WOTTON KEARNEY

July 2025

Australia's Energy Transition: Legal trends in Renewable Energy Projects

Disputes

Introduction

Australia is undergoing a profound transformation in its energy sector, underpinned by a national commitment to achieving net zero greenhouse gas emissions by 2050. As part of this goal, the country has set a clear interim target of reducing emissions by 65-75% (below 2005 levels) by 2035. This ambitious pathway will require a sustained, large-scale shift in energy generation, storage, and transmission infrastructure across all jurisdictions.

Australia is already regarded as a global leader in the uptake of renewable energy, supported by its natural endowment of solar and wind resources and a strong policy and investment environment. In 2024 alone, over $9 billion was invested into clean energy, a record that reflects the rising pace of Australia's energy transition.

This is not just a national agenda. Individual states and territories are also setting bold goals. For instance, South Australia aims to achieve 100% net renewable electricity generation by 2027, while Victoria is targeting net zero by 2045. Across the country, governments are accelerating Renewable Energy Zones (**REZs**), green hydrogen hubs, and battery storage investments to drive the transition.

Achieving these targets will require continued growth in renewable energy projects spanning wind, solar, hydroelectric, hydrogen, and large-scale batteries. As these projects scale in volume and complexity, a corresponding rise in legal disputes, across both contractual and tortious domains, is increasingly likely. Insurers, developers, and consultants must prepare for a growing and evolving risk landscape.

This document is the first in a four-part series exploring the legal trends and risks shaping this transition around renewable energy projects – starting with the increasing volume and complexity of disputes.

Contacts

Marcus Saw
Partner

+61 3 9116 7827
marcus.saw@wottonkearney.com

Tobias Campbell
Associate

+61 2 8273 9838
tobias.campbell@wottonkearney.com

Project complexity will drive future disputes

Renewable energy projects exist at the intersection of rapidly evolving technologies, large-scale infrastructure investment, and multi-tiered regulatory frameworks. This convergence introduces a high level of legal, commercial, and technical complexity, a trend that will only increase as the energy transition gathers pace.

Disputes in this space rarely arise from a single issue. They are often the result of cumulative, interrelated challenges across planning approvals, project financing, construction delivery, and environmental compliance.

These projects typically involve a wide range of stakeholders, including:

Multiple levels of government: From Commonwealth climate policy settings to state-based planning approvals and local government engagement

Design and construct contractors and installers: Responsible for the physical delivery of infrastructure

Subject-matter technical consultants: Involved in engineering design, feasibility, grid studies and energy modelling

Manufacturers and suppliers: Particularly for turbines, solar panels, battery systems, and hydrogen infrastructure

Traditional Owners and private landowners: Especially where projects are located on culturally significant or private land

Financiers: Including banks, infrastructure funds, and global institutional investors

Insurers and their insureds: Covering professional indemnity, construction risk, cyber, and other lines.

Standard contractual structures used in the delivery of these projects include:

Engineer, Procure and Construct (EPC) Contracts: Which typically require the contractor to deliver a fully operational facility, assuming significant design and performance risk

Operation and Maintenance (O&M) Agreements: Which govern how the facility is operated, maintained, and optimised over time post-completion.

As more projects move from construction to operation, disputes under both EPC and O&M arrangements are expected to rise. These may involve disagreements over defect rectification, commissioning delays, plant performance guarantees, and compliance with evolving regulatory standards.

Disputes are emerging, and broadening

Disputes in the renewable sector have already begun to emerge, particularly in relation to wind energy projects. However, as the range of technologies deployed continues to expand, so too will the nature and scope of the disputes.

We expect a steady increase in disputes involving:

Solar farms: Especially in relation to module quality, yield performance, degradation rates and cleaning/ maintenance obligations

Green hydrogen infrastructure: Where questions of scalability, storage safety, and gas blending compatibility are likely to feature

Grid-scale batteries: Where fire risk, energy throughput guarantees, and cooling systems may become flashpoints.

The types of disputes will also diversify. In addition to standard contract and tort-based claims, disputes may arise under:

Australian Consumer Law: Particularly in relation to misleading or deceptive conduct claims

Planning and environmental legislation: Including approvals compliance, offsets, and community consultation obligations

Security of payment legislation: Where construction disputes become entangled in staged progress payment issues.

Key risk areas include:

Design, construction or installation failures: Where the technology delivered does not meet specified performance outcomes or grid requirements

Incorrect or inadequate advice: From consultants or project partners, particularly in feasibility modelling, yield forecasts, or emissions abatement claims

Interference with land or amenity: Such as nuisance claims from neighbouring landowners over wind turbine noise or visual impact

Allegations of greenwashing: Where developers or operators overstate environmental benefits or fail to meet sustainability claims

Grid connection delays: Which can result in project commissioning blowouts and exposure to liquidated damages under EPC or power purchase agreements.

Compounding these issues is the fact that many renewable technologies are still evolving. This means the pool of qualified subject-matter experts may be small, and expert evidence in disputes may be contested and expensive.

Consultant liability is under increasing scrutiny

Consultants play a central role in renewable energy projects, from design and feasibility through to compliance and stakeholder engagement. As such, they are increasingly drawn into disputes, particularly where project outcomes do not align with expectations or where delays or failures result in commercial losses.

Key consultant roles that carry exposure include:

Project managers: Who must ensure works are completed in accordance with applicable codes and timelines. Programme slippage or poor oversight can result in significant claims, particularly if delay damages or refinancing costs are triggered.

Technical and engineering consultants: Responsible for designing energy systems and certifying their compliance. Design deficiencies, whether in turbine layout, inverter configuration, or grid integration, can have large commercial impacts due to defect rectification, reduced performance, or lost revenue.

PPA consultants: Those who advise on energy market trends and pricing. Errors in pricing projections, tender process design, or assumptions about future market conditions may result in serious downstream financial exposure.

Environmental consultants: Those whose work includes Environmental Impact Assessments (**EIA**), planning reports, community engagement and ensuring compliance with environmental obligations. Failure to properly consult, assess impacts or develop appropriate mitigation plans can delay projects or expose proponents to regulatory enforcement and legal challenge.

As the sector matures, consultant exposure is likely to increase, particularly where professional indemnity insurance is in place and significant damages are claimed.

Arbitration will play a growing role in dispute resolution

While court proceedings remain a common avenue for dispute resolution in the energy sector, arbitration is becoming increasingly favoured, particularly in large-scale or cross-border renewable energy projects.

Arbitration offers several benefits in this context:

Speed and efficiency: Particularly where specialist tribunals or agreed procedural rules are adopted

Privacy and confidentiality: Which can be critical for commercially sensitive disputes involving project finance, insurance or IP

Enforceability: Especially in cross-border contexts where international investors, insurers, or suppliers are involved and arbitration awards are easier to enforce than court judgments.

We expect to see an increase in arbitration clauses in renewable energy contracts, particularly where global financiers or EPC contractors are involved.

Case studies

Recent cases in Australia and the UK offer insight into the kinds of disputes that are already surfacing, and those likely to grow in future.

Uren v Bald Hills Wind Farm Pty Ltd [2022] VSC 145

A landmark nuisance claim brought by neighbours of a wind farm. Plaintiffs alleged sleep disturbance and amenity loss due to turbine noise. The Court awarded damages and granted injunctive relief, ordering the operator to abate the noise. Importantly, the Court noted that nuisance could exist even where noise levels did not exceed regulatory thresholds, suggesting greater scrutiny of compliance alone as a defence.

Goyder Wind Farm 1 Pty Ltd v GE Renewable Energy Australia Pty Ltd & Ors [2025] SASCA 39

A dispute under the SA Security of Payment Act involving multiple payment claims for similar project delays. The principal argued the contractor was estopped from making overlapping claims. The Court of Appeal rejected that argument, holding that the factual bases of the claims were sufficiently distinct that the estoppel did not apply.

Toucan Energy Holdings Ltd & Anor v Wirsol Energy Limited & Ors [2021] EWHC 895 (UK)

A UK decision involving widespread defect claims across 19 solar parks. The claims, including £30m in “blight” and refinancing losses, were mostly dismissed (save for fairly various minor claims mainly concerning defects). However, the developer succeeded almost entirely on a £6.4m counterclaim for lease extension fees. The case illustrates the potential scale of disputes and the difficulty in proving long-term loss projections in renewable asset portfolios.

These examples underscore the growing variety and complexity of renewable project disputes, from nuisance and contractual claims to payment and loss allocation issues.

Conclusion

Navigating the next phase of energy transition risk

As Australia accelerates its path toward net zero, investment in renewable energy projects is surging, alongside a corresponding rise in legal disputes, insurance exposure, and delivery risks.

Insurers, consultants, developers, and regulators should be prepared for:

- A growing number of disputes involving novel and evolving technologies,
- A broader range of stakeholders and risk interfaces,
- A rise in complex, multi-party proceedings, and
- An increasing reliance on highly technical expert evidence.

To mitigate these emerging risks, it will be critical to:

- Draft contracts that clearly allocate risk, incorporate effective dispute resolution mechanisms (including arbitration), and include robust force majeure clauses,
- Engage with stakeholders early and transparently to address concerns before they escalate,
- Ensure insurance coverage is comprehensive and responsive to evolving project and professional liability exposures, and
- Stay ahead of changing regulatory requirements and litigation trends.

Among continuing developments, we anticipate several areas of heightened legal risk:

Decommissioning disputes: Legal challenges involving the retirement of traditional energy infrastructure are likely to persist as decommissioning obligations increase in line with net zero commitments.

Nuisance claims: These will remain a significant commercial risk, particularly for wind farms, due to the focus on impacts to property use, rather than compliance with planning approvals or construction standards.

Complex arbitration: Arbitrations are expected to become more technically complex, and their cost advantages over litigation may diminish. They will be most effective in cross-border contracts, non-multiparty disputes, or where a technical arbitrator is preferred.

Consultant liability: Expert consultants will continue to play a key role in renewable project development but face heightened exposure to misleading and deceptive conduct claims under the Australian Consumer Law, especially regarding performance representations.

The transition is well underway, and so too is the shift in legal and commercial risk. Stakeholders in renewable energy projects must remain alert to these developments and respond with proactive governance, clear contracts, and tailored insurance coverage.

WOTTON KEARNEY

Australia

Adelaide

Level 1, 25 Grenfell Street
Adelaide, SA 5000
+61 8 8473 8000

Brisbane

Level 21, 71 Eagle Street
Brisbane, QLD 4000
+61 7 3236 8700

Canberra

Suite 4.01, 17 Moore Street
Canberra, ACT 2601
+61 2 5114 2300

Melbourne

Level 30, 500 Bourke Street
Melbourne, VIC 3000
+61 3 9604 7900

Perth

Level 49, 108 St Georges Terrace
Perth, WA 6000
+61 8 9222 6900

Sydney

Level 9, Grosvenor Place
225 George Street
Sydney, NSW 2000
+61 8 9222 6900

New Zealand

Auckland

Levle 8, 21 Queen Street
Auckland 1010
+64 9 377 1854

Christchurch

203/237 High Street
Christchurch 8011
+64 3 667 4003

Wellington

Level 12, 342 Lambton Quay
Wellington 6011
+64 4 499 5589

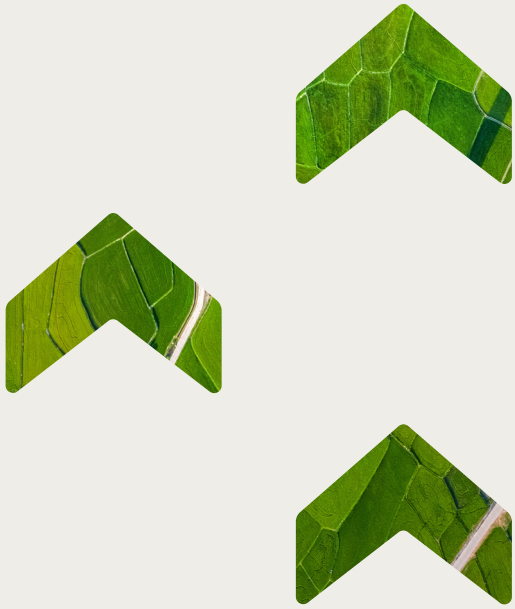
Asia

Singapore

138 Market Street
05-01, CapitaGreen
Singapore, 048956
+65 6967 6460

Thailand

Suite 1105-6Level 11, 540 Mercury TowerPloenchit Road, Lumpini,
Pathumwan, Bangkok 10330
+66 65 846 5823



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