CLIFFORD CHANCE

ENERGY & INFRA UPDATES

OCTOBER 2024

What's new in APAC's Energy Transition?
The latest energy and infrastructure updates

1. **New carbon market infrastructure will make it easier to hold and trade carbon credits and units**

2. **Be prepared for significant reforms to construction payment practices in Victoria**

3. **Next round of Capacity Investment Scheme tenders will support investment in dispatchable capacity projects**

4. **New royalty deferral scheme in NSW aims to incentivise investment in critical minerals and high-tech metals**

5. **Broader energy transition round-up**

1 New carbon market infrastructure will make it easier to hold and trade carbon credits and units

Key takeaway

The Clean Energy Regulator ("CER") is seeking input on new carbon market infrastructure to support the holding and trading of Australian carbon credit units ("ACCUs"), Safeguard Mechanism credit units ("SMCs"), large-scale generation certificates ("LGCs") and small-scale technology certificates ("STCs"). This should enhance market liquidity, transparency and access through a proposed exchange trading model and make it easier for investors to hold and trade these products.

Key details

The new infrastructure is proposed to include a modernised Unit and Certificate Registry which will replace the Australian National Registry of Emissions Units and connect with other platforms and exchanges. This should facilitate greater investor access and trading in carbon and environmental markets.

Carbon markets will continue to play an important role in the energy transition and companies will be incentivised to continue to reduce emissions, invest in onsite carbon abatement and either generate or source these products from the market to offset residual emissions.

We expect this demand will be accelerated by mandatory climate risk disclosure reporting and market based accounting which will hold companies accountable for informing the public and the market on their exposure to climate related financial risks and opportunities – read our prior briefing on this topic here.

Stakeholders are invited to provide feedback during a consultation period which will remain open until 22 November 2024 with virtual consultation sessions running throughout October and November 2024.

2 Be prepared for significant reforms to construction payment practices in Victoria

Key takeaway

The Victorian Government has endorsed significant reforms to the *Building and Construction Industry Security of Payment Act 2002* (Vic) ("SOPA") following a parliamentary inquiry into payment practices in the construction industry. It is important for private capital investors to be prepared for these reforms given the potential implications for their energy and infrastructure investments.

Key details

The Victorian government has broadly supported the 28 recommendations by the Legislative Assembly Environment and Planning Committee aiming to align Victoria's SOPA with other jurisdictions, particularly Western Australia.

These recommendations are intended to tackle the 'systemic poor payment and other contracting practices' within Australia's building and construction industry which has allowed financial risk to 'cascade' down the construction contracting chain – and include:

- in the context of the definition of 'business day', a new 'blackout' period from 22 December to 10 January inclusive which will allow a break during the Christmas shutdown;
- a new provision which allows an adjudicator, court, arbitrator or other expert to declare a notice-based time bar clause to be 'unfair' if compliance is not reasonably possible or would be unreasonably onerous;
- a new provision which prohibits unfair construction contractual clauses;
- amendments that extend the time limit on claiming payment to six months; and
- amendments that impose maximum time limits on payment terms to be no more than 25 business days after the payment claim has been made.

3 Next round of Capacity Investment Scheme tenders will support investment in dispatchable capacity projects

Key takeaway

The next round of Capacity Investment Scheme ("CIS") tenders under the federal government's CIS is expected to open on 13 November 2024 and support investment by private capital into dispatchable capacity projects in the National Electricity Market ("NEM"). It contains a specific First Nations eligibility criterion as part of the merits criteria which we expect will be a key focus for government in this and future CIS tender rounds.

Key details

This latest CIS tender round (CIS Tender 3 – NEM – Dispatchable Capacity) is seeking an indicative target of 4GW of 4 hour equivalent dispatchable capacity or 16 GWh projects in the NEM.

Projects with a minimum storage duration of 2 hours are expected to be eligible subject to satisfying the broader eligibility criteria. The target commercial operations date for projects that form part of the CIS Tender 3 is 31 December 2029, albeit an earlier date with milestones that are contractually enforceable will be more favourably viewed.

The proposed eligibility criteria for the CIS Tender 3 includes:

- Contribution to system reliability and system benefits: This criterion will be used to assess the impact that each project may have on the electricity system including reliability and its ability to provide essential system services and/or contribute to system strength; and
- First Nations engagement: A new First Nations eligibility criterion will be introduced pursuant to which proponents must (amongst other things) warrant that they have not previously breached any First Nations cultural heritage, environmental and racial discrimination protection laws. Projects will be attributed higher merit scores under the First Nations merit criteria where they (amongst other things) fund programs to help First Nations people enter the workforce and meet the federal government's indigenous procurement policy targets. For tenders in 2026, a minimum MW allocation will be set aside for projects that have put in place First Nations equity and revenue sharing agreements.

Registrations will open on 13 November 2024 with the bid closing dates for Stage A and Stage B in December 2024 and March 2025 respectively, and successful bids expected to be announced around Q3 2025.

4 New royalty deferral scheme in NSW aims to incentivise investment in critical minerals and high-tech metals

Key takeaway

The NSW Government released the NSW Critical Minerals and High-Tech Metals Strategy 2024–2035 (the “Strategy”) on 18 October 2024. Key actions to deliver the Strategy include the implementation of a A$250m royalty deferral scheme for new critical minerals projects from 1 July 2025.

Key details

The Strategy aims to establish NSW as a leader in critical minerals and high-tech metals through exploration, mining, processing, recycling and advanced manufacturing. It identifies cobalt, copper, rare earth elements, scandium and silver, as priority metals, which are highlighted as key to NSW’s contribution to the global energy transition and advanced manufacturing.

The A$250m royalty deferral scheme for new critical minerals projects which will be effective from 1 July 2025 aims to improve cashflow and investment feasibility for projects during the critical early years of operation, making it easier for them to secure finance from investors, free up capital and move forward to final investment decisions, allowing projects to move into production. Guidelines and eligibility criteria for the scheme are expected to be made available soon.

The release of the Strategy occurs against a backdrop of a rapid increase in global demand for critical mineral resources, driven by global investment in renewable energy, electric vehicles and other advanced technologies.

5 Broader energy transition round-up

Australia: Government support for sustainable aviation fuel

The federal and Queensland state governments are partnering to support a new sustainable aviation fuel ("SAF") project in Townsville which will convert ethanol (a byproduct from agricultural waste) into jet fuel. Key investors in the project include Qantas, Airbus and Idemitsu Kosan.

Australia: New renewable hydrogen strategy released in Western Australia

The state government launched an updated Western Australian Renewable Hydrogen Strategy 2024-2030 on 25 October 2025. With over 30 current and planned hydrogen projects in WA, the action plan through to 2030 includes targeted support for strategically important projects in green ammonia, green metals, and minerals processing as well as investment in infrastructure and activation of hydrogen hubs and increasing clarity and efficiency of approvals.

Singapore: International carbon credits ("ICCs") initiatives extension

Singapore's eligibility list for ICCs published by Singapore's Ministry of Sustainability and the Environment and National Environment Agency sets out the eligible ICCs that an entity may use to offset 5% of its taxable emissions under Singapore's carbon tax, which was introduced on 1 January 2019. Read our prior briefing on this topic here for further details.

South Korea: Revised bid guidelines reinforce opportunities for offshore wind projects

The government has announced revised bid guidelines to select wind power developers for 2024, with target allocations of 300 MW for onshore wind and 1,500 MW for offshore wind including 1,000 MW of offshore fixed and 500 MW of floating installations, each with different price caps. The government has also recently announced plans to implement new legislation to streamline the permitting process for large-scale offshore wind farms and identify development sites to reduce development time and risks.

KEY CONTACTS

Australia

Nadia Kalic
Partner, Corporate
Global Co-Head of
Energy & Resources
Sydney
T: +61 2 8922 8095
E: nadia.kalic@
cliffordchance.com

Chad Bochan
Partner, GFM
Sydney
T: +61 2 8922 8501
E: chad.bochan@
cliffordchance.com

Elizabeth Richmond
Partner, Antitrust
Sydney
T: +61299478011
E: elizabeth.richmond@
cliffordchance.com

Cameron Hassall
Partner, APAC Head of L&DR
Sydney
T: +852 2825 8902
E: cameron.hassall@
cliffordchance.com

Robert Tang
Partner, L&DR
Sydney
T: +61 2 8922 8502
E: robert.tang@
cliffordchance.com

Sunny Jong
Counsel, GFM
Sydney
T: +61 2 8922 8030
E: sunny.jong@
cliffordchance.com

Mark Grime
Counsel, Antitrust
Sydney
T: +61 2 8922 8072
E: mark.grime@
cliffordchance.com

Emily Yung
Senior Associate, Corporate
Sydney
T: +61 2 8922 8507
E: emily.yung@
cliffordchance.com

Spencer Flay
Partner, L&DR
Perth
T: +61 8 9262 5554
E: spencer.flay@
cliffordchance.com

Mark Gillgren
Partner, GFM
Perth
T: +61 8 9262 5543
E: mark.gillgren@
cliffordchance.com

Pat Saraceni
Director, L&DR
Perth
T: +61 2 9262 5524
E: pat.saraceni@
cliffordchance.com

Kristian Maley
Counsel, L&DR
Perth
T: +61 2 9262 5582
E: kristian.maley@
cliffordchance.com

Please contact us for an introduction to our broader APAC energy transition team.

Key contributors this month:
William Lucas (Associate, Corporate, Sydney); Jae-Ho Kim (Associate, Corporate, Sydney); Chantelle Masters (Associate, Corporate, Sydney); Georgina Clarke (Trainee, Sydney); Isabelle Ellerker (Trainee, Sydney); Sophia Ramaer (Trainee, Sydney); and Callum Florance (Trainee, Sydney).