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Clean Energy Investor Group

DELIVERING MAJOR CLEAN ENERGY PROJECTS IN QUEENSLAND AND VICTORIA

REVIEW OF QLD AND VIC STATUTORY PLANNING APPROVALS PROCESSES

1 Introduction

Following a review of the New South Wales planning framework in December 2023, Herbert Smith Freehills (**HSF**) and Clean Energy Investor Group (**CEIG**) have undertaken a review of the statutory planning assessment processes for major renewable energy projects, including wind, solar, and related battery and transmission, in Queensland, Victoria, South Australia and Tasmania.

The jurisdictions within the scope of this report have distinct planning frameworks and renewable energy targets and are at varying stages of progress towards achieving those targets. In particular, South Australia and Tasmania are relatively well-progressed, with a high percentage of electricity currently being generated by renewable energy. In discussion with CEIG members, no major concerns were raised regarding South Australia or Tasmania as impacting on timely development in those jurisdictions. In light of that feedback, this report focuses primarily on Queensland and Victoria.

The purpose of this report is to identify, from a legal perspective, key pinch points in the states' planning frameworks for major renewable energy projects and 'quick wins' that would enable government and industry to accelerate the delivery of renewable energy generation and transmission in these states, considered critical to achieving net zero emissions in accordance with their respective targets.

This report explores:

- state-based net zero and renewable energy targets and related key climate and energy policies;
- the statutory planning framework in each state covered, including recent trends, and key strengths and challenges;
- 'quick wins' to streamline and secure timely project delivery; and
- longer-term reform opportunities.

Some key issues to be considered through the current Nature Positive Plan and reform of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), as relevant to the states' processes, are also identified. The Federal legislation, however, is not the focus of this report, and is addressed only at a high level.

The findings set out in this report contribute to ongoing discussions on how to deliver renewable energy, storage, and transmission projects to meet pressing emissions reduction and renewable energy generation targets across Australia.

This report forms part of a broader review by HSF and CEIG to identify opportunities to streamline approvals processes for renewable energy and transmission projects in Australian jurisdictions.

2 Key recommendations

A snapshot of the key recommendations set out in this report to achieve 'quick wins' that accelerate planning approval processes in Queensland and Victoria to drive delivery of renewable energy, storage, and transmission projects is below.

2.1 Recommendations for all jurisdictions

Clarify and coordinate consultation processes	1 Set and clarify guidance for public consultation and engagement processes to achieve transparency, consistency and coordination between proponents. 2 Explore and prepare guidance on benefit sharing for hosts, neighbours and local communities.
Facilitate data sharing	3 Develop a formal data sharing platform for regulators, proponents and operators, having regard to pre-approval proponent requirements. 4 Consider how this might interact with or support the work of the proposed Commonwealth Environment Information Australia.
Streamline interaction with Commonwealth framework	5 Clearly communicate through policy and decision-making criteria that it is accepted that clean energy projects will have some impacts in light of broader policy objectives. 6 Work with the Commonwealth Government to ensure strategic planning at state level, including establishment of Renewable Energy Zones (**REZs**) is integrated into regional planning under the EPBC Act as it progresses. 7 Consider proposed criteria for accreditation arrangements and instruments under the EPBC Act reforms against current and proposed assessment processes and progress those arrangements and instruments promptly once reforms introduced.
Cultural heritage	8 Progress improvement of understanding and development of policy regarding intangible cultural heritage with First Nations people.

2.2 Queensland-specific recommendations

Progressive permitting pathways	9 Implement the recommendations of the Review of Oversize Overmass Wind Farm Arrangements to remove the constraints on the transport of components to wind farm developments and reduce the time and cost risk associated with cancelled police escorts for low-risk OSOM movements. 10 Provide fast-track approvals for early investigative works (meteorological masts and geotechnical works). 11 Allow 'relevant purpose' determinations under section 22A of the VMA to be considered concurrently with development applications, or investigate other administrative ways to streamline the process.

Land and transmission	12 Unlock state land for renewable energy development, where appropriate. 13 Strengthen social licence by establishing an 'expressions of interest' register for potential host lots.
REZ development	14 Progress the delivery of the in-flight REZs to give clean energy proponents and communities certainty with respect to future land use and how the REZ will operate to facilitate clean energy development. 15 Take steps to encourage development in the REZs, and maximise the development potential of the REZs, including investigating REZ-wide EPBC Act referrals, coordinated and centralised environmental offset delivery, and whole-of-REZ indigenous land use agreement / Cultural Heritage Management Plan. Consideration should also be given to coordinated State approvals (e.g. through the use of State development areas) to streamline approvals for REZs.

2.3 Victoria-specific recommendations

Clarify guidance on assessment of impacts (short term and ongoing benefits)	16 Clarify guidance on requirements for environmental impact assessments that are targeted to the particular project and are risk-based. 17 Clarify policy regarding when major renewables projects may access the Development Facilitation Program, including considering when potential impacts might be addressed through conditions of a no-EES decision rather than EES 18 Clarify guidance on how assessment of common impacts is to be undertaken, such as cumulative impacts and visual amenity impacts. 19 Provide for BESS projects to reach agreement with neighbours for increased noise limits, similar to the approach to wind farms. 20 Support an increase in EPA-accredited auditors able to undertake roles under the planning scheme and *Environment Protection Regulations* relating to wind farm noise and provide timely industry guidance on technical and process issues.
Streamline assessment pathways	21 Progress strategic land use assessments and identification of Renewable Energy Zones (**REZs**). 22 Integrate findings of strategic assessments into planning policy from an early stage. 23 Streamline the currently numerous assessment and approvals pathways, for example, through planning scheme and legislative reforms.
Facilitate appropriate staging and scoping of projects (longer term and strategic benefits)	24 Clarify policy on the ability to assess and approve projects in stages. 25 Clarify policy on the level of detail in design required for the various phases of the approvals process and what may be subject to secondary consent. 26 Facilitate low-impact preparatory works earlier in the assessment / approval process.

Cultural heritage	27 Consider providing ability for a RAP to give 'concept approval' so that other statutory authorisations can be granted and works outside sensitive areas can commence, and to facilitate staging of projects. 28 Consider REZ-wide Cultural Heritage Management Plans with traditional custodians of Country which proponents can sign up to in order to deliver benefits and opportunities to First Nations peoples.

3 The role of renewable energy projects in achieving net zero

3.1 Current energy mix

As at 1 April 2024, in the preceding 12 months, the energy contribution mix of each of the states considered in this report was made up as follows:[1]

	QLD	VIC	SA	TAS
Total renewable energy	**28.4%**	**42.3%**	**71%**	**92.6%**
Solar	21.7%	13.8%	26.9%	3.3%
Wind	4.4%	23.3%	44.2%	17.3%
Hydro	2%	5.3%	N/A	72.1%
Coal	67.4%	66.9%	N/A	N/A
Gas	7.7%	1.3%	21.6%	0.6%

3.2 Varying targets, progress and plans towards net zero

Each of the states considered in this report has set its own net zero emissions target and a target for renewable energy generation.

(a) **Queensland**

Queensland has set a pathway towards achieving net zero greenhouse gas emissions by 2050. The target trajectory for renewable energy supply is 70% by 2032, and 80% by 2035. To achieve these targets, Queensland will need to deliver a mix of renewable energy projects that will deliver 25 GW of renewable electricity to the grid by 2035 (for domestic supply). To put the task into context, at 30 June 2023, large-scale renewable energy projects delivered 6 GW of clean energy to Queensland.

Queensland's plan to achieve zero net emissions by 2050 has been set out in the Queensland Energy and Jobs Plan (**QEJP**). The QEJP provides a focused strategy for the delivery of clean energy projects. Broadly, the plan provides for:

- An additional 22 GW of large-scale wind and solar by 2035.
- Conversion of publicly-owned coal-fired power stations into clean energy hubs.

[1] Data obtained from OpenNEM.

- Development of two pumped hydro energy storage assets, delivering up to 7 GW of long duration storage.
- Construction of around 1,500 km of new high voltage backbone transmission lines.

(b) **Victoria**

In 2019, the energy sector accounted for 70% of Victoria's emissions.

In May 2023, the Victorian Government set new emissions targets to reduce the state's emissions by 45-50% below 2005 levels by 2030, 75-80% by 2035, and achieve net-zero emissions by 2045.[2]

It has also set targets of achieving 65% renewable energy by 2030 and 95% by 2035, with an energy storage capacity of 2.6 GW by 2030 and 6.3 GW by 2035. The Victorian Government has also set targets of generating at least 2 GW of offshore wind energy by 2032, 4 GW by 2035 and 9 GW by 2040. Key targets have been legislated under the *Climate Change and Energy Legislation Amendment (Renewable Energy and Storage Targets) Act 2024* (Vic).

To facilitate the distribution of the increased renewable energy generated, strategic planning and delivery of transmission infrastructure is required. The Victoria Government has established VicGrid and tasked it with planning major electricity transmission infrastructure and coordinating development within REZs. Legislation supporting development of VicGrid's transmission planning role and declaration of REZs is currently before Parliament under the *National Electricity (Victoria) Amendment (VicGrid) Bill 2024* (Vic). The first Victorian Transmission Plan is also under development, which will involve planning the transmission projects required to support REZ development and coordinating future connections. Further announcements regarding establishment of the Victorian Transmission Investment Framework (including the requirement for the Victorian Transmission Plan) and consequential reform to implement these matters are anticipated.

(c) **Tasmania**

In 2018, the Tasmanian Government introduced a target of 100% renewable energy generation by 2022. Tasmania achieved that target two years early in 2020. In November 2020, Tasmania introduced a further legislated target of 200% renewable energy generation by 2040.

In December 2020, the Tasmanian Department of State Growth proposed the Renewable Energy Action Plan. Key components of this Plan include:

- the establishment of 'Renewables Tasmania' (now Renewables, Climate and Future Industries Tasmania (**ReCFIT**), a statutory body to better plan, coordinate and promote the development of renewable energy in Tasmania;
- support for an initial round of funding for feasibility studies for three large-scale renewable hydrogen projects and the development of a four-year program to further develop relevant skills in Tasmania.
- the progression of Tasmania as the 'Battery of the Nation', a plan to maximise Tasmania's hydropower capacity, to be supported by the proposed Marinus Link.
- the Renewable Energy Coordination Framework, to progress the planning, design and ultimate development of future REZs in Tasmania.

In 2022, the Tasmanian Government's Register of Interest sought responses from renewable electricity generation projects of 10 MW of greater to assist in designing and planning the establishment of Tasmania's first REZ. The Register of Interest attracted interest in 15 onshore and

[2] Victoria's 2035 Emissions Reduction Target, Victorian State Government.

four offshore wind projects, three solar projects, two 'mini-hydro' projects and 10 battery storage projects.[3]

More recently, ReCFIT has published a Guideline for Community Engagement, Benefit Sharing and Local Procurement specific to renewable energy development in Tasmania.

(d) **South Australia**

South Australia is one of the most successful states in Australia with respect to achieving its renewable energy targets, and with the introduction of the *Hydrogen and Renewable Energy Act 2023* (SA) in December 2023, South Australia has developed a robust framework to achieve the energy transition.

In September 2022, the South Australian Government legislated its commitment to reduce greenhouse gas emissions by 43% below 2005 levels by 2030 and net-zero emissions by 2050. In March 2024, the South Australian Government announced proposed amendments to update its interim target to 50% reductions by 2030. A state-wide emissions reduction plan will be developed and updated in-line with the new interim target. It has also set a target of achieving 100% renewable energy by the end of 2027.

3.3 Current decision-making timeframes

In Victoria, there were four planning permit applications for energy generation facilities lodged in FY24. The average number of days between acceptance of an application and the responsible authority making a decision (processing time) was 333.6 days, with a median of 432 days.[4] In FY23, seven applications were received for energy generation facilities, with an average processing time of 375.6 days and a median of 222 days.

Delays can often arise in relation to the time between lodging an application and formal acceptance, requests for further information, uncertainty in technical assessment requirements, and the time between the public inquiry or panel (where applicable) submitting its report to the Minister and the Minister's decision on the permit application.

By way of example, the Mt Fyans Wind Farm was determined not to require an EES, subject to assessments being undertaken. A permit application was lodged in late 2018 and three separate requests for further information were made. In June 2019, the permit application was called in by the Minister for Planning and in December 2021, the Minister advised the applicant that technical studies and assessments satisfied the conditions of the EES decision and the Department advised the applicant that its comments had been addressed. The project description was amended in August 2022, and further information was requested and provided in November 2022. A Panel hearing took place from April through to 8 June 2023. The Panel's report is dated 8 August 2023 and was released to the public on 11 April 2024 (248 days later). The report recommends that, before further consideration of the application, the applicant should be directed to provide further assessments and information and subject to that further information satisfactorily providing for appropriate management of impacts, a permit be issued.[5] As at 11 April 2024, a decision by the Minister on the permit application has not been published.

The below sets out the renewable energy projects that are either operational, under construction, or approved but not yet constructed in Victoria.

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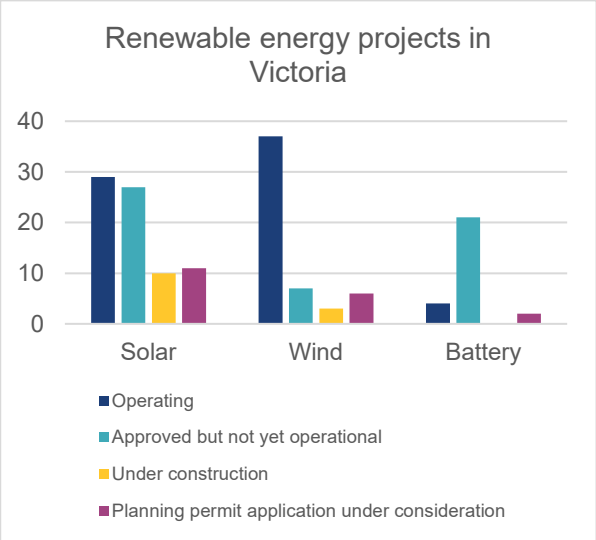
[3] ReCFIT: https://recfit.tas.gov.au/renewables/harnessing_our_renewable_energy/register_of_interest.

[4] Data sourced from the Department of Transport and Planning: https://www.planning.vic.gov.au/guides-and-resources/council-resources/planning-permit-activity-reporting. We note that this search applies to all "energy generation facilities" and the data platform does not provide for further filtering or detail.

[5] Planning Panels Victoria, Mount Fyans Wind Energy Facility Panel Report, 8 August 2023.



In Queensland, it is difficult to consolidate data on clean energy project approvals because different types of projects have different assessment managers. Solar farms and battery energy storage systems are typically the remit of local governments, and there is significant variance between local governments as to what information is publicly available on applications, assessment milestones and decisions. Pumped hydro energy storage (**PHES**) project approvals are usually managed by the Coordinator-General as coordinated projects under the State Development Act, with two projects currently under consideration.

Wind farms are usually assessed by the chief executive of the Planning Act via the State Assessment and Referral Agency, which has better data on development applications. Between 2019 and 2021, seven wind farms were approved by SARA, with an average assessment time of 190 days.[6] In the 2022/23 financial year, SARA approved 4 wind farms, and 2 change applications for wind farms.[7]

The lack of centralised data in Queensland, and particularly the lack of visibility over solar farm and BESS applications, has been identified as an area for improvement.

4 Overview of current planning frameworks

In preparing this report, industry feedback highlighted the importance of the planning framework in achieving efficient assessment and delivery of renewable energy projects.

The following sections set out an overview of the current planning frameworks for approving major renewable energy and transmission projects in Queensland, Victoria, South Australia and Tasmania.

[6] RystadEnergy, 'Recent approvals of Onshore Wind Farms: Queensland, Victoria, New South Wales, South Australia (October 2023).

[7] Department of State Development, Infrastructure, Local Government and Planning Annual Report 2022-23 https://www.statedevelopment.qld.gov.au/__data/assets/pdf_file/0029/83954/DSDILGP-annual-report-22-23.pdf

5 Queensland

5.1 Queensland's planning framework

Queensland has several planning pathways available to clean energy proponents to advance renewable energy projects, depending on the size and complexity of the proposed project. The assessment of renewable energy projects can progress under the *Planning Act 2016* (Qld) (**Planning Act**), the *State Development and Public Works Organisation Act 1971* (Qld) (**State Development Act**) and / or the *Economic Development Act 2012* (Qld) (**Economic Development Act**).

Secondary approvals such as roadworks approvals under the *Transport Infrastructure Act 1994* (Qld), the *Nature Conservation Act 1992* (Qld) or a waterway barrier works permit under *Fisheries Act 1994* (Qld) may also be required. As these secondary approvals are highly site specific, they are outside the scope of the report.

5.2 Assessment processes for renewable energy and associated projects

Most renewable energy projects are advanced under the Planning Act, which regulates land use planning in Queensland and sets out processes for the lodgement, assessment and determination of development approvals. The implementation of the Planning Act is supported by the *Planning Regulation 2017* (Qld) as well as related policies and guidelines.

A development approval will typically be required to develop land for renewable energy facilities and for any associated vegetation clearing. Under the Planning Act, development is broadly categorised as prohibited development, accepted development, or assessable development. Accepted development does not require a development approval. This is typically because of the low impact and intensity of the proposed development. Prohibited development is development for which a development application may not be made; for example, certain development on contaminated land is categorised as prohibited development.

Assessable development is development for which an approval is required. Assessable development is either code assessable or impact assessable. Code assessable development is a bounded assessment against certain prescribed assessment benchmarks. There is no public notification of the development application or third-party appeal rights.

Impact assessment is more rigorous. The assessment manager can have regard to any 'relevant matter' and also requires the proponent to carry out publication notification of the development inviting submissions from interested parties. Submitters may have rights to appeal the assessment manager's decision to the Planning and Environment Court.

The assessment of renewable energy projects except for wind farms and hydrogen projects that are hazardous chemical facilities usually occurs at a local government level. The level of assessment for these projects (i.e., code or impact assessment) will depend on the local planning instrument, unless the State provides for an alternate project facilitation mechanism, set out below. As with Victoria, the assessment process for wind farms is more onerous than for other renewable energy projects, and includes consideration of scenic amenity in some instances.

5.3 Alternative pathways

The State Development Act provides for a number of alternative project facilitation mechanisms. They range from powers to assist with the obtaining of approvals for individual projects to the ability to create a new set of planning controls over a large area.

They include:

Mechanism	Description	Example
State Development Area (SDA) (s 77)	SDA can be declared by regulation if the Governor-in-Council (**GC**) is satisfied that the public interest or general welfare of persons in the State requires it. A development scheme is prepared for the SDA which is implemented by the Coordinator-General (**CG**). The CG controls land use, infrastructure, economic and environmental planning in the SDA, assesses and decides all applications made under the development scheme and has compulsory land acquisition powers. For an SDA, the CG also has powers in respect of roads and works. There are no appeal rights for an SDA approval.	
Prescribed Project Declaration (s 76E)	Minister may declare project to be a 'prescribed project' where it is of significance (particularly, economically and socially) to Queensland or a region. The declaration enables the CG to ensure a decisions are made on the project in a timely way by acting as a point of contact for the proponent within government, coordinating local and state agencies and facilitating discussions. CG can also direct decision-maker to progress an application, decide an application within a certain timeframe or step in and make the decision in place of the original decision-maker.	Borumba Pumped Hydro Eva Copper Mine Kidston Wind Farm
Coordinated Project Declaration (s 26)	Projects may be declared as a 'coordinated project' where it meets one or more of the criteria. The effect of a coordinated project declaration is that either an environmental impact statement or impact assessment report process needs to be followed, and the CG then issues an evaluation report that can state conditions for certain subsequent approvals (that must be imposed), make recommendations and state enforceable imposed conditions for the project. A coordinated project declaration does not remove the need to obtain project approvals, but can operate to streamline some of those approvals processes.	H2-Hub Gladstone Borumba Pumped Hydro Mt Rawdon Pumped Hydro
Approved works regulation (s 99/100)	The CG may recommend to the Minister and the GC that certain works be undertaken by a 'local body' (which includes government-owned corporations, statutory bodies, other bodies established under an Act, corporations whose shares are wholly owned by the State and/or local government/s and subsidiaries of the aforementioned corporations). Approved works are directed by regulation. Works that a local body are directed to undertake cannot be assessable under a local categorising instrument (Item 25, Sch 6, Planning Regulation).	Borumba Pumped Hydro (Temporary workers accommodation camps) Julia Creek/Richmond Critical Minerals Zone Water Delivery Options
Approved works regulation (s 108/109)	These approved works are similar to local body approved works (set out above) except the direction is that the Coordinator-General undertake the works. The Coordinator-General is not subject to the Planning Act, and certain other legislation, so these works are not subject to approvals required under the Planning Act. In addition, the Coordinator-General can contract a third party to do the works and can delegate to a local body and certain entities under the Public Service Act with approval of the Governor in Council under section 111 of the SDPWO Act.	

Other pathways available to clean energy proponents, depending on the project / infrastructure involved, include:

- A Ministerial Infrastructure Designation (**MID**) for electricity operating works (i.e., transmission lines). Development for infrastructure under a MID is 'accepted development' under the Planning Act. There are several examples of MIDs being used to deliver transmission projects – the Wambo Wind Farm Connection Project is an example of this.
- Declaration of a Priority Development Area (**PDA**) under the *Economic Development Act 2012* (Qld). PDAs are administered by the Minister for Economic Development Queensland, who will assess and decide development applications in a PDA.
- A Ministerial Call-In under the Planning Act, where the Planning Minister makes a decision to assess and decide (or reassess and re-decide) a development application having regard to any matter the Minister considers relevant, where it involves, or is likely to involve, a 'State interest'. There are no appeal rights.

The Queensland Government is advancing plans for the declaration of Renewable Energy Zones (**REZ**). The aim of a REZ is to ensure that there is a coordinated, transparent and collaborative approach for the development of renewable projects and energy infrastructure within a particular region. REZ Readiness Assessments will be carried out to look at the potential implications of renewable energy development on infrastructure, transport, housing and accommodation, workforce, supply chains, waste management, other land uses, and social infrastructure, as well as local industry and First Nations peoples' consideration. While the REZs may provide an alternative planning pathway for renewable energy development in the future, the implementation of the REZ framework is still some years away.

5.4 Interaction with environmental assessments process

The *Environmental Protection Act 1994* (Qld) (**EP Act**) operates alongside planning legislation. Whether a renewable energy project requires an environmental authority will depend on whether the project involves the conduct of any environmentally relevant activities (**ERA**), such as chemical storage, electricity generation using gas or fuel, or extractive and screening activities. Queensland has ERA standards which support the application process for environmental approvals.

Coordinated projects under the State Development Act require either an environmental impact statement (**EIS**) or an impact assessment report (**IAR**). An EIS and IAR requires a more robust assessment of the environmental impact of a development.

A separate Commonwealth environmental approval may be required under the EPBC Act. A person is prohibited from taking an action that has, or will likely have, a significant impact on a matter of national environmental significance which, relevant to Queensland clean energy projects, includes listed threatened species and ecological communities, listed migratory species protected under international agreements, and the Great Barrier Reef Marine Park (among others). A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Commonwealth Environment Minister. If the Commonwealth Environment Minister determines that the action is a controlled action, then assessment and approval under the EPBC Act is required before commencing the action.

5.5 Cultural heritage management

In Queensland, the *Aboriginal Cultural Heritage Act 2003* (Qld) (**ACH Act**) establishes a cultural heritage duty of care to ensure that an activity being carried out does not harm Aboriginal cultural heritage. The cultural heritage duty of care applies to all land, regardless of whether there is a recognised native title claim for the land or if the land is freehold. Under the ACH Act, projects that require an environmental impact statement (such as coordinated projects under the State Development Act) must obtain a cultural heritage management plan (**CHMP**) with the affected

Aboriginal party. The CHMP must be approved before the Coordinator-General can grant a statutory authorisation for the relevant activity.

For projects not requiring an environmental impact statement, project proponents can meet their cultural heritage duty of care by voluntarily entering into a CHMP or another agreement or by adhering to the cultural heritage duty of care guidelines. Consultation with First Nations people on the recognition, protection and conservation of Aboriginal cultural heritage can take time, which can impact project delivery timeframes and, depending on the outcome of the negotiations, have cost implications for the project.

5.6 Flora and fauna considerations in decision-making

Development approvals and environmental authorities may impose an offset condition on proponents to counterbalance the significant residual impacts caused by vegetation clearing and development. Environmental offsets are usually required before commencing works that will impact regional ecosystems.

If an approval granted under the Planning Act, the EP Act or other law imposes an offset condition, the offset must be delivered in accordance with the *Environmental Offsets Act 2014* (Qld). An offset delivery plan is required, and offsets must be legally secured.

6 Victoria

6.1 Victoria's planning framework

The *Planning and Environment Act 1987* (Vic) (**PE Act**) establishes the framework for planning, assessing, and approving the use and development of land in Victoria.

Key to the framework is planning schemes, which regulate whether and how land can be used and developed for certain uses through permitting as-of-right uses, requiring planning permission and prohibiting uses, as well as the application requirements and decision guidelines for permissions required.

Planning schemes also contain general State planning policy, including express statements in support of appropriate development of energy supply infrastructure and of renewable energy in a manner that ensures appropriate siting and design considerations are met.

6.2 Specific requirements and pathways for renewable energy and associated projects

A planning permit will typically be required to use and develop land for a renewable energy facility (including generation from wind, solar, water flows and organic matter) and for a utility installation (which captures storage and transmission projects), though these uses are prohibited in some zones. A planning permit may also be required for ancillary aspects of a project, such as the removal of native vegetation, and a single permit is typically sought for all aspects of a project.

Planning schemes provide a consistent set of specific application requirements and decision guidelines for the use and development of renewable energy facilities (other than a wind energy facility). Decisions regarding solar energy facilities must have regard to the *Solar Energy Facilities Design and Development Guideline* (Department of Environment, Land, Water and Planning, October 2022). A separate set of requirements and guidelines is applicable to wind energy facilities.

The requirements for wind energy facilities are more stringent than those for other renewable energy facilities, and include prohibition of facilities within specified distances from dwellings and

other areas and within precise locations. The planning scheme requirements refer to the *Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria*, November 2021, although this has been updated as the *Planning Guidelines for Development of Wind Energy Facilities* (Department of Transport and Planning, September 2023).

(a) Development Facilitation Program

In March 2024, the Victorian government announced that all renewable energy projects will be considered significant economic development for the purposes of application of the Development Facilitation Program (**DFP**), which would bring eligible projects into an accelerated and facilitated planning pathway. Amendments to Clause 53.22 of all Victorian planning schemes were gazetted on 4 April 2024, which extend the DFP scheme (Significant economic development) to use and development of land and subdivision for a renewable energy facility with an installed capacity of 1MW or greater, and for utility installations for transmission, distribution or storage of electricity.

At the date of this report, limited detail has been released on any associated policy amendments to support implementation of this amendment. Currently, policy is that the DFP is not available to projects that require an environment effects statement (**EES**) under the *Environment Effects Act 1978* (**EE Act**), although this is not a requirement of the planning scheme. Given an EES is more commonly required for wind energy and transmission projects and for novel technologies, the DFP scheme would be more likely to facilitate solar, BESS and wind projects with lower potential impacts.

6.3 The responsible authority

Planning schemes further set out the 'responsible authority' for the purposes of the planning scheme and for matters under the PE Act. The role of a responsible authority includes assessing and determining an application for a permit, approving secondary consents and plans under a permit, and enforcing a permit. This role may be held by a single authority or may be split between authorities.

The responsible authority for a renewable energy facility will depend on the capacity of the energy facility. The Minister for Planning is the responsible authority for assessing, granting and amending permits and endorsing and approving related matters for:

- energy generation facilities that have an installed capacity of 1 MW or greater;
- utility installations used to store electricity if the installed capacity is 1 MW or greater; and
- utility installations used to transmit or distribute electricity.

The local council is the responsible authority for enforcement of permits granted for those projects.

For all other renewable energy projects, the responsible authority for all matters is the local council.

6.4 Interaction with environmental assessments process

The PE Act interacts with other state and Federal legislation, notably including the EE Act, pursuant to which proposals that will have or are likely to have a significant impact on the environment are referred to the Minister for Environment for determination of whether an EES is required for the proposal. Typically, the whole of a project, including all stages and ancillary aspects, is referred and assessed in its entirety.

An EES is an assessment of the effects of a proposal on the environment and the proposed measures to avoid, minimise and manage adverse effects. If an EES is required, a decision maker typically cannot grant an approval (such as a planning permit) for the proposal until the Minister has assessed the EES.

Since July 2019, 18 renewable energy generation and transmission projects have been referred under the EE Act.[8] As at February 2024, 12 of these have been determined to require an EES.[9] None of these proposals have progressed to assessment of the EES, with the earliest 'EES required' decision dated 25 August 2019. Two of the 18 projects have been approved, being two projects that were determined to not require an EES.

The average time between acceptance of a referral and determination of whether an EES is required is 97 days, with a range between 11 and 294 days.

In our experience, the 'soft' lodgement time from referral to acceptance of referral can also be significant—in the order of months. This is particularly relevant for wind energy facilities where protection from inconsistent new dwellings arguably may not arise until a referral is accepted.

We also note the new application of the DFP regime to renewable energy projects as discussed above, and the remaining uncertainty as to policy regarding interaction with the EE Act. Given the detailed planning regime applicable to renewable energy proposals and the relatively comprehensive understanding of potential impacts, there is an opportunity to consider whether renewable energy projects could be appropriately assessed through the DFP together with an Environment Report rather than an EES, in line with the guidance set out in the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (8th edition, DTP, 2023).

6.5 Cultural heritage management

If an EES is required, or if a renewable energy project is otherwise proposed within an area of Aboriginal cultural heritage sensitivity, typically a cultural heritage management plan (**CHMP**) must be prepared and approved before a decision maker can grant a statutory authorisation for the relevant activity (e.g. before the Minister or local council can grant a planning permit for a project).

The *Aboriginal Heritage Act 2006* (**AH Act**) and Regulations do not provide for an ability to scope the activity that is to be subject to a CHMP. Major projects are often staged or cover a large area, only one stage or part of which may be within an area of sensitivity.

Additionally, a CHMP is often required to undertake assessments to inform a project scope and design and as part of the EES preparation. If a CHMP cannot be approved in a timely manner, this can result in delays in undertaking the required assessments, uncertainty as to impacts, and difficulties in designing the project and consideration of any impact mitigation measures.

6.6 Flora and fauna considerations in decision making

In performing any function that may reasonably be expected to impact on biodiversity in Victoria, a Minister (such as the Minister for Planning) and a public authority (including a government department, administrative office, local council, public entity and State-owned enterprise) is required to, so far as is consistent with the proper exercising of their functions, give proper consideration to:

- the objectives of the *Flora and Fauna Guarantee Act 1988* (**FFG Act**);
- the instruments made under the FFG Act;
- potential impacts on biodiversity, including long- and short-term, beneficial and detrimental, direct and indirect, and cumulative impacts, and the impacts of potentially threatening processes.

[8] Department of Transport and Planning.

[9] Of the six remaining proposals, two are currently on hold, two await determination, and two have been determined to not require an EES.

These obligations under the FFG Act may apply to the Minister's assessment of the EES and a range of other decisions by public authorities on approval applications.

In respect of renewable energy projects and associated transmission, it is anticipated that there will be localised impacts to biodiversity and to specific species, however in the context of the need for timely energy transition to avoid the potentially adverse impacts of climate change that are predicted to continue increasing the longer decarbonisation is delayed. In this context, it would be of assistance to clarify:

- where a 'project level' approval decision has been made, for example assessment of an EES, satisfaction of conditions of a no-EES decision, or grant of a planning permit, whether the obligation also arises in respect of other decisions for that project; and
- how a decision maker should balance project-specific impacts against bigger picture objectives including Victoria's energy transition objectives.

6.7 Overview of the assessment and approvals process

Considerations and impact assessments for the various types of renewable energy projects, storage and transmission projects will differ. However, projects will follow a largely similar permit application and assessment process. The key typical steps under the Victorian assessment process are set out in the table below.[10]

#	Key step		
1	Proponent refers proposal to the Minister under the EE Act (wind/transmission/energy parks – not typically required for pure solar or BESS) Proponent applies to responsible authority for planning permit under PE Act		
	If EES required	**If EES not required, subject to environment report**	**If EES not required**
2	Draft scoping requirements prepared by Minister	Scoping requirements prepared by Minister	Responsible authority refers application to other authorities
3	Public exhibition of draft scoping requirements	Requirement and conditions for environment report issued by Minister	Public notice of planning permit application
4	Technical reference group convened	Environment report prepared by proponent	
5	EES prepared by proponent	Public exhibition of environment report	
6	Public exhibition of EES and planning permit application	Minister's assessment of environment report	
7	Public hearing of EES and planning permit application		Public hearing of planning permit application
8	Panel and inquiry report on EES with recommendations		

[10] Approvals processes under the EPBC Act are not included.

10	Minister's assessment of EES		
11	CHMP approved		
12	Responsible authority makes decision to grant or refuse permit		

7 Our legal review

The following sections of this report explore the current legislative and policy reform context and key strengths and challenges of the states' planning processes. We also outline some 'quick wins' to drive more immediate change in the states' planning systems as well as longer-term reform opportunities that may assist renewable energy and transmission proponents and support achievement of the states' renewable energy generation targets.

8 All jurisdictions

8.1 Evolution of Commonwealth-level legislative and policy context

There is significant reform of both legislation and policy currently underway at the Commonwealth level, with a particular spotlight on nature positive action and meaningful engagement with communities. These reforms will need to be considered by the states in progressing their own reforms.

(a) EPBC Act reform

The EPBC Act is currently undergoing significant reform following the 2020 independent review of the EPBC Act and in line with the Commonwealth Government's Nature Positive Plan.

We expect that it will be a number of years before the impact and efficiencies intended by the Nature Positive Plan and the reforms are realised in full. Until that time, there is a critical need to facilitate the efficient delivery of renewable energy projects. Regional and other strategic plans, in particular, are likely to assist in clarifying where projects can proceed, though will take a significant amount of time to prepare.

However, there are some steps the states will need to take now to ensure that their processes align with the objectives of the EPBC Act reforms and new National Environment Standards. For example, in considering reforms at state level, states will need to carefully consider the proposed new accreditation arrangements under the EPBC Act reforms. In order for these accreditation arrangements to achieve the intended efficiencies once the reforms are in effect, states will need to ensure that their assessment and authorisation processes are sufficient to meet the accreditation requirements and the decision-making criteria of the CEO of the proposed Environment Protection Australia and the Commonwealth Minister for Environment.

Across all jurisdictions, EPBC Act assessments have been identified as the single biggest challenge for delivering renewable energy projects in Australia, putting investment decisions and the likelihood of Australia meeting its clean energy targets and decarbonisation goals at significant risk.

(b) Community engagement

In December 2023, the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) published its Community Engagement Review report. The purpose of the review was to consider community attitudes towards renewable energy infrastructure and provide advice on the

best way to maximise community engagement and benefit in planning, developing and operating renewable energy infrastructure. The report sets out nine recommendations to the Minister for Climate Change and Energy for consideration. The Minister has released an initial response to the review, which accepted the recommendations in principle.

The Federal Government is also developing the First Nations Clean Energy Strategy, intended to identify mechanisms to support First Nations peoples participate in and benefit from renewable energy development. The Clean Energy Council has also published a guide that sets expectations for industry in engaging with First Nations peoples on renewable energy projects: *Leading Principles: First Nations and Renewable Energy Projects.*

In considering potential state-based policies and regulation of community consultation, states will need to consider these reports and strategies to ensure a consistent approach is adopted.

8.2 Common challenges

Based on our legal review of the planning frameworks of the states considered in this report and industry feedback, we identify the key challenges for renewable energy and transmission projects that are shared by the states in the table below.

Key challenges
• No formal coordination of consultation with communities, which can result in many proponents consulting with the same community members on similar issues for different projects, inconsistency, misunderstanding, and consultation fatigue.
• Managing cumulative impacts, including within a REZ.
• Interactions with the Commonwealth environmental assessment process under the EPBC Act and risk of additional conditions.
• Multiple planning pathways, requiring engagement with different assessment authorities and different assessment requirements.
• No clear statement from regulators that some impact will be acceptable, resulting in difficulties in assessing and applying net benefits of renewable energy projects in decision making.

8.3 ‘Quick win’ opportunities

Based on our review and industry feedback, we outline some key opportunities below that may achieve ‘quick wins’ under the existing planning frameworks.

Opportunity 1: Clarify, normalise and coordinate community consultation processes
A more coordinated and consistent approach to community consultation, benefit sharing and complaints management would improve community confidence and support social licence for renewable energy and transmission projects.

Implementation

Publish a single guidance document which sets out the minimum standards for consultation and provides clarification on when sufficient consultation has been undertaken.

Opportunity 2: Develop a formal data sharing framework

Data sharing between the state and project proponents, including impact assessment data and ongoing monitoring data, would facilitate better project design and cumulative impact assessment.

Information about the effectiveness of avoidance and mitigation measures could be shared to encourage best practice procedures and design of projects and assist in adapting measures over the life of a project, as needed.

Implementation

Establish a data sharing platform accompanied by clear guidance for proponents on when and what data is to be provided.

Opportunity 3: Consider communication of acceptance of some impacts

In establishing REZs and in any reforms to legislation and planning policy, states should consider integrating an express understanding that some impacts from renewable energy projects are or could be acceptable.

Implementation

Incorporate guidance or policy on the assessment of net benefits into formal decision-making criteria.

8.4 Longer-term opportunities

We have also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents across the states considered in this report. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

Consider proposed new accredited arrangements and instruments under the EPBC Act reforms in progressing state-based reforms	Any new facilitated pathways should be developed having regard to the decision making criteria and assessment processes under the proposed new accredited arrangements and instruments, to ensure that they can be accredited once the reforms are in place.
Integrate REZs and strategic assessments with regional planning under the EPBC Act	States will need to work with the Commonwealth to ensure strategic planning at state level is integrated into regional planning under the EPBC Act as it progresses. The Queensland Government has already entered into a memorandum of understanding with the Federal Government to work on three initial (bio)regional plans. The New South Wales Government will also begin consultation on an initial four regions: the Northern Rivers, Central Coast, Hunter Valley renewable energy zone and the Far Western NSW mineral sands deposits near the South Australian border.

	Regional plans prepared under the EPBC Act should integrate the data, assessments, and findings of state-based strategic assessments and REZ declarations.
Facilitate targeted and proportionate assessment under the EPBC Act	As the EPBC Act reforms are progressed, there is opportunity to ensure an appropriate balance of the need for renewable energy with need to manage impacts on Matters of National Environmental Significance. The National Environmental Standards could be reviewed, having regard to achieving this balance and what is appropriate for renewable energy project.
Improve understanding of cultural heritage	Data could be gathered and policy developed to assist industry better understand and respond to intangible cultural heritage.

9 Queensland

9.1 Overview

Queensland's plan to achieve zero net emissions by 2050 has been set out in the Queensland Energy and Jobs Plan (**QEJP**). The QEJP provides a focused strategy for the delivery of clean energy projects, including a mix of wind and solar, pumped hydro storage, battery storage, and transmission. Broadly, the plan provides for:

- An additional 22 gigawatts (GW) of large-scale wind and solar by 2035.
- Conversion of publicly-owned coal-fired power stations into clean energy hubs.
- Development of two Pumped Hydro Energy Storage assets, delivering up to 7 GW of long duration storage.
- Construction of around 1,500 kilometres of new high voltage backbone transmission lines.

To achieve its renewable energy targets, the Queensland Government is not proposing to significantly alter the existing legislative framework for the assessment and delivery of renewable energy projects. Rather, it is seeking to better coordinate the construction of transmission infrastructure through the creation of Renewable Energy Zones (**REZ**).

The government is working with Powerlink to identify areas with strong renewable resources, with a view to developing these areas in a coordinated manner, streamline approvals processes, and improve community, environmental and cultural heritage outcomes. Currently, 12 potential REZs have been identified across Queensland.

Underpinning the development of electricity assets is the government's public ownership strategy. All transmission and distribution assets part of the REZ transmission network will be owned by the state.

9.2 Key strengths and challenges

Key strengths

- Code assessment of wind farms provides certainty to proponents on what is required for an assessment, setting clear performance outcomes and acceptable outcomes that can be factored in during early stages of planning.
- Overall, proponents expressed satisfaction with state-based assessment processes and the timeframes for making decisions. Commonwealth environmental approvals were identified as the major cause of delay.

Key challenges

- Inconsistency in how clean energy projects are assessed – wind farms are code assessable and assessed by the state, while solar farms, battery energy storage systems and transmission lines are generally assessed by local governments.
- Lack of streamlining between wind farm assessments under State code 23 and assessment of projects under the EPBC Act. Anecdotal feedback that Queensland wind farms attract a higher assessment decision at the EPBC Act assessment stage.
- Obtaining a relevant purpose determination under section 22A of the *Vegetation Management Act 1999* (**VMA**) is leading to significant project delays. A development application for operational works and material change of use that involves native vegetation clearing requires a relevant purpose determination.

- Police escorts are required for some oversize overmass (**OSOM**) vehicles transporting wind turbine components, but resourcing constraints have led to last-minute cancellation by the Queensland Police Service, resulting in significant cost implications and time delays for projects.
- Lack of transparency with respect to how Council rates for renewable energy projects are levied.
- Appeals to the Planning and Environment Court would introduce significant delay to projects.
- Inconsistency in decision-making at a local government level and a lack of data on development applications, assessment milestones and decision-making timeframes.
- Managing community expectations with respect to visual impacts and benefits sharing of renewable energy projects and the requirement for more transmission lines to bring clean energy to the grid.

9.3 'Quick win' opportunities

Based on our review and industry feedback, we outline some key opportunities below that may provide 'quick wins' under the existing Queensland planning framework to accelerate the delivery of clean energy projects in Queensland.

Opportunity 1: Implement the recommendations of the Review of Oversize Overmass Wind Farm Arrangements

The Queensland Transport and Logistics Council (**QTLC**) has published its Review of Oversize Overmass Wind Farm Arrangements report, setting out 12 recommendations for implementation to support the efficient movement of wind farm components across the state. Among the recommendations, the QTLC identified a series of reforms that could be achieved in the short-term to overcome the inefficiencies associated with getting wind farm components to site, including greater use of industry pilots to escort low risk OSOM moves to free up Queensland Police Service resources and remove the time and cost risk associated with cancelled police escorts. All 12 recommendations received the support of the Queensland Renewable Energy Council, which has urged the government implement the recommendations as a matter of urgency.

In addition to the QTLC recommendations, the government should consider whether the pre-approved routes and transport corridors for OSOM movements require road upgrades and vegetation clearing, and whether these works will have a significant impact on matters of national environmental significance. Where a significant impact is likely, the state may consider scoping the upgrade works required and referring the proposed action under the EPBC Act to ensure environmental approvals are in place to allow timely mobilisation.

Implementation

Implement recommendations 1 to 7 of the QTLC Review of Oversize Overmass Wind Farm Arrangements report, specifically:

- Establish pre-approved routes on major highways and exits from each of Queensland's port facilities that would enable project proponents to plan ahead and reduce impacts of OSOM movements to the community.
- Create transport corridors which are designed for oversize overmass movements through permanent power line lifting and removing the need for electrical escorts where lines have been permanently lifted.
- Use of industry pilots to escort low risk OSOM moves to free up Queensland Police Service resources and remove the time and cost risk associated with cancelled QPS escorts.

Work on the implementation of the balance of the recommendations of the Review should also be carried out over the longer-term to ensure outcomes are delivered in a timely manner.

Opportunity 2: Provide fast-track approvals for early investigative works (meteorological masts and geotechnical works) and exemptions for limited vegetation clearing

Early investigative works and vegetation clearing associated with early works often require planning and environmental approvals separate to the approvals required for the main project, resulting in duplication of assessment studies and concurrent assessment processes. An example is meteorological masts ('met masts'), which are used to assess the suitability of a site for wind farms. The installation of met masts usually constitutes a material change in use and building work for which development approval is required under the Planning Act. Planning approvals may also be required for vegetation clearing associated with early investigative works.

To address this, state and local governments could develop guidance on when an exemption certificate may be granted under section 46 of the Planning Act for certain early investigative works. This would enable early investigative works to be carried out without development approval in certain circumstances and promote consistency across local government areas.

Implementation

The State Government could initiate the development of planning guidance on exemption certificates for early investigative works associated with clean energy projects in conjunction with local governments, which are typically responsible for issuing exemption certificates. Removing the need to obtain development approvals for early investigative works, including vegetation clearing, will enable proponents to undertake feasibility and scoping studies in a timelier manner.

Opportunity 3: Allow 'relevant purpose' determinations under section 22A of the VMA to be considered concurrently with development applications

Development applications for operational works and material change of use that involve the clearing of vegetation require a 'relevant purpose' determination under section 22A of the VMA. Without a relevant purpose determination, the development application will be prohibited development. Obtaining a relevant purpose determination is leading to significant delays. In our experience, obtaining a relevant purpose determination can take up to six months.

Under the VMA, development is for a 'relevant purpose' if the chief executive is satisfied the development is for 'relevant infrastructure activities' and clearing for the development cannot reasonably be avoided or minimised. 'Relevant infrastructure activities' includes constructing and maintaining necessary 'built infrastructure', which in turn includes a building or other structure built or used or any purpose'. Section 22A is cumbersome and this soft lodgement process that must be complied with before a development application can be made has time and cost implications for renewable energy projects.

Implementation

Amend the Planning Act and regulation to clarify that a development application will not be taken to involve prohibited development if the proponent has applied for a 'relevant purpose' determination under section 22A and the application is still under consideration. This will enable the assessment processes to run concurrently, removing some of the time and cost risk associated with obtaining approvals under the VMA.

Alternatively, the Planning Department and the Department of Resources may issue operational policy on how proponents can utilise the pre-lodgement process (where the State is the assessment manager of a development proposal) to advance a section 22A application and ensure that the information provided as part of the development assessment process will meet the requirements for the Department of Resources to issue a 'relevant purpose' declaration without further surveys required. Having an operational policy in place de-risks the delay associated with lodging a section 22A application while engagement with the relevant departments occurs pre-lodgement. The operational policy can also address when a new section 22A declaration will be required to meet specific conditions of an EPBC Act approval.

Opportunity 4: Unlocking state land for renewable energy development

Conduct an audit of unallocated state land and assess whether the State can unlock land for renewable energy development. Consider whether there is capacity for certain clean energy projects (i.e., BESS) to be co-located on State land being used by government.

Implementation

The Department of Resources may conduct an audit of unallocated state land to identify land that may be suitable for renewable energy projects. Where suitable, the State can fast-track the process for acquiring an interest in state land

Opportunity 5: Strengthen social licence by establishing an 'expressions of interest' register for potential host lots

Hosting renewable energy projects can bring significant economic benefits to landholders by providing an additional, drought-proof income stream. By inviting interested landholders to register their interest, clean energy proponents can factor in landholder sentiment into early project development to ensure projects are sited in a manner which strengthens its social licence and delivers benefits to local communities. The Remote Area Planning and Development Board's Power Grid transmission line landholder expressions of interest is a good example of how it might operate.

Implementation

Establish an 'expressions of interests' register where landholders can register their interest in hosting renewable energy infrastructure and clean energy proponents can investigate potential sites for development based on willing landholder participants.

Opportunity 6: Fast-track the delivery of the in-flight REZs to give clean energy proponents and communities certainty with respect to future land use and demonstrate to the wider industry how the REZ will operate to facilitate clean energy development.

There is considerable interest in the renewable energy sector on how the REZs will optimise renewable energy development and deliver shared infrastructure to deliver power to the grid and cost-savings to proponents. Three of the identified REZs are 'in-flight', which means that planning has advanced under the

National Electricity Rules and a foundation project is in development.[11] The delivery of these REZs will demonstrate to the wider industry how the REZ will operate, giving certainty to proponents and investors about how the REZ will facilitate development.

Implementation

Take steps to encourage development in the REZs, and maximise the development potential of the REZs, including investigating REZ-wide EPBC Act referrals, coordinated and centralised environmental offset delivery, and whole-of-REZ indigenous land use agreement / Cultural Heritage Management Plan. Consideration should also be given to coordinated State approvals (e.g. through the use of State development areas) to streamline approvals for REZs.

9.4 Longer-term opportunities

We have also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

Fast-track approvals by state stewardship of Renewable Energy Zones	Renewable energy projects could be delivered sooner if the Queensland Government takes the lead on planning and environmental approvals and cultural heritage surveying in the REZ areas. This may involve declaring a State development area and preparing a development scheme that enables proponents to obtain a single state approval for individual project developments. The State would lead the EIA process and identify suitable and strategic environmental offsets that would be managed by the State, with contributions from individual project proponents proportionate to their impacts. The State could manage native title and cultural heritage at a REZ level by negotiating an indigenous land use agreement over REZ areas that proponents could operate under.
Develop assessment codes for renewable energy projects	Developing State codes and guidance notes for solar and BESS will provide certainty to proponents on performance outcomes and acceptable outcomes for clean energy developments. Having codes in place with clear outcomes will enable proponents to locate clean energy developments and design projects to optimise environmental outcomes. Finalise the review of State code 23 and planning guidance for wind farms, liaising with DCCEEW to understand how the state assessment may be improved to avoid duplication and better align the State code with DCCEEW's draft onshore wind farm guidance.

[11] Queensland Government, 'Queensland Renewable Energy Zone Roadmap' (March 2024) <https://www.hpw.qld.gov.au/__data/assets/pdf_file/0036/49599/REZ-roadmap-50745.pdf>

Centralised clean energy approvals	Consider whether clean energy project approvals should be centralised, given the imperative for the State to meet its renewable energy targets and net zero ambition. Difficulties associated with the current approach (where most clean energy projects are assessed by local governments) include: • Projects are usually located in regional and rural areas, where local governments may not have the necessary resources or technical experience on hand to assess large-scale renewable energy projects. • Some projects may intersect two local government areas, requiring two separate approvals from different local governments. • Inconsistency in assessment level, transparency over assessment processes and milestones, and outcomes.

10 Victoria

10.1 Current reform underway

Strategic planning

Work is currently being done to identify suitable areas for renewable energy generation and transmission projects in Victoria. The State Government has announced a process for undertaking strategic land use assessments that will inform declaration of REZs and this will be formalised through progress of the *National Electricity (Victoria) Amendment (VicGrid) Bill 2024* which is currently before Parliament. It is intended that the strategic land use assessment process will produce preferred envelopes and corridors for renewable energy generation and transmission projects, based on desktop impact assessment modelling. Further announcements regarding consequent reform to implement these matters are anticipated.

There is opportunity to leverage this process to ensure that these strategic assessments, the data gathered in those assessments, and any consultation undertaken as part of those assessments can be available to proponents and integrated into the assessment of projects.

Development Facilitation Program

Amendments to all Victorian Planning Schemes on 4 April 2024 included renewable energy and transmission, distribution and storage facilities as 'significant economic development' which may potentially be eligible for an accelerated planning pathway under the DFP. Under the DFP, a dedicated facilitation team within the Department of Transport and Planning can assess new or existing applications for planning permits and planning scheme amendments.

However, current policy is that the DFP is not available to projects that require an environment effects statement (**EES**) under the *Environment Effects Act 1978* (**EE Act**), although this is not a requirement of the planning scheme. There is clearly an opportunity for policy to clarify how major renewable projects can appropriately access the accelerated pathway, including when it may be appropriate to assess such projects through an Environment Report rather than a full EES.

There is also opportunity to ensure that assessment through the DFP pathway can be accredited for the purposes of the EPBC Act. Pursuant to the current bilateral agreement between the Victorian and Commonwealth governments under the EPBC Act, the assessment by the Minister of

a planning permit application through the DFP pathway corresponds to assessment by preliminary documentation under the EPBC Act. Where assessment by an inquiry is required for the purposes of the EPBC Act, assessment by an advisory committee appointed under the PE Act would be required in order for the DFP pathway to be accredited.

Although the reforms to the EPBC Act propose to replace the current bilateral agreement approach with new assessment arrangements and authorisation instruments, until these are in place, there is a need to ensure that State and Commonwealth assessments are coordinated effectively.

Public land legislation

The *Energy and Public Land Legislation Amendment (Enabling Offshore Wind Energy) Bill 2024* (Vic) is currently before Parliament, and will provide new mechanisms for renewable energy and transmission projects to access Victorian coastal waters and certain types of public land. It is understood that the Victorian Government is also considering broader reforms to public land legislation, with a proposal to replace the existing *Crown Land (Reserves) Act 1978, Forests Act 1958 and Land Act 1958)* with a new Public Land Act. Draft legislation has not yet been released for consultation, though is anticipated in the first half of 2024.

10.2 Key strengths and challenges

Based on our legal review of the Victorian planning framework and industry feedback, we identify the key strengths and challenges for renewable energy and transmission projects in the table below.

Key strengths	Key challenges
• Provides opportunity to coordinate public consultation and hearing processes for EES, planning approval and other key approvals. • Some scope for proportionate assessment and planning permit application material based on the type of project (e.g. wind energy facility versus solar energy facility). • Some scope for targeted environmental assessment through EES. • Permits allow for secondary approvals/consents to be obtained for aspects requiring detailed further assessment (e.g. approval of bat and bird management plans, vegetation removal plans, and construction management plans).	• Much of the environmental impact assessment process is a matter of convention and policy without formal timeframes which creates significant uncertainty and risk for proponents. • Uncertainty as to whether an EES referral or EES is required, resulting in proponents making referrals even if impacts are anticipated to not be significant. This creates an administrative burden on proponents and the State and results in delays. • If an EES is required, assessments and documentation required is often lengthy and complex, and at times not targeted to the relevant impacts of a particular project. • Policy framework for application of Environment Report rather than an EES remains unclear. • Limited ability to scope a project or program of works in stages for the purposes of assessment. • There is a lack of clarity on when or how subsequent impact assessment would be required for change in project scope. • EES assessment does not result in an approval nor provide clarity on the conditions of subsequent approvals.

	• Requires engagement with a number of government and regulatory authorities, with no formal coordination opportunity. • Based on current information, DFP is not available for projects that require an EES, which will exclude many major renewable energy and transmission projects. • If DFP applicable, timelines are policy-based only and may remain uncertain despite facilitation by program. • Permits provide lesser opportunity for performance-based requirements. • There is no ability for battery projects or other noise generating projects to enter into noise agreements that integrate into the environment projection regime. Currently, noise from battery systems and substations need to comply at all receptors, even if neighbour agreements for wind farm noise are in place. • For wind farms, involvement of an EPA accredited auditor regarding operational noise is required to make a planning permit application and at multiple further steps in development and operation. Further guidance from EPA Victoria is awaited regarding a number of technical matters. With an extremely small number of auditors currently undertaking this work, this creates a constraint both for new applications and a delay and uncertainty risk for projects in development or operation.

10.3 'Quick win' opportunities

Based on our review and industry feedback, we outline some key opportunities below that may provide 'quick wins' under the existing Victorian planning framework to facilitate major renewable energy projects.

Opportunity 7: Clarify policy on EES requirements

Clear policy and guidance for proponents and decision-makers to determine (1) when an EES is required; (2) when an Environment Report or other condition is required; and (3) when no EES is required would provide certainty, reduce administrative burden, and reduce delay and costs for all parties.

This would ideally include guidance on the subject matter and level of impact assessment appropriate or required for various types of projects for the purposes of a referral. Ideally, this would also include guidance that has regard to the extensive application requirements and template planning permit conditions for solar and wind energy facilities, and to the need for a prompt energy transition to protect Victoria's environmental values, while appropriately avoiding, mitigating and managing local impacts.

For example, an environment report may be the process followed (without a need for referral for assessment method determination) for projects located within a REZ and the potential significant impacts of which have been subject to strategic assessment or there is otherwise data available (through the proposed formal data sharing platform) that is relevant to those potential impacts.

Similar guidance on the preparation of scoping requirements and environment report conditions would also ensure that, if an EES or environment report is required, the assessments are targeted towards the key issues relevant to the particular project.

There is also opportunity to expressly provide for low-impact preparatory works to be subject to a separate scope to main project works, which would allow for these to be progressed in a timely manner.

Implementation

An update to the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* could be prepared by the Department of Transport and Planning to improve clarity and certainty.

Alternatively, a new guideline could be prepared under section 10 of the EE Act which applies specifically to renewable energy and transmission projects.

Opportunity 8: Improve guidance on common impacts to achieve consistency

The methodologies adopted by proponents to assess the various impacts may vary substantially. This not only risks inconsistency in assessment of impacts, but creates uncertainty for the community and decision makers as to the appropriateness of a particular assessment. This can result in opposition to projects based on disagreement with or misunderstanding of methodology without guidance on what is best practice, in turn resulting in delays.

Clear guidance on assessing key common project impacts, such as landscape and visual impact, developed with assistance from independent experts, could assist in addressing this.

Community concerns regarding noise from wind energy facilities are commonly faced by proponents. Noise limits under planning permits are established in the context of protection of amenity. These noise limits are the limits for the purposes of the *Planning and Environment Act 1987* and *Environment Protection Regulations 2021* and compliance with those noise limits is expressly stated to be a way of demonstrating compliance with the general environmental duty under the *Environment Protection Act 2017.* However, the risk of common law nuisance claims remains despite that compliance with limits set based on protection of amenity and risk to human health.

Further, noise from wind turbines is expressly regulated under the *Environment Protection Regulations 2021* with an ability to modify applicable noise limits by agreement with residents and is no longer subject to the nuisance provisions under the *Public Health and Wellbeing Act 2008.* However, other projects with the potential to generate noise, such as battery energy storage projects, remain regulated by both of those regimes plus the *Planning and Environment Act 1987* and are not able to modify those limits by agreement.

For newer facilities, post-construction noise assessments are required to be undertaken within 12 months of the commencement of operation. If facilities receive noise concerns prior to that testing being undertaken, proponents face difficulties in responding effectively to those concerns.

There remains a number of methodological issues which have not been addressed in technical noise assessment guidance provided by EPA Victoria. Despite most wind farm planning permits and the *Environment Protection Regulations* requiring developers and operators to obtain advice of EPA-accredited auditors at each stage of noise assessment, to our knowledge there are only two such auditors currently accepting wind farm noise assessment work and both are extremely busy. The level of challenge to wind farm work of acoustic consultants and auditors in Victoria makes it difficult to envisage that it is an attractive area of work, which risks this skill-set becoming less and less available.

Implementation

Guidelines could be prepared by the Department of Transport and Planning, in consultation with suitably qualified experts, proponents, and the community, to be used in assessments of planning permit applications and under the EE Act. Subject matters for new guidelines could include:

- Landscape and visual amenity impact assessments;
- Blade shadow flicker assessments (to replace the guidance in the Draft national Wind Farm Development Guidelines, July 2010);
- Application of a 'high amenity' noise limit in developing wind energy facilities, including having regard to the Victorian Civil and Administrative Tribunal decision of Cherry Tree Wind Farm v Mitchell Shire Council[12] and the New Zealand Standard 6808:2010.

Although the regulatory framework governing noise from wind turbines in Victoria has recently been reformed, further reform of the *Environment Protection Regulations 2021* or supplementary guidance from the EPA could provide further explanation of the contents of noise management plans and how noise is to be assessed to achieve greater consistency in the industry. Reform could also provide for how concerns may be responded to prior to post-construction noise monitoring being completed.

EPA could also work with industry to provide greater training and encourage suitable auditor candidates to take up work in this space. Regulatory amendment to provide protection to an auditor's view (absent manifest incompetence) may also provide comfort.

Further guidance or ability to have neighbour agreements relating to noise from substations and battery storage systems could also be considered.

Opportunity 9: Facilitate streamlined planning approvals and targeted conditions

Obtain certainty as to eligibility of renewable projects that require an EES for DFP, or a link to Environment Reports. Clarify or update accreditation arrangements where DFP is applicable for the purposes of EPBC Act assessments.

Alternatively or additionally, consider a single and clear planning assessment and approval process for renewable energy and transmission projects that do require an EES-level of assessment. This process should be responsive, proportionate, and targeted to the risks of the various types of projects, including having regard to the outcomes of strategic assessments.

Performance-based conditions on approvals granted through this mechanism could also allow approvals to be granted based on a reference design, avoiding the delays associated with detailed design and assessment of that detailed design occurring prior to approvals being granted.

Legislate assessment and decision-making timeframes. Timelines for assessment and decision making should be established in regulations made under the relevant Acts for certainty, rather than remaining as policy-based guidelines.

Implementation

Guidelines under the EE Act, as discussed above.

New legislation to provide a clear assessment and approval pathway for all approvals for a renewable energy project that does require an EES-level assessment.

In future when REZ are declared, a planning scheme amendment could be prepared to replace the existing renewable energy facility and wind energy facility provisions of the Victorian Planning Provisions to provide a specific approval pathway and mechanism for those projects within a REZ, reflecting the desktop assessment that has underpinned the REZ declaration and the positive policy preference for energy generation, storage and transmission projects to be located in this area.

Any reforms should be supported by legislation of assessment and decision-making timeframes.

[12] *Cherry Tree Wind Farm Pty Ltd v Mitchell SC & Ors* (Includes Summary) (Red Dot) [2013] VCAT 521.

Opportunity 10: Facilitate staged CHMPs

Guidance on preparing and approving CHMPs in stages in accordance with the stages of the larger activity would achieve greater consistency in the way major projects are delivered. This would be particularly useful for linear components of activities.

Guidance could also include how a CHMP could approve a project at concept level and permit a scope of preliminary works, or preliminary works in certain non-sensitive areas, while detailed investigation of sensitive areas continues would facilitate the timely delivery of projects. This could include the relevant decision making criteria for the project and the types of conditions that may be attached to the project approval.

Implementation

First Peoples – State Relations could prepare guidelines on how a CHMP could provide for management conditions that may be complied with on a staged basis, how each stage should be described by reference to a part of the 'activity area' and component of the 'activity'.

Guidelines could address preparation and approval of a CHMP based on a 'reference design', that is, an approval in principle that a project can commence, with further detailed surveys to be done at a later date, potentially in accordance with specified milestones. The application of this approach could be limited to projects within a REZ.

10.4 Longer-term opportunities

We have also considered reform opportunities that may be considered as longer-term goals for government, industry and proponents. A selection of the key goals discussed with industry bodies and clean energy proponents is below.

A new streamlined assessment and approvals process	This might involve declaration of projects that meet certain criteria and application of the streamlined process to declared projects. A streamlined assessment and approvals process could remove some of the duplication across the existing framework and provide for a single governing instrument, assessment process, and approval. This would reduce regulatory burden and risk of disjointed or inconsistent adoption of recommendations and conditions across multiple approvals, or of issues being raised in secondary approvals. This could also provide for a single authority with appropriate expertise and resources to be responsible for assessment, approvals, and compliance matters.
Land access for investigations and surveys and for operational phase	A statutory process enabling proponents of declared projects to access land for a limited scope of survey and investigation activities would facilitate early investigations necessary to

	undertake technical and impact assessment and inform layout, design and impact avoidance and mitigation measures. This could include provision for entitlement of affected landowners to compensation and could, for example, require compliance with the Essential Services Commission Code of Practice for Land Access (2024). Land access provisions should also be included which apply to operational phase as well as investigation and construction phases.
Guidelines for renewable energy projects under the FFG Act	Section 4A of the FFG Act could be reformed to provide clear and strong support for renewable energy and transmission projects and acknowledgement that some impact on flora and fauna may be accepted, and clarifying the approvals decisions to which the FFG Act obligations apply.

For more information, please contact us.

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