are essentially infinite, and this legislation seeks to make sunshine and wind the property of the state at the effective exclusion of any land holder where that sunshine and wind is considered to be commercially real.

SADA simply disagrees with the premise at its most fundamental level. Should the Government seek to proceed with the proposal on the basis of its current philosophy SADA will stand ready to resist it at every possible opportunity.

Your sincerely,

Robert Brokenshire
President.

[1] Property rights issues in renewable energy (gettingtosustainability.com.au), *'Should we extend property rights to the atmosphere?'* 24 July 2013 Prof Samantha Hepburn teaches in mining and energy law, environmental law, natural resources law, water law, native title and land law at the school of law in Deakin University.

South Australian Dairyfarmers' Association Inc
U5 780 – 802 South Road, Glandore SA 5037
Ph: 8293 2399   Fax: 8293 8886   Email: sada@sada.asn.au
ABN: 70 250 523 225