

# New Energy Special Edition

Investment in Renewables

March 2026



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## Editorial

'Investment in Renewables', a New Energy Special Edition by Hamilton Locke, explores the ongoing maturation of Australia's renewable energy sector and the significant capital deployment opportunities. For the first time, AEMO recently reported that renewables supplied more than 50% of quarterly NEM energy needs.<sup>1</sup> Globally, the IEA reports that renewable power capacity is projected to grow by approximately 2.7 times current ambitions by 2030. At the same time, global developments are reshaping where and how capital flows. The effect of supply-chain realignments, geopolitical risk and incoming regulation has placed Australia in a strong strategic position to attract foreign capital into its new energy sector.<sup>2</sup>

Since we published our last special edition<sup>3</sup>, Australia has experienced unprecedented capital deployment in renewable energy infrastructure.<sup>4</sup> Recent data, reported by the Clean Energy Council, demonstrates record investment commitments, confirming that institutional capital has moved decisively beyond tentative positioning to firm allocation within the energy transition. Key market indicators underscore this momentum: rooftop solar surpassed four million installations in 2024, adding 3.2 GW of capacity, while large-scale project commitments surged to \$9 billion representing a six-fold increase from \$1.5 billion in 2023. Battery storage development accelerated significantly, with 8.7 GW/23.3 GWh under

construction by year-end. Renewable energy now provides 40 per cent of Australia's total electricity generation, though the 2 GW of large-scale generation added in 2024 remains below the 6GW annual target needed to replace retiring coal capacity.<sup>5</sup>

With Labor's return to majority government, there are substantial funding commitments for renewables, storage and transmission. However, realising these opportunities demands strategic management of an increasingly complex regulatory environment, from the Foreign Investment Review Board (FIRB) framework requirements to critical considerations under the EPBC Act and ACCC domestic regulatory developments.

This special edition provides a comprehensive view of the factors shaping capital flows into Australian renewable energy projects and the strategic approach investors, developers and key stakeholders must adopt to capitalise on these opportunities. As we progress through 2026, parties must be prepared for the increasing regulatory, technical and financial complexity. With scale comes scrutiny, and deals will need to be structured accordingly.

This publication considers how Australia's renewable energy transition in 2025 was shaped by global trade tensions, shifting energy policy and constrained capital markets despite a new term in office for the incumbent government. Escalating US tariffs disrupted global renewable supply chains and reinforced China's market position in solar, battery and rare-earth manufacturing, increasing cost and security risks for import-dependent markets like Australia while also creating opportunities to build domestic manufacturing capacity under the Future Made in Australia agenda. At the same

time, a retreat from clean-energy support in the US is redirecting global capital toward more stable, policy-aligned markets, positioning Australia to attract international investment.

Following the Albanese Government's re-election, significant reforms to Australia's foreign resident capital gains tax (CGT) regime are back in focus, with measures originally proposed in the 2024-25 Federal Budget particularly relevant for foreign investors in infrastructure and renewable energy. We provide a useful update on tax reforms, including Foreign Resident Capital Gains Withholding Tax, providing clarity for international investors navigating cross-border acquisitions.

The renewable energy transition is creating challenging conditions for some projects. Sub-optimal infrastructure, approval delays, rising debt costs, and financial stress are contributing to a growing pool of distressed renewable assets. We explore how this presents unique opportunities for well-capitalised investors to acquire and restructure troubled projects at attractive valuations. For buyers, success requires comprehensive due diligence to uncover hidden liabilities, strategic deployment of warranty and indemnity insurance to mitigate unforeseen risks, and early resolution of regulatory and compliance challenges.

As solar farm developers look to optimise land value and diversify revenue, carbon credit stacking has emerged as a compelling but complex opportunity. We explore how land-based sequestration projects can be combined with renewable energy assets in Australia, and what regulatory hurdles must be navigated to make it work.

Australia's clean tech sector is attracting strategic investors, corporates, utilities, superannuation funds, and government-backed entities whose priorities extend beyond financial returns to include IP access, decarbonisation targets, and supply chain resilience. We examine how these capital-intensive ventures involve complex joint ventures and staged capital raising, with investors demanding board representation and veto rights over key decisions, whilst increasingly favouring hybrid structures such as convertible notes and preference shares to manage risk through milestone-based funding and anti-dilution protections.

Planning and approvals remain pivotal for renewables projects with detailed analysis of regulatory requirements and project timelines required to ensure investors can assess feasibility and mitigate delays. On 28 November 2025, the Australian Parliament passed long-awaited changes to the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act), marking the biggest update to Australia's environmental laws in decades. For investors and developers, the reforms offer both opportunities and responsibilities. While the streamlined pathways and clearer regulatory framework may accelerate project approvals, the enhanced compliance obligations, mandatory offsets and stronger enforcement powers mean careful planning and environmental due diligence is essential.

A key regulatory development for 2025/2026 is the ACCC's reforms, which strengthen oversight of mergers and acquisitions in energy markets. Investors and developers now face a more rigorous assessment of competitive impacts, particularly for battery storage, grid infrastructure, and cross-border transactions. Understanding and responding to these changes is critical for both domestic and foreign participants seeking to secure strategic positions in the new energy sector.

This special edition also features three New Energy Expert Insights. First with Howden on the evolving W&I insurance market for renewable energy transactions. Growing transaction volumes and enhanced insurer familiarity with renewable assets have broadened coverage appetite, particularly for solar, onshore wind, and battery storage systems. Howden highlights the importance of robust technical and legal due diligence, especially for development-stage projects or assets with complex ownership structures, to maximise coverage.

Secondly, we explore joint ventures with Ankura, covering how parties can structure joint ventures that work in practice and not just on paper and what practical tips should be considered to accelerate the process to establish a successful joint venture.

We also consider with Sumitomo Mitsui Banking Corporation (SMBC) project finance for renewable energy projects in Australia, examining how lenders are adapting to the sector's unique challenges and what developers need to know to secure optimal financing.

As Australia's renewable energy market matures, the opportunities for strategic investment grow, but so too does the need for careful navigation of regulation, financing structures, and ESG obligations. This edition provides comprehensive, practical guidance for investors seeking to participate in Australia's transition to a net-zero energy economy identifying not only the opportunities, but the critical risks and strategic considerations necessary to achieve sustainable and profitable outcomes.

The Hamilton Locke Team advises across the energy project life cycle – from project development, grid connection, financing, and construction, including the buying and selling of development and operating projects.



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<sup>1</sup> [https://www.aemo.com.au/-/media/files/major-publications/ged/2025/ged-q4-2025.pdf?rev=b29ae0bd014c48f59a259009d246280f8sc\\_lang=en&hash=49B19FB5A8783BBD5BF435153C523905](https://www.aemo.com.au/-/media/files/major-publications/ged/2025/ged-q4-2025.pdf?rev=b29ae0bd014c48f59a259009d246280f8sc_lang=en&hash=49B19FB5A8783BBD5BF435153C523905)

<sup>2</sup> <https://www.iea.org/reports/renewables-2024>

<sup>3</sup> <https://hamiltonlocke.com.au/new-energy-special-edition-investment-in-renewables/>

<sup>4</sup> <https://cleanenergycouncil.org.au/getmedia/f40cd064-1427-4b87-afb0-7e89f4e1b3b4/clean-energy-australia-report-2025.pdf>

<sup>5</sup> Ibid

# Watt has Happened at Hamilton Locke?



3<sup>rd</sup> July 2025

## Harbour City Renewables - Women in Energy

Hamilton Locke hosted the Harbour City Renewables - Women in Energy event, bringing together around 80 attendees. Jo Ruitenbergh delivered an address, sharing insights from her leadership journey and advocating for workplace cultures that embed gender equity.



9<sup>th</sup> July 2025

## Bond University Job & Internship Fair

Matt Baumgurtel, Ally Frizelle and Marni Riley attended the Bond University Job & Internship Fair on the Gold Coast, meeting students and sharing insights about careers at Hamilton Locke.



18<sup>th</sup> July 2025

## Australia Wind Energy 2025 Conference and Exhibition

Matt Baumgurtel moderated a panel at the Australia Wind Energy 2025 Conference and Exhibition in Melbourne, focusing on Australia's offshore wind industry, including advanced manufacturing, logistics, infrastructure planning, and strategies to address key sector challenges.



29<sup>th</sup> July 2025

## Clean Energy Summit - Women in Renewables Lunch

The Hamilton Locke New Energy team attended the 'Women in Renewables' lunch hosted by the Clean Energy Council. The panel explored how artificial intelligence is reshaping decision-making, problem-solving and leadership in the clean energy sector, emphasising the importance of diverse perspectives in ensuring technology enhances human insight.



29<sup>th</sup> July 2025

## Clean Energy Summit

The Hamilton Locke New Energy team had a fantastic time at the Australian Clean Energy Summit Gala Dinner alongside our clients, collaborators and the broader clean energy community.



1<sup>st</sup> August 2025

## Philip Riley Renewable Energy Golf Day

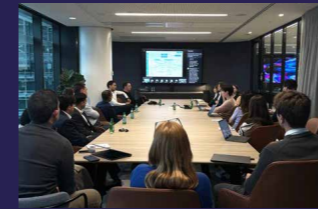
David O'Carroll and Cory Johnson attended the Philip Riley Renewable Energy Golf Day, joined by Lucas Sadler and Christian Cronje as part of the Hamilton Locke four ball team.



20<sup>th</sup> August 2025

## Critical Minerals and Energy Transition Summit 2025

Matt Baumgurtel presented at the inaugural Critical Minerals and Energy Transition Summit 2025, providing legal insights on the Critical Minerals Production Tax Incentive.



20<sup>th</sup> August 2025

## Hamilton Locke x Pottinger

Hamilton Locke hosted the Pottinger team at the Sydney office for a presentation on valuation of renewable energy projects. The session examined key factors that determine project purchase price and how these vary depending on the stage of development.



26<sup>th</sup> August 2025

## Battery Asset Management Summit Series - Commercial Asset Management panel

Matt Baumgurtel spoke on the Commercial Asset Management – Energy Trading & Revenues panel at the Battery Asset Management Summit Series hosted by Solar Media Limited. The panel discussed how batteries are reshaping energy trading and revenue strategies, including managing market volatility and the shift from FCAS revenues to energy arbitrage.



27<sup>th</sup> August 2025

## Battery Asset Management Summit Series - Social Licensing panel

Matt Baumgurtel hosted a panel on social licensing at the Battery Asset Management Summit Series. The panel explored the challenges and opportunities facing developers and communities, including the importance of continuous engagement, transparent communication, and exploring models of community equity to build lasting trust.



11<sup>th</sup> September 2025

## River City Renewables event - Aboriginal and Torres Strait Islander perspectives in energy

Hamilton Locke hosted the Phillip Riley River City Renewables event which had a session on embedding Aboriginal and Torres Strait Islander perspectives and leadership in energy and infrastructure projects, emphasising the importance of genuine ongoing consultation, culturally safe workplaces, and benefit-sharing agreements that reflect community priorities.



18<sup>th</sup> September 2025

## Swan River Renewables event - Mining and renewables in WA

Matt Baumgurtel spoke on a panel at the Swan River Renewables event held at the Hamilton Locke Perth office. The panel discussed how critical minerals, policy, investment, geopolitical factors and innovation are shaping the intersection between the mining industry and renewables in WA, including the state's potential to become a global hub for clean value-added mineral processing.



27<sup>th</sup> November 2025

## 'Cheers to You!' celebration

We were thrilled to bring together clients, collaborators, and supporters to reflect on another year of growth, innovation, and shared success.

# Market Insights

## ► Planning for net zero requires planning for people

Achieving net zero targets depends not only on technology and infrastructure but critically on workforce planning and community engagement. The renewable energy sector faces significant skills shortages and must develop strategies to attract, train, and retain talent whilst ensuring local communities benefit from the transition. A people-first approach is essential for delivering Australia's clean energy ambitions.

[Read more](#)

## ► Social licence in renewable energy projects: Part 1 & Part 2

Social licence has become a critical success factor for renewable energy projects, with community opposition capable of delaying or derailing developments. Part 1 explores the foundational principles of social licence, including early engagement, transparency, and alignment with community values. Part 2 examines practical strategies for engaging diverse stakeholder groups including landholders, Traditional Owners, local councils, and broader communities.

[Read more](#)

## ► Solar and battery storage surges ahead of wind generation in Australia

Recent data shows solar and battery storage installations are outpacing wind generation development across Australia, driven by falling costs, shorter development timeframes, and favourable policy settings. This shift has significant implications for grid planning, investment strategies, and the energy mix required to meet renewable energy targets. The trend reflects both technological maturity and evolving market preferences.

[Read more](#)

## ► Trust me, I'm a developer: what the Developer Rating Scheme means for developers and communities

The Developer Rating Scheme introduces a framework for assessing and publicly rating renewable energy developers based on their track record, community engagement, and project delivery. For developers, strong ratings can facilitate approvals and community acceptance; poor ratings may hinder future projects. The scheme aims to drive industry accountability and rebuild trust where community confidence has been eroded.

[Read more](#)

## ► CIS tender reforms: What's changing and when?

The Commonwealth's Capacity Investment Scheme (CIS) is undergoing reforms to improve tender processes, streamline approvals, and enhance project bankability. Key changes include revised eligibility criteria, updated assessment frameworks, and clearer timelines for future tender rounds. Developers should familiarise themselves with the reforms to position projects competitively for upcoming opportunities.

[Read more](#)

## ► Curtailment – new energy's silent crisis: what happens when the grid says 'no'

Curtailment, when generators are instructed to reduce or cease output due to grid constraints, is becoming an increasingly common challenge for renewable energy projects. The phenomenon results in lost revenue, complicates financing, and signals urgent need for transmission upgrades and storage solutions. Understanding curtailment risk and contractual protections is now essential for project viability assessments.

[Read more](#)

## ► Greenbacks for green acts: insights on the Production Tax Incentives for hydrogen and critical minerals

Australia's Production Tax Incentives for hydrogen and critical minerals represent a significant policy shift towards production-based support rather than capital grants. The incentives aim to bridge the cost gap with international competitors and accelerate domestic manufacturing capacity. Developers must navigate eligibility requirements, compliance obligations, and strategic timing to maximise benefit from these schemes.

[Read more](#)

## ► Navigating Western Australia's power system reforms: key implications for the renewable energy industry

Western Australia is implementing substantial power system reforms to accommodate increasing renewable energy penetration and maintain grid stability. The reforms include new market mechanisms, updated technical standards, and revised connection processes that will fundamentally reshape how generators participate in the WA market. Developers and investors must understand these changes to structure projects appropriately and manage commercial risks.

[Read more](#)

## ► New Energy Bulletin: Productivity Commission recommends reforms to environmental approval process for renewable energy projects

The Productivity Commission has recommended significant reforms to streamline environmental approval processes for renewable energy projects, acknowledging that current frameworks create unnecessary delays and costs. Proposed changes include consolidated assessment pathways, clearer timelines, and improved coordination between Commonwealth and State regulators. If implemented, the reforms could materially accelerate project delivery and reduce development risk.

[Read more](#)

## ► New Energy Bulletin: Queensland Government introduces comprehensive reforms to renewable energy planning framework

Queensland has introduced comprehensive planning reforms designed to facilitate renewable energy development whilst strengthening community protections and environmental safeguards. The reforms establish new assessment pathways for priority projects, updated setback requirements, and enhanced consultation obligations. Developers operating in Queensland must adapt to the new framework to maintain project momentum and secure community support.

[Read more](#)

## Market Recognition



Hamilton Locke named “fastest-growing partnership” in the Australian Financial Review.

### LawyersWeekly

Matt Baumgurtel named finalist in Dealmaker of the Year in Lawyers Weekly Australian Law Awards 2025.

### LawyersWeekly

Hamilton Locke wins Law Firm of the Year at the 2025 Australian Law Awards.



Hamilton Locke advises Australian Soil Management on its acquisition partnership with Climate Friendly.

### Tamarindo

Hamilton Locke shortlisted for the 2025 Energy Storage Investment Awards.

### LawyersWeekly

Marni Riley named finalist in Special Counsel of the Year in Lawyers Weekly Australian Law Awards 2025.

### LawyersWeekly

Hamilton Locke lawyers Minji Kim and Megan Chau named finalists in the 2025 Women in Law Awards.



Hamilton Locke has increased its ranking for Energy in Legal 500.

### LawyersWeekly

Matt Baumgurtel and Veno Panicker named a finalist in the Lawyers Weekly Partner of the Year Awards 2025.



Hamilton Locke tops WA Business News' 2024 Corporate Finance Survey.

### enervest

Hamilton Locke advises Enervest on the Stoney Creek BESS sale.

### Chambers AND PARTNERS

Hamilton Locke ranks in Chambers and Partners 2025 Asia-Pacific and FinTech Guides.

### Mergermarket

Hamilton Locke ranks equal second in Mergermarket's Australian M&A league tables for deal count in Q1 2025.



Hamilton Locke excels in national M&A and ECM rankings.

### BESTLAW FIRMS RANKED BY Best Lawyers

Hamilton Locke Recognised in Best Lawyers 2026 Edition of Best Law Firms – Australia.

### LawyersWeekly

William Ryan named finalist in the 2025 Lawyers Weekly 30 Under 30 Awards for the Projects, Energy and Resources category.

### LEXOLOGY Legal Influencer Q1 | 2025

Matt Baumgurtel recognised as a Lexology Legal Influencer – Q1 2025.

### FINANCIAL REVIEW

HPX Group recognised in AFR Fast 100 List for the second consecutive year.

## Watt has happened in New Energy M&A?

Transaction	Timing	Comments
Potentia Energy (formerly Enel Green Power) acquisition of 1 GW Tallawang Hybrid Renewable Energy Project <a href="#">Hamilton Locke is pleased to have advised Potentia Energy on this transaction, which has been shortlisted in the category of 'M&amp;A Deal of the Year' at the Tamarindo Energy Storage Investment Awards 2025.</a>	July 2024	Potentia Energy (formerly Enel Green Power Australia) acquired the 1 GW Tallawang Hybrid Renewable Energy Project from RES Australia. The 500 MW solar farm and 500 MW/1000 MWh battery was one of the first projects to obtain access rights in the NSW Government's Central-West Orana Renewable Energy Zone (REZ).
<a href="#">Intera Renewables acquisition of 100% interest in the Limestone Coast North Battery Energy Storage System from Pacific Green Technologies.</a>	February 2025	Intera Renewables (a renewable energy platform majority owned by funds managed by Palisade Investment Partners) has agreed to acquire a 100% interest in Pacific Green Technologies' 250MW/500MWh Limestone Coast North Energy Park battery energy storage system (BESS) in South Australia for approximately A\$460 million.
<a href="#">New Energy Opportunities (NEO) acquisition of GoZero Group</a>	February 2025	United H2 Limited (UHL) (rebranded since as New Energy Opportunities (NEO)) agreed to acquire GoZero Group Limited ("GoZero"), an Australian based provider of zero-emission transport solutions. The transaction, valued at circa AUD \$400 million, will see NEO take full control of GoZero's electrified commercial bus and truck fleets, including e-bus manufacturer, Nexport, and bus charter business, NSBC Group.
<a href="#">Energy Vault acquisition of 1 GWh Stoney Creek Battery Energy Storage System from Enervest</a> <a href="#">Hamilton Locke is pleased to have advised Enervest (seller) and Energy Vault (buyer) on this transaction, which has been shortlisted in the category of 'Equity Deal of the Year' at the Tamarindo Energy Storage Investment Awards 2025.</a>	June 2025	Energy Vault acquired the 1.0 GWh Stoney Creek Battery Energy Storage System from Enervest. As part of AEMO Services' NSW Long Duration Storage tender, the Stoney Creek BESS will play a key role in expanding the portfolio of projects that enhance system reliability and support the state's energy transition objectives.
<a href="#">AGL acquisition of Yadnarie solar and long duration energy storage project from Photon Energy</a>	July 2025	AGL agreed to acquire the Yadnarie project from Netherlands-based Photon Energy for approximately €4 million (A\$7.2 million). The two-stage project will use early-stage storage technology that can provide energy from the sun after dark. Once built, its capacity would consist of up to 150 megawatts of solar power and a 90 MW thermal plant with eight hours of storage.
<a href="#">Neoen divestment of Victorian energy storage and renewables portfolio to HMC Capital</a>	August 2025	ASX-listed HMC Capital acquired Neoen's Victorian energy storage and renewables portfolio for A\$950 million. The transaction included Neoen's 652MW of operating assets, notably the 350MW/450MWh Victorian Big Battery, the 224MW Bulgana Green Power Hub and the 128MW Numurkah Solar Farm.
<a href="#">Atmos Renewables acquisition of 100% interest in the 316 MW Hornsdale Wind Farm in South Australia</a>	August 2025	Atmos Renewables agreed to acquire Neoen's majority interest in the 316 MW Hornsdale Wind Farm in South Australia.
<a href="#">TagEnergy acquisition of ACE Power</a>	August 2025	TagEnergy acquired specialist early-stage developer ACE Power, adding approximately 6GW pipeline of battery, wind and solar projects to its growing Australian portfolio.
<a href="#">La Caisse acquisition of Edify</a>	September 2025	Canadian pension fund La Caisse acquired renewables company Edify. With an equity value reaching approximately A\$1.1 billion, this transaction will fund the acquisition of Edify and provide equity to finance two ready-to-build integrated solar and BESS hybrid projects totalling 900 MW / 3,600 MWh.
<a href="#">Wollemi Capital acquisition of ASX-listed renewable energy developer MPower</a>	September 2025	Wollemi Capital acquired ASX-listed MPower Group's renewable energy and battery storage business for approximately A\$19 million. Post-acquisition, Wollemi has pledged to invest more than A\$100 million to expand MPower's mid-scale solar and battery project pipeline.
<a href="#">Octopus Australia acquisition of Coleambally Battery</a>	October 2025	Octopus Australia acquired the Coleambally Battery, a 100 MW / up to 4-hour standalone battery project located in southern New South Wales west of Wagga Wagga.
<a href="#">CleanPeak Energy acquisition of five Australian solar and BESS sites from Fortitude Renewables</a>	January 2026	CleanPeak Energy acquired five solar and battery energy storage system (BESS) development sites in New South Wales (NSW) from Fortitude Renewables. This transaction is set to add 25MW of solar capacity and 100MWh of battery storage to CleanPeak's portfolio.

# Watt is ARENA Funding?

Program	Summary	Funding available	Closing date
<a href="#">Virescent Ventures Investments</a>	The Clean Energy Finance Corporation (CEFC) has spun out Virescent Ventures as a climate-focused venture capital fund. It is an investment portfolio that has deployed over \$270 million of taxpayer funds through the CEFC into climate focused technology start-ups. The CEFC has pledged to provide up to a third of the second fund.	\$100 million	Ongoing.
<a href="#">Hydrogen Headstart Round 2</a>	Hydrogen Headstart Round 2 was announced in the May 2024 Federal Budget. The Programme provides up to \$2 billion in grant funding through Headstart Production Credits to accelerate the development of Australia's renewable hydrogen industry and catalyse clean energy industries. Funding is provided as production credits specified in \$/kg of hydrogen or \$/unit of derivative, paid on each unit of eligible production over a maximum period of 10 years. The competitive round consists of an Expression of Interest phase and full application phase.	\$2 billion	Ongoing. Expression of Interest Phase opened on 10 October 2025 and is due by 5:00pm AEDT on 8 December 2025. Full applications due in August 2026 with decision outcomes expected between October and December 2026.
<a href="#">Battery Breakthrough Initiative</a>	The Battery Breakthrough Initiative is a funding programme delivered by ARENA and is a key part of the National Battery Strategy. The Programme objective is to fund projects that contribute to one or more of the following Programme Outcomes: enhance Australia's battery manufacturing capability to improve supply chain resilience and support emissions reduction; and commercialise battery manufacturing processes/technologies that can contribute to emissions reduction. All funding provided through the Programme will be in the form of a grant which may include Capital Grants, Production Incentives or other payments deemed appropriate by ARENA for the Project. The application and assessment process for the Programme will typically involve two stages, an Expression of Interest (EOI) stage and a Full Application stage.	\$523.2 million	Ongoing. The Programme will remain open until funds are exhausted or otherwise terminated or extended at ARENA's discretion.
<a href="#">Solar Sunshot</a>	The Solar Sunshot programme supports Australia's photovoltaic (PV) manufacturing capabilities and aims to support innovative manufacturing facilities in Australia across the solar PV supply chain. The solar PV supply chain includes polysilicon production, production of ingots, wafers, solar PV cells and solar module assembly. The programme may also support complementary aspects of the solar PV supply chain such as solar glass, module frames, deployment technology and other innovation or manufacturing elements required for solar deployment. The programme is delivered through funding rounds, with details set out in funding announcements that serve as calls to market for specific types of projects.	\$1 billion	Ongoing. Programme commenced on 31 August 2024 and will remain open until all funds available under the programme are exhausted. Funding announcements will set out specific application and assessment processes for each funding round.
<a href="#">Advancing Renewables Program (ARP)</a>	The ARP awards grants to a range of projects that seek to: <ul style="list-style-type: none"> <li>• optimise the transition to renewable electricity;</li> <li>• commercialise clean hydrogen; and</li> <li>• support the transition to low emission metals.</li> </ul>	Up to \$50 million	Ongoing.
<a href="#">Powering the Regions Industrial Transformation Stream</a>	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.	\$400 million	Ongoing.

Program	Summary	Funding available	Closing date
<a href="#">Regional Microgrids Program (RMP)</a>	The Regional Microgrids Programme (RMP) aims to support the development and deployment of renewable energy microgrids across regional Australia that contribute to the Programme Outcomes. Funding has been allocated across two Streams under the Programme, each with its own Outcomes: <p><b>Stream A - Regional Australia Microgrid Pilots</b> - to fund Projects that contribute to the innovation and/or acceleration of developing and deploying equipment that enables the coordinated use of distributed renewable energy technologies, improving the resilience and reliability of electricity supply in regional areas and addressing barriers to deployment of microgrid solutions.</p> <p><b>Stream B - First Nations Community Microgrids</b> - to fund Projects that contribute to the provision of cleaner, cost effective and reliable energy in First Nations Communities and empowering these Communities to participate in electricity supply arrangements and the development of energy infrastructure.</p>	\$125 million; Stream A \$50 million; and Stream B \$75 million	19 December 2025.
<a href="#">Driving the Nation Program</a>	The Driving the Nation Program is delivered by the Australian Renewable Energy Agency (ARENA). The Program is focused on accelerating the uptake of Zero Emission Vehicles (ZEVs). ZEVs include Battery Electric Vehicles, Hydrogen Fuel Cell Vehicles and vehicles using low carbon liquid fuels. The Program Objectives are to: overcome barriers to accelerate uptake of ZEVs; optimise the integration of BEVs into the grid; demonstrate new technology, use cases and business models for ZEVs; and increase skills, capacity and knowledge relevant to ZEV technologies. The Guidelines should be read in conjunction with the Program Focus Areas and any Funding Announcements published on the Program webpage.	Up to the total amount of funds uncommitted and available under Budget Measures applicable to the Program and any additional funding ARENA allocates to the Program from its uncommitted baseline funding	Ongoing.
<a href="#">Future Made in Australia Innovation Fund</a>	The Future Made in Australia (FMA) Innovation Fund administered by ARENA will provide up to \$1.5 billion in grant funding to support pre-commercial innovation, demonstration and deployment of renewable energy and low emission technologies, to support Australia's transition to a net zero economy. The funds will be split into three priority areas: Green Metals, Clean Energy Technology Manufacturing and Low Carbon Liquid Fuels.	Up to \$1.5 billion	Ongoing.
<a href="#">Community Batteries Funding Round 2</a>	Community Batteries Funding Round 2 (Round 2) is delivered under ARENA's Advancing Renewables Program (ARP). The Round 2 Objective is to fund Projects that contribute to one or more of the following Outcomes: improve the economics of community battery projects through the reduction in, or removal of, barriers to large-scale deployment; build industry capacity to deploy community batteries at scale; support the integration of distributed energy resources into Australia's energy markets and market operator systems; and demonstrate the benefits of community batteries by putting downward pressure on household electricity costs, contributing towards lowering emissions, providing a net benefit to the electricity network, and enabling storage of distributed solar energy for later use or sharing.	\$46.3 million	EOI Stage Closed. EOI Due Date was 30 April 2025. Full Application Due Date was 1 September 2025. ARENA aims to assess Applications and issue outcome letters from the Full Application as soon as practicable after the Full Application Due Date.
<a href="#">Ultra Low-Cost Solar PV R&amp;D Funding Round</a>	The Ultra Low-Cost Solar PV R&D Funding Round (Funding Round 4) is delivered under ARENA's Research Development and Commercialisation Program (RDC Program). Ultra Low-Cost Solar (ULCS) is a Strategic Priority for ARENA and is the Priority Technology for Funding Round 4. Funding Round 4 targets accelerated commercialisation of Australian innovation in R&D along the solar PV supply chain towards ARENA's ULCS goal of under \$20 per MWh for the Levelised Cost of Electricity (LCOE) for utility-scale solar PV. <p>The objectives of Funding Round 4 are to fund Projects that contribute to one or more of the following outcomes: support ambitious cost reduction, improved efficiency and stability for utility-scale solar PV across one of two Streams; and facilitate commercialisation of solar research and innovation to support research, industry and innovative businesses to drive applied research for solar at scale.</p>	\$60 million	Expression of Interest due on 21 October 2025 by 11:59 PM AEDT. Full Applications may be submitted at any time once ARENA's EOI feedback has been addressed and not later than the Full Application Due Date, which will be updated on the Funding Round website and notified to successful EOI Applicants.

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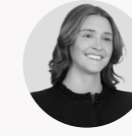
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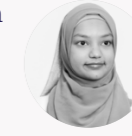
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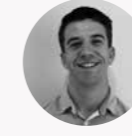
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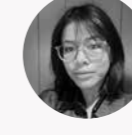
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# Global policy – Macroeconomic factors affecting renewable transition in Australia

**Authors:** Matt Baumgurtel and Tim McAlpine-Scott.

Australia's renewable energy transition in 2025 is being shaped by a complex interplay of global macroeconomic forces, trade policies, and shifting investment patterns. Australia's abundant renewable resources, combined with growing global demand for clean energy and green commodities, positions the domestic industry well for future market participation. This article considers the primary economic headwinds in the global energy market and their role in shaping Australia's renewable transition.

## Tariffs and the Supply Chain

The imposition of tariffs by the United States (US) on key trading partners, like China, has created significant ripple effects across global renewable energy supply chains, with solar panels, wind turbine components, and battery storage systems facing higher costs due to these trade barriers.<sup>1</sup> Specifically, in 2025, the US government concluded a trade investigation resulting in the decision to impose a combination of duties and trade taxes, focusing on circumvention and anti-dumping, on key importing countries.<sup>2</sup> When combined with existing anti-dumping duties, the US's global tariff regime and proposed reciprocal tariffs could result in import rates of 450–720% on solar modules and cells from Thailand, Vietnam, and Cambodia, and up to 90% from Malaysia.<sup>3</sup> This would render approximately 90% of global PV manufacturing capacity outside the United States uncompetitive in the US market by 2026.<sup>4</sup>

Global PV manufacturing capacity reached 1,100–1,350 GW in 2024, more than double the rate of annual deployment, contributing to sustained low module prices.<sup>5</sup> Despite efforts to diversify supply chains, China is projected to control 75–95% of global PV manufacturing by 2030.<sup>6</sup> Additionally, China currently controls 60% of rare earth mining, 90% of refining, and approximately 90% of magnet production, being key components for wind turbines and battery technologies.<sup>7</sup> For Australia, which remains highly dependent on imported renewable technologies, concentrated Chinese supply chains are expected to increase project costs, deployment uncertainty, and national reliance on foreign industry. Alternatively, global supply chain disruption also presents a strategic opportunity for Australia to scale domestic manufacturing and position itself as a regional clean energy assembly and supply hub, aligning with the objectives of the Future Made in Australia agenda.



## US Policy and International Investment Opportunities

US energy policy under the Trump administration has taken a markedly different direction from previous commitments to clean energy. The rollback of renewable energy incentives and renewed emphasis on fossil fuel production is creating uncertainty in global clean energy markets. The US renewable energy growth forecast is revised down by almost 50% across all clean energy technologies outside of geothermal power, reflecting the expedited phase-out of investment and tax credits under the Inflation Reduction Act 2022.<sup>8</sup>

For Australia, reduced US competition for renewable energy investment (REI) and talent could redirect capital and expertise towards more committed domestic markets, making Australian projects relatively more attractive to international investors seeking stable, policy-supported renewable energy opportunities. The outlook for renewables is more positive in South-East Asia, Europe and most emerging and developing economies compared with last year's forecast:

- India's renewable expansion is being driven by higher auction volumes, new support for rooftop solar projects, and faster hydropower permitting;<sup>9</sup>
- the European Union's growth forecast has been revised upwards slightly, driven by strong corporate power purchase agreement (PPA) activity in Germany, Spain, Italy and Poland;<sup>10</sup> and
- the Middle East and North Africa has been revised up by 23%, driven by new developments in Saudi Arabia this year, which has nearly tripled its renewable energy capacity since last year.<sup>11</sup>

This redirection of capital, from the US to international markets, represents the resilience of the renewable energy industry and highlights the significant opportunities for markets with stable policy frameworks to attract greater capital investment.

## Overseas Capital and the Global Economy

Foreign investment remains a critical enabler of Australia's renewable energy ambitions, with the scale of investment required to meet Australia's 2030 and 2050 targets far exceeding domestic capital availability. European and Asian investors continue to show strong interest in Australian renewable projects due to the availability of abundant natural resources, stable regulatory environment, and ambitious clean energy targets. Between 2013 and 2022, investments in renewable energy saw a compound annual growth rate of 8.5%, as global investments in clean energy technologies grew to USD 1.3 trillion by 2022 - a 19% increase from 2021, and nearly 70% higher than investment levels during the COVID-19 pandemic.<sup>12</sup>

High inflation and heightened borrowing rates continue to increase the cost of renewable energy components, making capital-intensive projects like solar or wind farms, more expensive to finance. While inflation has somewhat eased since 2022, long-term interest rates remain elevated compared to pre-2019 levels, particularly in emerging and developing economies, where rates are 4–6 percentage points higher than in developed markets.<sup>13</sup> Despite being home to nearly half the world's population, developing economies received only 15% of global REI in 2020, while the EU and US accounted for more than 60%, highlighting persistent disparities in access to clean energy capital.<sup>14</sup>

## What's Next: A Strategic Outlook

Despite global and domestic pressures, Australia's renewable energy sector remains resilient. Steady bipartisan support for emissions reduction and ambitious state-based renewable targets continue to provide the policy confidence investors look for. Further, overall appetite for new renewable capacity remains high, with major developers maintaining, or expanding, their long-term deployment goals.<sup>15</sup> However, global market conditions are prompting more cautious short-term planning. Recent policy shifts in the US and Europe, particularly affecting offshore wind, have pushed some 2030 emissions reduction targets back and increased market uncertainty. As a result, many developers are taking a more flexible approach to near-term investment, investing capital more selectively while keeping future options open. Higher global interest rates are also shaping investment decisions, with developers now applying stricter financial return thresholds to new projects.<sup>16</sup>

Looking ahead, strategic planning will be critical to maintain momentum. Key priorities must include:

- strengthening domestic manufacturing and supply chains to reduce exposure to international trade volatility;
- deepening partnerships with allied countries to accelerate technology sharing and investment; and
- expanding access to competitive financing through tools like green bonds, concessional funding and government co-investment.

Global renewable capacity is expected to double by 2030, with solar alone driving nearly 80% of this growth.<sup>17</sup> This is signalling a substantial opportunity for countries to expand their domestic solar industries - for Australia, success will hinge on maintaining stable policy settings, backing innovation, and building economic and industrial resilience to ensure competitiveness in an increasingly complex and fast-moving global energy transition.

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# Changes to Australia's foreign resident capital gains tax and the impact on renewable energy investment

**Authors:** Mark Payne and Seema Sandhu.

Significant reforms to Australia's foreign resident capital gains tax (CGT) regime are back in the spotlight, and will be especially relevant for foreign investors in infrastructure and renewable energy. With the legislation expected soon, stakeholders should anticipate greater compliance obligations and consider reviewing their investment structures.



## Need to know

- Reforms aim to clarify and broaden the types of assets subject to CGT for foreign residents – including assets that have a “close economic connection” to Australian land. The “principal asset test” is to be amended to include a 365-day testing period, rather than the existing point-in-time test, which only applies at the time of disposal.
- Changes to require foreign residents disposing of shares and other membership interests exceeding A\$20 million in value to notify the Australian Taxation Office (ATO), prior to the transaction being executed.
- While draft legislation has not yet been introduced, foreign investors with Australian assets should prepare for potential impacts on future disposals and exit strategies.

## A renewed focus on foreign investment and tax reform

As previously announced in the 2024–25 Federal Budget and reaffirmed in recent Treasury consultations, significant reforms to Australia's foreign resident CGT regime are back in focus following the Albanese Government's re-election.

These proposed changes aim to broaden the scope of assets subject to CGT for foreign investors, particularly those with a “close economic connection” to Australian land and natural resources — a concept introduced to address longstanding ambiguity around what constitutes real property under Australian tax law.

The reforms are especially relevant for foreign investors in infrastructure and renewable energy, as assets such as solar farms, wind turbines, and transmission infrastructure may now fall within the expanded definition of taxable Australian property.

## What's changing?

Originally proposed in the 2024-25 Budget, the measures aim to clarify and broaden the types of assets subject to CGT for foreign investors. They were expected to come into effect from 1 July 2025, however no draft legislation has yet been tabled.

A key focus of the consultation process that led up to the announcement of the proposed new measures was the concept of “fixtures” and whether or not they are included in the concept of real property.

The term “real property” isn't defined in tax law, as such it takes on its everyday ordinary meaning. In contrast, the legal meaning of the term is dependent on the legislative context, and the legal meaning comes from both common law and state and territory legislation which expands on and adds to that common law concept.

Under common law, “real property” includes land, and anything permanently attached to it (called “fixtures”). But in recent years, state and territory laws have expanded this concept to also include items that are simply fixed to the land, even if they aren't fixtures in the traditional legal sense.

During consultations, Treasury noted that it's unclear whether the ordinary meaning of “real property” is the same as the legal definition. This uncertainty has made it harder to know which assets count as part of the land, especially since different states and territories use different definitions in their laws.

## The concept of “close economic connection”

This uncertainty is the rationale for the introduction of a new “close economic connection to Australian land” test.

Subject to the draft legislation, which is yet to be released, the intention behind the proposed measures would result in:

- The clarifying and broadening of the types of assets on which foreign residents will be subject to CGT to include assets that have a “close economic connection” to Australian land.
- The amendment of the “principal asset test” (which operates to test whether an entity's value is principally derived from Australian real property) to include a 365-day testing period, rather than the existing point-in-time test, which only applies at the time of the disposal; and
- The introduction of a notification requirement for foreign residents disposing of shares and other membership interests exceeding A\$20 million in value to notify the ATO prior to the transaction being executed.

Relevantly, the concept of a “close economic connection” to Australian land will apply to infrastructure and machinery installed on land situated in Australia, including land subject to mining, quarrying or prospecting rights, for example:

- Energy and telecommunications infrastructure, such as wind turbines, solar panels, battery energy storage systems (BESS), transmission towers, transmission lines and substations.
- Transport infrastructure, such as rail networks, ports and airports; and
- Heavy machinery installed on land for use in mining operations, such as mining drills and ore crushers.

## Implications for foreign investors

These reforms are significant for foreign investors across the infrastructure and renewable energy sectors. The broadened definitions and new notification obligations will increase transparency but may also add complexity to deal structuring, compliance and exit strategies. The proposed reforms highlight the government's continued focus on aligning Australia's tax framework with its broader economic and energy transition goals.

Foreign residents investing in Australia should consider the details of these proposed changes as further information is released and the tax impact of those changes on disposals of Australian assets or their eventual exit from Australia.

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# A timely investment: Distressed M&A opportunities in Australia's renewable energy sector

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Australia's renewable energy transition is not without its challenges. The sector's rapid expansion, against a background of evolving government policies and shifting market dynamics, is creating challenging conditions for projects. While the industry has seen substantial growth in wind, solar, and battery energy storage systems (BESS), an increasing number of projects are facing financial and operational difficulties, leading to distressed asset sales.

Sub-optimal infrastructure, approval delays, rising debt costs, and financial stress have all contributed to the growing pool of distressed renewable assets. As a result, mergers and acquisitions (M&A) in the renewables sector are increasingly focused on acquiring and restructuring troubled projects. For well-capitalised investors, acquiring distressed assets at a discount presents a unique opportunity if they can successfully navigate the legal and financial complexities involved. These deals also provide a viable exit strategy for sellers who can minimise further expected losses from their asset.



## When is a renewable energy asset 'distressed'?

A renewable energy project is considered "distressed" when it faces financial, operational, or physical challenges that threaten its viability. These challenges may include:

- **Revenue pressures** – Low or negative electricity prices reducing profitability.
- **Debt burdens** – High leverage making it difficult to service debt obligations.
- **Curtailement issues** – Limited grid capacity or economic factors forcing reduced generation.
- **Regulatory hurdles** – Permit or approval delays or compliance risks affecting project timelines.
- **Market dynamics** – Shifts in energy pricing, competition from newer technologies, or changing policy incentives.

## What's driving distress in the renewables market?

### 1. Economic and grid curtailement

Curtailement is one of the most pressing challenges facing renewable energy projects. The main types of curtailement affecting energy assets are:

- **Economic curtailement:** when market conditions make it unprofitable to generate electricity, such as when wholesale prices drop to negative levels during periods of oversupply.
- **Grid curtailement:** when transmission infrastructure is unable to handle the volume of energy produced, forcing renewable generators to scale back output.

Projects located in areas with weak grid infrastructure or that are exposed to volatile market pricing will be affected more by curtailement pressures.<sup>1</sup>

### 2. Financial viability and debt pressures

The financial health of a renewable asset is closely tied to its Levelized Cost of Energy (LCOE) and debt structure. Projects with higher-than-market LCOE struggle to compete, especially when technological advancements drive down the cost of new developments.<sup>2</sup>

- **Debt-heavy projects** face refinancing risks, particularly in a rising interest rate environment. Increased debt servicing costs can strain cash flow and lead to lower profitability.
- **Delayed projects** often suffer from cost overruns and revenue shortfalls, further compounding financial stress.

### 3. Transmission and infrastructure bottlenecks

Grid congestion and high Marginal Loss Factors (MLF) are additional challenges for renewable projects. Assets located far from demand centres experience higher transmission losses, reducing the actual energy delivered to the grid. Transmission delays and lack of energy storage solutions exacerbate these issues, making it difficult for projects to generate consistent returns.

## The market outlook

Australia's renewable energy market is expected to continue its strong growth trajectory, with total capacity projected to reach 57.38 GW by the end of 2025, driven by solar, wind, and battery investments.<sup>3</sup> M&A activity in renewables and energy infrastructure grew by 4% in 2024.<sup>4</sup>

The following factors will likely lead to an increase in distressed M&A:

- **Interest rate decreases** will allow for higher borrowing capacity for buyers. Similar increases in other markets have fuelled M&A activity.
- **Withdrawal of government support** provided during the COVID-19 pandemic has led to a growing number of businesses becoming insolvent.
- **Government policies** will continue to shape market dynamics, influencing investor appetite for struggling projects.

These conditions will likely see a surge of interested investors and allow owners of distressed assets to sell their assets, decreasing debt commitments and avoiding further costs. The ongoing global energy transition and heightened demand for renewable energy will mean higher deal value and minimal capital loss for sellers.

## Turning distress into opportunity: Key strategies for M&A buyers

From a legal perspective, distressed assets often have encumbrances, unresolved contractual obligations, or regulatory compliance risks that can complicate transactions. Buyers must assess potential liabilities, unexpired power purchase agreements (PPAs), and pending litigation before pursuing a deal. For investors and energy companies looking to capitalise on distressed M&A opportunities, several key strategies can be employed:

### 1. Restructuring and financial optimisation

- **Debt restructuring** – Buyers with strong financial expertise can renegotiate debt terms or acquire distressed debt at a discount, converting it into equity.
- **Cost optimisation** – Implementing cost-saving measures, such as renegotiating supplier contracts or improving operational efficiencies, can enhance project viability.
- **Refinancing under better terms** – As interest rates shift, acquiring distressed assets and securing financing at lower costs can improve project economics.

### 2. Grid and transmission solutions

- **Strategic site selection** – Acquiring distressed assets in areas with lower grid congestion or planned infrastructure improvements can mitigate transmission risks.
- **Storage integration** – Investing in battery storage solutions to manage curtailement and capture value from peak pricing periods.

### 3. Repowering and technology upgrades

- **Replacing outdated technology** – Older wind and solar projects with higher LCOE can benefit from repowering initiatives, where newer, more efficient equipment is installed.
- **Leveraging AI and predictive maintenance** – Optimising asset performance using data analytics can improve long-term profitability.

### 4. Acquiring assets below replacement cost

- Many distressed renewable assets are being sold below their original development cost, providing investors with an opportunity to acquire projects at attractive valuations. With careful due diligence, investors can unlock value by stabilising operations and securing long-term revenue streams.

### Who stands to benefit?

The growing pool of distressed renewable assets presents opportunities for various market participants:

- Owners of distressed projects – While financial distress can be a challenge, owners have several potential avenues to extract value from their assets. Selling to a well-capitalised buyer can provide an exit strategy, allowing them to recover capital and avoid prolonged financial strain. Alternatively, restructuring through debt refinancing, joint ventures, or securing new PPAs can help stabilise the project and extend its operational viability. Owners who proactively engage with investors or restructuring specialists can ensure they retain some upside while alleviating financial pressure.
- Private equity and infrastructure funds – Can acquire distressed assets, restructure them, and exit profitably.
- Renewable Energy Developers/Asset Owners – Can deploy capital to the asset, optimise and renovate the equipment before operating efficiently.
- Utilities and independent power producers (IPPs) – Can expand their portfolios, optimise operations, and achieve economies of scale.
- Debt investors and special situation funds – Can take advantage of loan-to-own strategies, converting distressed debt into asset ownership.

For distressed asset owners, the key is early intervention and strategic decision-making: whether that means a structured exit, financial restructuring, or operational turnaround. By taking proactive steps, project owners can mitigate losses, preserve stakeholder confidence, and potentially reposition their projects for long-term success.



### Navigating distressed M&A: legal and strategic considerations

While distressed asset acquisitions present significant opportunities, they also come with unique legal and financial risks that require careful navigation. Unlike traditional M&A deals, distressed transactions often occur on accelerated timelines with limited access to seller-provided information. This can create challenges in conducting due diligence and assessing potential liabilities.

Sellers in financial distress may not be able to provide extensive contractual protections, such as warranties and indemnities, leaving buyers exposed to greater risks. To mitigate this, investors should:

- Ensure comprehensive due diligence to uncover hidden liabilities, regulatory risks, or operational deficiencies before finalising the acquisition.
- Negotiate warranty and indemnity (W&I) insurance to protect against unforeseen risks, particularly in cases where sellers cannot offer traditional legal protections.
- Structure deals strategically, including considering deed of company arrangement (DOCA) mechanisms in insolvency situations to negotiate better terms with creditors.
- Address regulatory and compliance challenges early, ensuring that the acquisition meets all legal requirements and avoids post-transaction disputes.

With the right legal and financial strategy, buyers can successfully acquire and restructure distressed renewable energy assets, maximising value while minimising risk. Given the complex nature of these transactions, engaging experienced legal advisors is critical to navigating the process efficiently and ensuring a successful outcome.

### The future of distressed M&A in renewables










With economic and market conditions creating an environment where distressed asset sales will likely increase, strategic investors have a unique opportunity to acquire and revitalise struggling renewable projects. By leveraging financial restructuring, operational efficiencies, and technological advancements, buyers can turn distressed assets into high-performing investments that contribute to Australia's clean energy transition.

As M&A activity in the renewable sector intensifies, those with the capital and expertise to navigate the distressed asset sector will be well-positioned to create long-term value while supporting the industry's growth.

Navigating distressed M&A requires more than just financial resources – it demands a deep understanding of regulatory risks, contract restructuring, and creditor negotiations. Our team has advised on complex energy transactions, from distressed debt restructures to insolvency-linked acquisitions, ensuring buyers mitigate risk while maximising value.

If you are looking to capitalise on distressed opportunities in renewables, we can guide you through every stage of your transaction.

For more information, please contact Nicholas Edwards, Matt Baumgurtel or Jo Ruitenber.

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# Stacking Carbon Credits with Renewable Energy Projects in Australia: Can Land Sequestration and Solar Projects Co-Exist?

**Authors:** James Delesclefs and Sally Yang.

The concept of “stacking” carbon credits has gained increasing attention as developers seek to maximise land value, diversify revenue streams and enhance ESG outcomes. In Australia, this issue is particularly relevant for renewable energy developers - especially proponents of large-scale solar farms - who are exploring whether generation assets can be co-located with land-based carbon sequestration activities on the same or adjacent land.

This article considers whether, and how, land sequestration projects may be stacked with renewable energy projects, with a focus on Australian Carbon Credit Unit (ACCU) eligible activities and the regulatory principles that govern such arrangements.

## What Is Carbon Credit Stacking?

Carbon credit stacking refers to the generation of multiple, distinct environmental credits from the same land area or project footprint, where each credit reflects a separate and independently verifiable environmental outcome. Critically, stacking must be distinguished from 'double counting', which occurs when the same environmental outcome is credited more than once - a practice that undermines market integrity and is prevented under the ACCU Scheme in connection with ACCUs.

Examples of stacking could include:

- **carbon sequestration credits** (such as ACCUs generated from reforestation or soil carbon projects – we discuss more about approved methodologies in our article [here](#)); and
- **other environmental credits**, such as state-based biodiversity or ecosystem service credits.

When appropriately structured, stacking can deliver:

- improved project economics through diversified income streams;
- more efficient land use, particularly for large-scale solar assets;
- enhanced ESG and sustainability outcomes, supporting investor and offtaker expectations; and
- greater resilience to changes in energy or carbon markets.

## Renewable Energy Projects and Carbon Credits: A Different Regime

In Australia, renewable energy projects (such as solar farms) typically participate in the [Renewable Energy Target \(RET\)](#) and generate Large-scale Generation Certificates (LGCs) (noting that the RET framework is being replaced by the Renewable Electricity Guarantee of Origin certification framework – we discuss this in

more detail in our publication [here](#)). These certificates reflect the generation of renewable electricity. By contrast, ACCUs are issued for verified emissions reductions or removals, in accordance with legislated methodologies under the ACCU Scheme.<sup>1</sup> While a solar farm cannot generate ACCUs for its electricity generation, land-based sequestration activities co-located with a solar project may potentially be eligible for ACCUs, provided they independently meet all ACCU Scheme requirements and represent genuinely separate environmental outcomes.

This distinction is critical: the ACCUs would not be generated from the renewable electricity generation (which is prohibited), but rather from distinct land management activities that sequester carbon, such as:

- Environmental plantings on non-panel areas, perimeter areas or adjoining land parcels;
- Soil carbon sequestration projects integrated with continued grazing or agricultural use beneath or between panel arrays (in agrivoltaic models); or
- Human-induced regeneration of native vegetation in areas not required for solar infrastructure.

The long-awaited Integrated Farm and Land Management (IFLM) method is currently open for consultation in draft.<sup>2</sup> If adopted within a commercially viable construct, this method is anticipated to provide both enhanced investment return certainty for ACCU project developers and the ability to further enable stacking of various co-located ACCU generating projects.

In such arrangements, revenue would be derived from two fundamentally different activities:

- Electricity sales and LGCs from the solar farm's renewable generation; and
- ACCUs issued for eligible carbon sequestration activities occurring on the same or adjacent land.



## Case Study: Blind Creek Solar and Battery Project

The Blind Creek Solar Farm & Battery project is an agrisolar development on pastoral land near Bungendore, New South Wales, Australia. It combines a large-scale utility solar farm (approx. 300 MW) with co-located battery storage (~243 MW/486 MWh) while retaining and enhancing agricultural and ecological uses of the land

### Project Structure & Co Location:

- Developed by local landowners together with renewable energy investors, the project sits on over 600 hectares of historically grazed farmland and is said to avoid 600,000 tonnes of CO2 emissions.<sup>3</sup>
- The design intentionally allows sheep grazing, regenerative agriculture practices, soil carbon sequestration activities, biodiversity restoration, and solar generation to coexist.<sup>4</sup> For example, grass species suited to partial shade are planted under panels to support grazing, with normal grass species planted in between panels.<sup>5</sup>
- Environmental rehabilitation efforts include revegetating creek lines, creating conservation zones equal to 15% of the property total area, and planting more than 14,000 trees.<sup>6</sup>

In Australia, stacking carbon credits from land sequestration projects with solar developments is feasible in principle, but requires careful regulatory navigation and disciplined project design.

As Australia's carbon markets mature and policy frameworks evolve, the intersection of renewable energy and carbon sequestration will likely receive continued regulatory and market attention. Successful stacking arrangements will be those that prioritise integrity over aggressive crediting, transparency over

ambiguity, and long-term sustainability over short-term revenue maximisation.

The overarching principle remains constant: every tonne of carbon sequestered or emissions avoided should be counted once, claimed once, and contribute meaningfully to genuine climate action. Developers who embrace this principle whilst creatively structuring multi-benefit projects will be best positioned to navigate Australia's evolving carbon landscape.

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<sup>1</sup> Clean Energy Regulator, How to participate in the ACCU Scheme (Web Page, 31 October 2025) <<https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/how-to-participate-accu-scheme>>.

<sup>2</sup> Department of Climate Change, Energy, the Environment and Water, ACCU Scheme – Draft Integrated Farm and Land Management (IFLM) Method Consultation (Web Page) <<https://consult.dccceew.gov.au/accu-scheme-draft-iflm-method>>.

<sup>3</sup> Blind Creek Solar Farm, Homepage (Web Page, 2025) <<https://www.blindcreeksolarfarm.com.au/>>.

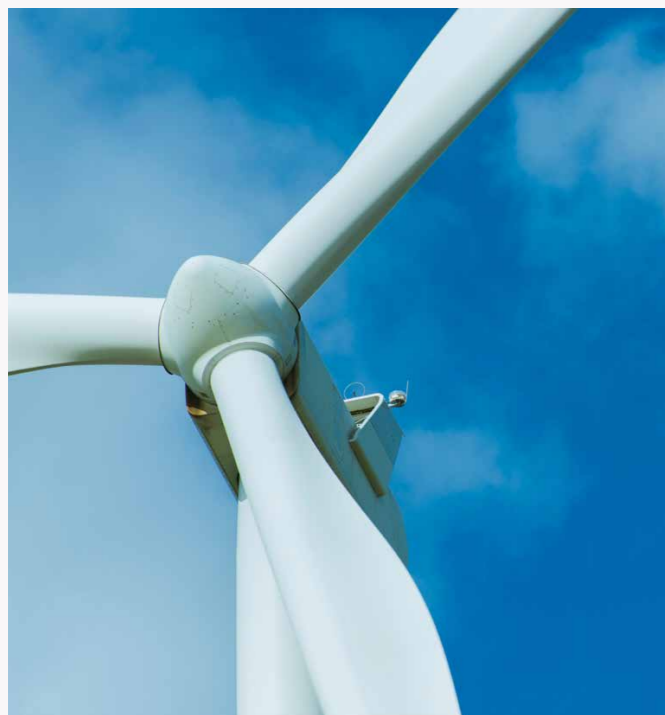
<sup>4</sup> Blind Creek Solar Farm, Refocusing our farm (Web Page) <<https://www.blindcreeksolarfarm.com.au/refocusing-farm>>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

# Investing in Clean Tech: What Clean Tech Investors really care about

**Authors:** Jo Ruitenber, Sarah Gilkes, Kylie Zih, Christine An and Isabel Roach.



Australia is establishing itself as a clean tech hub, with exciting new ventures ranging from record breaking solar and battery projects to cutting-edge waste-to-energy solutions, carbon capture and pioneering sustainable aviation fuel initiatives that turn sugarcane waste into jet fuel. The growth in the clean tech space has been driven by accelerating investment in clean energy, with \$12.7 billion invested in clean energy in 2024.<sup>1</sup>

Deals in this space are often complex. They often involve joint ventures, staged capital raising, and multi-party shareholder arrangements, each requiring careful navigation of competing interests and complex governance structures. Unlike traditional financial investors, many clean tech investors are strategic players—corporates, utilities, superannuation funds, and government-backed entities—whose priorities extend beyond financial returns to include access to critical IP or technology assets, decarbonisation targets, and supply chain resilience. This makes the legal work particularly intricate, as it demands bridging diverse investment horizons, risk appetites, and governance expectations to craft agreements that are both commercially viable and strategically aligned.

## Investor motivations

Clean tech investors can be more hands-on than investors in other industries because of the capital intensity, long development timelines and strong focus on regulation and technology. There are a number of ways this plays out – investors will often push for a board seat or at least observer rights and voting rights over major corporate actions and strategic decisions. Intellectual property will also be a key diligence item for investors as this will be important to the value ascribed to the clean tech business, and to its ability to scale the business going forward.

### Board seat

In the clean tech space, investors commonly ask for board seats given the unique risks and complexities of the industry. Clean tech businesses are usually faced with long development timelines, capital-intensive scale up requirements, reliance on government policy or subsidies and difficult regulatory hurdles. Given these complexities, investors typically want rights in relation to shaping strategy and oversight, to ensure that key project milestones are met and their investment is deployed effectively over the long term.

Not every investor will push for a board seat – some may prefer observer or information rights, however we note that this is more common if they hold a minority stake and are purely financial investors rather than strategic investors. Observers have access to the information of a business without the investor taking on fiduciary responsibility.

From the company's perspective, whether a board seat is granted to an investor depends on a number of factors, including the size of the investment, the stage of the company, the appetite of the founders to accommodate investor oversight without diluting their own control and whether the investor is a strategic partner or purely a financial investor. It is important for the company to assess the credentials of any proposed director including whether they have relevant technical, commercial or regulatory expertise, as well as whether they align with the company values and goals. Companies need to carefully balance the desire for incoming capital against governance considerations, including whether a leaner board composition may help preserve agility and reduce the risk of deadlock in decision-making.

## Voting rights

Clean tech investors often push for veto or consent rights to safeguard their capital and influence key project decisions.

This will generally always include consent rights over issuing further shares or options. Due to the capital intensive nature of clean tech companies, these companies often require multiple funding rounds. Therefore it is important for investors to have rights that protect their ownership position in future rounds. This can be achieved in a number of ways, as set out below.

- Pre-emptive rights in shareholders agreements are common, giving investors the ability to participate pro rata in new equity issues to avoid dilution.
- Some investors may wish to seek a stronger position by asking for a right of first refusal (ROFR), which requires a company to first negotiate a deal with a third party and then present the investor with the option to take up those securities on the same terms. While a ROFR gives an investor control over future investment, it is a heavy handed right that can slow down future investment and deter new investors.
- A softer alternative is a right of first offer (ROFO), which requires a company to first offer new securities to the investor and if the investor declines, the company can then approach third party on the same terms.

Often clean tech investors settle for pre-emptive rights, with larger or more strategic investors pushing for a ROFR or, in some cases, parties land on a ROFO to balance protection for the investors and flexibility in raising money for the company.

Other corporate actions that investors will commonly require the right to approve include:

- new financings, mergers and acquisitions, changes to the capital structure or the sale of substantial assets; and
- strategic decisions that could affect the company's technology, intellectual property or regulatory compliance, entry into material contracts such as major offtake and supply contracts, or material changes to business plans or budgets.

Given these asks from the investor often conflict with the desire for the owners of the business to maintain control, it is important to carefully draft the shareholders agreement such that there is clearly defined reserved matters (so the parties are clear on which decisions require investor consent versus routine operational approvals), exit triggers (when a party can force a sale, drag/tag provisions), robust deadlock and dispute resolution provisions to ensure that any conflict is appropriately managed and an investment remains workable throughout the life of the project.

## Intellectual property

For investors in the clean tech space, robust intellectual property protection is paramount. Businesses who are looking to raise capital must ensure that they hold clear title to their IP – not only through formal registration on relevant IP registers, but also by securing ownership of any underlying copyright and other unregistered rights.

During investor due diligence, there are certain themes which are raised as red flags on a recurring basis. A primary concern for investors is where the company's R&D collaborations result in an unclear IP ownership position, particularly where those collaborations involve independent contractors and other external partners. R&D partnerships can be critical for clean tech ventures, particularly in the early stages of the business when the business is reliant on external expertise to supplement its in-house technical skillsets or to validate its technology on a larger scale. However, without proper assignment agreements transferring title in R&D outputs from collaborators to the business, ownership can remain ambiguous or even vest in the external party. Investors will scrutinise whether these kinds of historical ownership arrangements need remediation, which can be a costly and time-consuming exercise (and, at its worst, can derail a prospective investment).

Employee-generated inventions forming the basis of patents can present another critical consideration for investors. Under Australian common law, an implied term is generally recognised in employment contracts that inventions created by an employee in the course of their employment are owned by the employer. However, this requires the employee to have 'a duty to invent' – that is, it is generally not sufficient that the employee created an invention on the employer's time and using the employer's resources. Therefore, where the core value of a business is in its patent portfolio, the business may again need to take remedial or confirmatory steps to ensure that the relevant corporate entity has clear title to those patents.

Investors will also want to have confidence that the business has a clear runway to scale, and that there are not any third party IP rights which will limit the business' growth strategy. In this regard, investors will at times want to see freedom-to-operate searches before committing funding. These searches provide assurance in two ways: first, they provide confidence that commercialisation of the business' IP will not infringe third-party rights; and second, they can point to a clear gap in the IP landscape which the business will be able to protect and own (and, ultimately, commercialise through the intended channels).

In summary, it is critical that a clean tech venture seeking to raise investment can show clear IP ownership; proper assignments of IP title where relevant; and (ideally) evidence of its freedom to operate, so that the business can gain investors' confidence and capitalise on funding opportunities. Proactive IP management is essential for successful capital raising in this sector.

### Form of investment

Clean tech investors are increasingly favouring hybrid structures such as convertible notes and preference shares to account for the capital-intensive and higher risk profile of clean tech projects. This approach is more favourable for investors for the following reasons.

- **Funding tied to milestones** – Investors can deploy funds progressively by linking contributions to the achievement of technical or regulatory milestones. Milestones should be drafted carefully so that they are expressed objectively to reduce the potential for future disputes.
- **Preference shares** – Often include liquidation preferences, dividend entitlements, and anti-dilution
- **Convertible notes** – Common in early-stage Australian clean tech start-ups because they allow investors and founders to defer agreeing on a valuation until a later funding round, reduce upfront negotiation friction, and bridge to strategic milestones. Convertible notes will often be structured as follows:
  - Conversion into shares on a material equity investment or liquidity event; and
  - Voting rights on reserved matters as if the investor is a shareholder, on a deemed conversion basis on a predetermined price, to ensure the investor's position is protected before conversion.

Hybrid structures also help reconcile differing investor objectives, allowing one investor seeking long-term involvement to coexist with another who prefers staged exits or milestone-based de-risking.

Investment through ordinary shares is more common for later-stage investments with reduced valuation uncertainty and a lower risk profile than early-stage clean tech projects, or joint ventures where parties are contributing non-cash assets such as technology or land.

Of course, investor objectives differ depending on the type of investor. Superannuation funds and listed corporates often seek stable, predictable returns, whereas early-stage venture funds may prioritise rapid growth and liquidity events. Because these objectives differ, it is critical for companies to align investor interests with the structure of the investment.

Investing in clean tech requires a nuanced understanding of the sector's unique challenges and opportunities. From governance rights like board seats and voting protections to the strategic use of hybrid investment structures, clean tech investors are deeply engaged in shaping the trajectory of the businesses they back. Their motivations often go beyond financial returns, encompassing long-term sustainability goals, technological innovation, and regulatory alignment. For clean tech companies, aligning investor expectations with the right investment structure and governance framework is critical—not only to secure capital, but to build resilient partnerships that can support growth through the complex and capital-intensive journey of clean tech development.

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<sup>1</sup> Clean Energy Council, Clean Energy Australia 2025 report, (Web Page, 28 May 2025) <<https://cleanenergycouncil.org.au/getmedia/140cd064-1427-4b87-afb0-7e8914e1b3b4/clean-energy-australia-report-2025.pdf>>.

## EPBC Act Reforms: What investors and developers need to know

**Authors:** Amelia Prokuda and Duyen Mai.

On 28 November 2025, the Australian Parliament passed long-awaited changes to the **Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)** have now been introduced, marking the biggest update to Australia's environmental laws in decades. While the amendments are quite detailed, they are intended to make approvals more efficient, decisions more transparent and environmental protections stronger. The reforms will likely come into effect in mid-2026.



### Faster, smarter approvals

One of the biggest (and in our experience, most needed) changes is the new streamlined assessment pathway, which replaces three older, often confusing pathways, being assessment on referral information, preliminary documentation, and public environment reports. The idea is to make the assessment process clearer and more predictable for projects with well-understood impacts.

Under the reforms, when a project is referred as a "controlled action", the Minister can choose between the following assessment processes:

- accredited state assessment processes under bilateral agreements;
- streamlined assessment;
- environmental impact statement (EIS); or
- public inquiry.

For projects that qualify, streamlined assessments are intended to move quickly, with decisions made within a specific timeframe once all necessary information is provided. It is proposed that decisions under the pathway could be made within 30 business days after the assessment approach is confirmed, though in practice additional information requests and negotiations will likely extend the timeframe.

### Clearer tests for approval

The reforms introduce three key tests that guide whether a project can proceed:

- **National Environmental Standards (NES):** these are binding guidelines for decision making covering matters of national environmental significance (MNES) such as threatened species, heritage sites and water resources.
- **Avoiding unacceptable impacts:** The EPBC Act will define what is considered an "unacceptable impact," particularly for species and ecological communities. This includes serious harm to irreplaceable habitat or actions that threaten the survival of a species.
- **Net Gain:** Any remaining environmental impacts must be offset to ensure an overall improvement in environmental outcomes, moving beyond the previous "no net loss" standard.

The tests also apply to variations or extensions of existing approvals. Projects of national significance can also be approved under a "national interest proposal" exemption, though what qualifies as "national interest" remains broad and will likely be clarified through Ministerial guidance over time.



### Early works and reconsiderations

The reforms introduce flexibility for early preparatory works such as minor land clearing or geotechnical surveys which can now occur before formal approval if the Minister gives written consent. This will assist proponents to gather information and prepare assessments without breaching the EPBC Act.

There are also new rules for reconsideration requests, in particular:

- Third parties now have 28 business days to request a reconsideration of a controlled action decision.
- Proponents have expanded ability to request reconsideration of “not controlled action” decisions, offering flexibility to adjust conditions if circumstances change.

### Bilateral agreements and state approvals

State and Territory assessment processes will be accredited more flexibly under bilateral agreements, including partial frameworks or non-statutory guidelines. For water-related projects, previous restrictions have been removed, allowing a full handover to state processes provided advice from the Independent Expert Scientific Committee is obtained. This strengthens collaboration with States while maintaining environmental standards.

### Climate and emissions information requirements

The reforms establish the National Environmental Protection Agency (NEPA) as an independent regulator responsible for compliance, enforcement, assessment, and setting approval conditions. Projects will be required to provide Scope 1 and 2 greenhouse gas emissions estimates for informational purposes, though these will not affect decision-making.

A statutory head of Environment Information Australia will improve the availability and quality of environmental data, supporting better-informed decisions by government, investors, and developers.

### What does this mean for investors and developers?

For investors and developers, the reforms offer both opportunities and responsibilities. While the streamlined pathways and clearer regulatory framework may accelerate project approvals, the enhanced compliance obligations, mandatory offsets and stronger enforcement powers mean careful planning and environmental due diligence is essential.

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# Navigating the ACCC's New Merger Control Regime: Key Considerations for Renewable Energy Developers and Joint Ventures

**Authors:** Alistair Newton, Jo Ruitenbergh and Ally Frizelle.

The introduction of Australia's new mandatory merger control regime, effective 1 January 2026, marks a fundamental shift in the regulatory landscape for renewable energy transactions.<sup>1</sup> For developers, investors and JV participants, the implications go well beyond headline M&A deals, impacting project-level joint-ventures, step-ups in shareholdings and contingent milestone funding structures.

This article examines three critical areas where the reforms will impact renewable energy transactions: joint venture structures and connected entities, step-up in shareholding implications and contingent consideration.



### Key takeaways

- **JV deals can be caught even at small scale** – revenue from JV partners and their wider corporate groups can be aggregated with the JV vehicle, meaning mandatory notification to the ACCC may apply despite low standalone JV turnover.
- **Step-ups and staged investments may trigger notification** – crossings of the 20% and 50% voting-power thresholds can require a filing even without a change in practical control, which is common in renewable co-development and funding structures.
- **Contingent and milestone pricing may push transactions over the line** – the contingent consideration payable upon the achievement of milestones may count toward transaction value thresholds.
- **Serial or platform acquisitions heighten exposure** – pipeline build-outs or repeated asset acquisitions by a JV can activate cumulative revenue tests under the creeping acquisition rules.
- **Upfront regulatory planning is now essential** – ACCC conditions precedent, extended long-stop dates, threshold modelling and allocation of merger-clearance risk will need to be embedded into transaction documents.

### Joint Ventures: when your partner's revenue becomes your problem

The new merger regime's “connected entity” and revenue aggregation rules significantly extend the scope of mandatory ACCC notification for JV transactions, even when the JV's own turnover would otherwise fall below prescribed thresholds.

The concept of a “connected entity” is complex and introduces significant uncertainty into the regime. Entities are connected if they are “related” under Section 4A of the Competition and Consumer Act 2010 (Cth) (for example, as a parent, subsidiary or sibling entity) or if there is a relationship of “control” between them under section 50AA of the Corporations Act 2001 (Cth), including where an entity is able to determine, either alone or with any “associates”, the outcome of another entity's financial and operating policies.

Crucially, the regime aggregates the Australian revenue of all connected entities of the acquirer and, where relevant, of the target group being acquired. As a result, a JV partner's group revenue – and potentially that of its parent or related entities – may dictate whether ACCC approval is required, even for minority investments or step-up acquisitions.

Accordingly, a potentially detailed examination of equity structures, inter-entity agreements and on-the-ground business practice may be required. This may differ from conventional analysis undertaken to produce consolidated group financial statements.

## Worked Example: Solar Platform JV

To illustrate how the new regime can apply in practice, consider the following joint venture scenario:

- Company A and Company B have established a JV – Solar Platform JV – to acquire and operate solar farms and add BESS capability. Company A owns 70% and Company B owns 30%.
- Company A also has interests in other renewable energy businesses that are similar in nature to Solar Platform JV.
- Solar Platform JV now proposes to acquire Glenworth Solar Farm for \$160 million, which has Australian revenue of \$10 million.
- Solar Platform JV itself has Australian revenue of \$50 million.
- Company A has \$300 million in Australian revenue on a standalone basis, but more than \$500 million when revenue from its connected entities is included.

### Scenario 1: Is Solar Platform JV's proposed acquisition of Glenworth Solar Farm subject to ACCC approval?

Acquisition category	Mandatory notification threshold <sup>2</sup>	Is the test satisfied for Glenworth Solar Farm?
Acquisitions resulting in large or larger corporate groups	The combined Australian revenue of the acquirer and target (including their connected entities) on the contract date is ≥ \$200 million; and either <ul style="list-style-type: none"> <li>• the target's (including its connected entities) Australian revenue is ≥ \$50 million; or</li> <li>• the transaction value (greater of market value or consideration) is ≥ \$250 million.</li> </ul>	<b>No.</b> The first limb of the test is satisfied as the JV (as the acquirer), its connected entities (being Company A and B) and the target's revenue, in total, exceeds \$200 million.  However, the target's revenue is only \$10 million, which is below the \$50 million threshold. Further, the transaction value is under \$250 million.
Acquisitions by very large corporate groups	<ul style="list-style-type: none"> <li>• The acquirer's (including its connected entities) Australian revenue is ≥ \$500 million on the contract date; and</li> <li>• the target's (including its connected entities) Australian revenue is ≥ \$10 million on the contract date.</li> </ul>	<b>Yes.</b> Solar Platform JV's majority owner, Company A, has combined Australian revenue (including connected entities) over \$500 million, satisfying the first limb.  Glenworth Solar Farm has revenue of \$10 million, satisfying the second limb.
Creeping or serial acquisitions resulting in large or larger corporate groups	The: <ul style="list-style-type: none"> <li>• combined Australian revenue of the acquirer and target (including connected entities) on the contract date is ≥ \$200 million; and</li> <li>• cumulative Australian revenue from acquisitions by the acquirer (and connected entities) of any target in the same/substitutable goods or services over the past 3 years is ≥ \$50 million.</li> </ul>	<b>Possibly.</b> The first limb of the test is satisfied as the JV (as acquirer), its connected entities (being Company A and B) and the target's revenue exceeds \$200 million.  The cumulative revenue from any prior acquisitions in the renewables sector over the past 3 years would need to be assessed to determine if it exceeds \$50 million. If so, the transaction may be caught under this category.
Creeping or serial acquisitions by very large corporate groups	The: <ul style="list-style-type: none"> <li>• acquirer's (including its connected entities) Australian revenue on the contract date is ≥ \$500 million; and</li> <li>• the cumulative Australian revenue from acquisitions by the acquirer (and connected entities) of any target in the same/substitutable goods or services over the previous 3-year period is ≥ \$10 million.</li> </ul>	<b>Possibly.</b> The first limb of the test is satisfied as the JV (as acquirer) and its connected entities (being Company A and B) exceeds \$200 million.  The cumulative revenue from any prior acquisitions in the renewables sector over the past 3 years would need to be assessed to determine if it exceeds \$10 million. If so, the transaction may be caught under this category.

### Scenario 2: If the revenue of Glenworth Solar Farm is less than \$2m, is Solar Platform JV's proposed acquisition of Glenworth Solar Farm subject to ACCC approval?

No – 'Small acquisitions', referring to a target with less than \$2 million in Australian revenue, are excluded from the mandatory notification requirements, meaning transactions below this threshold generally do not need to be notified to the ACCC.<sup>3</sup>

### Crossing the Lines: Voting Power Thresholds

The new regime includes a general exemption from notification where an acquirer either already controls the target or does not obtain control through the acquisition. Control is assessed by reference to the capacity to determine the outcome of decisions about the target's financial or operating policies.

However, from 1 April 2026 there will be carve-outs to this exemption that will require notification for certain share acquisitions even where no change of control occurs. Where the monetary thresholds are met, notification will be required when an acquisition crosses specific voting power thresholds:

Acquisition category	Mandatory notification threshold
20% Voting Power Threshold	When acquiring an interest in a private, unlisted entity, a notification to the ACCC is triggered if the acquirer's voting power rises <b>from 20% or less, to above 20%</b> .
50% Voting Power Threshold (all entities)	For any entity, a notification is required if voting power increases <b>past 50%</b> .

These voting power rules create notification obligations for staged investments and step-up acquisitions that are common in renewable energy joint ventures where the majority threshold are also crossed. For example:

- A co-developer acquiring an additional 5% stake that takes their holding from 18% to 23% must notify (crossing the 20% threshold)
- A JV partner increasing from 48% to 52% to gain majority control must notify (crossing the 50% threshold)

Importantly, these obligations arise regardless of whether the acquirer obtains "control" in the policy sense. The focus is purely on the mathematical crossing of the specified voting power thresholds.

### Contingent consideration: counting what you haven't paid yet

Renewable energy transactions are particularly prone to contingent consideration structures. Purchase prices are frequently tied to successful commissioning, achievement of generation targets, obtaining regulatory approvals, grid connections, or offtake agreements.

A key question facing renewable investors is whether contingent milestones may count towards the transaction value threshold for acquisitions resulting in large or larger corporate groups.

The notification threshold for transaction values, under section 1.12(b) of the Determination, considers the total "consideration received or receivable for all shares and assets being acquired".

The Explanatory Note to the Determination defines consideration in its ordinary sense, encompassing both cash and non-cash amounts paid for the target.<sup>4</sup> This broad definition indicates that any payment the buyer is contractually obliged to make, including deferred, milestone-linked, or performance-based payments, should generally be included in the transaction value calculation. While there may be arguments for excluding genuinely uncertain contingencies, most milestone or earn-out payments are likely captured as "consideration received or receivable".<sup>5</sup>

Accordingly, parties structuring transactions with milestone payments should account for the aggregate potential transaction value, not just upfront amounts, when assessing whether mandatory notification thresholds are met.

If you're in the middle of or contemplating a future transaction, it's important you have a clear plan for navigating these changes to avoid your transaction being caught up in regulatory red tape.

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1 Competition and Consumer (Notification of Acquisitions) Determination 2025 (Cth) Part 2 (the Determination).  
2 'Thresholds and exemptions for acquisition notification', Australian Competition and Consumer Commission (Web Page) <<https://www.accc.gov.au/business/mergers-and-acquisitions/thresholds-and-exemptions-for-acquisition-notification>>.  
3 The Determination (n 1) s 1.14.  
4 The Australian Treasury, 'Explanatory Statement: Competition and Consumer (Notification of Acquisitions) Determination 2025' (Public Release, 1 July 2025) pp. 13 <<https://www.legislation.gov.au/F2025L00753/asmade/downloads>>.  
5 Ibid.

## FIRB 2025 Snapshot

**Authors:** Clementyne Rawlyk and Madeleine Kulakauskas.

### 1. FIRB under the spotlight

- **Mayne Pharma/Cosette Pharmaceuticals:** After a failed attempt to terminate via a MAC clause, US bidder Cosette Pharmaceuticals changed tack - telling FIRB that it intended to close Mayne's profitable South Australian manufacturing plant despite earlier statements in the scheme booklet that it had no plans to substantially change operations. In November 2025, Treasurer Jim Chalmers declined to approve the transaction (conditionally or otherwise), citing the need to 'protect Australia's national interest, the security of our critical medical supply chains, local jobs and the local community'. The decision handed Cosette the exit it sought, prompting accusations it had 'weaponised' FIRB to back out of the deal. The Treasurer's claim that no conditions could have adequately addressed national interest concerns also drew scepticism, with critics questioning whether FIRB had been outmanoeuvred.
- **Santos:** The \$36B ADNOC-backed bid collapsed in September 2025 during due diligence – before it ever reached FIRB. However, the transaction had piqued considerable interest amongst commentators, with speculation emerging early about how FIRB would assess sensitivities around domestic gas security, geopolitical and climate considerations. One can't help but wonder whether this regulatory shadow – cast well before formal application – shaped the deal's outcome. Its early demise left open the question: how would the Treasurer have ruled on Australia's largest ever foreign investment proposal?

### 2. Breaking new ground

In February 2026, the Federal Court of Australia slapped Indian Ocean International Shipping and Service Company Ltd (**Indian Ocean**) and its sole director and shareholder with \$14 million in penalties for breaching Australia's foreign investment laws – the first case brought by a Treasurer under the foreign investment regime since its introduction in 1975.

The case arose from the Treasurer's June 2024 divestment order requiring Indian Ocean and four other foreign investors to sell their shares in Australian heavy rare earths-focused company Northern Minerals Limited to unrelated parties, due to national security concerns. When Indian Ocean transferred its shares to its director and sole shareholder, the Treasurer initiated unprecedented Federal Court proceedings. The Court subsequently declared the transfer breached the disposal order.

This outcome marks a significant escalation in FIRB enforcement, signalling the Government's willingness to pursue litigation and substantial penalties to ensure compliance with national security orders and conditions.

### 3. Heightened Focus on Tax Integrity

Tax compliance has long been a key consideration in national interest screening, but 2025 saw significantly increased scrutiny, with FIRB directing particular attention to (1) Internal Restructuring (particularly transactions involving the migration of intellectual property or income-generating assets to low-tax jurisdictions) and (2) Private Equity Structures (pre-acquisition tax planning, particularly structures involving debt funding, management fee arrangements, and offshore holding entities).

FIRB also shifted away from standardised tax conditions towards transaction-specific requirements tailored to individual risk profiles, requiring more detailed tax submissions and extending negotiation periods.

### 4. The Digital Transition

The FIRB Portal became fully operational in April 2025, fundamentally changing application processes. Straightforward, low-risk applications have benefited from improved processing efficiency and clearer procedural pathways, whereas complex or multi-layered transactions have encountered Portal constraints, with rigid data field requirements proving ill-suited to nuanced deal structures.

From September 2025, the Portal began requiring disclosure of competition risks, transaction party revenue data (in anticipation of the new merger control reforms) and ACCC notification status - including for transactions which are clearly not notifiable to the ACCC or fall outside of Australia's merger control regime entirely.

### 5. Decision Timelines

The Treasurer's 2025 performance target of 30-day decisions for 50% of low-risk cases has not been consistently met. Whilst some straightforward applications have been determined within the 30-day window, many low-risk transactions continue to extend to 6 – 8 weeks. High-risk or sensitive transactions have maintained consistent decision timeframes of 4 – 6 months.

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## New Energy Expert Insights

# Navigating the W&I Insurance Landscape for Renewable Energy Projects with Eliza Grant, Howden

**Authors:**



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Hannah Jones,  
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In this edition of *New Energy Expert Insights*, we sat down with Eliza Grant from Howden to explore the evolving warranty and indemnity (W&I) insurance market for renewable energy projects, examining how insurers are adapting to the sector's unique risks and what deal parties need to know to secure optimal coverage.

Eliza is the Head of M&A Insurance for the Pacific at Howden, where she advises private equity and corporate clients on transactional risk solutions.

### How has the W&I insurance market for renewable energy projects evolved over the past few years, and what trends are Howden currently observing?

#### *Growing volume of deals*

The W&I insurance market for renewable energy has matured significantly. Firstly, we have seen a growing volume of deals in the renewable energy sector. This has naturally led to increased insurer familiarity with the risk profiles of these transactions. As insurers gain confidence in certain renewable asset classes their appetite for underwriting these deals has grown, making coverage more accessible.

#### *Competitive Market resulting in better premiums and coverage*

We are experiencing increasingly competitive market dynamics. The surge of new entrants over the past few years has intensified competition amongst insurers, leading to downward pressure on pricing and broader policy terms that favour the insured.

#### *Synthetic structures*

Synthetic warranty structures are gaining traction, especially in deals involving fractured ownership structures or sales by minority or passive investors, who may not have the detailed operational knowledge. In these cases, synthetic warranty structures offer a practical solution.



## Are there particular types of renewable energy assets that are more insurable from an underwriting perspective?

The level of insurability of different renewable energy assets from a W&I perspective really depends on the maturity and risk profile of the specific renewable asset.

*Solar and onshore wind:* Solar and onshore wind are the most mature technologies with well-understood risks, so insurers are generally very comfortable with those assets.

*BESS:* In relation to BESS, there is increased deal activity and insurers are becoming familiar with the risks making appetite strong.

*Offshore Wind:* Offshore wind is insurable but more complex due to high capex and condition of asset risk. Robust technical diligence will be required to get insurers comfortable.

*Emerging Technologies:* Emerging technologies like hydro and carbon capture are very nascent, with limited transaction history. Appetite is there but underwriting is more cautious because of the lack of historical deal flow.

We are seeing utility scale solar and onshore wind projects the front-runners in terms of demand for W&I insurance, driven by robust M&A activity in this sector. BESS is another fast-growing area. Emerging technologies, such as hydrogen, are less common. However, while we are not currently seeing the W&I demand in these areas in Australia, we are seeing growing interest globally in different energy transition insurance products, such as carbon credit insurance (a policy which covers the sale of carbon credits from projects) and insurance for leakage from carbon capture and storage project (covering environmental damage and loss of revenue resulting from CO2 from these projects).

## How much of the purchase price should a client insure and are there any other key insurance products clients should consider?

This is a key commercial decision and largely dependent on the risk appetite of the buyer. Generally, parties tend to take out between 20% and 40% of the enterprise value of the business, though this can change depending on the size and nature of the business. As a rule, as the deal value goes up, the limit (as a percentage of the overall enterprise value) tends to come down but, broadly speaking, 30% is seen as the sweet spot for renewable energy projects.

Where a particular property or title risk in relation to a project has been identified (and therefore cannot be covered by W&I insurance), parties might also consider taking out title insurance in conjunction with a W&I product to ringfence these risks. These policies can cover, for example, identified property risks such as title defects, boundary issues or missing documentation. The premiums on these policies also tend to be significantly lower than W&I premiums.

## How do you approach the underwriting of renewable energy projects at different stages in the project lifecycle and is there a difference in premium pricing?

Understanding where a project sits in its lifecycle has an impact on the underwriting approach taken by insurers because the nature of the risks shift between development and operational stage assets.

For development-stage assets, underwriters will focus on risks associated with securing land rights, regulatory matters and material contracts. For operational assets, on the other hand, the project is built, operational and generating cash flow, so the risks shift towards the assets, the financials and general compliance.

The W&I premium is likely to be marginally higher for construction and operational assets, rather than development assets, but the risk appetite for renewable energy projects across the board is still very broad.

## What role do technical advisers play in the underwriting process?

Technical advisers play a crucial role in the underwriting process for renewable energy projects. Insurers tend to rely heavily on technical reports in comparison to other sectors because these assets are inherently more complex. The technology, the regulatory environment, and the operational challenges all require a deep level of technical scrutiny. Advisers help bridge the gap between the warranties and the technical issues, such as grid connection risks, so it is important for insurers to have technical engagement to obtain meaningful cover for the insured.

## What are the key risks of focus in renewable energy projects?

Risk areas require particular attention during due diligence to ensure comprehensive coverage can be obtained. The key risk areas include:

- **Condition of Assets** – the physical state of generation equipment and infrastructure particularly key for wind projects due to high capex and supply chain delays;
- **Compliance with laws** – adherence to regulations;
- **Material contracts** – the validity and enforceability of key contracts, such as power purchase agreements;
- **Leases and planning** – security of land rights and planning consents;
- **Grid connection** – the existence and terms of grid connection agreements; and
- **Environmental** – environmental permits, compliance, and potential liabilities.

## What are the most common warranty claims and how long after completion do claims typically emerge?

The two most common warranty claims we see in renewable energy projects relate to breaches of financial statements warranties and material contracts warranties. The accuracy and presentation of the target's financial position, particularly where operational assets are involved, is critical. Material contracts also feature prominently where there are undisclosed agreements or contracts that lead to significant financial exposure. This underscores the importance of thorough diligence and accurate disclosure of all material documentation.

On average, we see claims being notified just over 12 months after completion. Looking at Howden's M&A Claims Insight Report, which analysed data over the past five years, approximately 47% of all claim notices are made within the first 12 months. This shows that notifications in the renewables sector are broadly in line with other sectors.

## What emerging risks in the renewable energy sector are you monitoring that may affect the underwriting approach in the future and are there particular exclusions?

For operational projects, a key focus of coverage is the condition of the assets. The W&I market has seen a number of claims in this space, prompting insurers to tighten their approach to underwriting these risks and require more rigorous technical due diligence to secure meaningful cover. While it has not resulted in blanket exclusions, underwriting standards are evolving and buyers must demonstrate robust technical diligence to obtain coverage. Despite this, the competitive insurer market continues to offer broad coverage, meaning risks can generally be addressed through thorough diligence.

All W&I policies will have an exclusion for forecasts, projections and estimates. For an operational asset, power generation or the yield is typically captured by these forecast-related exclusions. For assets under construction, the ongoing development risk will also be excluded from coverage, for example the cost overruns or delays relating to a project's construction.

## What advice would you give to clients to make renewable energy projects more insurable?

Insurers are agile and typically only need 5 to 10 business days to review the risks and underwrite a renewable energy project. From Howden's perspective, however, the earlier the engagement, the better. Early engagement allows Howden to deliver real value through our services as we can help mitigate risks, avoid surprises, and secure the most competitive terms from the market.

Robust technical and legal due diligence is critical. Renewable assets are complex, and insurers gain confidence through diligence when providing broad coverage. At Howden, our role is to help deal parties scope their due diligence to maximise coverage, regardless of the stage of the renewable energy project. At the start of our engagement, we will have a detailed discussion about the project, the insurability of the warranties and key risk areas to make sure the diligence stacks up and the policy delivers meaningful protection.

## Transaction insights from Hamilton Locke

Drawing on Hamilton Locke's experience on the divestment and acquisition of renewable energy projects that have had W&I insurance coverage:

- **For sellers:** Engage a broker early to commence the W&I process. Early engagement gives you greater control over the process, terms, and messaging to the insurance market, helping shape the risk allocation narrative before it becomes buyer-led.
- **For buyers:** Ensure your due diligence scope and reporting are aligned from the outset with what insurers will expect to see addressed. It is difficult to retrofit a transaction into a W&I process once due diligence is well advanced or finalised.

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## New Energy Expert Insights

# New Energy Expert Insights: structuring successful joint ventures with Tracy Pyle, Practice Group Leader for Ankura's Joint Venture & Partnership Practice

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In this edition of New Energy Expert Insights, we sat down with Tracy Pyle, Practice Group Leader for Ankura's Joint Venture & Partnership Practice, to discuss how parties can structure joint ventures that work in practice and not just on paper.

Ankura is a global advisory firm supporting organisations across the full transaction and asset lifecycle, including strategy, transactions, performance improvement and disputes. In the energy and infrastructure sectors, Ankura is particularly well known for advising on complex joint ventures, consortium arrangements and strategic partnerships, often involving multiple stakeholders, cross border elements or assets at different stages of development.

## What are the top three structural issues parties should focus on when forming a joint venture?

### Scope

Clarity around what the joint venture will do and what it will not do is fundamental. In the renewables context, this often arises where joint ventures are intended to cover projects that will span multiple stages of the value chain. Defining scope clearly at the outset helps align expectations, informs the operating model and minimises misalignment (and therefore disputes) as the project progresses.

### Ownership and governance

Ownership percentages and governance rights are related but distinct, concepts. While ownership is often driven by relative capital contributions, governance does not need to mirror equity. Minority partners can have meaningful governance rights, including veto rights over key decisions, while majority ownership does not necessarily equate to control.

In practice, both 49/51 and 50/50 structures can work well, provided the governance framework reflects how decisions will be made in reality and accommodates any asymmetry in contributions, expertise, or risk exposure. Parties may favour majority/minority structures where one partner is better positioned to make operational decisions efficiently, or where accounting or consolidation outcomes are important.

### Legal Form

Parties need to consider whether the joint venture should be incorporated or unincorporated, and, if incorporated, what type of entity, jurisdiction and choice of law. First, the parties should consider what they are trying to achieve, then consider the vehicle that will achieve those outcomes and importantly, what works from a tax and accounting perspective.

## Are 50/50 joint ventures successful?

50/50 structures are often assumed to be prone to deadlock and thus JV failure. However, experience suggests otherwise. Benchmarking by Ankura and market observations indicate that 50/50 joint ventures last longer and are more successful than majority/minority ventures, largely because both parties feel like they are equally invested in the outcome.

In majority/minority joint ventures, even if the majority partner has veto rights, the joint ventures that work best are those that try to achieve unanimity even if it's not required in the joint venture agreement.

Joint ventures are a unique beast. Unlike M&A transactions, they require a genuine alignment of interests to succeed. If one party perceives the arrangement as unfair, whether in decision-making rights, economics or operational control, the venture is unlikely to deliver its intended value.

## What derails a joint venture?

There are many issues that can undermine a joint venture, such as weak business cases, unclear interfaces with partners, cultural incompatibility, failure of partners to deliver promised capabilities, or misalignment on strategy.

In the renewables sector, particularly where partners come from different industries or operate across the value chain, a common challenge is the absence of a jointly developed business case. Without early alignment on the commercial rationale and shared assumptions underpinning the venture, parties risk misalignment that can prevent the venture from being consummated or cause it to fail in its early stages.

## How should parties approach risk allocation in joint ventures?

Risk allocation should reflect both control and exposure. Where partners have equal control over, and exposure to, a particular risk, it is often simplest for the joint venture to bear that risk, with partners sharing it pro rata.

Where control is asymmetric, risk allocation can be adjusted through incentives and protections. For example, where one partner controls demand by marketing the joint venture's output or acting as an offtaker, mechanisms such as tiered pricing, milestone payments, equity adjustments or tailored exit rights can be used to balance that asymmetry.

In some cases, services provided by a partner (such as securing grid connection) may be documented through service agreements with the joint venture, with built in performance based incentives. While less common, equity adjustments may also be used creatively to bridge gaps in expectations.

## How can parties deal with the complexity of cross-border joint ventures?

Cross border joint ventures introduce additional layers of complexity, which may be due to differences in corporate culture, decision making authority and internal approval processes that can materially affect transaction timelines.

Parties should be transparent early about approval requirements, decision making processes and expected timeframes. Tax, legal and accounting considerations also require careful coordination to ensure the structure works across multiple jurisdictions.

In practice, in person negotiations can significantly improve efficiency in cross border joint ventures, particularly where cultural differences are pronounced.

## How can parties plan for exit from day one?

When considering exit, it is important to understand the most likely exit scenario. In the majority of joint ventures, this involves one partner acquiring the other's interest.

Exit provisions should be designed with that reality in mind, recognising that there is often a natural buyer and a natural seller, for example, where one party operates that asset or holds core technology.

Ankura's benchmarking of joint ventures shows that while most joint venture agreements include standard exit triggers (such as default, insolvency or prolonged deadlock), voluntary exit rights are also common. These are typically subject to mechanisms such as rights of first refusal, rights of first offer or buy sell arrangements, with rights of first refusal being the most prevalent.

Importantly, exit provisions rarely dictate outcomes in practice. They provide a framework for negotiation, rather than a script that is followed strictly. Lock up periods of three to five years are also common, helping stabilise the venture during its early stages, alongside high level provisions for transition services on exit.



## What are the key trends shaping joint ventures?

Globally, Ankura has observed the following:

- joint ventures are increasingly being formed to support AI-driven power demand including the energy requirements of data centres.
- governments are playing a more active role in brokering and co-investing in joint venture structures through incentives, grants and direct investment. While this has traditionally been more common in the Middle East, it has expanded in prevalence globally in response to geopolitical developments.
- innovative funding structures are emerging with ventures increasingly paired with strategic investments or bespoke commercial arrangements that extend beyond standard services agreements.

## What practical tips can you offer to accelerate the process to establish a joint venture?

Joint venture transactions are notoriously protracted. Ankura's benchmarking indicates a median of 408 days from term sheet announcement to close, with the longest transaction taking 708 days. Given the significant investment of resources involved parties should consider the following to accelerate the process:

- **establish a dedicated deal team:** joint ventures require focused attention and part-time resourcing invariably leads to delays
- **use a neutral external party:** this can help drive the process and maintain momentum
- **keep key decision-makers engaged throughout negotiations:** significant delays often arise when parties negotiate terms without involving decision-makers until a later stage, only to find that sign-off is not forthcoming.



## Transaction insights from Hamilton Locke

Drawing on Hamilton Locke's experience advising on joint ventures in the renewable energy sector:

- **Find the middle ground:** Don't get bogged down negotiating every possible scenario, but equally don't rush through with boilerplate terms. Focus on the key structural issues that will make or break the joint venture.
- **Think win-win:** Unlike a sale transaction, joint ventures require both parties to feel the deal is fair. If one party feels they've "won" at the expense of the other, the joint venture is unlikely to succeed.
- **Consider the type of structure:** Whilst incorporated joint ventures are common, unincorporated joint ventures can sometimes provide more flexibility depending on what the parties are trying to achieve.
- **Business Case:** Particularly where partners come from different industries, invest time upfront in developing a jointly agreed business case with aligned assumptions.
- **Flexibility:** Use creative mechanisms like milestone payments, equity adjustments, or tiered pricing to bridge gaps in expectations and balance asymmetric contributions or control.
- **Plan for exit:** structure exit provisions accordingly. Remember that exit provisions provide the backdrop for negotiations rather than being followed to the letter.

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## New Energy Expert Insights

# New Energy Expert Insights: Project Finance for Investment in Renewables with Viet Pham, Sumitomo Mitsui Banking Corporation (SMBC)

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In this edition of New Energy Expert Insights, we sat down with Viet Pham from Sumitomo Mitsui Banking Corporation (SMBC) to explore project finance for renewable energy projects in Australia, examining how lenders are adapting to the sector's unique challenges and what developers need to know to secure optimal financing.

Viet is the Head of Renewables, Australia at SMBC Group, where he leads the bank's renewable energy financing activities in Australia.

## How has SMBC's approach to renewable energy project finance evolved over the years?

SMBC's renewable energy financing business has evolved significantly over the past 15+ years in the Australian market. The bank initially focused on greenfield wind farm projects before broadening its portfolio to include solar projects, and more recently, battery energy storage system (BESS) and hybrid projects.

SMBC has participated in the majority of landmark transactions in the Australian market since 2010 and remains keen on supporting sponsors who are committed to investing in Australia's energy transition.

Today, the portfolio encompasses an array of sophisticated structures. As a market leader in this space, SMBC has appetite to consider novel transactions in addition to the traditional single asset and portfolio financings in the renewable energy sector.

## What are the key differences between portfolio financing and single asset project finance?

Portfolio financing is more akin to corporate financing, as it provides borrowers with greater flexibility to manage individual assets within agreed portfolio parameters. Larger portfolios underpinned by a diversified pool of operational assets are typically more bankable by a wide range of lenders, as opposed to traditional single-asset project finance which tends to be highly bespoke with extensive due diligence requirements, lender controls and security arrangements.

The portfolio approach offers a critical risk management advantage. When you have a portfolio and one asset breaks down, the overall financial damage is mitigated by cashflows from the other operating assets. However, if you are looking at a singular project and something important such as the PPA becomes ineffective, the project may have lost its primary revenue source to pay Principal and Interest or to repay debt at the maturity date. Typically projects that have encountered such difficulties have been consolidated into portfolio financings or sold to larger platforms.

## What makes a renewable energy project bankable from a lender's perspective?

Whilst project finance is theoretically based on a non-recourse structure with no recourse to sponsors, the reality is that the identity of the sponsors is of key importance to lenders. In addition to the identity of the sponsors, the identity and credit rating of the offtakers, the tenor and structure of those offtakes, and the identity of key suppliers all contribute strongly to bankability.

Early engagement with key stakeholders, from landowners to government to offtakers, combined with advice from experienced legal advisors and financiers, is where developers can maximise the bankability of their projects from the outset. The ability to consult with lenders depends significantly on existing relationships and the developer's successful track record.

A key issue to avoid is procurement of an "unbankable PPA", which requires developers to renegotiate with the tenderer on terms that have already been agreed, either directly or through a tripartite agreement. Similar issues can also arise with land documents and network connection arrangements.

## What are the main challenges facing renewable energy projects today?

The main challenges include:

- project delays;
- cost blowouts;
- commissioning risk;
- curtailment risk; and
- forecasting errors baked into assumptions.

The biggest challenge for Australia is the sheer scale of the construction task ahead with a limited labour force. The ability to construct projects will be constrained by the available labour force and credible construction players in the market. Multiple large-scale projects are being constructed across Australia and it will be a challenge to ensure there is enough labour for such projects.

From a financing perspective, whilst it is difficult for investors to over-size equity to meet their required investment returns, higher equity cheques are probably the easiest way to maximize lender interest in a project because they show valuable 'skin in the game' which should assist in addressing any unforeseen issues.

## How have EPC contracting arrangements changed?

The EPC landscape has fragmented significantly. Historically, arrangements involved one counterparty to cover the whole build. Now arrangements typically involve separate contracts for the technology provider, connection, balance of plant and others. Instead of just two counterparties (owner and EPC contractor) responsible for risk, the owner now needs to separately manage multiple contract streams, meaning that the owner may need to hire additional resources or contract these to external consultants – these all add to the cost of build despite falling costs in some areas (e.g. price of BESS cells or solar panels).

## What distressed asset situations are you observing in the market?

A large number of distressed assets are being observed, most commonly single asset solar farms without BESS. Some are over-contracted with up to 100% contracting on their solar farm but constrained to only exporting ~30% of their capacity in certain situations, creating a large shortfall on their obligations to the offtaker. In partially merchant situations (e.g., 50% contracted, 50% merchant), projects may satisfy the 50% portion of obligations to the offtaker, but the other 50% which may have been banked by lenders could be struggling to provide any additional positive cash flow. These cash flow issues flow through to compliance certificates, meaning projects may be in default and asking banks for forbearance whilst they understand their cash flow position.

## How do regulatory changes impact project financing?

Regulatory changes can significantly impact project economics and financing. For example, the 'solar sharer' program. This adds complexity to modelling and forecasting, as prior models would not have known about these arrangements. All projects that have already procured PPAs and market forecasts now need to revisit what the market forecast looks like going forward.

The risk is that there could be further announcements, so from a lender's perspective one way to address this would be to undertake a regulatory review event, where if there is a change, the financing documents can accommodate the impact.

Developers must pragmatically acknowledge that regulatory changes may happen. If revenues are 20% below what was projected at financial close, the banker's response would be that the financial model should be rerun to incorporate updated forecasts. If the ratios are too low and debt sizing criteria is not met, equity needs to come in to right-size the debt so the debt number is not too high.

## What is SMBC's appetite for emerging technologies like hydrogen and long duration storage?

SMBC is actively engaged in emerging technologies across the long duration storage spectrum including a current role as FA for one emerging technology player.

Success in these sectors is underpinned by strong, experienced sponsors who have long-term PPAs or strong government support. Projects with these components are in theory bankable by lenders in the market. The key challenge is that emerging technologies and hydrogen projects struggle to procure PPAs or government support, which has been the missing piece of the puzzle for many.

There is very strong interest in the biofuels space, particularly sustainable aviation fuel (SAF). Key offtake counterparties are the most important factor for success. Examples of buyers include large airlines who are highly rated, well known, and have strong requirements for the product. Government mandated requirements also assist with the bankability of these sectors.

## What due diligence issues require particular attention?

Due diligence expectations from a project financing perspective have increased over the years. Due diligence on land arrangements is of key importance – the more landowners that are involved, the more complicated things become.

Critical issues that may arise include security arrangements or lease problems with original developers, and situations where one landowner could potentially halt part of the project by imposing additional restrictions. These issues should be resolved well in advance of financial close.

## What is SMBC's approach to Queensland projects and merchant renewables?

SMBC still has a very strong appetite for Queensland projects, particularly those with good PPAs (availability based or tolling). SMBC has limited appetite for fully merchant renewables given the continued prevalence contracted transactions available in the market.

## What advice would you give to developers seeking project finance?

Developers should position their projects to be easily bankable, which would also make projects more attractive to other equity investors and the project finance market. Developing a project with too bespoke a risk profile restricts financing to a small pool of potential lenders and often results in a longer than expected process. Given the higher level of uncertainty in global financial markets, projects considered risky from a technical or financial perspective will need access to an experienced ecosystem of legal and commercial advisors and lenders or risk not achieving Financial Close in 2026.

## Transaction insights from Hamilton Locke

Drawing on Hamilton Locke's experience advising on renewable energy project finance transactions:

- **Engage early with advisers:** Early engagement with key stakeholders from land to government to offtakers, combined with advice from experienced legal advisers and financiers, maximises the bankability of projects from the outset. Having legal and financial advice prior to entering into contracts is crucial.
- **Build strong banking relationships:** New developers should invest time in building relationships with experienced lenders who understand the renewable energy market.
- **Focus on appropriate gearing:** Whilst it may be challenging to deploy significant equity, higher equity levels make projects more attractive to banks because many risks are partially mitigated when projects are not over-g geared.
- **Prepare for regulatory change:** Developers must pragmatically acknowledge that regulatory changes may happen. If revenues fall significantly below projections, financial models should be rerun, and equity may need to be injected to right-size the debt. Building flexibility into financing structures to accommodate potential regulatory changes is crucial.
- **Secure strong offtake arrangements:** The identity of the offtakers, the tenor of those offtakes, the structure of those offtakes, and the identity of key suppliers all contribute strongly to bankability. Focus on securing long-term PPAs with creditworthy counterparties.
- **Address land issues comprehensively:** Security arrangements, lease problems with original developers, and situations where one landowner could potentially halt part of the project must all be fleshed out prior to financial close.

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# New Energy Quarterlies



# Previous expert insights

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