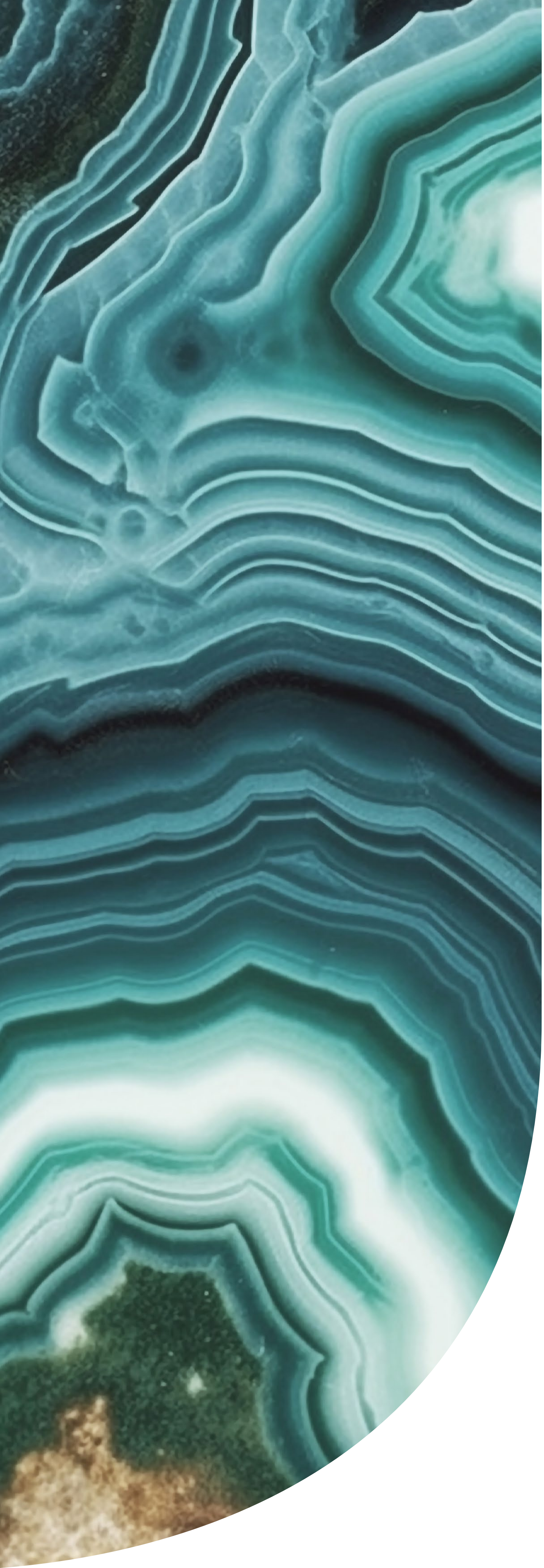
CLAYTON UTZ

Net Zero Exceptionalism

Accelerating foreign investment in Australia's energy transition

MARCH 2024



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About this report

Net Zero Exceptionalism: Accelerating foreign investment in Australia's energy transition is written by Australian leading law firm Clayton Utz in partnership with The Action Exchange, a thought leadership and stakeholder engagement agency.

This report explores the emergence of a new attitude of exceptionalism in Australian policy, regulatory and investment settings, which aim to facilitate the speedy development of energy transition infrastructure. It focuses on the perspectives of global investors and businesses assessing these opportunities in the Australian market.

The report examines whether the efforts to make Australian energy transition deals more attractive to offshore capital are proving effective, and if not, what might help to commit more green capital down under.

Clayton Utz and The Action Exchange thank the following people who were interviewed for this research:

- **Paul David,** Head of New Initiatives, Infrastructure Debt Asia Pacific, Allianz Capital Partners
- **Andy Haining,** Managing Director and Co-Head of Asia Pacific, John Laing Investments
- **Stephen Kirchner,** Senior Economist, Business Council of Australia
- **Jean-Étienne Leroux,** Managing Director Infrastructure and Managing Director Australia, Caisse de dépôt et placement du Québec
- **Nicolas Lucas,** Lead Portfolio Manager, Infrastructure Credit, Allianz Global Investors
- **Monique Miller,** Chief Investment Officer, Renewables and Sustainable Finance, Clean Energy Finance Corporation
- **Emily Scivetti,** Chief Operating Officer, Oceanex
- **Tony Schultz,** Managing Director, North Harbour Clean Energy
- **Tony Wood,** Energy and Climate Change Program Director, Grattan Institute.

We acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders, past and present.

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Executive Summary

'Net zero exceptionalism' describes the special case made by Australian governments, regulators and industry to support or expedite decisions that will enable energy transition and decarbonisation projects. In the past 12 months, this new attitude has facilitated new tranches of funding, incentivised private investment, enabled regulatory approvals and given rise to policies that lag in other sectors of the economy. Net zero exceptionalism has seen emissions reduction trump other investment considerations like competition.

At a time when capital and supply constraints are thwarting Australian infrastructure projects, making the case for net zero exceptionalism is increasingly important to mobilise the international capital and resources needed to accelerate the country's energy transition.

This shift should be good news for investors looking for net zero opportunities in Australia. It indicates a progression from nebulous targets and promises to tangible policy implementation designed to create an investment-enabling environment on the ground.

The huge volume of global private capital earmarked for energy transition opportunities in an otherwise dour fundraising market is itself an iteration of net zero exceptionalism.

Despite being ready to deploy capital, international investors and developers face barriers to closing energy transition deals in Australia that do not hamper domestic investors. For some, Australia's Foreign Direct Investment pendulum has swung too far against them. Yet, at the same time, others see the path to final investment decisions (FID) being smoothed by new Commonwealth and State initiatives.

Either way, the debate about funding Australia's energy transition is often preoccupied with domestic concerns. Government policies, targets, announcements and spending promises are coming thick and fast. Yet, their impact on investor thinking in a global market, where every economy is racing to decarbonise at the same time, receives far less attention.

This report explores the convergence of these trends, examining the impact of net zero exceptionalist market signals on international private capital decision-making and the investment process into Australia. It examines how the energy transition is changing the relationship between public and private infrastructure funders, and argues that meeting Australia's net zero targets depends on ensuring today's exceptionalism is here to stay for the long-term.

Key Findings

The energy transition is a bright spot in a tough global investment environment. Decarbonisation-related investments are holding strong in the face of higher capital costs and geopolitical uncertainty, yet in Australia, capital deployment into decarbonisation opportunities is nevertheless insufficient.

Emerging net zero exceptionalism is good news for international capital. Australian policymakers, regulators and industry are rapidly shifting their actions to create an enabling environment for private capital investment into Australia's energy transition.

Investing in Australia isn't without challenges. Foreign investors face hurdles to deploying capital in Australia, but developing a strong understanding of Australia's energy transition landscape can help.

Australia has an opportunity to learn from other countries in the same boat. Australia is not unique in struggling with foreign investment rules, supply chain constraints, higher capital costs and skilled labour shortages. These factors hamper energy transition efforts globally. But applying net zero exceptionalist approaches to these areas too could help Australia compete.

The transition is only just beginning. Australia is ramping up financial and policy support for the transition and investors can expect a clearer path to realising returns.

Regulators care about climate, too. Investment approvals are no longer only decided on the grounds of security and competition.

No time to waste. Stakeholder opposition to new infrastructure projects is on the rise, but streamlining approvals will put the transition on track.

The energy transition is changing public-private partnerships. Australia has several government-sponsored programs, including the Clean Energy Finance Corporation–the world's largest green bank–that are successfully incentivising private investment by providing up-front capital and reducing risk.

Introduction

Australia has historically built its wealth-generating industries using foreign investment. Foreign Direct Investment (FDI) inflows underpinned the growth of industrial capacity in coal, iron ore and natural gas. As these emissions intensive energy and industrial sectors look to go green, the country has an immediate need to mobilise foreign capital to build infrastructure at scale for its low carbon energy transition.

To date, Australia has been agnostic about the origins of the capital it needs for the energy transition. In his speech to the Melbourne Institute in November 2023, Australian Treasurer Jim Chalmers set the government's ambition at incentivising A$225 billion of investment into low-emissions energy and industry.[1] Whether these funds come from domestic or international investors, the consensus is that public funds are insufficient to meet the scale of the transition.

Higher borrowing costs, inflationary pressures and geopolitical tensions have added to the challenge. Constrained public infrastructure budgets have forced the Australian government to trim its pipeline of infrastructure commitments.[2] Facing a double whammy of growing urgency to meet emissions reduction goals and rising costs, Commonwealth and State treasuries will need more private capital to cement Australia's energy transition infrastructure.

From private equity and debt, to venture capital, pension and sovereign wealth funds, as well as corporate foreign direct investment, international private capital is hungry for green investment opportunities that align with its long-term investment horizon. Australian energy transition infrastructure seems like a natural fit. But, in recent years, offshore investors have reported feeling a cold shoulder from Australia, even those from long-standing trading partners like the United States, Canada and Korea.

For the first time since the 1980s Australia has become a net exporter rather than importer of capital. This is in part due to the record size of superannuation funds looking to diversify investments internationally.[3] However some economists and commentators worry that capital inflows are being hampered by mounting regulatory factors and fewer bankable projects on the ground.

Recognising these challenges, Australian governments, regulators and industry have begun to accelerate their efforts to mobilise private capital toward the energy transition. Incentives, announcements and approvals appear to be creating a case for 'net zero exceptionalism' designed to facilitate both domestic and inbound foreign investment. In this regard, the FDI attractiveness pendulum may be swinging back in offshore investors favour.

> "Considering the mandate for capital to accelerate decarbonisation in Australia, in addition to infrastructure more broadly, there is a need for greater foreign investment across the full spectrum of government priorities, including renewable energy, transmission and infrastructure."
>
> Jean-Étienne Leroux, Managing Director Infrastructure and Managing Director, CDPQ Australia

Prospective investors are watching these developments closely. Many global investors and asset managers with large exposures to renewables in Asia, the US, the European Union, and Latin America are now actively weighing up opportunities further afield, and Australia is seen as a strong emerging market. "We are on a path to be a global player, and the next step for us is Asia Pacific, and a big part of that is Australia," says Paul David, Head of New Initiatives, Infrastructure Debt Asia Pacific at Allianz Capital Partners. "If we can bring foreign capital that wouldn't otherwise be going there, that would be a win-win for us and Australia."

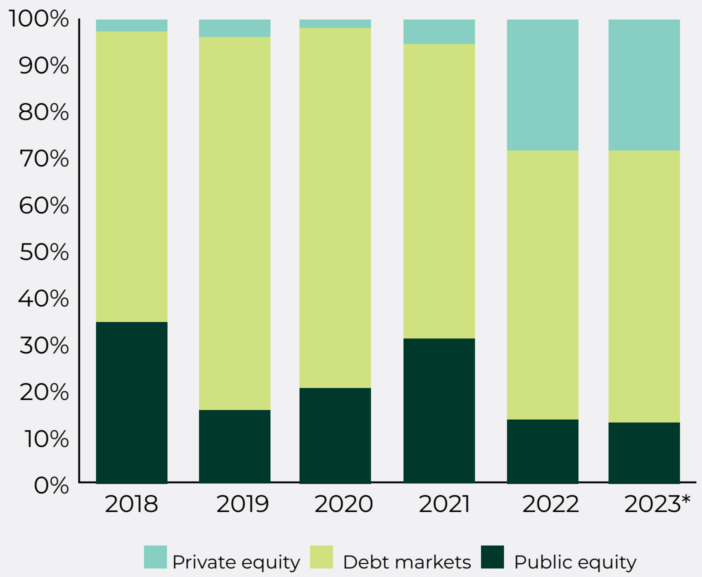
Mr David, who is in the process of assessing whether there is a business case for the firm to invest in Australia's decarbonisation transition, says that any potential investment decision will rely on several factors, including the availability and suitability of assets. But it will ultimately be decided by long-term investment potential. "One set of factors that can be challenging for foreign investors investing in a new jurisdiction are regulatory and tax issues. If we feel the barriers are too high and the Australian government just isn't that committed to the future, then I guess my recommendation is we don't try to open up activities," he adds.

The question for Australia's energy transition and its potential overseas funders is how government and industry will pivot and incentivise them to commit.

Australia’s FDI pendulum

Globally, competition to attract international capital into the energy transition is heating up. According to the International Energy Agency, between 2020 to June 2023, governments around the world allocated US$1.34 trillion to clean energy investment support.[4] Subsidies like those offered under the United States Inflation Reduction Act and the European Green Deal have proven a big draw. Investors eager to capitalise on the transition opportunity and decarbonise their portfolios are funnelling capital into energy transition infrastructure faster than ever. According to S&P Global, combined public and private investment in the energy transition has almost doubled since 2020, and in the United States and Europe, it is private markets that are leading the charge. (See Figure 1)

Figure 1. Private capital flooding into energy transition investments[5]



* YTD through August.
Sources: S&P Global Commodity Insights; S&P Global Market Intelligence.
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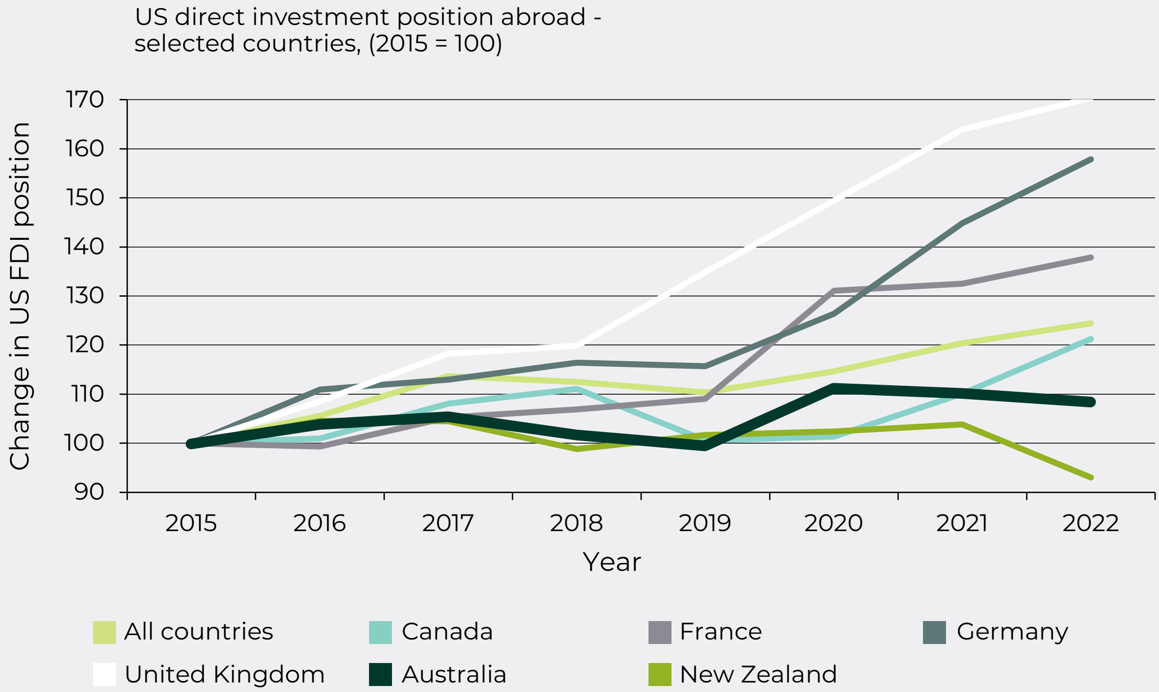
S&P Global
Commodity Insights

Concurrently, investor appetite for infrastructure assets has risen in the face of variable economic conditions. Private equity investors appreciate the ongoing, steady returns pegged to inflation that infrastructure assets offer during market volatility.[6] BlackRock, among a chorus of international heavyweights, has expressed great enthusiasm for the convergence of infrastructure and decarbonisation, eyeing opportunities in electrification and energy storage.[7] The longer-term nature of energy transition investment suits private capital,[8] with global FDI in renewable energy investments up more than 40% since 2019[9].

But Australia's ability to attract that foreign capital has come into question. The country has dropped down FDI league tables, falling from 7th in 2021 to 10th in 2023 on Kearney's FDI Confidence Index, an annual survey of big business' investment intentions.[10] Unsurprisingly, those higher up the index—like the US, Germany, France and the United Kingdom—were the largest recipients of inward energy transition investment.

And while Australia's overall FDI inflows remain strong, investment from the country's biggest source of foreign capital, the United States, has dropped (see Figure 2). In a 2021 report, the American Chamber of Commerce in Australia described "a growing perception among US dealmakers that Australia does not welcome investment or is not an easy place to do business".[11] While these sentiments may not be ubiquitous, they don't bode well for Australia's attractiveness as a destination for green funds.

Figure 2. Australia falls out of US investor favour[12]



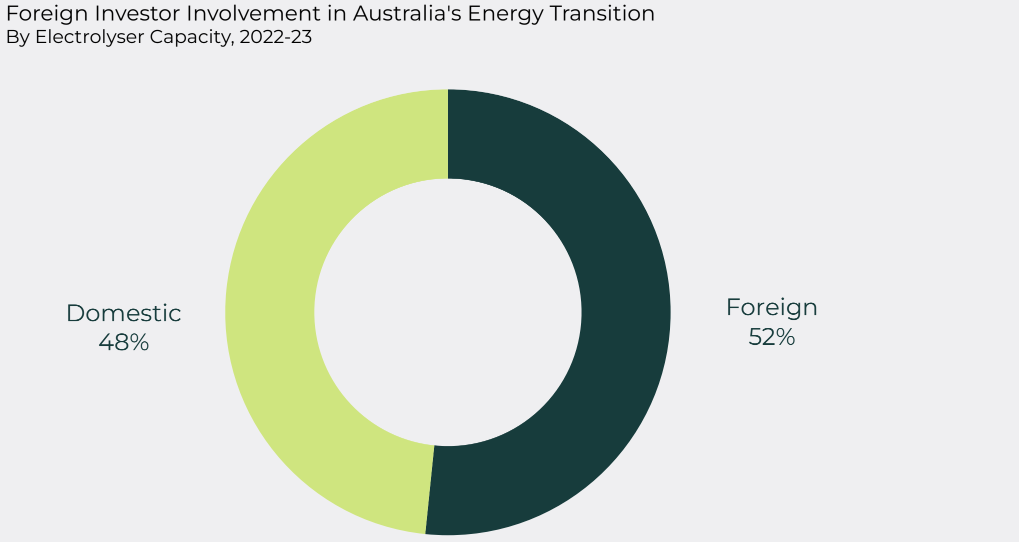
Source: US BEA, 2023

Since becoming a net exporter of foreign capital,[13] commentators have suggested Australia counterbalance the decline in US investment by directing more of its domestic funds toward the transition. Proposals include tapping further into superannuation funds and incentivising domestic banks to finance the energy transition. But fiduciaries like super, with a regulatory requirement to produce a return for their members, can only allocate so much of their investments to capital intensive projects that carry significant construction risks. The Your Super Your Money benchmarking requirements further restrict investment in such projects.

"Energy transition assets are by nature greenfield assets. They have to be built, which carries a longer-term risk element before investors start seeing any return," says Marcus Davenport, an Infrastructure Partner at Clayton Utz. "Once those projects are built and at a steady state of operation, then pension funds and superannuation style investments have more appetite to come in and generate returns for their members without the delay associated with construction time periods."

Australia must remain attractive to offshore capital to compensate, and foreign investors were responsible for delivering over half of the country's completed renewable energy generation and storage projects (by capacity) from 2022-2023 (see Figure 3).[14] If Australia hopes to hit its targets of 43% emissions reduction and 82% renewable energy generation by 2030,[15] foreign capital will need to play an even greater role.

Figure 3. Offshore investor involvement in Australia's energy transition[16]



Source: Clean Energy Council Project Tracker, 2023

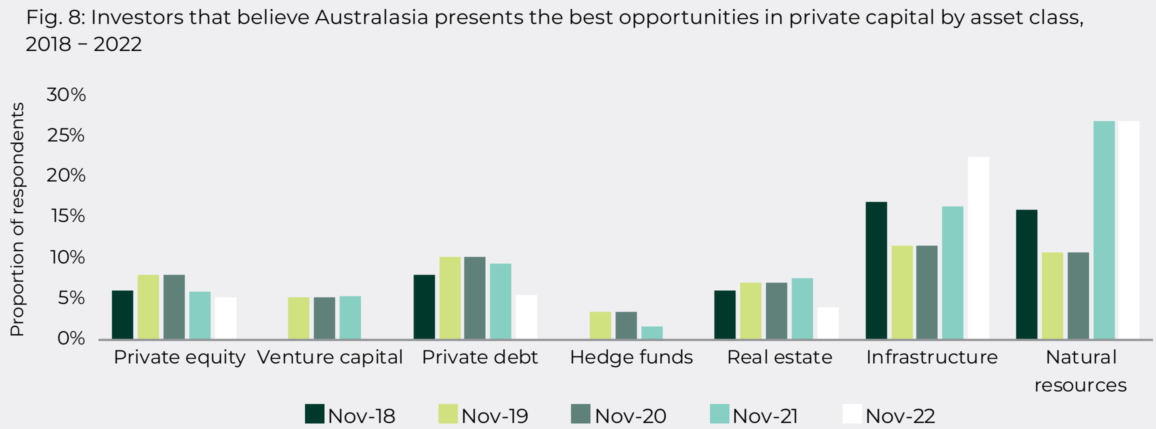
Growing appetite for Australian green assets

While Australia's ranking on overall FDI league tables may be wavering, the country is doing comparatively better at attracting investment into energy transition assets. Net zero infrastructure is considered a promising emerging market opportunity among international investors.[17] A 2023 Preqin survey for the Australian Investment Council found that infrastructure and natural resources were Australia's most attractive asset classes.[18]

This optimism is also evident in EY's 2023 Renewable Energy Country Attractiveness Index, where Australia ranks fourth for investment opportunities, up from sixth in 2022.[19]

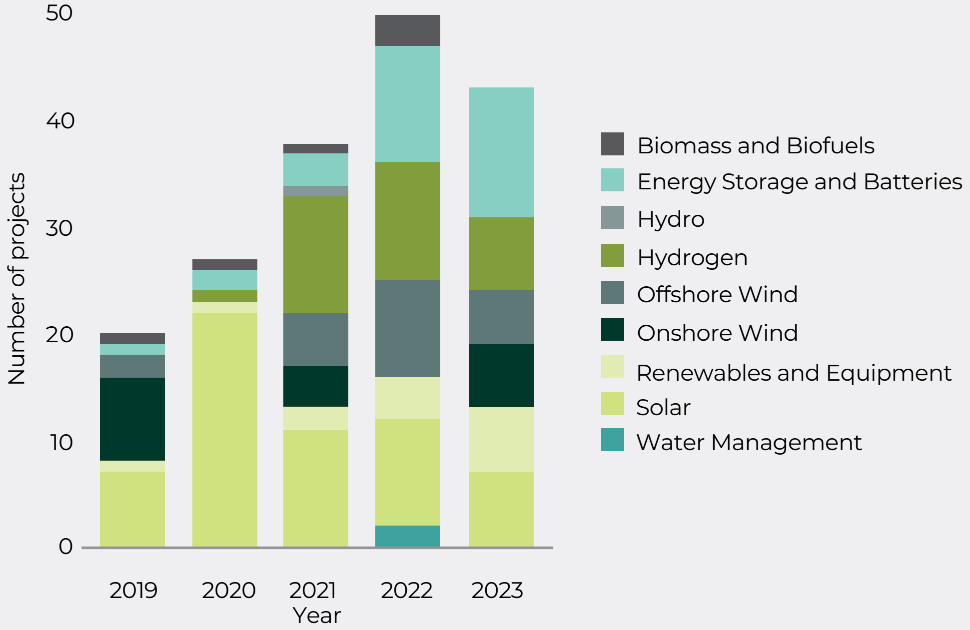
Momentum reflects this, with the number of foreign-funded energy transition projects in Australia more than doubling between 2019 to 2022, before slowing slightly in 2023.[21]

Figure 4. Investors looking to Australian infrastructure and natural resources for opportunities[20]



Source: Preqin Investor Surveys, Nov 2018 – Nov 2022

Figure 5. FDI project count in the Australian energy transition by sector[22]



Source: GlobalData FDI Projects Database 2024

Monique Miller, Chief Investment Officer at the Clean Energy Finance Corporate (CEFC), Australia's 'green bank', says "foreign investment has always underpinned development across the Australian economy and we continue to see that in the clean energy transition. Offshore investment is playing a significant role in backing Australian renewable generation and energy storage, and we're now seeing private sector interest in our massive grid transformation". She notes that while offshore energy transition investors have historically been European, the CEFC is increasingly seeing more capital coming to Australia from Southeast Asia. "A lot of the recent activity has come out of the energy majors in Asian countries, such as Malaysia's Petronas and Thailand's Ratch with its big renewables portfolio in Australia. Another, ACEN Corporation headquartered in the Philippines, has a huge amount of gigawatts under development in Australia as well," says Ms Miller.

The world's second largest institutional investor in renewables, the Canadian pension fund Caisse de Depot de Placement du Quebec (CDPQ), also intends to double its A$7 billion allocation in Australian infrastructure within five years.

The fund has "a strategic interest in the significant opportunity around decarbonisation as well as for greenfield opportunities in the social and critical infrastructure sector," says Jean-Étienne Leroux, Managing Director of Infrastructure and Managing Director of CDPQ Australia. "Certainly, the appetite for us to do more in decarbonisation and energy transition remains," adds Mr Leroux.

> "Our job is to draw in much needed capital as we try to achieve the cheapest overall energy transition for the Australian consumer."
>
> Monique Miller, Chief Investment Officer, Clean Energy Finance Corporation

"CDPQ is keen to support the ambitious policy agenda set by the Australian Government on critical issues–most notably the energy transition. Foreign investment in Australia is an important enabler to help deliver on these key government priorities and CDPQ is committed to working in partnership with the Australian government to deliver long-term investments for generations to come."

Jean-Étienne Leroux, Managing Director Infrastructure and Managing Director, CDPQ Australia

Case study
International capital creates a swell in Australian offshore wind

Despite the absence of government targets and investor concerns about uncertain regulatory parameters for offshore wind energy, the Star of the South attracted international capital for its multi-gigawatt scale offshore wind project in 2022. Copenhagen Infrastructure Partners bought a stake in the company, followed shortly by domestic super fund CBUS and Norwegian energy giant Equinor. "CBUS is the only Australian super fund to take up a stakeholding in a very early phase project in offshore wind. It's very bold of them to have made that move," says Emily Scivetti, Chief Operating Officer of Oceanex, an offshore wind developer run by the founders of Star of the South.

Oceanex expects it will need to spend A$300 million to get the first of its A$10 billion plus projects to Final Investment Decision (FID). "These are big dollars just to get to the commercial license phase," says Scivetti, "but offshore oil and gas investors and developers understand the upfront investment, risk profile and payoff period of projects of this scale and complexity. Even in the absence of declared areas, they see Australia as a very attractive emerging market. Everyone should pay attention".

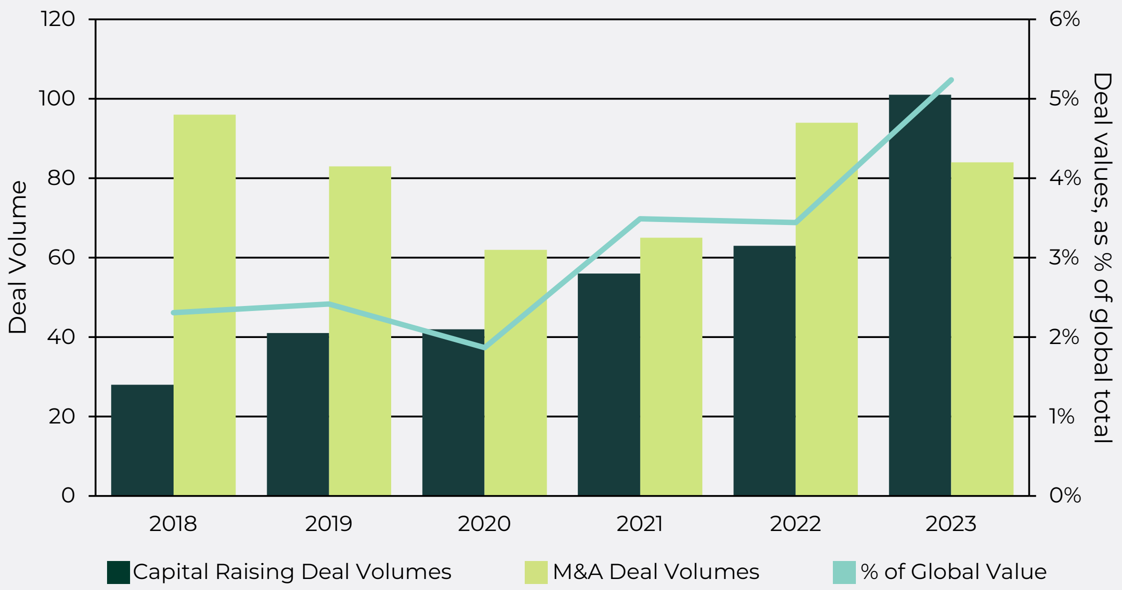
Energy transition infrastructure is the bright spark in a tough fundraising environment

The appetite for investment in energy transition infrastructure held even as other asset classes struggled in 2023. "Whilst capital raising was difficult globally in 2023", explains Andy Haining, Managing Director and Co-head of APAC at John Laing Investments, "there seems to be a significant trend in terms of capital being raised for deployment into the energy transition."

Canada-based Brookfield Asset Management proved this with its September 2023 announcement that it had raised the world's largest energy transition fund of US$15 billion.[23] Three months later, the firm announced it had raised another US$28 billion—its biggest fund to date—for infrastructure assets including low carbon projects.[24]

Private investors have been particularly active in this space. Capital raised in clean and climate tech-related sectors increased from US$63.64bn in 2018 to $266.32bn globally in 2023, according to Global Data.[25] In Australia, private capital raised in these sectors rose from $631.5m in 2018 to $ 5.86bn in 2023, more than doubling Australia's position in the global market.

Figure 6. Private investment in clean and climate tech[26]



Source: GlobalData 2024

Such large sums may buoy decarbonisation advocates, but much of the private capital earmarked for energy transition investments is yet to be deployed. "That's the more difficult bit, particularly outside of traditional wind and solar generation" says Mr Haining.

Tapping international green capital

If all signs point to Australia being an attractive destination for the bountiful private capital looking for energy transition infrastructure opportunities, what's the hold-up?

According to international investors, regulatory delays and taxation measures are continuing challenges that impede capital deployment. These guardrails are in place for good reason.

Yet, according to international investors, a more level playing field could speed up the pace of investment.

"For the past five to six years, domestic investors have had an advantage over foreign investors in some of the regulatory settings," says Brendon Lamers, Tax Partner at Clayton Utz. "Partnering with domestic investors can help moderate this, but most local capital is over-invested in the Australian market and looking offshore to reduce its concentration risk."

The "domestic focus" of Australia's regulatory and tax settings also adds to "the impression of complexity" for foreign investors, according to the Financial Services Council.[27]

Timing issues aside, for capital intensive energy transition developments, tax and capitalisation rules can make or break deals. "Australia's tax rates are the highest among developed countries for investors like us," says Mr Leroux. "From a competitiveness standpoint, higher tax means that Australia, relative to other jurisdictions, is less attractive on a risk return adjusted basis."

Mr David says Australia's 10 per cent withholding tax on foreign investors may "make it uneconomic" for Allianz Capital Partners to invest. "There are some safe harbours that avoid this tax, so we will have to make sure we can navigate these before we decide that we will go ahead with our strategy, but they're quite hard to navigate," he says. Allianz Senior Director, Nicolas Lucas, adds that other jurisdictions like the United Kingdom exempt eligible international investors from withholding tax which "makes it much easier when you have a simple regime".

Australia's Foreign Investment Review Board (FIRB) process is also cited as a drag on energy transition investment timelines. Some investors have found the process has become increasingly lengthy, repetitive and expensive. "As a foreign investor, we can lose the agility that is required to complete a transaction" warns Mr Leroux.

Some Triple A-rated investors that regularly undergo FIRB and ACCC approvals have suggested Australia consider a fast track or pre-approval function to speed up capital deployment in priority areas like decarbonisation. Echoing this, the Australian Government's 2023 Southeast Asia economic strategy, developed by ex-Macquarie Bank CEO Nicholas Moore, recommends Australia create a 'concierge service' to help investors navigate the FDI regime.[28]

Others believe regulatory and tax issues are not the real problem. "FIRB and tax are just day-to-day issues that need to be worked through," says Tony Schultz, Managing Director of North Harbour Clean Energy and former Australian Managing Director of KKR. "I don't think these issues have directly caused a lack of investment in Australia." Instead, Mr Schultz believes that the nature of the decisions investors make about energy transition infrastructure opportunities are vastly more complex and fluid than typical infrastructure investing has been in the past. "The changes will have profound impacts on the way we produce and consume energy," says Mr Schultz.

"Availability of capital isn't the problem. A well thought through and well packaged investment will be in high demand," he says. "The problem is preparing the investment for that capital. This is much more complex than investing in, for example, a power station with a long-term power purchase agreement (PPA) has been historically."

CEFC's Ms Miller agrees, observing that the international investors who have been most successful are those "that have built a really strong technical and grid expertise on the ground in Australia. It's a very different process here than in other parts of the world."

Mobilising energy transition resources is a global dilemma

> "Australia has a window of opportunity to be relevant to the international investor market and that window will close if we don't act fast enough by giving strong signals that we are ready to deploy. And part of those signals is removing barriers."
>
> Emily Scivetti, COO, Oceanex Energy

Some offshore investors are less concerned about foreign investment hurdles for Australian energy transition infrastructure and are instead focused on overcoming the structural and workforce challenges created by a difficult global macroeconomic environment. The capital is available but deploying it has become harder as resource constraints impact project delivery capability.

Higher interest rates, for example, have made capital intensive infrastructure loans more expensive to service, while inflation has increased labour and equipment costs, which in turn has created supply chain bottlenecks and labour shortages. Delays in securing planning approvals, especially for transmission infrastructure for new generating assets like wind and solar, are also dragging out project timelines and impacting the economics of investments.

Domestic commentators, concerned about the delays, question Australia's ability to deliver. Analysis by Infrastructure Partnerships Australia points to a slow-down in project delivery performance and concerns about the "market hitting a delivery ceiling".[29]

Yet increasing costs, competition and securing planning approval are also proving challenging for Australia's 'capital competitors' in the global race to decarbonise. This is apparent in the United States where, according to S&P Global, a patchwork of federal and state regulations is causing delays in permits and project development and creating queues for renewable energy transmission connections.[30] Inflationary pressures on construction costs are also eating up even the most generous green subsidies.[31]

Australia is also not alone in raising the bar on its foreign investment regime. Other jurisdictions including Singapore, the United Kingdom and the EU have similarly announced plans to ratchet up their investment screening.[32]

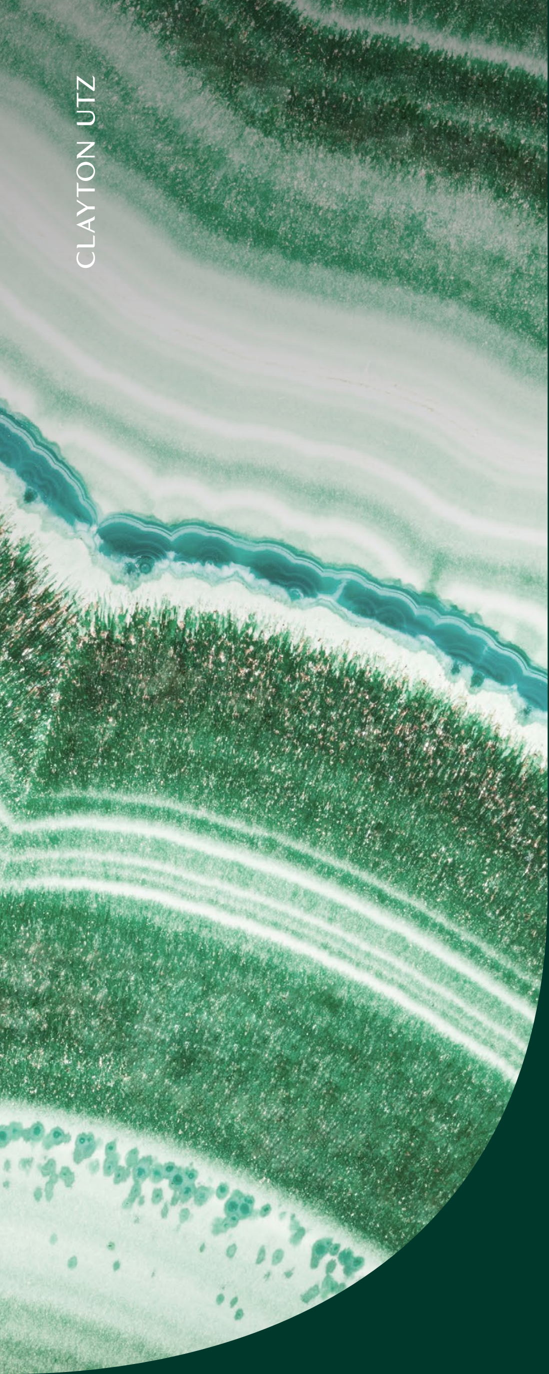
How to move up the queue

Adding to the economic challenges, Australia is in competition with the rest of the world for energy transition equipment and skills. In its draft 2024 strategy, the Australian Energy Market Operator observed the enormous volume of demand being created by government spending on energy transition in the US, EU, South Korea, Japan, Canada, China and India. AEMO's strategy notes that "the whole world is competing for the same investment, equipment and engineering skills".

> "Make no mistake, this is already a global race and access to supply chains is a really big challenge. There is fierce global competition for equipment and services."
>
> Tony Schultz, Managing Director, North Harbour Clean Energy

"The lead times for equipment are significant–and at unprecedented levels," explains Mr Leroux. "You can order a piece of equipment today, such as a large transformer or synchronous condenser–critical to connecting renewable sources of energy to the grid–but you would not expect your equipment to land in your backyard for a good two years or more."

Mr Haining says the story is the same for any transitioning country. "When I speak to colleagues in other parts of the world, they have the same issues around skilled labour and availability of materials, especially in the greenfield space." He notes that government announcements are a "really helpful" signal to encourage global suppliers to send their best people to Australia. Ms Scivetti agrees and suggests that Commonwealth and State governments could give Australian offshore wind developers a boost in securing their place in supplier production slots by setting generation targets. In doing so, they would signal to global contractors and suppliers that Australia is committed to the sector.



An emerging case of net zero exceptionalism

To compete for capital and resources for the energy transition, Australian governments have recently accelerated efforts to create an enabling environment for investment deployment. Moving from lip service about "Australia welcomes foreign investment in renewables," to action. Commonwealth and State governments are rapidly rolling out policies and incentives designed to incentivise private capital in the sector. Regulatory decisions are being moderated by net zero exceptionalism with emissions reduction trumping other concerns such as competition.

Investors report a clearer pathway being laid by government. This is beginning to make Australia more attractive to overseas investors and companies. "The announcements that have been made are giving confidence, and I don't think those have been around in the past," says Allianz's Mr David "If the other issues like tax can be navigated… I'd say this appears to be an environment that's encouraging new investment."

Clayton Utz's Mr Davenport says that there is now a clearer mandate at the Commonwealth level which, from a sovereign risk perspective, means investors can see that the government is willing to make it happen. "That's a big step," he says.

While investors welcome the changes, some still caution that Australia's energy transition could use more clarity and consistency that would indicate a long-term directional shift. "Being bold and being clear about policy is really important," says Mr Haining. "As investors, we take a very long-term view and want to be able to deliver new projects that are well structured and resilient in today's environment of inflation and base rate movements." North Harbour Clean Energy's Tony Schultz agrees, saying "The changes are a huge step forward, but the next step, one that the government really needs to start taking, is one of concrete action and delivering on some of the announcements."

A catalogue of government programs, policies and positions designed to enable Australia's energy transition.

Incentivising investor commitment

Outside of regulation, the Australian government is also taking steps to address some of the broader economic barriers to investment. Among other changes, amendments to existing policies aim to balance energy transition infrastructure investment risks and facilitate FIDs. "In response to fluctuating energy prices creating revenue uncertainty for investors, the Australian government has scaled up its contract for difference model in its Capacity Investment Scheme," notes Brett Cohen, an Energy and Resources Partner with Clayton Utz in Perth.

The Capacity Investment Scheme (CIS) provides revenue underwriting for new power generation and storage projects to set floors and ceilings to reduce some of the risk for investors.[33] "Although it doesn't completely de-risk a project, it does provide a stable environment and gives more certainty than before".

Mr Cohen notes that international investors are benefiting from the support the federal government's A$19bn Rewiring the Nation program provides in bridging the cost gap in transmission projects connecting renewables to the grid.[34] The Western Australian State government is similarly committing over $700m to upgrade WA's main electricity network to unlock renewables opportunities.[35] "This is not only helpful, it's critical," says CDPQ's Mr Leroux, "because the regulatory regime at the moment would not provide sufficient return for the huge amount of investment required to decarbonise the Australian electricity grid." Although these policies don't specifically target foreign investors, they can smooth the path to FID.

Regulators move rapidly to facilitate the transition

Claire Smith, Clayton Utz's Environment Practice Leader, says further momentum across Australia's investment landscape is evident as the country makes strides to embed sustainable finance taxonomies and regulations in 2024. "Australia's Green Bond Framework was released in December 2023 and mandatory climate-related financial disclosures are expected to commence in July 2024," Ms Smith says. "Combined with the Sustainable Finance Strategy, these reforms are putting Australia back into the global race among leaders like the EU and UK, which already have frameworks for sustainability disclosures and investment product classifications. A lot is happening this year."

Arguably regulators are moving faster, and more favourably, on energy transition decisions than on decisions in other sectors. "Relative to what we're seeing elsewhere, it's very impressive," says Oceanex's Emily Scivetti, in response to the Commonwealth government declaring priority areas for offshore wind development. "Compliments to the government and department for mobilising quite quickly— but we can still act faster," she says.

Although Brookfield Asset Management's bid to takeover Origin Energy was rejected by shareholders, the Australian Competition and Consumer Commission made a landmark decision when it initially approved the Canadian's proposed takeover on grounds that "the acquisition will likely result in an accelerated roll-out of renewable energy generation." The decision saw climate considerations trump competition concerns for the first time.[36]

One area that regulators' commitment to net zero exceptionalism is being tested is in planning approvals. Community support or opposition to developments is nothing new for the infrastructure community that views securing social licence for their operations as an important part of the job. But tensions around energy transition trade-offs are heating up. Clayton Utz Brisbane Partner, Stuart MacGregor says "we are seeing more stakeholder objections than say five or ten years ago to some large renewable projects, whether they are for wind, solar or battery storage." If governments are going to meet their energy transition timetables, they will have to speed up decisions and double down on their exceptionalist perspective.

Does government certainty translate?

While some investors view government announcements as a positive signal, not everyone is convinced. Hands-on government policies, such as the Capacity Investment Scheme, can "spook investors" and slow down their momentum, says the Grattan Institute's Energy Program Director, Tony Wood. "In some ways, a government power purchase agreement or contract for difference, whilst it provides more certainty and bankability for a relatively small company, does the opposite for a large one that would be happy to take more risk and get more return for taking that risk," he says. He expects the dust will settle and investors will have more clarity when the first options under the CIS are taken up by the second quarter of 2024.

Recent history further illustrates the importance of policy consistency. In the early 2000s, government incentives for the development of Australian renewable energy were not extended once initial targets had been reached. Investment promptly stalled and the market contracted. "This time it's more sustainable and all governments appear more committed," says Mr Davenport. "There is more certainty for investment and a pipeline. The signals are better than they were."

The changing nature of energy infrastructure partnerships

The surge of interest in energy transition investments is changing the nature of infrastructure investing, and in particular, the relationship between public and private market participants. A closer partnership model is emerging between government, offshore investors, domestic capital and developers in the energy transition. Public dollars intended to offset risk and accelerate progress have changed investor perceptions, notably those in private equity, from seeing government just as a regulator to that of a dealmaking partner.[37] This is the case across the country with state governments increasingly eager to secure private capital for their energy transition projects, says Clayton Utz's Stuart MacGregor, "Queensland and Victorian governments are both very active in teaming up with private capital," he says.

The expanding remit of Australia's Clean Energy Finance Corporation is an indicator that this trend is here to stay. CEFC's Monique Miller explains that "state and federal governments understand that to do this transition quickly, you need all hands on deck. Just sitting around waiting for the private sector to do it themselves isn't going to do it, you need everyone in the room working together."

The CEFC aims to "crowd in" private capital for Australia's transition by building market confidence and, where necessary, providing some flexibility on risk return to get projects across the line, says Ms Miller. It seems the crowd is assembling. Last financial year the CEFC reported record financial leverage of $5.02 in private capital for every $1 of CEFC capital invested. This took CEFC's lifetime leverage to $2.82 of private capital for every $1 of CEFC capital invested in energy transition opportunities.[38]

Government signalling long-term commitment

Rather than limiting their role to de-risking investments or setting the rules for energy markets, the Grattan Institute's Tony Wood points out that Australian state governments are increasingly entering those markets themselves. In late 2023, Victoria re-established its state-owned electricity commission to use co-investment with private capital to speed up the state's transition.[39] Other international jurisdictions are also renationalising infrastructure to speed up the connection of renewable energy generation. In late 2023 the UK government passed legislation enabling it to nationalise the electricity grid operator.[40]

Case study
Partnerships creating a Bright future

Deal formation in this new world of partnerships is key, says Clayton Utz tax partner Brendon Lamers. “There are incredible opportunities down here. Our role is finding new ways to structure these deals to work around some of the challenges,” he says. “Often the opportunity is in partnering with local capital, and we see this more and more.”

Bright Energy Investment (BEI Group) is a good example of a closer relationship between government and private capital facilitating offshore investment. BEI Group is a partnership between European investor DIF Capital Partners, Australian super fund CBUS and Synergy, West Australia's state-owned energy generator and retailer. Since 2018, the company has delivered over 250MWs of renewable energy across its wind and solar projects.[41]

“For international investors, being in a partnership with government backing like that serves as a good indicator that they will be able to expect stable, long-term revenue,” says Clayton Utz’ Mr Cohen. BEI Group is structured as a Managed Investment Trust (MIT),[42] reducing its foreign partners' withholding tax rate from 30% to 15%. According to Mr Cohen, it is preferable to have different types of capital funding these kinds of projects.“A mix of investors–offshore, domestic, public and private–helps diversify the risks,” he says.

With offshore capital poised to invest, Australian state and federal governments are taking a timely step toward building confidence and commitment in Australia’s energy transition future. This longer-term outlook is precisely what investors want to see. Mr David from Allianz Capital Partners, a firm with long-duration insurance and pension capital, has noticed that the Australian market has largely been financed with short-term debt from banks. “Ten years is considered long-term in discussions I’ve had in the Australian market,” says Mr David. “I hear people say that 15 years could be really good. I think, okay we can do that, but what about 30 years?... 10 years is at the shorter end of what we do, we are quite comfortable going longer. This is where foreign investors like ourselves may have something to add.”

Meeting Australia’s energy transition targets hinges on how effectively government and industry incentivise offshore private capital. This requires continuing recent efforts to create a more amenable environment for international investors and clearly demonstrating Australia’s commitment to the sector.

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