

New Energy Quarterly:

Empowering Communities

Spring 2023



Contents

Editorial	1
Watt’s happened at Hamilton Locke	2
Watt’s new at Hamilton Locke	2
Watt’s happened in the Market	3
Market Recognition	3
Watt’s next	3
Spotlight – Adam Jeffrey	4
Rising Star – Rahul Tijoriwala	6
Watt is being funded	8
Hamilton Locke New Energy Team	10
ESG at Hamilton Locke: An Interview with Managing Partner, Nick Humphreys	12
Australia’s Green Financing Market: Financing Empowerment or Facilitating Greenwashing?	14
‘Social licence and registration, please’: Social Licences to Operate as a mandatory consideration	18
Community Voices: Do’s and Don’ts of Community Engagement	20
Empowering Communities Through Ownership: The Rise of Inclusive Ownership Models	22
IESS QUEEN! AEMO clarifies implementation of integrated energy storage systems	24
Combating Modern Slavery in the Renewable Sector – An Australian Perspective	26
Explainer: Embedded Networks 101	28
To fix or not to fix? Offshore wind and community impact	30
Agrisolar: saving two birds with the one stone	32
How to solve the problem of decommissioning?	34
Finding Common Ground Between Offshore Wind Farms and the Rights of Aboriginal and Torres Strait Islander People	38
Hamilton Locke Expert Insights AEIC – Andrew Dyer	40
New Energy Associates Network – NEAN	44
New Energy Expert Insights – Lucas Sadler of Energy Vault	45
Previous Editions of the New Energy Quarterly	48
Previous Expert Insights	48

Editorial

The transition to renewable energy is necessary for a sustainable future. However, for renewable projects to be successful, it is essential to engage and empower the communities that will be directly affected by them.

Community engagement is a nebulous concept, but it [has been defined as](#) ‘the process of working collaboratively with and through a group of people affiliated by geographic proximity, special interest or similar situations to address issues that affect the well-being of those people’. It involves consulting with communities to inform decision-making processes of a project.

While forms of community engagement are as diverse as communities are, the overarching benefits are clear. First, community engagement builds trust and goodwill between developers and the community. This is essential for the long-term success of a renewable project. Second, community engagement can help to identify and address potential issues or concerns early on. This can help to avoid delays and conflict later in the renewable project. Third, community engagement can help to ensure that the benefits of the renewable project are shared equitably. This can help to build support for the renewable project and make it more sustainable in the long run.

Contents of this Quarterly

This Quarterly considers how communities may be empowered throughout the lifecycle of a renewable project.

To commence, this Quarterly considers the meaning and practical significance of holding a social licence to operate, including by reviewing case studies where projects (renewable and otherwise) have failed to acquire or maintain a social licence to operate. Genuine engagement with communities is particularly significant in the context of landowners and traditional owners, the latter of which must provide ‘free, prior and informed’ consent to a renewable project. In doing so, this Quarterly investigates historic and contemporary models of engagement to assess how benefits can be targeted to empower a specific community, as balanced against bankability requirements.

Next, this Quarterly considers the role of legislation and the judiciary in protecting and strengthening diverse communities. This includes prohibitions on greenwashing and laws regulating embedded networks to protect communities of consumers, as well as recent changes to modern slavery laws designed to protect economically disadvantaged communities at risk of human rights violations.

Finally, this Quarterly demonstrates that community engagement is not a zero-sum game between developers and communities. There are promising renewable energy developments which herald a new era of renewable project–community relationships. This includes the potential for floating offshore wind farms to reduce the impact on coastal communities, the co-existence of solar farms and farming through agrisolar, and the growth of ‘Discretionary Mutuals’ to protect landowners at later stages of a renewable project’s lifecycle.

Key Themes of this Quarterly

Two key themes emerge from this Quarterly:

1. the first is that engagement must be ongoing (i.e. beyond the initiation and construction phases) and tailored to the specific community to ensure that the benefits advance the needs and interests of a community. Historically, benefits have often comprised singular or tokenistic monetary donations which are insignificant in the context of a renewable project’s profit. Nowadays, benefits go much further, and include co-ownership of renewable projects via equity, co-existence of local practices with renewable projects, mandatory hiring of local labour, and the supply of generated power to residents; and
2. the second is that while communities must receive genuine benefits and be actively engaged during the new energy transition, the benefits and control granted cannot be so great as to compromise bankability. The objectives of communities and financiers are not always consistent, and communities often prioritise energy security, energy access, and decarbonisation, whereas financier goals often prioritise profitability (although this is changing). Ensuring a greater degree of alignment between communities and financiers is therefore key moving forward.

Looking forward

Ensuring communities are empowered is more than an aspiration; it is a government priority. Historically, national legislation and programmes have insufficiently regulated community ownership. However, this is changing. The Australian Energy Infrastructure Commissioner is presently [leading a review](#) into community engagement practices (in respect of local communities, landowners and traditional owners) related to the deployment of renewable energy infrastructure. As concepts of ‘best practice’ crystallise into legislation and policy, it is imperative that all those involved – developers, contractors, financiers and the communities themselves – are aware that empowering communities is no longer a ‘box-ticking’ activity – it is the heart of the renewable energy transition.

Finally, it is important to keep in mind that community engagement, done right, doesn’t just benefit the community. It benefits the renewable project and ensures the reliability of our electricity supply. As the International Renewable Energy Agency stated in its [‘Community-Ownership Models – Innovation Landscape Brief’](#), ‘Community projects can provide flexibility and, when connected to the main power system, increase the reliability and resilience of the whole system. They provide many socio-economic benefits in addition to low-cost renewable energy to the local community.’

Put simply, when a community benefits, everyone benefits.

Watt’s happened at Hamilton Locke

► Hamilton Locke has been named Law Firm of the Year (101-500 Lawyers) in the Australasian Lawyer’s 2023 Australasian Law Awards.

[Read more](#)

► Hamilton Locke’s New Energy Associates Network (NEAN) have recently hosted fireside chats with:

Jean-Louis Salinas of Siemens Energy [Read more](#)

and Lucas Sadler of Energy Vault [Read more](#)

► NEAN is a network for New Energy industry professionals from graduate to senior associate level, aimed at building connections and sharing industry knowledge among members. Find out more via the NEAN LinkedIn page.

[Join here](#)

► Hamilton Locke has again partnered with the Technology **Scale-Up Awards** and **Australian Growth Company Awards** in 2023, proudly supporting the innovation, excellence and superb business leaders that are achieving great things in their respective industries.

► A number of Hamilton Locke Partners have been named in the 2024 Best Lawyers in Australia report by Best Lawyers.

[Read more](#)

► The Hamilton Locke New Energy team recently attended the Australian Clean Energy Summit 2023 and the neighbouring Energy Next 2023 conference. Read the team’s key takeaways from an extensive and insightful list of panellists and speakers here.

[Read more](#)

► Matt Baumgurtel recently featured as a panellist at the Solar Mega Projects in Australia: Build Solar Better forum.

► Matt Baumgurtel, Adriaan van der Merwe, Ally Frizelle and Poulad Berenjforoush of the New Energy team gave a guest lecture in Global Energy and Resources Law at the University of Sydney in March.

Watt’s new at Hamilton Locke?

New Starters and Promotions:

Partners	Maggie Chang (promoted) James Tannock (promoted) Bryan Ventura Clementyne Rawlyk	Lawyer, Associates and Solicitors	Benjamin Hall Anica Cunanan Tariq Alardah Vivienne Sasse Talya Jasson Jasmine Tran Alexandra Meissner Poulad Berenjforoush Leanne Chew (admitted) Kate Basta (admitted) Raymond Deng (admitted) Madeline Torrisi (admitted) Luke Simperingham (admitted) Isabel Roach (admitted) Zane O'Neill (admitted) Chermonica Niranjan (admitted) Megan Chau (admitted) Lucinda Tracy (admitted) Lily Cox (admitted) Mackenzie Grayson (promoted)
Special Counsel	Adriaan van der Merwe (promoted) Eliza Buchanan (promoted) Monty Loughlin (promoted) Jessica Smith (promoted)		
Senior Associate	Camilla Vadas (promoted) Cormac Foley (promoted) Emil Conradie (promoted) Joshua Mills (promoted) Nicholas Achurch (promoted) Julian Ilett (promoted) Nicholas Pavouris (promoted) Pravneel Chaudhary (promoted) Katherine McMenamin Candice Gibson Rachael McGurgan	Graduates	Sarah Sekandar
		Paralegals and Law Clerks	Kusum K C David Wan Dhanushka Rajaratnam

Watt’s happened in the Market

► Victorian Government has issued the Offshore Wind Energy Implementation Statement 2.

[Read more](#)

► CSIRO has issued the Renewable Energy Storage Roadmap.

[Read more](#)

► The Department of Climate Change, Energy, the Environment and Water issued the State of Hydrogen 2022 report (released April 2023).

[Read more](#)

► The International Energy Agency issued the Global EV Outlook 2023.

[Read more](#)

► International and Renewable Energy Agency has issued Creating a global hydrogen market: Certification to enable trade.

[Read more](#)

► The International and Renewable Energy Agency issued Green hydrogen: A guide to policy making.

[Read more](#)

► Australia and the United States signed the Australia – United States Climate, Critical Minerals and Clean Energy Transformation Compact.

[Read more](#)

► Consultation has opened on the Hydrogen Headstart Program.

[Read more](#)

Market Recognition

Hamilton Locke Partners recognised in the 2024 Edition of Best Lawyers in Australia.

[Read more](#)

Hamilton Locke selected as a Finalist in Fintech Australia’s 2023 Fannies Awards.

[Read more](#)

Hamilton Locke named Finalist in 2023 Financial Times Asia-Pacific Awards.

[Read more](#)

Hamilton Locke recognised in Doyle’s Guide 2023 Queensland.

[Read more](#)

Hamilton Locke named ‘Best Banking, Finance and Insurance Firm (<\$30m revenue) in the 2023 Client Choice Awards category.

[Read more](#)

Watt’s next?  The next New Energy Quarterly – Offshore Wind

Spotlight - Adam Jeffrey



Adam Jeffrey
Partner - Finance
Sydney
+61 481 913 850
adam.jeffrey@hamiltonlocke.com.au

Adam has extensive experience acting across a broad range of industries, including construction, property, infrastructure, real estate and financial services.

Regularly acting for Australian and international corporate borrowers and financial institutions, Adam focuses on general corporate finance, property finance and leveraged finance. In addition, Adam has expertise in negotiating derivative arrangements and acting for issuers in the Australian and US debt capital markets. He regularly advises borrowers and financiers across a range of local and cross-border financing matters.

Adam's extensive background in banking and finance together with his valuable global experience allows him to provide innovative and pragmatic solutions for even the most complex legal matters. Adam provides sophisticated and value driven advice, ensuring his clients are always protected and that the best possible outcome is achieved.

Prior to joining Hamilton Locke, Adam worked for Baker McKenzie and Herbert Smith Freehills, as well as Clifford Chance, where he gained valuable global experience in Moscow, Russia.

Journey to becoming a lawyer

As far as I can remember, I always wanted to be a lawyer. I just can't remember why... I was always involved in debating and drama at school, so I am sure that played a part. I am also drawn to the logical and critical way of thinking and problem solving that being a lawyer involves.

After university, I completed my articles at Freehills and on my first day, I was sent to court. I was petrified but managed to survive - and have never set foot in a courtroom again! This experience clarified my inclination to the transactional side of lawyering.

Following my articles, I moved to Sydney on a secondment with Freehills and soon after made the relocation permanent. Eager to broaden my horizons further, my wife and I decided to immerse ourselves in an entirely new culture and work environment - Russia. Our Moscow experience, both challenging and enriching, marked an important chapter in my evolving legal journey. We subsequently returned to Sydney where I have continued to work as a finance lawyer.

Specialisation

Having established my aversion to litigation, I soon settled in banking and finance. Over the years, I have worked with many borrowers and lenders on a diverse range of financing transactions.

With the recent global shift towards sustainability, I've had the opportunity to work on a number of green financings (both traditional debt and in the debt capital markets) and renewable projects. I enjoy assisting treasury teams on their 'green journey' and navigating this complex yet rewarding sector. Working with the Hamilton Locke New Energy team allows me to continue this interesting and ever-evolving work.

Career highlights

While I have worked on many high profile and complex transactions, one of the most rewarding aspects of my legal career has undoubtedly been the opportunity to truly get to know my clients and become an integral part of their journeys. Whether guiding a startup through the complex legal landscape, assisting a long-established corporation in navigating new challenges, or working hand-in-hand with clients to innovate within the green financing space, I have found immense satisfaction in building genuine relationships and providing tailored solutions.

Why I joined Hamilton Locke

I joined Hamilton Locke because I was looking for something different. The Hamilton Locke way of doing things really resonated with me - particularly the emphasis on being a people-centric organisation and the constant encouragement to collaborate across teams, practice groups and offices. Pleasingly, this approach has been evident throughout my time at the firm. This focus leads to better experiences and results for our clients.



Rising Star - Rahul Tijoriwala



Rahul Tijoriwala
Paralegal
Sydney
+61 2 8072 8271
rahul.tijoriwala@hamiltonlocke.com.au

Get to know you

Favourite books:
The Subtle Art of Not Giving a F*#k by Mark Manson

12 Rules for Life: An Antidote to Chaos by Jordan Peterson

Two different yet intriguing insights into living life and slightly more sophisticated answers than the Big Hungry Caterpillar and Where the Wild Things Are.

Favourite documentary:
OJ: Made in America

An awe-inspiring series on sports, celebrity culture and race in the US, centred around arguably the most famous murder trial in history.

Favourite late-night host:
Conan O'Brien

His combination of quick-wit, sarcasm and self-deprecating humour is unique in itself and infectious to watch.

Top future travel destinations:
New York

The idea of a future stint in New York can solely be blamed on the unrealistic expectations set out in most of the TV and film I've watched growing up.

What are you most proud of in your career to date?

Balancing full-time studies at university, my work as a paralegal at Hamilton Locke, and football and athletics coaching duties, is something I am extremely proud of. It was challenging having to juggle competing priorities and responsibilities, especially during the course of a pandemic. I found that careful planning and time management was of great benefit to me, and I will continue to develop my organisational skills into the future.

What do you enjoy about working in the legal industry?

I enjoy the intellectual challenge of analysing legal problems and the constant learning and growth that comes with working in a dynamic field. Navigating complex issues and devising tailored solutions can entail a range of diverse thought processes and I admire how eloquently and succinctly lawyers can articulate their answers, whether it be an abstruse legal question or why the Fast and Furious franchise may never end. Both questions are of equal relevance.

If you have taken part in the Da Vinci program, what activity did you undertake and why?

Numerous snoozed alarms and a crushing acceptance that I may never get to the gym before work led to me choosing F45 as my Da Vinci Activity last year. With highly exaggerated recounts of high school sporting glory wearing thin with close friends, I thoroughly enjoyed pushing the limits of my limited cardiovascular endurance and integrating more physical exercise into my work and university life cycle. The classes played a big factor in getting me back in shape to return to playing AFL after 9 years.

What do you like most about Hamilton Locke?

The firm has a culture of collaboration and teamwork embedded within its foundations. I have been appreciative of colleagues and supervisors fostering an environment where knowledge sharing and support are highly valued. The collaborative nature not only enhances the quality of our work but also provides a sense of camaraderie and shared purpose. It would be amiss to not mention the somewhat endless supply of various lollies and morning coffee runs as a very close second.



The HPX Group Mentality
I am impressed by the HPX Group consistently going above and beyond to create a working dynamic between clients and lawyers that is productive and prosperous. The idea of working in law is prone to common misconceptions which permeate throughout law school. It is easy to forget that at its core, the legal industry revolves around building close and trusting relationships and helping people achieve legal, commercial and personal outcomes. Within HPX Group, the focus on relationship-building begins with your team members and broader colleagues – strong and healthy relationships are cultivated in everyday interactions within the group.

Watt is ARENA funding?


The 2023 Federal Budget has been released. Read our analysis of the budget's key climate change and renewable energy investments [here](#).

Program	Summary	Funding available	Closing Date
Advancing Renewables Program (ARP)	The ARP awards grants to a range of projects that seek to: <ul style="list-style-type: none">- Optimise the transition to renewable electricity- Commercialise clean hydrogen- Support the transition to low emission metals	Up to AUD \$50 million	Ongoing
Powering the Regions Industrial Transformation Stream	The Industrial Transformation Stream seeks to support existing industrial facilities, and new clean energy developments, in regional areas to reduce their emissions, in line with Australia's 2030 targets and in support of reaching net zero by 2050.	AUD \$400 million	Register your interest
Industrial Energy Transformation Studies Program (IETS)	IETS looks to assist large energy users in undertaking engineering and feasibility to identify ways to lower energy costs and reduce carbon emissions. Funding is available to companies and organisations in agriculture, mining, manufacturing, gas supply, water supply, waste services and data centre sectors. Funding will be provided in two Streams: <ul style="list-style-type: none">- Feasibility Studies: to provide an independent assessment that examines all aspects of a project- Engineering Studies: to determine whether a EPC contract could be executed	AUD \$43 Million	Stream A: March 2023 Stream B: July 2023
Hydrogen Headstart	Hydrogen Headstart will underwrite the biggest green hydrogen projects to be built in Australia through a competitive process which will provide revenue support for ongoing operational costs in the form of a production credit.	AUD \$2 billion	1 June 2023
Hydrogen Research and Development Funding Round	The Hydrogen Research and Development (R&D) Funding Round seeks to support the commercialisation of renewable hydrogen through innovative R&D in renewable hydrogen production, storage and distribution technologies.	Up to AUD \$25 million	Ongoing


Program	Summary	Funding available	Closing Date
Regional Australia Microgrid Pilots Program (RAMPP)	Regional Australia Microgrid Pilots Program (RAMPP) aims to improve the resilience and reliability of power supply for regional and remote communities. Grants between \$1 million and \$5 million are available to projects that have successfully completed a feasibility study. This is an open, non-competitive funding round, with funds available in two stages: <ol style="list-style-type: none">1. \$30m until CY2022; and2. \$20m until CY2023.	AUD \$50 million	31 December 2026
Iron and Steel Research Development Funding Round	The Iron and Steel Research and Development (R&D) Funding Round seeks to support the transition to low emissions iron and steel through innovative R&D in low emissions iron and steel technologies using Australian iron ore.	AUD \$25 million	1 June 2023
Sustainable Aviation Fuel Funding Initiative	Following market developments since this time, the scope of this initiative is targeted towards the development of a sustainable aviation fuel (SAF) industry in Australia with production from renewable sources. Expressions of Interest are expected to open in mid-2023.	Up to AUD \$30 million	1 November 2023
Driving the Nation Program	The Program is focused on accelerating the uptake of Zero Emission Vehicles (ZEVs). ZEVs include Battery Electric Vehicles, Hydrogen Fuel Cell Vehicles and biofuel vehicles.	AUD \$500 million	Ongoing
Clean Energy Innovation Fund (CEIF)	Seeks to fund emerging Australian technologies and businesses to speed the nation's transition to a renewable economy.	Up to \$5 million	Ongoing

Check your eligibility here
If one of the programs sparked your interest you can check your eligibility [here](#).


Hamilton Locke New Energy Team




Matt Baumgurtel Sydney
Partner – New Energy Lead
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel




Veno Panicker Sydney
Partner – Construction and Infrastructure
+61 409 495 242
veno.panicker@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/veno-panicker




Grant Parker Sydney
Partner – Construction and Infrastructussre
+61 402 855 728
grant.parker@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/grant-parker




Brit Ibanez Sydney
Partner – Litigation and Dispute Resolution
+61 421 355 503
brit.ibanez@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/brit-ibanez




Michael Boyce Perth
Partner – Energy and Resources
+61 400 142 494
michael.boyce@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/michael-boyce




Tricia Moloney Melbourne
Partner – Finance
+61 434 154 180
tricia.moloney@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/tricia-moloney



Margot King Perth
Partner – Property
+61 406 056 651
margot.king@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/margot-king



James Simpson Sydney
Partner - Workplace and Employment
+61 407 061 641
james.simpson@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/james-simpson



Adam Jeffrey Sydney
Partner – Finance
+61 481 913 850
adam.jeffrey@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/adam-jeffrey



Adriaan van der Merwe Sydney
Special Counsel
+61 2 8072 8271
adriaan.vandermerwe@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/Adriaan-van-der-Merwe




Sandra Taran Sydney
Special Counsel
+61 2 8072 8271
sandra.taran@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/sandra-taran




Timothy Zahara Sydney
Special Counsel
+61 2 8072 8271
timothy.zahara@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/timothy-zahara




Eliza Buchanan Sydney
Special Counsel
+61 2 8072 8271
eliza.buchanan@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/eliza-buchanan




David O'Carroll Sydney
Senior Associate - Energy, Infrastructure and Resources
+61 2 8072 8271
david.ocarroll@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/david-ocarroll




Hannah Jones Sydney
Senior Associate – Corporate, M&A and Private Equity
+61 2 8072 8271
hannah.jones@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/hannah-jones




Gareth Howard Sydney
Senior Associate – Construction and Infrastructure
+61 2 8072 8271
gareth.howard@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/gareth-howard




Cormac Foley
Senior Associate – Workplace and Employment
+61 2 8072 8271
cormac.foley@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/cormac-foley




William Ryan Sydney
Lawyer
+61 2 8072 8271
william.ryan@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/william-ryan




Poulad Berenjforoush Sydney
Lawyer
+61 2 8072 8271
poulad.berenjforoush@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/poulad-berenjforoush/



Ally Frizelle Sydney
Lawyer
+61 2 8072 8271
ally.frizelle@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/ally-frizelle




Tariq Alardah Sydney
Lawyer
+61 2 8072 8271
tariq.alardah@hamiltonlocke.com.au




Megan Chau Sydney
Lawyer
+61 2 8072 8271
megan.chau@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/megan-chau







Rahul Tijoriwala Sydney
Paralegal
+61 2 8072 8271
rahul.tijoriwala@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/rahul-tijoriwala



Dhanushka Rajaratnam Sydney
Paralegal
+61 2 8072 8271
dhanushka.rajaratnam@hamiltonlocke.com.au



David Wan Sydney
Paralegal
+61 2 8072 8271
david.wan@hamiltonlocke.com.au



Kusum K C Sydney
Paralegal
+61 2 8072 8271
kusum.kc@hamiltonlocke.com.au

ESG at Hamilton Locke:

An Interview with Managing Partner, Nick Humphrey



Nick Humphrey
Managing Partner
Sydney

nick.humphrey@hamiltonlocke.com.au

Can you start by giving us an overview of Hamilton Locke's approach to ESG and its importance to the company?

At Hamilton Locke, we firmly believe that our responsibility extends beyond financial success. Environmental, Social, and Governance considerations are at the core of our business strategy. We see ESG as a framework that aligns with our value-based model and helps us drive sustainable growth while positively impacting the communities we operate in.

Could you highlight some specific ESG initiatives that Hamilton Locke has undertaken?

Of course. **On the environmental front**, we've committed to adopting sustainable office solutions such as incorporating energy-efficient practices, minimising waste, and encouraging recycling. Additionally, our New Energy team has been established to facilitate the successful implementation and operation of renewable energy projects, both domestically and abroad. For example, they have [partnered with H2Q Hydrogen Queensland](#) to support Australia's developing domestic hydrogen industry.

On the social side, we're dedicated to fostering a diverse and inclusive workplace to enhance both our people experience (Px) and client experience (Cx). We've implemented policies to ensure equal opportunities and accommodate our employees' needs (such as our generous paid parental leave and mental health policies). We have also created employee resource groups that promote diversity across all levels of the organisation (for example, our diversity and inclusion committee). In 2022, we spent \$1 million on development initiatives that encouraged our employees to maintain a work-life balance. This includes the Da Vinci program, which provides financial support and up to five additional days of annual leave to employees who learn a new skill beyond their comfort level.

We have also established a Community and Pro Bono Program and have key partnerships with organisations like The Hunger Project, Ocean Impact Organisation, the Magic Coat Foundation and Your Buddy Check.

In terms of governance, transparency and accountability are paramount. We maintain a high standard of corporate governance, ensuring that our decision-making processes are ethical and fair.

Regular assessments and audits help us identify areas for improvement and maintain the highest level of integrity.

That's an integrated approach. How do you see ESG evolving in the corporate landscape, and how does Hamilton Locke plan to stay ahead?

ESG is no longer just a buzzword; it's a fundamental aspect of how businesses operate. As societal expectations continue to evolve, companies that embrace ESG will have a competitive advantage. At Hamilton Locke, we are committed to staying ahead by continuously learning and adapting. We're investing in education and training for our employees to ensure they are well-equipped to navigate the changing ESG landscape.

We also track key performance indicators related to each pillar of ESG to ensure our efforts are effective. Additionally, we engage with stakeholders, including employees, clients, and investors, to gather feedback and understand their perspectives on our ESG efforts.

Finally, what message would you like to convey to other organisations looking to enhance their ESG practices?

My message is simple: ESG is not just a box to check; it's a mindset that can drive innovation, resilience, and growth. Start by aligning your ESG initiatives with your core values and business strategy. Engage your stakeholders, set measurable goals, and communicate your progress transparently. Embrace ESG as a journey and remember that small steps can lead to significant positive impacts.

For Hamilton Locke, ESG is not just a compliance matter. It is who we are and how we operate.



Australia's Green Financing Market: Financing Empowerment or Facilitating Greenwashing?

Author: Adam Jeffrey

Australia's Green Financing Market: Financing Empowerment or Facilitating Greenwashing?

In the rapidly evolving world of sustainable finance, Australia's green financing market has the potential to drive the nation towards a more sustainable future. However, a critical question emerges - is this burgeoning sector genuinely empowering environmentally friendly initiatives, or is it merely presenting a superficial image of sustainability? There is a delicate balance between genuine green financing that empowers individuals and communities and the potential pitfalls of greenwashing.

“Green” Finance

Green financing, also known as sustainable or environmental finance, is a broad term that encompasses a variety of financial activities designed to support and promote the development of a sustainable, low-carbon, and climate-resilient economy. It involves directing financial investments towards projects, products, and companies that contribute to environmental sustainability.

However, the scope of green financing extends beyond the environmental aspect, touching on social and governance factors as well. This includes ensuring that projects and companies adhere to fair labour practices, promote social equity, and contribute to the overall well-being of communities. This aspect of green financing aligns with the broader concept of social responsibility in business, which emphasizes the need for companies to operate in a manner that benefits society.

Examples of green financing include green or sustainability-linked bonds or loans, sustainable funds and impact investing. The effectiveness of these financial instruments in achieving their intended benefits often depends on clear and transparent criteria for what counts as "green" or "sustainable", robust reporting standards, and effective oversight and enforcement mechanisms.

Empowerment

Green financing can empower in a number of ways:

- **Economic Empowerment:** Green financing has the potential to stimulate economic growth by generating employment opportunities in industries such as renewable energy, sustainable agriculture, and green construction. This can result in increased income levels and improved living standards for both individuals and communities. For instance, the Australian government's Clean Energy Finance Corporation (**CEFC**) has invested in various renewable energy projects, such as wind farms and solar power plants, which have created thousands of job opportunities and contributed to the economic development of local communities.
- **Environmental Protection:** By investing in projects that promote environmental sustainability, green financing plays a crucial role in protecting and restoring ecosystems. This, in turn, leads to improved health outcomes for communities and nations, as well as the preservation of biodiversity. An example of this is the Australian government's proposal to commit over \$3.2 billion of the budget to the Reef Trust, being the government's flagship investment program to protect and ensure the long-term, sustainable management of the Great Barrier Reef.
- **Social Equity:** Green financing initiatives often prioritise social equity, ensuring that the benefits of sustainable development are spread widely and reach marginalized and under-resourced communities. This focus helps reduce inequality and promote social cohesion. For instance, the Aboriginal Carbon Foundation is driving transformative changes within communities by advocating for carbon farming. Their primary objective is to foster economic prosperity for both Indigenous landowners and non-Indigenous carbon farmers.
- **Resilience Building:** Green finance investments in climate-resilient infrastructure and adaptation measures enhance communities' and nations' ability to withstand the impacts of climate change. This reduces vulnerability to climate-related disasters and ensures the continuity of essential services. In Australia, the Clean Energy Finance Corporation has invested in projects like battery storage systems and microgrids, which enhance the resilience of remote communities by providing reliable and sustainable energy sources, even during extreme weather events.

- **Policy and Governance:** Green financing can also influence policy and governance by encouraging governments to implement sustainable policies and practices. This leads to improved environmental regulation, increased transparency, and better management of natural resources. This can be seen via the National Waste Policy Action Plan, which was implemented in 2019 to promote more efficient and sustainable waste management practices by state and territory governments, as well as local governments, businesses and industries. As part of this action plan, among other commitments, the Australian government proposed to ban the export of waste plastic, paper, glass and tyres.

Greenwashing Risks

While green financing has the potential to bring about significant positive change, it's important to consider the risks associated with greenwashing.

Greenwashing refers to the deceptive or misleading practice of presenting a company, product, or initiative as environmentally friendly, sustainable, or socially responsible when it may not be the case. It involves making exaggerated or false claims about the sustainability benefits or impact of a product or service, often with the intention of boosting the company's reputation and sales. In the context of green financing, this could involve funds being directed towards projects that are not genuinely sustainable or companies misrepresenting their environmental impact to attract investment.

Green financing, while intended to support environmentally friendly and sustainable projects, can inadvertently facilitate greenwashing.

Investors, driven by the desire to be part of the green movement, may not conduct thorough due diligence before investing in a project. For instance, an investor might be swayed by a company's marketing efforts that highlight a single green project, without looking into the company's overall environmental footprint. This can allow companies with less-than-green practices to receive green financing. Even when a project is genuinely environmentally or socially friendly, there is a risk that the funds received through green financing could be used for other, less sustainable activities within the company. As a result, the company appears more sustainable than it truly is due to the presence of a few green projects.

Some green financing focuses on the potential future benefits of a project, rather than its current environmental impact. This can allow companies to receive green financing for projects that promise long-term sustainability but are currently harmful to the environment. In addition, without regular and transparent reporting of a project's environmental impact, it is difficult for investors to verify whether their funds are being used in a truly sustainable way. This lack of transparency can facilitate greenwashing as it allows companies to portray themselves as more environmentally friendly than they might actually be.



Image Source: AI



Addressing greenwashing risks

There are several mechanisms and policies in place which help mitigate the risks of greenwashing in the context of green financing (and more broadly).

Both main regulators in Australian (the Australian Securities and Investments Commission (**ASIC**) and the Australian Competition and Consumer Commission (**ACCC**)) have made it clear that greenwashing is a key focus, and that there is a mandate to bring enforcement against greenwashing. ASIC and the ACCC have been increasingly vigilant in monitoring green claims made by companies, including those seeking to attract investment through green financing, and infringement notices and fines have been issued in a number of cases. In February 2023, ASIC commenced its first prosecution in relation to alleged greenwashing (against Mercer Superannuation (Australia) Ltd). ASIC has followed this with actions against Vanguard Investments Australia (in July 2023) and Active Super (in August 2023).

Both ASIC and the ACCC have issued regulatory guidance that outline steps companies can take to minimise the risks of greenwashing and they have been proactive in investigating and taking action against companies that make misleading green claims, reinforcing the importance of transparency and honesty in the green financing sector and elsewhere. These efforts, along with other regulatory measures, are crucial in maintaining the integrity of the green financing market and ensuring that it truly contributes to a sustainable future.

There has also been a focus on the development of green financing taxonomies. These taxonomies provide a classification system for environmentally sustainable economic activities, helping investors, companies, and policymakers to navigate the green finance market. They set out clear criteria for what can be considered an environmentally sustainable investment, thereby reducing ambiguity and the potential for greenwashing. For instance, the European Union has developed a detailed taxonomy for sustainable activities, which serves as a guide for determining whether an economic activity is environmentally sustainable. It includes thresholds for various sectors and activities, such as energy, transport, and agriculture, and covers key environmental objectives like climate change mitigation and adaptation, water protection, and biodiversity conservation. The development of such taxonomies is an ongoing process, with efforts being made to refine and expand them to cover more sectors and environmental objectives. These taxonomies are not only instrumental in guiding green investments but also in shaping regulatory and policy decisions related to green finance.

Climate-related finance reporting is another essential aspect of sustainable finance, providing transparency and accountability in the financial sector’s response to climate change. It involves companies disclosing their financial risks and opportunities related to climate change, as well as their strategies for managing these risks and capitalising on opportunities. This type of reporting is guided by frameworks such as the Task Force on Climate-related Financial Disclosures, which provides recommendations for consistent, comparable, and reliable disclosure of climate-related financial information. These disclosures not only help companies to manage their climate-related risks and opportunities better, but they also provide investors with the information they need to make informed decisions, contributing to more resilient and efficient markets.

In June 2023, the Australian government released a consultation paper in relation to climate-related financial disclosure. This paper sought views from key bodies, individuals, academics and other public sector entities as to what should be the main considerations for implementing standardised requirements for disclosure of climate-related financial risks and opportunities in Australia. The responses evidence a strong demand for standards to be developed quickly and implemented in phases to allow more time for smaller entities to build the capability and skills required to meet reporting obligations.

While green financing is a crucial tool for promoting sustainability, it's important for investors and financiers to be vigilant and for companies to be transparent to ensure that these funds are used effectively and don't contribute to greenwashing. Increasing efforts are being made to make it easier for investors and companies alike to meet these obligations – including the proposed mandatory reporting requirements alongside existing regulatory frameworks enforced by ASIC and ACCC. As these practices continue to be implemented, it is hopeful that green finance can become truly “green”.

For more information, please contact:



Adam Jeffrey Sydney
Partner – Finance
+61 481 913 850
adam.jeffrey@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/adam-jeffrey

‘Social licence and registration, please’: Social Licences to Operate as a mandatory consideration

Authors: Megan Chau and Ally Frizelle

Social licences to operate (SLOs) are becoming as mandatory to companies as formal legal registration. Unlike company registration, however, an SLO cannot be obtained by simply completing an online form and paying a processing fee.

An SLO describes an ongoing level of acceptance or approval that employees, stakeholders and wider communities extend to a particular project, site, company or industry.¹ SLOs are created and maintained – often slowly – by companies as they build trust organically within the community and with stakeholders. This article discusses how the renewable sector and companies within may develop and maintain an SLO.

Why are SLOs important?

The importance of maintaining an authentic SLO cannot be understated, particularly in the renewable energy context where obtaining community support is necessary for Australia to achieve its key energy transitional goals, such as reaching 82% renewable energy supply by 2030. As the industry increasingly expects environmental, social and corporate governance to be a key priority in investment strategies and project development, the possession of an authentic SLO may be the determining factor as to whether a developer is able to secure the financial, community and governmental support necessary to develop and complete a project over its lifecycle.

A study on SLOs released by ARENA in 2020 found that by obtaining and maintaining SLOs, projects are usually able to deploy resources more effectively, reduce delays and garner political support.² On the other hand, failing to establish an SLO presents financial risk through loss of productivity, damage or loss of assets and difficulty securing and maintaining a labour force, ultimately impeding project delivery. The risks of an impaired SLO – to the bottom line, at least – are clear. This was demonstrated during BP’s Deepwater Horizon oil spill in 2010, where BP’s share price fell 51% in just over a month.

How to develop and maintain an SLO?

1. Understand the Community

To attract support for a new project, a project should respond to the needs of the community. The introduction of the Renewable Energy Zones (REZs) is an example of a government program which successfully developed an SLO, because it:

- (a) **reflected current social values and responded directly to identified needs and concerns within the relevant community:** notably, the REZ was introduced following public debate surrounding the need to retire coal-fired power stations while keeping the grid stable and reliable.³
- (b) **identified and catered to local stakeholders:** the REZs were introduced in regions with suitable workforces, infrastructure and industries. The introduction of the REZ catered to stakeholders by providing \$1.5 billion in financial benefits to landholders hosting REZs, and by 2030 will have supported approximately 6,300 construction and 2,800 ongoing jobs.
- (c) **established effective communication channels:** prior to initiating each REZ, community consultation was undertaken via community reference groups involving EnergyCo (the REZ coordinating body), local councils, the NSW Aboriginal Land Council and other governmental agencies.

2. Build Trust and Relationships

Developers must build trust and strong relationships with key stakeholders and the wider community, characterised by:

- (a) transparent project planning and decision-making processes that are notified early to the community;
- (b) meaningful involvement of local communities and key stakeholders including benefit sharing; and
- (c) addressing community concerns and providing bespoke solutions – which may incorporate creating local job opportunities, working adjacent to local businesses and economies or reinvesting in community development and infrastructure projects.

3. Seek the Free, Prior & Informed Consent of Indigenous Communities

Developers must obtain indigenous communities’ ‘free, prior and informed consent’ (FPIC) at the initiation phase of a project as well as throughout a project’s lifecycle. The concept of FPIC, which describes the rights of indigenous communities to give, withdraw or withhold consent to projects which may impact their land, has been adopted by international organisations such as the United Nations and the International Finance Corporation.⁴



A recent failure to obtain FPIC and a breach of social licence was evidenced in May 2020, when Rio Tinto detonated 46,000-year-old caves at the Juukan Gorge in Western Australia. Subsequent investigations disclosed that Rio Tinto had provided incomplete information as to the available extraction options and extent of detonation, and that the company had misrepresented the depth of public consultation. Although the detonation was legally permissible, the subsequent community backlash to the detonation resulted in the resignation of the company CEO and other senior executives. This demonstrates that legal consent and SLOs may be inconsistent, and that FPIC cannot be ignored in the event of an inconsistency.

Conclusion

The possession of an authentic SLO, or lack thereof, demonstrates whether a company will deliver projects which cater to a community’s specific concerns and needs. It is increasingly becoming a key consideration as to whether investors and communities will support a project. Continuous and productive engagement with the community, in particular indigenous communities, is key to the long-term success of renewable energy projects. As such, all companies within this sector must focus on maintaining an authentic SLO, building key relationships and reinforcing trust in their local communities to ensure ongoing, successful outcomes in their renewable energy projects.

For more information, please contact:



Matt Baumgartel Sydney
Partner
+61 459 900 080
matt.baumgartel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgartel



Megan Chau Sydney
Lawyer
+61 2 8072 8271
megan.chau@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/megan-chau



Ally Frizelle Sydney
Lawyer
+61 2 8072 8271
ally.frizelle@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/ally-frizelle

¹Will Kenton, ‘Social License to Operate (SLO): Definition and Standards’ (31 May 2021): <https://www.investopedia.com/terms/s/social-license-slo.asp#:~:text=What%20is%20the%20Social%20License,stakeholders%2C%20and%20the%20general%20public.>

²Australian Renewable Energy Agency, ‘Establishing the Social Licence to Operate Large Scale Solar Facilities in Australia’ (19 November 2020): <https://arena.gov.au/knowledge-bank/establishing-the-social-licence-to-operate-large-scale-solar-facilities-in-australia/>

³EnergyCo, ‘Renewable Energy Zones’ (2023): <https://www.energyco.nsw.gov.au/renewable-energy-zones>

⁴BSR, ‘Building a Social License to Operate in the Renewable Energy Sector’ (7 April 2016): <https://www.bsr.org/en/blog/building-a-social-license-to-operate-in-the-renewable-energy-sector>

Community Voices: Do's and Don'ts of Community Engagement

Authors: Poulad Berenjforoush and Dhanushka Rajaratnam

Community engagement (**CE**) plays a pivotal role in ensuring the success and sustainability of renewable energy projects. As Australia forges ahead to meet its ambitious renewable energy targets, a crucial factor in fostering acceptance, cooperation, and long-term viability of renewable energy projects is to ensure that communities are not forgotten.

What is the purpose of community engagement?

In its ‘Community Engagement Guidelines for the Australian Wind Industry’, the Clean Energy Council identified that *‘while the goal of community engagement is not always to reach agreement on specific outcomes, engagement must enable the input of community to identify local values and inform the decisions and activities of project.’*

CE processes are often viewed as regulatory impositions to be complied with at the risk of incurring bad publicity or the wrath of communities or authorities. A widespread practice is to treat CE as a compliance risk that must be addressed at certain stages of a project’s life cycle, particularly the initial stages. This risk-centric view must be reconsidered as CE is an ongoing process of engaging with the people impacted, positively or negatively, to achieve long-term and sustainable outcomes, relationships, and the successful implementation of a project. Genuine CE empowers communities by creating an opportunity for the community to participate in decisions that impact their lives. A successful renewable energy project is not just about generating low-cost renewable energy and returns on investment, but it is also one that minimises damage to the communities and ecosystems it impacts.

Key considerations when engaging communities

First and foremost, project developers engaging with communities must be mindful that they are entering into and changing, sometimes permanently, the lives of the people in the communities around project locations. The histories and experiences of the community members, their social connections, and their relationship with the land and neighbours will be significantly affected by project’s development and have continuing effects beyond the project’s life. It may not be possible to accurately, if at all, quantify those consequences in financial terms. Understanding that life-altering decisions cannot be rushed within the constraints of project planning deadlines is a key principle in effective CE.

Concerns raised by the participants during CE events are vital information sources that can make the difference between the success or failure of a project. Issues highlighted during CE events highlight practical issues that are often overlooked or not prioritised by project proponents. These issues raised in CE events include the impact of renewable energy projects on the existing local infrastructure, such as water and housing, workforce, and waste management. CE must create a respectful and safe forum to discuss these issues and develop solutions to prevent a breakdown of relationships and conflicts. Another fundamental principle in CE is that life-altering decisions cannot be imposed on a community.

There is an unacknowledged power imbalance between the local communities and developers, which must be addressed for CE to have any meaningful impact. More resources must be dedicated to changing CE participants’ perceptions of each other. Regulatory authorities and project developers must be transparent with the community, as transparency is useful in removing rumours and building trust.

Dos and Don'ts checklist

The true impact of CE on participating communities may extend beyond quantifiable financial terms, encompassing broader socio-ecological consequences that require careful consideration and attention. With these considerations in mind and from hearing directly from a range of community voices, we have created a quick checklist below to guide project proponents in implementing successful community engagement practices and fostering meaningful relationships with the community.

For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



Dhanushka Rajaratnam Sydney
Paralegal
dhanushka.rajaratnam@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/dhanushka-rajaratnam



Do's	Dont's
Build trust Build trust by taking the time to understand and know the community's aspirations, fears, and hopes	Excessive jargon Use excessive industry or technical jargon in your communication
Listen and act Listen carefully and be aware of clues that reveal the community's feelings and respond appropriately	Overuse non-disclosure agreements Use non-disclosure agreements excessively to curb the ability of the community to access information
Balance engagement Balance the level of engagement with the community's needs and provide a variety of ways to engage the community to prevent "engagement fatigue"	Use misinformation or inaccurate information Use inaccurate or misleading information as misinformation will result in the breakdown of trust and create rumours and panic in the community
Communicate effectively Know your audience but don't be condescending	Tick-box processes Use "tick-box" exercises to demonstrate that you have consulted the community without taking into consideration the community's concerns
Address historical conflicts Be aware there might be a history of conflict between landowners, neighbours or communities so include different mechanisms for people to express their views, including one-on-one or small group meetings	Ignore community voices and self-interest focus Allow voice of the project developers to overpower that of the community and only talk about the project's interests
Consider community stress Be mindful that stakeholders might be under stress for a range of reasons and ensure engagement is in a way that will not add to the stress of the community	Develop 'saviour syndrome' Approach the community with the "saviour syndrome"
Honesty and transparency Be honest and upfront about the project and its impacts on the community	Make unrealistic commitments Overcommit to timelines or promises you won't be able to keep
Timely and accurate information Share honest and accurate information promptly, allowing the community to provide meaningful input and make informed decisions	Avoid a deficit mindset Focus on the deficits of the communities you are engaging with and be mindful of the community's experience and resilience

Empowering Communities Through Ownership: The Rise of Inclusive Ownership Models

Authors: Matt Baumgurtel; Adam Jeffrey; Ally Frizelle; David Wan

The rise in renewable energy in Australia has brought about a significant shift in the way the sector engages with affected communities. Historically, developers constructing a project on native title land simply distributed benefits to the affected communities, rather than genuinely involving those communities. Typically, developers would obtain development permission from native title holders by paying royalties, often at the project's conclusion. In recent years, the sector has come to view this approach as insufficient. Instead, we are now seeing a transition away from passive community involvement to active and thoughtful participation of affected communities by way of equity ownership in projects. This transition is not only reshaping the relationship between communities and the energy sector, but also establishing novel – and inclusive – ownership models.

The advent of active, thoughtful participation

Recent developments, such as the [Yindjibarndi Project](#) and the [East Kimberley Clean Energy Project](#) in Western Australia, are examples of this shift from passive to active community engagement. Unlike the previous norm of annual royalties, these projects have adopted new models which promise substantial, long-term revenue and community benefits.

The Yindjibarndi Project

The Yindjibarndi Aboriginal Corporation (**YAC**) and seasoned international renewables developer, [Acen Corporation](#), have partnered to form the [Yindjibarndi Energy Corporation \(YEC\)](#) to develop up to 3GW of wind, solar and renewable energy storage projects on Yindjibarndi Ngurra (country), in Western Australia's Pilbara region.

The YEC partnership entails:

- ensuring the YAC has a 25% to 50% ownership stake in all projects;
- granting approval rights to the Yindjibarndi people over site selection of proposed projects;
- prioritising Yindjibarndi-owned businesses as contractors; and
- providing training and employment opportunities for the Yindjibarndi community.

This partnership's benefits include:

- establishing enduring economic advantages for the community;
- safeguarding and preserving culturally, spiritually, and environmentally significant areas within Yindjibarndi Ngurra;
- creating sustainable, long-term training and employment prospects for the Yindjibarndi people; and
- supporting the return-to-country movement, alongside bolstering education, health, and housing initiatives within the community.

The East Kimberley Clean Energy Project

Similarly, the [East Kimberley Clean Energy Project](#), set to be Australia's first 100% green energy, hydrogen and ammonia export project, involves three indigenous groups: MG Corporation, the Kimberley Land Council and Balangarra Aboriginal Corporation. Each group holds a 25% share in the project-developing company, Aboriginal Clean Energy Pty Ltd (**ACE**), alongside [Pollination](#) (a climate change advisory and investment firm). The venture marks Pollination's first direct investment into decarbonisation projects.

This form of community equity participation has the potential to simplify land use agreements and approvals, consequentially reducing uncertainty for investors and shortening development timelines as considerations such as heritage, native title and environmental matters are integrated into the development itself. However, it is possible that the shareholders' individual interests may dilute as further agreements are made with investors, financiers and industrial

Ownership and Community Participation: Striking the Balance

The renewable energy sector is witnessing a growing number of projects that involve communities at the equity level. While empowering communities is significant, it poses considerable challenges concerning community equity and control of the project.

Economic Interest vs Control

In a broader sense, questions arise about the nature and extent of community participation. Where is the community situated in the equity stack? Are they exposed to risks, or is their engagement limited to the economic upside? Is each partner required to contribute in the same way (financially or otherwise)? Such questions are vital from both investor and bank perspectives. Investors might find it acceptable to sacrifice certain economic benefits in favour of community involvement as long as the developer maintains control over project execution.

Engaging Neighbours, not just Landowners

Engaging neighbours, distinct from landowners, introduces unique complexities. Neighbours often bear most of the project's drawbacks, such as increased traffic and reduced amenity, without enjoying the financial benefits. A significant consideration is how to strike the right balance that allows the project sponsor to retain control while incorporating community equity. One option is structuring the community fund as passive or shadow equity, granting neither voting rights nor active control. Alternatively, a potential solution may involve establishing a community trust with neighbours included as beneficiaries of the project.

Ownership Structures: Company vs Trust

Given the above considerations, the optimal ownership structure varies with the desired level of community involvement.

In the context of traditional owners and native title holder groups, a company structure may be preferable as traditional owner groups may retain a significant level of control and involvement through voting rights. For instance, in the East Kimberley Clean Energy Project discussed above, three indigenous groups hold a 75% share, meaning the group has significant rights and ongoing control. All issued capital in ACE is ordinary shares (i.e. not preferential shares), which suggests that there is likely a shareholders agreement in place setting out decision-making mechanisms and powers of each party. The shareholders agreement also likely address matters such as potential dilution of shareholdings, which often requires shareholder approval. The company structure aligns well with the preferences of indigenous groups, allowing them to maintain a level of control and involvement in the project.



Conversely, in the context of community groups, a trust structure may be preferable, particularly if the group prioritises monetary benefits over control. For instance, in the case of a group of neighbours to a project, their emphasis may be on financial gains rather than decision making authority. In a trust structure, the trustee controls the project and the beneficiaries (in this case, the community group) benefit. Similar to a shareholders' agreement, a trust deed will set out parameters around dilution and may stipulate that beneficiaries' equitable interest cannot be reduced below a certain threshold. However, the beneficiaries cannot directly instruct the trustee. Accordingly, for communities primarily interested in economic benefits and less concerned with direct control, a trust structure may be a more suitable option.

Towards a Balanced Future

The evolving landscape of renewable energy projects underscores the need for innovative structures that embed community interests while customising community engagement to meet the unique needs and preferences of different groups. Achieving this balance demands creative solutions and a re-evaluation of conventional project ownership models.

For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



Adam Jeffrey Sydney
Partner – Finance
+61 481 913 850
adam.jeffrey@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/adam-jeffrey

IESS QUEEN! AEMO clarifies implementation of integrated energy storage systems

Authors: Matt Baumgurtel, David O'Carroll and Dhanushka Rajaratnam

In August 2021, Hamilton Locke published a comprehensive three-part analysis (read [Part I](#), [Part II](#) and [Part III](#)) on a draft determination of the Australian Energy Market Commission (**AEMC**). The AEMC's draft determination proposed to change the National Electricity Rules to create a new market participant category and generation asset classification in the National Electricity Market (**NEM**), called the Integrated Resource Provider (**IRP**) and the Integrated Resource Unit respectively.

The AEMC's reforms are arguably the most significant changes to the NEM since its creation. They are driven by the growing trend of bi-directional energy generation, mainly due to the growing implementation of battery energy storage systems (**BESS**) in the NEM. The changes aim to facilitate the registration and participation in the NEM of grid-scale batteries, aggregators of smaller batteries, and new business models with a mix of technologies behind the connection point. .

Integrating Energy Storage Systems

The "[National Electricity Amendment \(Integrating Energy Storage Systems into the NEM\) Rule 2021](#)" (**IESS Rule**) was published on 2 December 2021. The IESS Rule, which comes into effect on 3 June 2024, is intended to streamline the registration process for hybrid generators in the NEM. Instead of registering separately as a 'Generator' and 'Market Customer', they can now register under the consolidated IRP category.

The "[National Electricity Amendment \(Implementing Integrated Energy Storage Systems\) Rule 2023](#)" (**2023 Rule**), published on 4 May 2023, is designed to implement the IESS Rule. While the 2023 Rule became operative on 11 May 2023, as the majority of the amendments made by it are to the IESS Rule, these amendments will only practically take effect in June 2024 (alongside the IESS Rule).

Change	Description	Status
Small Generation Aggregators providing FCAS	Aggregators of small generating and storage units can now provide ancillary services (if they choose to do so).	Implemented on 31 March 2023.
Aggregated dispatch conformance	Aggregate systems can choose to register for aggregated dispatch conformance (ADC). ADC provides an aggregate system with the flexibility to conform to its dispatch instructions by dispatching energy at the connection point from any combination of its units (with some restrictions), rather than individually on a unit-by-unit basis. This includes minor changes for BESS. AEMO will be using the ADC mechanism to monitor net dispatch conformance for a BESS across its scheduled generating unit/scheduled load pair, as a target aggregate.	Implemented on 9 August 2023.
IESS retail and settlement changes	Significant changes to the calculation method to be used for non-energy cost recovery: <ul style="list-style-type: none">Recovery calculations are to consider the gross energy amounts (consumption separate from generation) of all participants, rather than current approach using net energy (generation – consumption) of specific participant types; andMajor settlements database structure changes are required to enable the new calculations. These changes will flow into the data model and affect:<ul style="list-style-type: none">Participant reconciliation and reporting activities;AEMO data provision; andEmbedded network management changes to ensure that the parent has the appropriate gross energy volumes available for settlement.	Implementation date of 2 June 2024
IESS registration, classification and bidding changes	Introduction of IRP participant category and bi-directional unit (BDU) bidding, scheduling and participation.	Implementation date of 3 June 2024.

Source: AEMO



Implications

1. Transition:

Until 3 June 2024, a participant that registers and classifies a facility that is, or will be, an integrated resource system will have its application(s) assessed under both the current and new rules, to facilitate a transition into the new registration categories from the effective date.

As such, any participant seeking to register a storage or hybrid facility between now and 3 June 2024 should familiarise themselves with the new arrangements that will apply through this interim period.

The AEMC has taken care to avoid unintended transition consequences and costs – existing connection agreements, performance standards and service levels should continue to apply, and no registration fees are payable to transition existing registrations.

2. TUOS: One of the most controversial elements of the AEMC's final rule determination was to maintain the current arrangements for transmission charging (TUOS) for storage systems. Stakeholders advocating for storage systems to be exempt from TUOS charges highlighted the benefits that storage systems provide to the grid and raised concerns about energy being 'double-charged' (ie once when entering storage and again when being consumed).

The AEMC has stated that a broader review is needed to consider how the network charging framework should better account for flexible, price-responsive loads. It stated that it was not mandating that storage systems be subject to TUOS charges, but that it would need to consider the network pricing model for flexible loads that can respond to dynamic price signals to support the management of network congestion.

3. Recovery of non-energy costs: non-energy costs are expenses related to maintaining and managing the energy grid, such as maintenance, administration, and infrastructure. The traditional way of deciding who pays these costs was based on the type of energy user (participant classification).

However, the introduction of the concept of adjusted sent out energy and adjusted consumed energy as two new data streams for the recovery of non-energy costs suggests a fairer approach. Instead of just looking at who uses the energy, it focuses on how much energy is actually used.

4. DC coupled systems: the IESS Rule clarified the classification of bidirectional units within integrated resource systems, allowing them to be categorised as scheduled generating units, semi-scheduled generating units, or non-scheduled generating units. However, the 2023 Rule has removed the option to register DC coupled, bidirectional units as semi-scheduled due to non-use of the category.


5.Improvements and clarifications: the 2023 Rule introduced amendments to improve the implementation of the IESS Rule, offering clarity on classifications such as market points, ancillary service units, and the possibility of an IRP acting as a small resource aggregator.

The Road Ahead


While the IESS Rule and the 2023 Rule mark significant strides in accommodating distributed energy resources in the NEM, further transformative actions are required for the NEM to become a dynamic yet stable energy market capable of meeting the country's electricity needs.

Embracing more radical measures, such as market redesign to prioritise variable and distributed energy resources while aligning objectives with the needs of all electricity consumers, could pave the way for a more sustainable energy future.


For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



David O'Carroll Sydney
Senior Associate - Energy, Infrastructure and Resources
+61 2 8072 8271
david.ocarroll@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/david-ocarroll



Dhanushka Rajaratnam Sydney
Paralegal
dhanushka.rajaratnam@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/dhanushka-rajaratnam

Combating Modern Slavery in the Renewable Sector – An Australian Perspective

Authors: Poulad Berenjforoush, Rahul Tijoriwala and Dhanushka Rajaratnam

There is a growing concern that the renewable energy transition is facilitating a rise in modern slavery.

The renewable energy sector relies on complex and extended supply chains where the length and complexity of these supply chains make it difficult for businesses to accurately assess the prevalence of modern slavery practices. Renewable sector supply chains often commence in developing nations (where many raw materials are extracted and converted into products) and the labour force may be susceptible to exploitation, including long hours, low pay, and hazardous working conditions.

This article considers the Australian legislative backdrop which addresses modern slavery (including upcoming reforms) and sets out measures that companies may take to minimise the risk of modern slavery in renewable energy supply chains.

Modern slavery globally

The most recent “Global Estimates of Modern Slavery” report prepared by the International Labour Organization, Walk Free Foundation and the International Organization for Migration estimated that 50 million people were living under conditions of modern slavery in 2021.¹

Although there is no globally agreed definition for “modern slavery”, the Walk Free Foundation (an Australian human rights organisation) defines modern slavery as “*situations where one person has taken away another person’s freedom – their freedom to control their body, their freedom to choose to refuse certain work or to stop working – so that they can be exploited. Freedom is taken away by threats, violence, coercion, abuse of power and deception. The net result is that a person cannot refuse or leave the situation*”.²

Australian legislative framework

In Australia, modern slavery is addressed by the Modern Slavery Act 2018 (Cth) (**MSA**), Modern Slavery Act 2018 (NSW) and the Criminal Code Act 1995 (Cth) (**Criminal Code**). The Criminal Code criminalises what is considered ‘traditional’ slavery - chattel slavery, and slavery like practices. Practices involving the sale or ownership of a person, or the assertion of ownership of a person (whether by debt or contract), or the purchase of a slave, or the capture or transport or disposal of a person to be a slave are criminal offences under the Criminal Code. The MSA is a transparency reporting law which attempts to promote a race-to-the top to eradicate modern slavery from supply chains. It defines ‘modern slavery’ to include slavery and slavery-like offenses, the trafficking of persons and the worst forms of child labour.

The MSA creates annual mandatory reporting requirements through the filing of a Modern Slavery Statement (**MSS**) for entities based or operating in Australia which have an annual consolidated revenue of more than \$100 million. A publicly accessible [Modern Slavery Statement Register](#) houses filed MSSs and attempts to promote public scrutiny and engagement. Reporting entities must set out the risks of modern slavery in their operations and supply chains, and actions to address those risks in the MSS. Other entities based, or operating, in Australia may report voluntarily. The Commonwealth Government also has reporting obligations under the MSA.

While some argue that ‘paper-based’ reporting obligations do not significantly influence business practices, the creation of a regulatory risk for businesses may incentivise businesses to scrutinise their supply networks and relationships to comply with the obligations imposed by the MSA.

Upcoming reforms

The ‘[Report of the statutory review of the Modern Slavery Act 2018 \(Cth\): The first three years](#)’ was released in May 2023 and made 30 recommendations as to the regime’s effectiveness. These recommendations included:

- expanding the application and scope of reporting obligations (including by lowering reporting threshold from companies with a \$100 million consolidated revenue to those with a \$50 million consolidated revenue);
- introducing penalties for specific non-compliances (including failing to submit an MSS or making a materially false statement);
- mandating that reporting entities have due diligence;
- grievance and complaints reporting mechanisms; and
- empowering the Minister or Commissioner of a region, location, industry, product, supplier, or supply chain to make declarations as to high modern slavery risks.

It remains to be seen whether these reforms will be considered for formal adoption. There are concerns that Australia’s modern slavery regime will become too prescriptive and cause excessive administrative burden, particularly for the smaller businesses that would fall within the scope of the MSA.

How to ensure compliance

Addressing modern slavery requires a multi-stakeholder approach that involves governments, businesses, civil society, and consumers working together to identify and eliminate exploitative practices from supply chains. Organisations operating in the renewables sector must assess their supply chains, engage with suppliers, and implement policies and processes to prevent and address modern slavery risks.

Specifically, renewable energy companies (alongside sponsors and financiers) should

- 1. conduct due diligence on their supply chains to identify and mitigate the risk of modern slavery practices.** This includes mapping out supply chains, identifying the origin of raw materials, and assessing suppliers’ labour practices prior to formalising contractual arrangements;
- 2. putting in place robust policies and procedures to prevent the use of modern slavery in their supply chains,** including establishing a code of conduct that suppliers must adhere to (with contractual warranties of compliance and indemnities for breach), implementing training programs for employees and suppliers on labour rights and modern slavery risks, establishing reporting obligations and performing periodic audits on suppliers’ compliance with the code of conduct;
- 3. building strong relationships with suppliers based on transparency and a carrot-and-stick approaches,** including by proactively monitoring supplier compliance with mandatory MSA reporting obligations to improve accountability and promote a culture of compliance and best practice; and
- 4. greater collaboration with government,** including by sharing best practices and advocating for policy changes.

Looking forward

It is important that the path to achieving net-zero is not undermined by human rights violations and environmental damage. Companies in the renewable sector should scrutinise supply chains to ensure modern slavery compliance. Alongside human rights benefits, doing so will ensure that companies do not fall afoul of ESG obligations, and that investor confidence and public reputation remains intact. The legislative trend is for obligations to become more stringent (and penalties more severe), so now is the time for companies to assess and ensure compliance.

For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



Rahul Tijoriwala Sydney
Paralegal
+61 2 8072 8271
rahul.tijoriwala@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/rahul-tijoriwala



Dhanushka Rajaratnam Sydney
Paralegal
dhanushka.rajaratnam@hamiltonlocke.com.au

¹Global Estimates of Modern Slavery: Forced Labour and Forced Marriage (12 September 2022).

²Walk Free Foundation Submission - Inquiry into an Australian Modern Slavery Act (28 April 2017).

Explainer: Embedded Networks 101

Authors: Adriaan van der Merwe, William Ryan, Poulad Berenjforoush and Dhanushka Rajaratnam

What is an embedded network?

There has been massive growth in the development of embedded networks in Australia. By one estimate, 1 in 10 Australians live in a residence which is part of an embedded network.¹ An embedded network typically refers to a privately owned and operated electricity network that serves multiple buildings or premises within a specific area. The most common places where embedded networks can be found are apartment blocks, office buildings, retirement villages, shopping centres and caravan parks.²

Embedded networks are usually managed by private entities. Embedded networks offer several benefits for the community of consumers connected by proximity, including cost savings through lower tariffs and greater transparency through the installation of equipment and energy management tools by the operator (assisting customers to manage their energy usage habits).

What laws govern embedded networks?

The key regulatory body of embedded networks is the Australian Energy Regulator (**AER**), which has issued various guidelines regulating embedded networks to ensure that consumer within are protected.

In Australia, embedded networks are governed by both federal and state law. In NSW, embedded networks are governed, among other things, by the National Electricity Rules (**NER**) and the National Energy Retail Law 2012 (NSW) (**NERL**). These regulations cover how a proposed embedded network provider may register as a network services providers with the Australian Energy Market Operator (**AEMO**) (or obtain an exemption) or how sellers of electricity may obtain a retailer authorisation from the AER (or obtain an exemption).

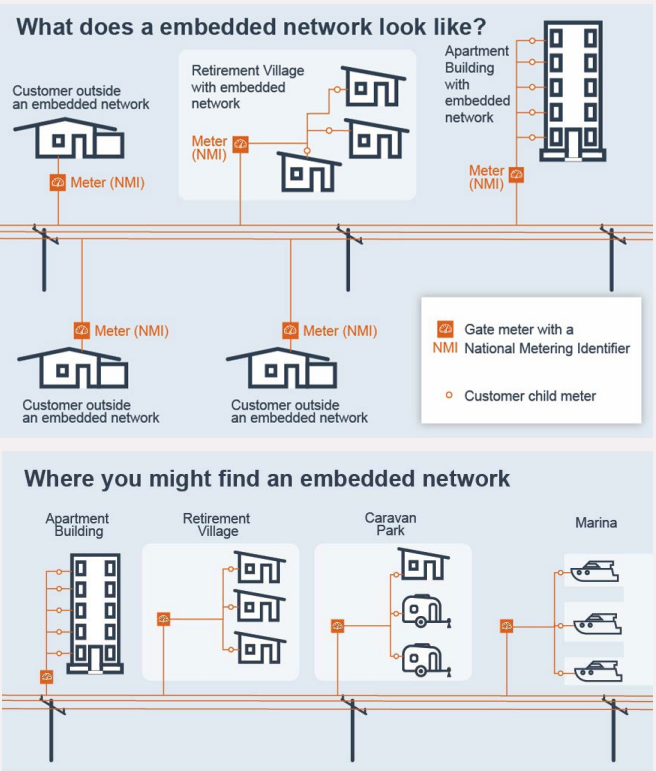
Operators of embedded networks, known as exempt sellers, are not authorised by the AER to sell electricity. The customers of exempt sellers are called exempt customers. These exempt sellers on-sell electricity to exempt customers that either generate electricity themselves or acquire it from the grid.

Customer rights

The rights of customers on an embedded network are the same as those of customers on traditional networks, including:

- customers must be informed of their rights and protections including the right to choose their electricity retailer;
- customers have the right to approach the relevant energy ombudsman to help with or to resolve disputes; and
- that equipment used to calculate the electricity supplied to customers must meet certain requirements.

The diagram below sets out the structure of an embedded network.



Source: AER, 'How to access an authorised retailer of your choice if you live in an embedded network'

What are the key contracts used for embedded networks?

The types of contractual arrangements used in an embedded network vary. In general, the contracts should set out the terms and conditions that regulate the relationship between an embedded network operator and the various parties involved in setting up or operating an embedded network. These parties include property owners, customers, distribution network service providers (DNSP), and electricity retailers. The types of agreements executed by the embedded network operators include operating agreements, energy supply agreements, network connection agreements and agreements in relation to construction, operation, and maintenance of the generation facilities.

What are an embedded network operator's key responsibilities?

An embedded network operator is responsible for:

- contracting, billing and general customer services;
- retrofitting the embedded network site (as required) by creating a single connection point where electricity is purchased and sold to the customers;
- notifying customers to inform them of the intention to install an embedded network and the right of customers to choose their own electricity provider;³
- acquiring a "National Metering Identifier" for each customer. This is a unique number that identifies each customer's connection point in the electricity network system. This number is like a serial number for customer's electricity meters, which is used when connecting electricity from a retailer to customer's premises;⁴ and
- publishing on its website procedures for handling small customer disputes and its membership details with a member of an energy ombudsman that the customers can approach.⁵

Opportunities and new challenges

It is becoming increasingly common for embedded networks to install solar panels to generate clean, renewable energy while offering the option to obtain permissions for exporting surplus power to the grid, generating passive income streams. At first glance, this seems to be an efficient use of space and existing energy assets. However, recent developments, such as the AER's Export Tariff Guidelines 2022, might make this decision less attractive.

The proliferation of distributed energy resources has created challenges due to bidirectional energy flows that sometimes exceed the grid's capacity to handle them. These challenges are particularly evident during peak daylight hours when the supply of electricity generated from solar power systems leads to a phenomenon known as '**the duck curve**'—a solar energy surplus.

The Guidelines were introduced as a result of the Australian Energy Market Commission's decision to update the NER and the National Energy Retail Rules enabling a two-way pricing model. Under this pricing model, DNSPs may impose tariffs during specific times of the day. This model serves as an alternative to the outright ban on exports that some DNSPs were enforcing in areas with high saturation of rooftop solar power generation.

Embedded networks are becoming increasingly common as communities seek cheaper and more transparent electricity solutions through proximity-based connections. However, given the complex and evolving regulatory landscape, it is crucial for embedded network operators to seek legal advice before installing such networks and in order to negotiate contracts to avoid hidden charges.

For more information, please contact:



Matt Baumgartel Sydney
Partner
+61 459 900 080
matt.baumgartel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgartel



William Ryan Sydney
Lawyer
+61 2 8072 8271
william.ryan@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/william-ryan



Adriaan van der Merwe Sydney
Special Counsel
+61 2 8072 8271
adriaan.vandermerwe@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/Adriaan-van-der-Merwe



Dhanushka Rajaratnam Sydney
Paralegal
dhanushka.rajaratnam@hamiltonlocke.com.au

¹The Energy & Water Ombudsman (NSW) (last accessed 29 May 2023).

² Section 3 of the AER's Electricity Network Service Provider - Registration Exemption Guideline (2018) (Network Registration Exemption Guideline).

³Condition 4.9.1 of the Network Registration Exemption Guideline.

⁴Rule 7.8.2(c) of the NER.

⁵Section 81(1) of the NERL.

To fix or not to fix? Offshore wind and community impact

Authors: William Ryan and Megan Chau

On 12 July 2023, the federal government announced the Hunter Coast as Australia's second offshore wind zone. The announcement of a second offshore wind zone (alongside the Bass Straight off Gippsland) demonstrates that offshore wind – formerly believed to be ‘technologically impossible’¹ – is now a viable renewable energy source. As community acceptance of offshore wind (as an alternative to onshore wind) has grown, a secondary debate has arisen: to fix or not to fix?

It is a pressing question. According to the Global Wind Energy Council, approximately 80% of the world's offshore wind is found in waters deeper than 60m.²

However, the technical capacity and bankability of floating wind farms lag significantly behind its fixed-bottom counterparts. For example, the world's first fixed-bottom wind farm (Ørsted's ‘Vindeby Offshore Wind Farm’) was commissioned in 1991. By contrast, the first floating wind farm (Equinor's ‘Hywind Scotland’) was only commissioned in 2017.

This article compares the key differences between fixed-bottom and floating wind farms, and discusses the impact of each on the marine ecosystems and coastal communities.

When to fix and when to float?

The below table sets out the key characteristics and differences between fixed bottom and floating wind farms.

Characteristic	Fixed-bottom	Floating
Description	Monopiles are drilled into the seafloor and operate from a ‘fixed’ location.	Monopiles are constructed on floating structures which are anchored to the seafloor by anchors, chains and sea cables. Designs vary – see Diagram 1 for examples.
Location	Depths up to 60m. Accordingly, fixed-bottom wind farms are located much closer to the coast.	In theory, capable of installation up to 1km above the seabed, and therefore has greater flexibility to be installed further out to sea in areas of stronger consistent wind.
Construction	Requires specialised installation vessels to install fixed foundations (for example, jack-up and dynamic positioning vessels).	Can be constructed onshore then transported to the offshore location using tugboats and cable-laying vessels, reducing installation costs.
Cost	Less expensive to construct.	Presently, more expensive to construct (however forecasts estimate this gap will significantly decrease over the next decade).

Diagram 1: Floating offshore wind designs



Figure 1 Example of a semi-submersible floating substructure. Photo of the WindFloat Atlantic project courtesy of Principle Power/Ocean Winds.



Figure 2 Example of a barge floating substructure. Image courtesy of BW Ideal. All rights reserved.

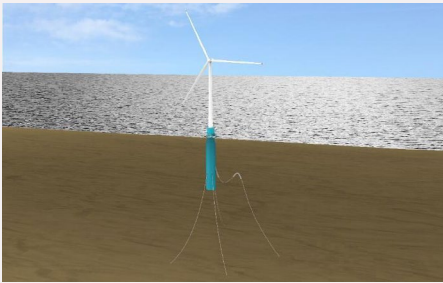


Figure 3 Example of a spar floating substructure. Image courtesy of ORE Catapult. All rights reserved.

Source: As compiled in BVG Associates, ‘Guide to a Floating Offshore Wind Farm’ (May 2023): <https://guidetofloatingoffshorewind.com/wp-content/uploads/2023/06/BVGA-16444-Floating-Guide-r1.pdf>

Impact on coastal communities

Coastal communities frequently resist the construction of offshore wind farms on the basis that the construction and operation would disrupt the livelihoods of fisherman and those operating in the tourism sector. For example, Blue Float Energy's recent proposal to construct an offshore wind farm off the coast of Port MacDonnell, South Australia, was met with resistance by some within the 800-strong local community. The pushback was centered around concerns that the offshore wind farm would disrupt the natural ecosystem during the process of installation and operation, and affect visual amenity.

Public dissatisfaction with any new developments may be a deciding factor in the progress or termination of any renewable energy project, and offshore wind projects are no exception. Consider the Cape Wind project, a proposed wind farm off the coast of Massachusetts in the U.S.. While the project received the necessary federal government approvals to progress with development in 2010, the Cape Wind project faced strong opposition from a variety of stakeholders, including environmental groups, nearby local townspeople and indigenous communities. Among others, concerns have included the size and unsightly appearance of the project (alleged to affect tourism and property values), wildlife and historic conservation issues, and a lack of transparency surrounding the cost of the project in terms of development and whether consumers would be entitled to a subsidy scheme for any energy generated by the project.³ Eventually, the protest lead to the termination of the entire project in 2017.

While these concerns are applicable to floating wind farms, it is notable that, when constructed onshore and installed further to sea, the impacts on fishing communities and visual and aural amenities are significantly reduced.

Relevance of offshore wind farms for developing nations

In 2019 the World Bank Group announced a limited but notable program, the WBG Offshore Wind Development Program, to fast-track the adoption of offshore wind in developing nations with significant offshore wind resources (including Brazil, India and the Philippines).⁴ Notwithstanding the present high upfront costs, floating wind farms have been touted as a partial solution to the energy crises faced by many of these countries. Floating wind farms will be particularly relevant to countries like the Philippines and South Africa, which have deeper seafloors.⁵

Conclusion

The Cape Wind project – and the current conflict with Port MacDonnell – provides us with the following key takeaways on how to move forward with offshore wind projects while maximising stakeholder satisfaction and minimising controversy:

1. emphasise the need for open communication, transparency and public consultation, particularly for affected industries such as fishing and hospitality industries, prior to the planning and development of any floating wind farm projects;
2. thoroughly evaluate the suitability of the proposed wind farm site, taking into account potential impacts on the environment from both a practical and visual perspective. This can be done through scientific research and consulting with local communities and other stakeholders; and

at a governmental level, there must be further consideration on how to regulate the operation and development of floating wind farms and how these new regulations interact with existing legislation, ultimately to ensure that each relevant party's interests are adequately protected.

For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



William Ryan Sydney
Lawyer
+61 2 8072 8271
william.ryan@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/william-ryan



Megan Chau Sydney
Laywer
+61 2 8072 8271
megan.chau@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/megan-chau

¹The Atlantic, ‘Floating Wind Farms are about to Transform the Oceans’ (4 November 2021): <https://www.theatlantic.com/science/archive/2021/11/floating-wind-farms-california-marine-life/620489/>.

²IEEE Spectrum, ‘Floating Wind Farms Aim for Open Ocean’ (22 May 2023): <https://spectrum.ieee.org/offshore-wind-floating-turbines>

³Christina Riska Simmons and Elizabeth Wolzak, ‘Case Study: Cape Wind Project’ (20 May 2022): <https://education.nationalgeographic.org/resource/case-study-cape-wind-project/>

⁴The World Bank, ‘New Program to Accelerate Expansion of Offshore Wind Power in Developing Countries’ (6 March 2019): <https://www.worldbank.org/en/news/press-release/2019/03/06/new-program-to-accelerate-expansion-of-offshore-wind-power-in-developing-countries>

⁵The World Bank ‘Expanding Offshore Wind to Emerging Markets’ (31 October 2019): <https://www.worldbank.org/en/topic/energy/publication/expanding-offshore-wind-in-emerging-markets>

Agrisolar: saving two birds with the one stone

Authors: William Ryan, Dhanushka Rajaratnam

The sun is shining on solar project developments. The popularity of solar project developments has been accelerated by the declining cost of solar photovoltaic (PV) technology and changes to the energy market to accommodate distributed energy resources. However, these benefits are being clouded by concerns about associated negative externalities, particularly energy-sprawl. Energy sprawls describes the use of land and water resources for renewable energy generation.

These concerns are understandable given the conversion efficiency of PV technology is low. Utility-scale solar energy projects (USSEP) have a conversion rate of approximately 23%.

In this context, agrisolar has become an increasingly popular method of land co-use adopted by renewable projects to manage energy sprawl.

What is agrisolar?

‘Agrisolar’, ‘agrivoltaics’ or ‘solar sharing’ are terms used to refer to a system of energy production and land co-use combining renewable solar energy production with agricultural activity.¹

The integration of USSEP into spaces that have already been deployed for other uses such as agriculture or rooftops helps to minimise or avoid new ecological damage. PV and agriculture are not strange bedfellows: agricultural land meets most, if not all, of the environmental requirements of solar farms. This includes flat land with high irradiance which is located close to electricity transmission networks. Given that agricultural land accounts for around 55% of Australian land use (excluding timber production),² the potential for agrisolar is significant.

Solar grazing is currently the most prevalent form of agrisolar in Australia but globally, the concept has expanded to encompass a diverse range of applications in viticulture, horticulture, aquaculture, beekeeping, and biodiversity regeneration. Agrisolar systems now include solar-greenhouses, solar-powered drip irrigation, hybrid energy systems, heat harvesting, “floatovoltaics” deployed in fisheries, and solar rainwater harvesting.

Alongside reducing energy-spawl, agrisolar may reduce land-use conflicts and benefit landowners, farmers, regional communities, and solar project proponents.

Benefits for project proponents

The benefits for project proponents are numerous, including:

- agriculture has a cooling and dust-suppressing effect which results in improved PV efficiency in hot climates;
- where solar grazing has been implemented, livestock control the growth of vegetation, in turn reducing the risk of fire hazards and maintenance costs;
- landowners and land users have experienced improved crop quality and livestock wellbeing due to the partial shading and weather protection provided by PV arrays;
- new opportunities have arisen to cultivate tomatoes, turnips, carrots, and squash which thrive in PV array climatic conditions;
- soil moisture retention is enhanced by the partial shading, leading to higher water savings;
- where solar energy project consultations have been implemented with genuine community engagement, opportunities to improve or conserve native vegetation biodiversity have been identified resulting in biodiversity gains such as increased pollination, rising bee populations and improved overall crop yields. This category of benefit is particularly relevant in the Australian context with the imminent introduction of National Environmental Standards which aim to protect and conserve the environment for current and future generations.

Benefits for decarbonisation

Australia aims to increase its share of low-carbon power from 27% (today) to 82% (by 2030). USSEP has the potential to play a large role in achieving that target. For example, if just 0.027% of Australia’s agricultural land was converted to agrisolar, this would compensate the total loss of electricity supply from the coal-fired power stations scheduled to close by 2040.



Benefits for regional communities

By engaging – rather than removing or relocating – existing agricultural practices in regional Australia, agrisolar has the potential to streamline community consultation by providing a ‘best of both worlds’ solution. Landowners will be more incentivised to engage with project developers with the prospect of two income streams: the value of the lease or licence as well as the value of their existing agricultural operations.

Further, environmental idiosyncrasies and infrastructural inadequacies are more readily identified and managed with local knowledge. Information shared by project proponents regarding the technology used and operation of the project may help identify shared needs, values, and expectations. Project proponents and local communities could pool resources to make requests for government services.

Relevance of Government Involvement

Government involvement is essential to deploy large scale agrisolar in a coordinated manner. Many USSEP’s encounter issues when obtaining local government approvals even where landowner consent has been obtained. If Australia is to meet its renewable energy targets, it is crucial that governmental authorities facilitate and support initiatives such as agrisolar which maximise resource use and improve the uptake of new technologies. The lack of policy regarding the co-use of land and the implementation of agrisolar practices should be addressed to encourage the uptake of agrisolar.

Looking forward

Embracing agrisolar practices offers a transformative approach to mitigate the negative externalities of solar projects, foster ecological harmony, and maximise value for stakeholders and communities alike. The question is, are we going to make use of this opportunity?

For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



William Ryan Sydney
Lawyer
+61 2 8072 8271
william.ryan@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/william-ryan



Dhanushka Rajaratnam Sydney
Paralegal
dhanushka.rajaratnam@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/dhanushka-rajaratnam

¹Dupraz, C, Marrou, H, Talbot, G, Dufour, L, Nogier, A, & Ferard, Y, 2011, ‘Combining solar photovoltaic panels and food crops for optimising land use: Towards new agrivoltaic schemes’, Renewable Energy, vol. 36, no. 10, pp. 2725–2732

²Australian Bureau of Agricultural and Resource Economics and Sciences, Snapshot of Australian Agriculture 2023, March 2023 https://daff.ent.sirsidynix.net.au/client/en_AU/search/asset/1034541/0

How to solve the problem of decommissioning?

Authors: Margot King, Charmian Holmes, Matt Baumgurtel, Megan Chau



Short version

In this article, partners Matt Baumgurtel and Margot King talk with partner Charmian Holmes about Discretionary Mutual Funds and how they might solve issues relating to the decommissioning of solar, wind and battery infrastructure at the end of project life.

What are the issues?

Project proponents for wind, solar and battery projects are in a race to secure optimal land near transmission infrastructure for projects as the new energy transition and the race to net zero speeds up.

Often, negotiations to secure the land are with individual landowners who have been farming on the land as a family business for some time.

A key concern for landowners is to ensure that project infrastructure is removed at the end of the lease. The landowner is concerned that, in the worst case scenario, a project company might go bankrupt, leaving the landowner with decommissioning and make good costs.

Negotiations to solve this issue usually focus on bank guarantees, parent company guarantees or some form of decommissioning fund. See the Clean Energy Council's page on decommissioning - www.cleanenergycouncil.org.au/advocacy-initiatives/community-engagement/decommissioning

Bank guarantees are not suitable because of the cost and the long term of a project lease (eg 30 years with a 10 year further term). Parent company guarantees are not suitable because they add too much to the cost of capital and make the project unviable. Internationally, there are insurance products available to cover the risks but these are not available in Australia. In other contexts, councils impose a development bond or similar type of security as a development condition. This is also difficult in the context of a long project life.

Generally, parties end up agreeing:

- make good and decommissioning obligations without security; or
- make good and decommissioning obligations with a decommissioning fund as security.

The decommissioning fund works so that, for example, 5 years prior to the end of the term, the cost of decommissioning is assessed by an independent person, and the project proponent contributes 20% per year into an escrow fund that the landowner can call on at the end of the term if the project proponent has not met its decommissioning obligations.

This solution is also not entirely satisfactory since it ties up capital, requires fees and administration by a third party and does not give complete assurance as the arrangements are not established at the time the documents are signed. There is a risk that the process is not followed properly when it is set up.

How does the renewables industry avoid an unfunded decommissioning liability in 30 years time? How do we ensure that landowners feel assured about projects on their land? How do we continue with social licence by addressing community concerns about visual pollution from 'rusty windmills' in the future?

All of this made partners in the New Energy and Real Estate teams, Matt Baumgurtel and Margot King start to think about better solutions. Matt and Margot recently talked with Charmian Holmes, Partner in the Financial Services team about how a Discretionary Mutual Fund might play a role in solving this issue.

Charmian, what is a Mutual Fund?

Discretionary Mutual Funds – often just called 'Discretionary Mutuals' – are usually set up by industry or professional groups, or by businesses or corporate groups, to cover common or similar property or liability risks.

Discretionary mutuals are similar to insurance, but members contribute to capitalising the fund, and members may claim on the fund to cover certain risks that are protected by them. It is a genuine peer-to-peer model where the members can share the risks and the costs of operating the mutual fund.

For example, the Australian Federation of Travel Agents set up a discretionary mutual to protect against 'chargeback costs' – ie, costs that a credit card company passes on to the supplier when a customer cancels or disputes a transaction. This happens in the travel industry for example, when a travel service provider, like a tour company goes insolvent or for some other reason does not honour a pre-paid booking. Typically, the travel agent would wear that costs but the AFTA mutual was set up to allow the travel agents to address that risk by coming together to form a mutual that could protect its members for that cost.

There's lots of other examples where people use discretionary mutuals because of 'hard to place' risks or where there is no appetite at all in the local insurance market or because they need to create a product that is more innovative than what the local insurance market can support now.

Discretionary mutuals are often set up by an industry for their industry – as such, the advantages of them include:

- having those with experience in a particular sector consider and approve protection claims which may result in a fairer outcome for the community in line with their industry standards;
- providing products which cater to specific concerns and risks unique to a particular industry compared to what would be available from the traditional insurance market; and
- reinforcing positive and communal methods of risk management which encourages the active participation of mutual members.

Discretionary mutuals can be a good alternative because:

- discretionary mutuals are generally simpler and less expensive to set up and capitalise than an insurance company and do not require an insurance licence (although do require a financial services licence);
- the discretionary power means that the mutual can manage their exposures in terms of structuring a risk program to maximise their buying power for excess of loss and stop loss (re)insurance – reaching beyond primary markets to access capital that is not normally available to them;
- they have a lower tax burden than an insurance company or captive insurer and there are tax advantages because GST is payable but income tax and insurance taxes like stamp duty are not; and
- mutuals can raise equity by issuing Mutual Capital Instruments (which are similar to shares) to investors.

Charmian, how might a discretionary mutual work in a renewable industry and decommissioning context?

The potential liability for decommissioning of infrastructure in the future sounds like a good example of a risk that a discretionary mutual might be established to cover – it is industry wide, affects a number of stakeholders and it is not currently protected by a local insurance product.

Setting up a discretionary mutual does require industry co-ordination and co-operation. Generally, an industry body would drive the process by having some of the major participants commit in-principle. There would need to be an actuarial study to work out the feasibility of the pricing for the protection and to ensure it is appropriately capitalised to meet the potential liability.

How is a discretionary mutual structured?

A discretionary mutual can be set up as a public company limited by guarantee or a unit trust.

A public company limited by guarantee is useful where membership is to be offered to a larger number of similar businesses or industry stakeholders and not one corporate group. Instead of issuing shares, members apply for membership. Their rights are contained in a Constitution or a set of Rules (or both).

This structure is particularly efficient where the group membership will not change regularly or if the mutual is being managed by a leadership team which drawn from a not-for-profit entity.

Unit trust structures are more commonly used by commercial providers, such as trustee companies and insurance brokers, where there are smaller member numbers and no need for members to have management/leadership responsibilities. There are taxation advantages for both structures due to the operation of the principles of mutuality.

Charmian, are there any disadvantages?

The claimant may not be entitled to 100% recovery on the claim. The claimant in this case would be the member, not the landowner. The landowner would need to be assigned the rights of the member to the proceeds of any claim in the relevant project documents.

The key difference between insurance on the one hand and discretionary protection on the other is that:

- an insurance policyholder has an absolute contractual right to have their claim paid if it is covered under the terms and conditions of the insurance policy.
- a person protected by a discretionary mutual has the right to have their claim considered and for a decision to be made about the exercise their discretion - either in favour or against the payment of a claim. The governing body of the Mutual Fund (ie, the board or the trustee) makes the decision and might have regard to the interests of all the members. For example, the Board might decide to pay out a percentage of every claim if the industry was hit by an industry wide event that triggered a lot of claims (for example, COVID-19 or a mass weather event) and they can't make sufficient (re)insurance recoveries to fund a claim payment of 100%.

Both discretionary mutuals and insurance products offer a legitimate way of protecting someone against the occurrence of an 'insurable' event or risk.

Discretionary protection is recognised by case law as a valid legal alternative to insurance.¹

Although it is not necessary to have an insurance licence from the Australian Prudential Regulation Authority, because discretionary mutuals are a facility for managing financial risk, they are regulated as a financial product under Chapter 7 of the Corporations Act 2001 (Cth). In most cases, this means an Australian financial services (AFS) licence will be required.

Wrap Up

A discretionary mutual fund might be one way of driving some certainty on the decommissioning risk. If the risk could be minimised, this would alleviate concerns from landowners that are often the most difficult to resolve adequately in negotiations. It would also contribute to social licence and relationships with communities and ensure that future decommissioning liability is not left unfunded. In our view, if a full solution is not found, legislation or approval conditions will step in to fill the void. It would be great to see the industry develop its own solution in this space using more innovative alternatives to the traditional insurance market.

For more information, please contact:



Margot King Perth
Partner
+61 406 056 651
margot.king@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/margot-king



Charmian Holmes Brisbane
Partner
+61 408 244 736
charmian.holmes@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/charmian-holmes



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



Megan Chau Sydney
Lawyer
+61 2 8072 8271
megan.chau@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/megan-chau

¹ Medical Defence Union Ltd v Department of Trade [1980] 1 CH 82. This English case was confirmed and considered in the Australian decisions of Bailey v Medical Defence Union (1995) 184 CLR 399 and The Barclay MIS Group of Companies v ASIC [2002] FCAT 606



Finding Common Ground Between Offshore Wind Farms and the Rights of Aboriginal and Torres Strait Islander People

Authors: William Ryan and Megan Chau

Introduction

As Australia's offshore wind sector shifts into high gear to accelerate the clean energy transition, project developers and investors will be required to consider the rights of Aboriginal and Torres Strait Islander people (**First Nations People**).

Balancing the rights and aspirations of First Nations People and the advancement of offshore wind farms presents significant hurdles for those in the development of offshore renewable energy projects.

Unique circumstances

First Nations People hold a holistic view that rejects the division between Sea Country and Land Country or the protection of practices and sites of historical or cultural significance in isolation. This arises from the profound, holistic connection that First Nations People have with space, time, and the environment compared to the extreme compartmentalisation prevalent throughout the country and most of the world¹. It is useful to remember that for First Nations People, their culture and heritage is not something of the past but that it is an ongoing, living relationship with the planet and its people.

The fact that First Nations People's socio-economic relationship with Country, and in this case, Sea Country, begins well before the current coastal ecosystems were established and that heritage sites include tangible and intangible aspects adds another layer of complexity to this situation. The Sea Country, where offshore wind zones and projects will be established and developed, have many areas of historical and cultural significance that still form an integral part of the socio-economic and legal system of First Nations People.

Another distinction unique to offshore wind project development compared with other development projects is the difference between Anglo-Australian legal traditions and the legal traditions of First Nations People. The legal tradition of First Nations People is strongly characterised by oral accounts of conduct and history and by restrictions on the transfer and possession of knowledge.² For example, some information may be sacred, kept secret and only shared under strict preconditions set by customary laws that are often unique to each group.

These restrictions on public access to information, particularly in respect of sites of significant cultural or ritualistic value can result in the fragmentation of knowledge across communities. This also affects the success of laws and policies aimed at protecting the property rights of First Nations People.

Native Title

These differences become apparent and somewhat problematic within the framework of the Native Title Act 1993 (Cth) (**NTA**). The NTA acknowledges that First Nations People possess rights and interests in waters based on their traditional laws and customs. These water-related native title rights encompass fishing, hunting, resource extraction from water bodies, access to water and the use of water for cultural or spiritual purposes.

However, the limitation of restricted information sharing present in the socio-legal systems of First Nations People hinders the comprehensive recognition of coastal areas and water rights and usage practices.

This challenge could be exacerbated by the voluntary and involuntary displacement of coastal communities of First Nations People, who possess vital knowledge about significant locations and cultural practices. Consequently, there is a risk that the scope of traditional rights over coastal land or waters may exceed the recognition provided under the NTA framework.

While there have been a handful of cases where exclusive native title has been recognised, native title in tidal and sea areas can only be of a non-exclusive nature, as exclusive native title is considered inconsistent with other common law rights regarding marine access and navigation. This non-exclusivity makes it even more important to balance the interests of First Nations People and offshore wind project proponents.

Faced with these difficulties, how can proponents of offshore wind projects guarantee the preservation of First Nations People's rights over Sea Country while meeting their commercial objectives?

These restrictions on public access to information, particularly in respect of sites of significant cultural or ritualistic value can result in the fragmentation of knowledge across communities. This also affects the success of laws and policies aimed at protecting the property rights of First Nations People.

Impact and Regulatory Response

As discussed above, strict compliance with the law may be insufficient to ensure conflict-free project operations. Many project proponents are often unaware of the application of the NTA to offshore areas or coastal lands. The NTA does indeed operate in the waters where projects may be implemented. Further, the Offshore Electricity Infrastructure Act 2021 (Cth), makes it an offence for a license holder to carry out activities in the Commonwealth offshore area that interfere with the exercise of native title rights and interests (within the meaning of the NTA), even if that purpose was in the exercise of licensed activities.

Even though the Offshore Electricity Infrastructure Act 2021 (Cth) links the recognition of the right of First Nations People to the coastal areas and waters to the NTA, this area of the law is a dynamic space as stakeholders become more aware of the nuances of sustainable social and economic development.

The Protecting the Spirit of Sea Country Bill 2023 (Bill) is currently before the Australian Senate and was introduced earlier this month to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth) (**OPGGSA**) and the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009.

The Bill is a consequence of the cases of *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority* (No 2)³ and the subsequent appeal in *Santos NA Barossa Pty Ltd v Tipakalippa*.⁴ It is centered around the principle of Free, Prior and Informed Consent (**FPIC**). FPIC is a right recognised for Indigenous People, and in this case, First Nations People, and allows First Nations People to provide or withhold / withdraw consent, regarding projects impacting their territories and to engage to shape the design, implementation, monitoring, and evaluation of projects. The Bill seeks to address the following issues faced by First Nations People:

1. the absence of standards of consultation;
2. the absence of statutory requirements to consult with Traditional Owners and knowledge holders within First Nations communities; and
3. the absence of a requirement to identify underwater cultural heritage that may be impacted by offshore projects.

While it is arguable that the impact of offshore wind projects is smaller than the impact of offshore petroleum and gas projects, the impact of offshore wind projects on the rights of First Nations People is not insignificant and will profoundly influence both the customary use of coastal regions and waterways and the rights of First Nations People.

Management

Offshore wind proponents should adopt a proactive approach by initiating engagement with First Nations People during the project's design phases and ensuring that the participants representing the proponent's interests understand the importance of adhering to FPIC so as to avoid the risk of engaging in practices that are exploitative or could be construed as unethical business practices.

Proponents should consider establishing Indigenous land use agreements or similar agreements that address the interests of First Nations People and which create community ownership in the offshore wind projects whilst also respecting and protecting the property rights and cultural rights of First Nations People.

These proactive measures align with enhanced ESG (Environmental, Social, and Governance) compliance for offshore wind projects, serving to reduce the likelihood of legal disputes and unfavourable publicity. This strategic alignment is crucial in safeguarding the broader clean energy transition's trajectory and to establish a strong social license for the nascent industry.

Conclusion

Discussions that are sensitive to the unique proprietary and cultural customs of First Nations People are therefore essential to creating stakeholder value through the implementation of offshore wind projects and accelerating the clean energy transition.

For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel

¹ Sea Country – an Indigenous perspective, The South-east Regional Marine Plan Assessment Reports, National Oceans Office, 2002

² Saying It Like It Is: Oral Traditions, Legal Systems and Records, P. R. A. Gray, Archives and Manuscripts, vol. 26, no. 2, pp. 248–269

³ [2022] FCA 1121

⁴ [2022] FCAFC 193

Hamilton Locke Expert Insights

AEIC – Andrew Dyer

Authors: Matt Baumgurtel and William Ryan

For this New Energy Expert Insights, we sat down with the Australian Energy Infrastructure Commissioner, Andrew Dyer, to discuss his experiences with community engagement during Australia’s renewable energy transition.

What is the role of the Australian Energy Infrastructure Commissioner (AEIC)?

The Commissioner’s primary role is to:

- facilitate the referral and resolution of complaints received from concerned residents about proposed or operating wind farms (onshore and offshore), large-scale solar farms, energy storage facilities, pumped hydro, and new, long-distance high voltage transmission projects;
- provide and promote greater transparency on information related to the development and operation of these projects; and
- identify and promote best practices related to the planning, development, construction and operation of projects, including guidelines, planning standards and compliance, complaint handling procedures, landholder and neighbour relationships, and engagement with landholders and the broader community.

The Commissioner’s role is independent. It is funded by the Australian Government, reporting to the Minister for Climate Change and Energy, and provides an Annual Report each calendar year to the Federal Parliament.

The role has no formal powers or authority. The Commissioner relies entirely on the relationships that have been developed with all of the key stakeholders, the results of our work and our reputation. The absence of any formal authority or powers can be quite an asset. When you have powers, they are often subject to challenge, which can be a major distraction.

How has the AEIC’s role developed over time?

My role initially commenced as the National Wind Farm Commissioner. It was created in 2015, in response to a Senate Select Committee’s inquiry into wind turbines, held during 2014-15. I was appointed in October 2015 and commenced on 1 November 2015.

Towards the end of that initial three-year term, the government reviewed the role and recommended that the role be renewed for a further three-years, with an expanded mandate to include large-scale solar farms and energy storage facilities. The role was expanded further again in March 2021, to include new, large-scale transmission projects, and was extended until late 2025.



In July 2023, I was asked to lead a review of community engagement, in particular with regard to the significant energy transition required across Australia. I completed that review in December 2023.

What are some key challenges developers or operators face when engaging with a community?

Community engagement needs to be tailored to the community. Proponents, often with employees based in a city, may design a well-intentioned community benefit scheme that does not work out so well when implementing the scheme in rural Australia.

For example, a windfarm proponent, as part of its overall community benefit program, offered a choice of either a rooftop solar or a solar hot solar system to the windfarm’s neighbours. The program required the neighbour to obtain three quotes for their chosen solar system. That was a difficult requirement for the neighbours to meet – for those of us that have lived in rural Australia, you are lucky to be able to get one quote from a willing supplier – three quotes may not be practical in the locality of the windfarm.

Further, the program had been budgeted over a three-year period, requiring neighbours to be “wait-listed” for the budget funds to become available. And, when the funds did become available, the quotes had expired and the process had to be restarted again.

The administrative process was too bureaucratic and, while completely understandable from a controls point of view, was impractical for the neighbours. What should have been a popular benefit sharing program for the project’s neighbours became, instead, a nightmare for the recipients to navigate.

A much better approach is to involve some of the community members in the design of the project’s solar benefits sharing program, capturing their perspectives and knowledge as to what would work best (and not work) when rolling out and administering the program in the locality.

On a related, but different topic, it is extremely important that the developer’s personnel assigned to undertake community engagement and landholder relationship roles are properly trained for those pivotal roles.



These roles require the appropriate interpersonal skills and knowledge to be able to engage effectively with community members so that the discussions are productive and not wasting people’s time. To assist in building the required skills, we recently helped initiate and design an intensive training program for Transmission Network Service Provider personnel, which was conducted by TasNetworks on behalf of the transmission industry. It was a comprehensive program that included role plays and site visits, as well as expert presentations on topics such as the construction process and valuation of properties for securing easements.

Lastly, you cannot be effective at community engagement or landholder relations by sitting at your desk in the city looking at satellite maps. You need to get out there and meet with stakeholders and even “walk the route” with landholders so that you can jointly assess the impacts of the proposed design and assess alternatives at the same time.

In the Commissioner’s 2022 Annual Report, 51% of all complaints were related to large-scale transmission projects (44 complaints). Promisingly, however, over the past two years, there has also been a significant decrease in the number of transmission-related complaints (notably, in 2021, there were 111 transmission-related complaints).

Why do you think the frequency of transmission complaints has decreased?

Prior to our Office taking on transmission, there weren’t many places you could go if you had a complaint. We hadn’t really built major new transmission lines for a long time, so relevant complaint handling processes largely did not exist at the transmission network service providers (TNSPs). Also, TNSPs do not normally receive complaints from members of the public in operating and maintaining the existing grid, so it was not a surprise that this particular cupboard was bare.

So, when we opened up the door to receiving complaints about new transmission developments, there was perhaps a backlog of complaints from individual complaints that had not been addressed properly. We worked with the TSNPs, for the most part, to resolve these complaints through our normal complaint referral process. We also worked with the

TNSPs to help them design and implement their own complaint handling procedures, enabling them to receive and process complaints directly.

A combination of these initiatives, together with our evidence-based approach to working through a complaint – particularly systemic issues – saw a reduction in the number of new transmission complaints received by our Office in 2022, the second year of our remit.

You are currently leading the Review of Community Engagement, which the Minister of Climate Change and Energy announced in July 2023. Could you share some insights into the objectives of this review and any preliminary findings or observations you may have?

For the Community Engagement Review (Review), we went out to the community to get their advice. Our public consultation included the opportunity to make written submissions to the Review as well as participate in a survey, which was tailored to the particular perspective that the participant may have. For example, a developer participant received a different survey than a local council participant.

And, finally, we conducted an extensive number of round tables and interviews with the myriad stakeholders around the country. Many of these meetings were held in person.

Overall, we received over 500 submissions, over 250 survey responses and held over 75 roundtable and interview meetings, with over 750 stakeholder participants.

The insights gained from this substantial amount of relevant information have enabled the Review to form a set of findings and observations that, in turn, helped tremendously in forming our final views on pragmatic recommendations and next steps.

Boiling all of this down, to be truly effective at community engagement for renewable energy and related infrastructure projects, it is about quality people, representing well managed, professional developers to develop the projects we need in the right locations – supported by sound and efficient processes.

Which emerging aspects of the renewable energy transition are at the forefront of your agenda over the next five years?

In terms of the next five years, as I said just before, we need to be focussed on supporting qualified developers to successfully progress the right projects in the right places for the energy transition to be successful – in particular with regard to effective engagement of the community and stakeholders throughout the development and construction cycle.

I also expect that we may be quite involved in assisting State, Territory and Federal governments implementing outcomes of the Review where appropriate.

How transferrable are the community engagement learnings from established renewable energy projects (for example, solar and onshore wind) to, say, offshore wind?

We have worked with communities regarding onshore wind projects for a number of years – interestingly, people would often comment that if windfarm projects were located offshore then there would be fewer complaints. However, now that we are embarking on offshore wind projects, there are still plenty of concerns. These concerns often relate to the perceived or real impacts of offshore wind farms on the natural environment, commerce (e.g. commercial fishing, tourism, shipping lanes capacity) and visual amenity.

There will also be a large amount of activity onshore, such as assembling turbine components through to building new transmission to connect the offshore wind farms to the onshore transmission grid, that may raise other concerns in other community groups.

The flip side is that all of these initiatives and projects create substantial new business and employment opportunities in regional Australia, sustained over a long period of time. It would be a great pity to miss out on these benefits and opportunities that have arisen from the energy transition due to ineffective community engagement and consultation.

We recently released a guideline to best practice community engagement for offshore wind projects, which can be found [here](#).

If you could give project developers reading this one piece of advice relating to community engagement, what would it be?

To be effective at community engagement, you need to engage the community. Get the community involved in solving problems and identifying opportunities. The community members are much more likely to support the solutions put forward if they have been properly involved in the process. You may also develop solutions that may never have been considered internally, making it a win-win for all.

For more information, please contact:



Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel



William Ryan Sydney
Lawyer
+61 2 8072 8271
william.ryan@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/william-ryan



David O'Carroll Sydney
Senior Associate
+61 2 8072 8271
david.ocarroll@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/david-ocarroll



New Energy Associates Network – NEAN

NEAN is a network for New Energy industry professionals from graduate to senior associate level, aimed at building connections and sharing industry knowledge among members. NEAN seeks to foster and grow relationships between industry stakeholders at the earlier stages of their careers.

Recent Events



Fireside Chat with Jean-Louis Salinas of Siemens Energy

On 28 March 2023, the New Energy Associates Network hosted a fireside chat with Jean- Louis Salinas of Siemens Energy and David O’Carroll of Hamilton Locke’s New Energy team.

Jean-Louis Salinas is the Hydrogen and Decarbonisation Solutions Lead for Siemens Energy. With over 20 years of experience in the new energy sector, Jean-Louis provided global expertise in developing pathways to decarbonisation across multiple industries, particularly in the context of the Australian Hydrogen Market.



To join NEAN and to stay up to date with upcoming events and industry insights, join the NEAN linkedin group here.

New Energy Expert Insights – Lucas Sadler of Energy Vault

Authors: William Ryan and Megan Chau

In this edition of New Energy Expert Insights, we sat down with Lucas Sadler, Energy Vault’s Vice President of Sales in Asia Pacific and an expert in energy storage and associated technologies, to unpack the benefits and challenges of implementing energy storage systems (ESS) at scale.

With over 30 years of sales leadership experience across the renewable energy, power generation and rapidly evolving energy storage sectors, Lucas is responsible for driving sales, business development and demand generation for Energy Vault’s energy storage software and infrastructure technologies across the Asia Pacific Region. Lucas has a wealth of expertise from his senior sales, business development and management roles in renowned companies such as Schneider Electric, Powerark Solar, Origin Energy, Yingli Green Energy, EnergyAustralia and Samsung.

Energy Vault develops and deploys turnkey sustainable energy storage solutions which are designed to transform current approaches to utility-scale energy storage while maintaining grid stability.

What are the primary challenges and risks associated with implementing large scale ESS in Australia, despite the evident advantages they offer?

The transition towards a sustainable-energy-future hinges on effectively integrating renewable energy sources into the power grid. Energy storage will play a pivotal role by offering the means to capture and store excess renewable energy during periods of high generation and release it to meet peak demand. However, the road to widespread adoption of large-scale ESS is marked by a series of complex challenges and risks that require careful navigation.

A significant obstacle is the substantial cost to establish and maintain large scale energy storage facilities. Unlike traditional fossil fuel technologies, which often benefit from established infrastructure, energy storage technologies demand significant upfront investment to build or retrofit existing infrastructure.

Inadequate government incentives and a lack of recognised markets in the National Electricity Market which value the flexibility and grid stability services which ESS services offer make them less attractive to investors.

The regulatory landscape adds another layer of complexity. Navigating energy market regulations and grid operation frameworks is intricate and time-consuming. Policy changes to streamline existing regulations and create a favourable investment climate while fostering fair competition in the market are essential ingredients which will encourage ESS uptake and integration.

While ESS should, in the long term, contribute towards reducing greenhouse gas emissions, the materials, manufacturing processes and end-of-life disposal of these systems must be carefully managed to minimise their environmental footprint. Striking this balance is imperative to ensure that the benefits of energy storage do not come at the expense of sustainability.

We must not overlook the social dimension either. Gaining public acceptance and support for the establishment of energy storage facilities, particularly in local communities, can be a significant challenge. Addressing concerns related to visual impact, noise, health and safety concerns is essential to foster a positive attitude towards these projects.

Given the importance of ESS to meet renewable energy targets, how important is it for the Australian government to attract local and foreign investment in this sector?

Australia has some of the best renewable resources in the world and it is in Australia’s best interests to invest in ESS to meet both energy demands and its net zero targets. However, the energy sector is facing a number of challenges that can only be described as a ‘perfect storm’. Leading contributors include policy uncertainty and government inertia, regulatory complexity, grid constraints and aging infrastructure, lack of long-term planning and increased occurrences of extreme weather events due to climate change.

Energy storage is an important tool to address some of these issues. However, it is not a panacea for all that ails the energy industry. Urgent government leadership and vision is required to build key infrastructure and develop human resources necessary to implement and maintain the ‘new’ energy system.

Policy measures must be reviewed on an urgent basis to make Australia and its energy industry more attractive to investors. For instance, generally in other markets, such as California, the lead time from application to construction of an energy storage facility in most cases is much shorter, while in Australia regulatory and grid approval results in a varied and often protracted process of generally between 9 to 18 months. It is imperative that the systemic weaknesses resulting in such long delays are identified and resolved if the country is to make maximum use of the opportunities available to it.

Energy Vault has a strong track record of innovation and successful project implementation in ESS. What is it about the Energy Vault approach that gives its investors the confidence to invest in ESS projects?

Energy Vault’s appeal to investors rests on several pillars. First, our gravity-based technology is both scalable and adaptable, offering solutions that align with various project sizes and markets. This compatibility extends to seamless grid integration and harmonious coexistence with renewable energy sources.

Secondly, investors are increasingly looking for sustainable and eco-friendly solutions. Energy Vault’s system is inherently sustainable, using locally sourced materials like concrete and recycled kinetic energy, which aligns with the global push for greener energy solutions.

Energy Vault has a history of successful project implementations and can point to past projects as evidence of the technology’s viability and effectiveness, which reduces the perceived risk associated with new technologies.

Energy Vault has also established partnerships with key players in the energy industry, including utilities and renewable energy developers. These alliances give our customers and markets confidence in the company’s ability to navigate the complex energy landscape and gain market access.

In summary, Energy Vault’s innovative technology, sustainability focus, reliability, scalability, track record, partnerships, cost competitiveness, and experienced management team collectively provide investors with the confidence to invest in ESS projects developed by the company.

In our recent NEAN fireside chat, you noted the potential for increased energy equity in communities including the potential gamification of the energy sector to encourage renewable energy uptake. Can you please expand on what that might look like?

While the emergence of artificial intelligence in energy storage poses significant concerns about cybersecurity and market manipulation, there is no doubt that resources to optimise renewable energy consumption and promote sustainable practices are readily available.

Many countries, including Singapore, the United States, Japan, South Korea, Germany and the United Kingdom, have implemented gamification initiatives in their energy sector. Singapore’s Energy Market Authority launched a gamified mobile application called “My Green World” which allows consumers to monitor their electricity consumption, set energy-saving goals and win points and badges thereby making energy efficiency a part of their day.

Energy equity refers to the fair and accessible distribution of affordable and reliable energy resources across all segments of society, regardless of socioeconomic factors. Energy equity models empower local residents to become active participants in the renewable energy transition.

By facilitating community investment in, and ownership of renewable energy generation resources such as rooftop solar farms or community battery systems, communities become active participants in meeting their energy needs. Active participation by energy consumers improves the uptake of energy efficient technologies and ultimately reduces the reliance on centralised and often dirty forms of energy distribution systems.

How do you see the energy storage market developing over the next few years?

The energy storage market will likely undergo expansion in tandem with the rising demand for renewable energy. Grid stability and intermittency management needs will be the primary drivers of this growth.

A policy of decentralised energy generation through the deployment of microgrids for the purposes of reducing strain on the central grid will help consolidate this growth.

In addition to the volume driven expansion of the energy storage market, energy management software will become more sophisticated with the

ability to accommodate dynamic pricing and demand patterns and integrate with smart grid conditions. Artificial intelligence and predictive analytics will be the catalyst of this evolution.

While energy storage holds great promise to facilitate Australia’s energy transition, realising its full potential requires addressing a multitude of challenges and risks. From financial and technical considerations to regulatory hurdles and environmental responsibilities, a comprehensive approach is needed to ensure the successful deployment of ESS.

For more information, please contact:

- 

Matt Baumgurtel Sydney
Partner
+61 459 900 080
matt.baumgurtel@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/matt-baumgurtel
- 

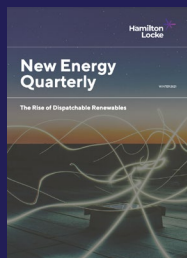
William Ryan Sydney
Lawyer
+61 2 8072 8271
william.ryan@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/william-ryan
- 

Megan Chau Sydney
Lawyer
+61 2 8072 8271
megan.chau@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/megan-chau
- 

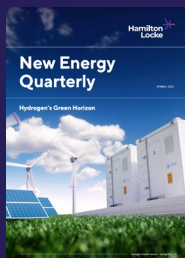
David O'Carroll Sydney
Senior Associate
+61 2 8072 8271
david.ocarroll@hamiltonlocke.com.au
hamiltonlocke.com.au/our-team/david-ocarroll



Missed our previous Quarterlies? No dramas – read them here:



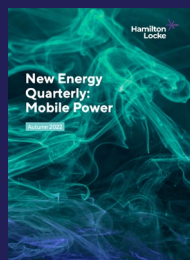
New Energy
Quarterly -
The Rise of
Dispatchable
Renewables >>



New Energy
Quarterly –
Hydrogen's
Green
Horizon >>



New Energy
Quarterly –
Power Plus >>



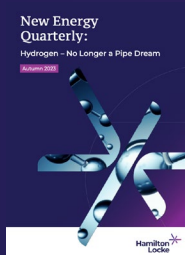
New Energy
Quarterly –
Mobile Power
>>



Digital Power
Publication –
Special Edition
>>



New Energy
Quarterly – Energy
Security >>



New Energy
Quarterly –
Hydrogen
No Longer a
Pipe Dream >>

Missed our previous Expert Insights? No dramas – read them here:

