

AEBN & MinterEllison: Webinar

A legal perspective on
environmental compliance changes
within the Commonwealth, WA,
TAS, ACT, NT, and QLD

March 2022

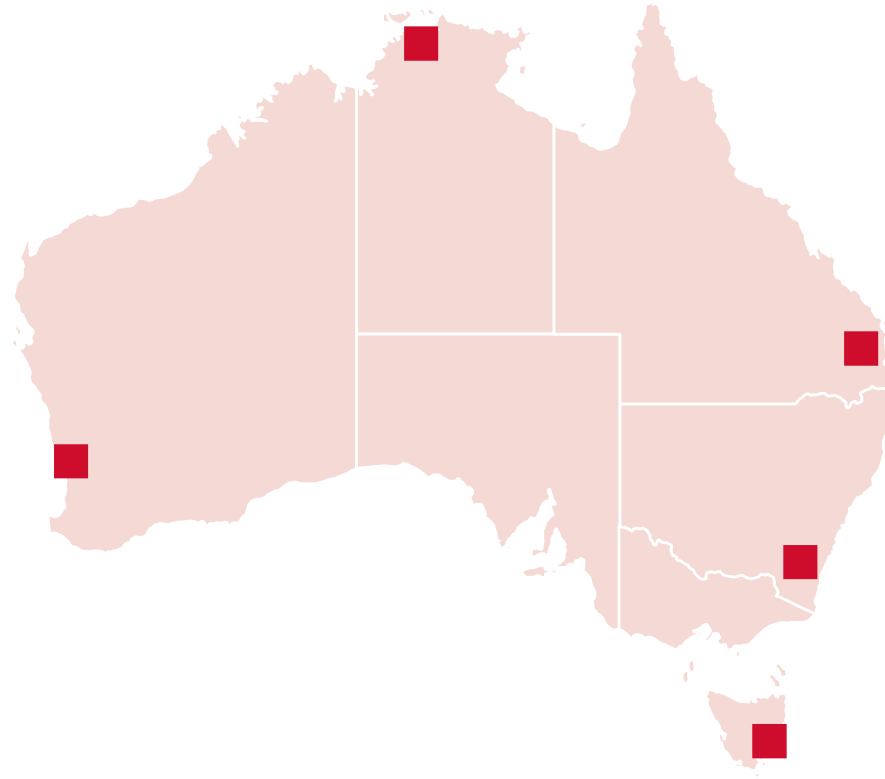
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Overview

Key updates:

1. Commonwealth
2. Western Australia
3. Tasmania
4. Northern Territory
5. Australian Capital Territory
6. Queensland



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Commonwealth



EPBC Act

Reforms Following the Graeme Samuel Report

- The Graeme Samuel Report was tabled in Parliament on 28 January 2021 after its public release in October 2020.
- The Report concluded the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* requires significant reform, and it identified a total 38 recommendations. The Australian Government has released a proposed timeline in accordance with some of its key recommendations.
- Currently, the Government is undertaking Stage 2 of its priority reform delivery. Its focus is on implementing **single touch approvals** underpinned by protections through **national environmental standards**.

Independent Review of
the EPBC Act

Independent Review of the EPBC Act – Final Report

October 2020

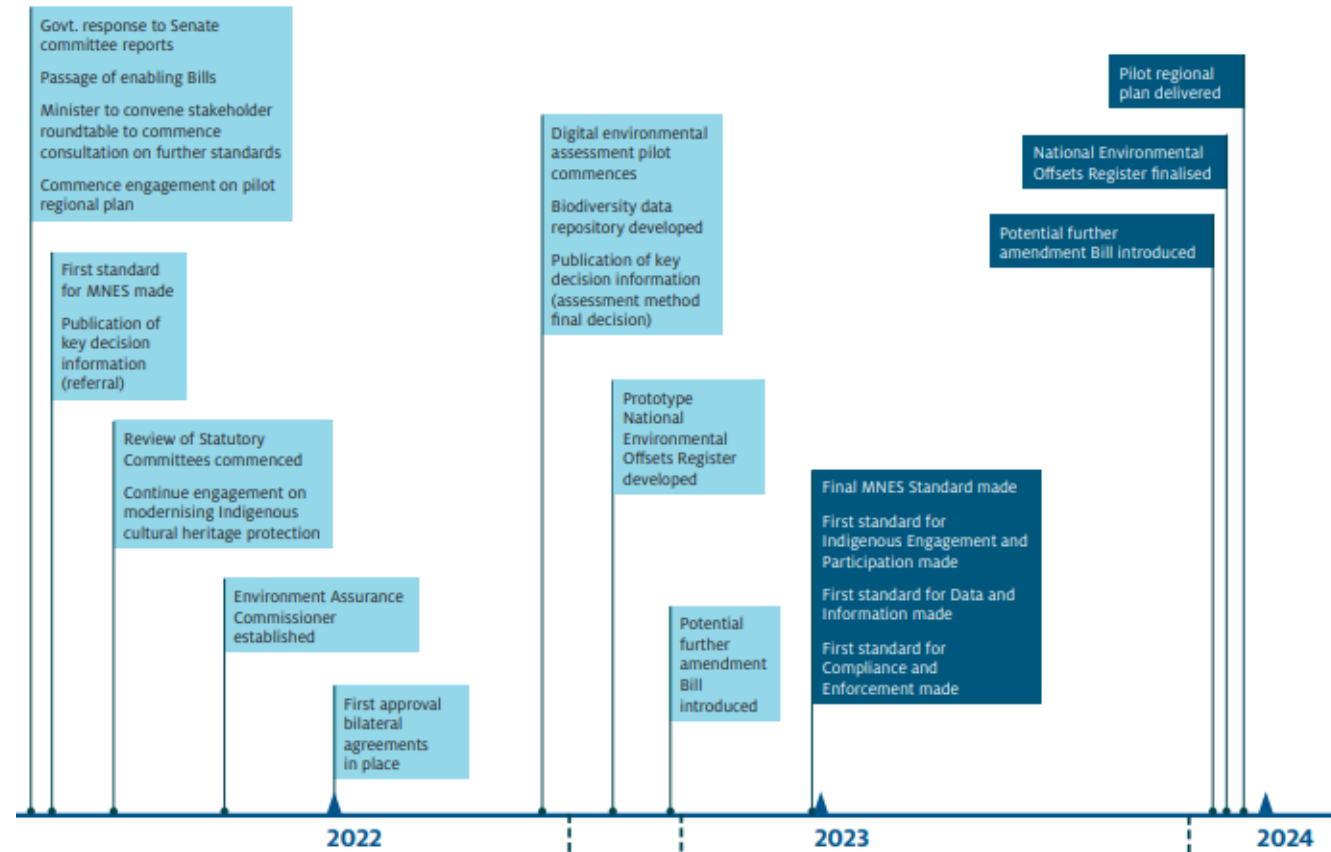
Professor Graeme Samuel AC



EPBC Act

'Single Touch' Approvals

- On 27 August 2020, the *EPBC Amendment (Streamlining Environmental Approvals) Bill 2020* was introduced to Parliament to support single touch approvals that will **allow states and territories to approve projects on behalf of the Australian Government** for certain Commonwealth protected matters.
- Notably, the Bill proposes to:
 - amend the **creation and operation of bilateral agreements** between states / territories and the Commonwealth such that **certain projects will no longer require separate approval**;
 - enable states and territories to make minor changes to environmental assessment processes without needing to amend a bilateral agreement / re-accreditation of a management process; and
 - remove the water trigger prohibition, which will allow for bilateral agreements to enable states and territories to approve actions which fall under the trigger.
- Bilateral agreements made under the Bill will be underpinned by the **Natural Environmental Standards**.



EPBC Act

National Environmental Standards

- On 25 February 2021, the *EPBC Amendment (Standards and Assurance) Bill 2021* was introduced to Parliament to establish a framework facilitating legally enforceable **National Environmental Standards**.
- The Standards will **initially reflect existing requirements of the EPBC Act**. They will subsequently be reviewed to define limits to acceptable impacts on environment and heritage matters once more information becomes available.
- The Bill proposes to:
 - ensure decisions under the EPBC Act are consistent with the Standards;
 - ensuring the Standards apply to all bilateral agreements;
 - empower the Minister to make decisions inconsistent with the Standards (as long as it is in the public interest); and
 - establish an **Environment Assurance Commissioner** as the responsible authority for monitoring and auditing the operation of bilateral agreements under the EPBC Act for making and enforcing approval decisions.



EPBC Act

National Environmental Standards (Cont.)

- The **Environment Assurance Commissioner** will be:
 - an independent statutory body;
 - housed within the Department of Agriculture, Water, and Environment; and
 - required to publish annual work plans and audit reports.
- The *National Environmental Standard (Matters of National Environmental Significance) 2021* was developed and is currently released for the public as a final draft.
- The Standard will be formally established once the *EPBC Amendment (Standards and Assurance) Bill 2021* is passed.



Offshore Energy Infrastructure

A New Licensing Regime



- On 2 December 2021, the *Offshore Energy Infrastructure Act 2021 (OEI Act)* became an Act of Parliament. The new Act provides a legislative framework to grant licence holders **rights to seabeds in Commonwealth waters for the development of offshore electricity infrastructure** (e.g. offshore wind farms).
- The OEI Act provides **for four types of licences** that will allow proponents to access offshore licences areas to scope, research, or carry out projects.
- Under the OEI Act, the Minister may declare a specified Commonwealth offshore area to be a declared area suitable for licences activities to take place.
- Proponents will need to satisfy certain **merit criteria** to show that they have the technical and financial capability to carry out their proposed projects.
- Under the Act, the **National Offshore Petroleum Safety and Environmental Authority (NOPSEMA)** is the regulator responsible for monitoring and enforcing compliance. The **National Offshore Petroleum Titles Administrator (NOPTA)** is the registrar responsible for managing the administration of licences.

Separately:

- Changes to the regulatory requirements for offshore oil and gas decommissioning will come into force on 2 March 2022.
- Changes to the offshore oil and gas decommissioning framework will ensure Australia plans for and manages increased levels of decommissioning activity as the industry matures. These enhancements followed extensive consultation with the public, industry and regulators.

Biodiversity Trading Regime

*Carbon, Biodiversity
Certificates, and a National
Market*



- On 9 February 2022, the *Agriculture Biodiversity Stewardship Market Bill* 2022 was introduced to Parliament, which aims to develop a **national voluntary agriculture biodiversity stewardship market**. It forms part of the Government's Agriculture Biodiversity Stewardship Package, which aims to increase private investment in biodiversity by connecting landholders with potential investors.
- The Bill proposes to establish **biodiversity certificates**, which will be personal property separate from the land that can be purchased, transferred, claimed, and used.
- Under the Bill, the **Clean Energy Regulator** will be the body responsible for the scheme's assurance and compliance. The Bill also establishes the **Agriculture Biodiversity Stewardship Market Register** as the register responsible for tracking biodiversity projects and the issuance and transfer of biodiversity certificates.
- Additionally, round 2 of the voluntary **Carbon + Biodiversity Pilot** launched in December 2021. Participant farmers/landholders undertaking reforestation projects (per the *Carbon Credits (Carbon Farming Initiative) Act* 1991 to earn carbon credit units) and plant native vegetation in line with the Pilot protocols will be eligible to obtain payments.

Climate Change Litigation

Sharma v Minister for Environment

O'Donnell v Commonwealth and Ors

ACCR v Santos

- The Federal Court of Australia held the Environment Minister had a duty to take reasonable care to avoid causing personal injury to child applicants when deciding to approve the Whitehaven Vickery coal mine expansion under the EPBC Act.
- This includes **a duty to take reasonable care to avoid causing personal injury or death to Australian residents under 18 years of age arising from emissions of greenhouse gas.**
- Following the outcome, the Minister is appealing the decision.
- The applicant and owner of bonds to mature in 2050 claims she was misled by the Federal Government because they **failed to disclose climate risks** which will materially impact the value of the bonds.
- Material risks included:
 - "significant additional expenditure" on climate mitigation before the bonds mature;
 - because of global action to reduce emissions, demand for exports of Australia's fossil fuel are likely to decrease; and
 - the physical risks of climate change.
- The Government's strike-out application was rejected in October 2021. The Federal Court is set to decide the case this year.
- The applicant, the Australasian Centre for Corporate Responsibility (**ACCR**) filed a Federal Court case against gas company Santos, arguing its 2020 Annual Report claims natural gas is a "clean fuel" and that it has a credible pathway to net zero emissions by 2040 are misleading and deceptive.
- This is a world-first case that challenges the veracity of a **company's net zero emissions target**. It is also the first case concerning the viability of carbon capture and impacts of blue hydrogen.

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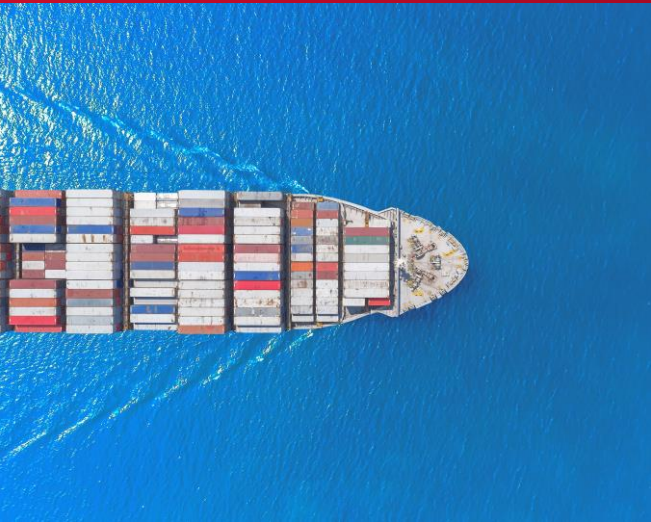
Western Australia



Environmental Protection Act

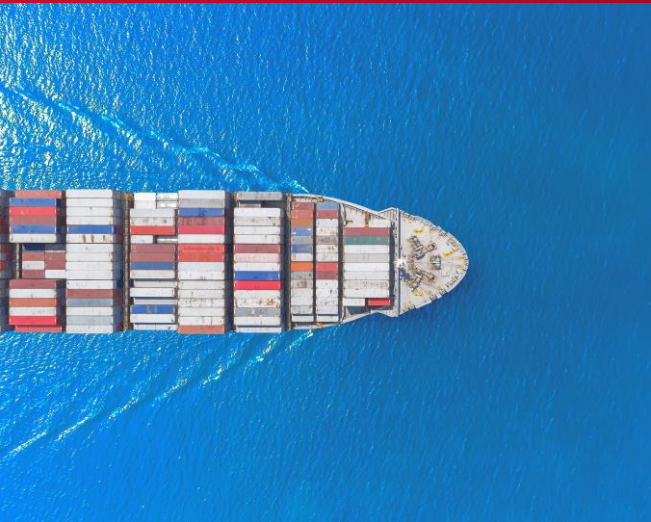
Amendments and a New Licensing Regime

- In November 2020, the *Environmental Protection Amendment Act 2020 (EPA Act)* became an act of Parliament.
- Proclamation of amendments under stage 2 occurred on 22 October 2021 relating to Part IV of the EP Act, which concerned the framework for assessment procedures in EIA.
- The purpose of these amendments was to streamline the EIA process and improve regulation of native vegetation.
- For example, the amendments provided for:
 - splitting a proposal across Ministerial Statements or combining Ministerial Statements into one;
 - withdrawal or amendment of a proposal prior to decision;
 - introduction of new processes and assessment criteria for native vegetation clearing referrals;
 - a new concept of “key decision-making authority”, allowing the Minister to determine which decision-making authorities should be consulted concerning a proposal assessed under the EP Act; and
 - the implementation of bilateral agreements with the Commonwealth for EIA and clearing of native vegetation.



Environmental Protection Act

Amendments and a New Licensing Regime (Cont.)



- Proclamation of amendments under stage 3 is expected to occur by the **end of 2022**.
- This amendment replaces and reorganises the old 'works approval' regime **with a new licensing system in Part V Division 3**.
- The work approvals and licences processes will be consolidated into a single instrument which regulates both 'controlled works' and 'prescribed activities'.
- The EP Act will **no longer require a licence to be granted** to the occupier of a premises or for licences to be issued for a prescribed premises boundary (but a licence can still be restricted to a defined premises if considered appropriate).
- Instead, **a licence may authorise either the carrying out of controlled work or a prescribed activity, or both**.
- Broader offence provisions will be introduced, which will allow **people other than the licence holder to be held responsible for licence offences**, including carrying out controlled work or a prescribed activity without a licence.
- The amendments will also:
 - create head powers for establishing environmental monitoring programmes in regulations; and
 - include provisions for the management of offset funds.

Climate change

Woodside & new Climate Change Bill



Conversation Council WA and Woodside

- **Background:** The Council has instituted proceedings in the WA Supreme Court to overturn environmental approvals in relation to Woodside's proposed Burrup Hub LNG expansion, which involves the development of two new gas fields (Browse and Scarborough).
- **Claim:** The Council argues the WA Environment Department of Environment failed to fulfill its duty to properly consider and control environmental harm when deciding on the works approval, because it didn't consider the increase in greenhouse gas emissions.

- The Council has long argued that Part V of the state's Environmental Protection Act requires regulation of greenhouse gas emissions
- **Impact:** If the Council wins, it will have ramifications for departmental works approval and licensing decisions made about other large-emitting projects.

Climate Change and Greenhouse Gas Emissions Reduction Bill 2021

- Introduced to WA Parliament on 14 October 2021. The Bill aims to provide legislated targets for the reduction of greenhouse gas emissions, increased renewable energy generation, and the establishment of a Climate Change Council.
- The first and second reading of the Bill occurred on the 14 October 2021. However, there have been no subsequent developments.

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Tasmania



Climate Change Act

Amendments on the Way to Net Zero

- On 24 November 2021, the *Climate Change (State Action) Amendment Bill 2021* was introduced to Parliament. The Bill was developed in response to the findings of recent independent reviews of the Act.
- The Bill will be read a second time and debated in Parliament early this year.
- The Bill proposes to:
 - legislate a new **emissions reduction target for Tasmania of net zero emissions, or lower, from 2030**;
 - establishing a framework for **emissions reduction and resilience plans for key industry sectors**, to be updated every five years;
 - require the Tasmanian Government to prepare a climate change action plan and state-wide climate change risk assessment every five years;
 - consolidate the existing ten objects of the Act around five key themes; and
 - require the Minister for Climate Change to table certain reports in Parliament (e.g. annual greenhouse gas emissions report and climate change risk assessment).
- Additionally, the Tasmanian Government has committed to develop a whole-of-government policy framework to ensure relevant Government plans, policies and strategies consider climate change

Waste and Resource Recovery

Levying Landfill Waste

- On 27 October 2021, the *Waste and Resource Recovery Bill 2021* was introduced to Parliament. The Bill establishes a **state-wide levy on waste disposed to landfill** as a disincentive landfill and to fund investment into Tasmania's waste and resource recovery sectors.
- The levy collection and compliance requirements will not commence until proclamation. It is currently being read by the Legislative Council.
- The Bill operates alongside the framework of the existing EPA regulations under the *Environmental Management and Pollution Contract Act 1994*.
- The waste levy will have a staggered introduction over 4 years, with the intention of starting at \$20 per tonne and rising to \$40 and then \$60 at 2 yearly intervals.
- The staggered rate is intended to avoid price shock and allow time for alternatives to landfill disposal to be developed. The amounts will be expressed in fee units (as closely as possible) to ensure the amounts continue to be adjusted in real terms through time.
- The collection and enforcement of levy will be regulated by the Secretary of the **Department of Natural Resources and Environment Tasmania**.



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Northern Territory



Environmental Chain of Responsibility Laws

*Amendments on the Way
to Net Zero*

Overview

- The legislative framework is proposed to apply to all activities and industries that have the potential to harm the environment.
- Environmental chain of responsibility laws provide a mechanism that permits environmental liabilities and the costs associated with managing them to be 'redirected' to a 'related person' of the company (or person) responsible for the environmental liabilities.
- An environmental chain of responsibility scheme is proposed to be incorporated into the new environment protection legislation through amendments to the EP Act and EP Regulations.

Status

- A consultation paper was released on 7 July 2021.
- Submissions closed on 4 August 2021.
- NT Government is currently working on legislation to enact these changes, anticipated to be released for consultation in the first half of this year (likely late March / April).

Various amendments

Amendments

- On 29 September 2021, the *Statute Law Amendment (Territory Economic Reconstruction) Act 2021 (TER Act)* became an act of Parliament.
- The TER Act made amendments to roughly 22 legislation, with the aim of cutting red tape and encouraging investment in the Northern Territory.
- This includes amendments to:
 - The *Environmental Protection (Beverage Containers and Plastic Bags) Act 2011*, to streamline registration for suppliers of containers and reduce approvals processes;
 - The *Territory Parks and Wildlife Commission Act 1976*, to streamline approval processes for developments within parks and reserves; and
 - The *Water Act 1992*, to ensure **businesses and industry can obtain a longer licence** when they meet updated criteria, as well as to **ensure mining and petroleum activities are now subject to licencing and permitting requirements.**

Water Act

Amendments (Cont.)

- Amendments to the *Water Act 1992* are proposed following the Water Reforms Directions Paper (2018) and Report Card against the Directions Paper (January 2021).
 - Further amendments will be released in a draft Bill. This is proposed to be finalised in the second quarter of 2022. Engagement and consultation on the proposed future reforms to the Water Act are ongoing.
- Proposed changes will:
 - improve definitions for tidal water and interference with a waterway and include definitions for water resource and estimated sustainable yield;
 - clarify Aboriginal water reserve provisions;
 - clarify water allocation plan requirements and establish a hierarchy of water;
 - establish trade provisions across the Territory;
 - establish a power for the Controller to declare an area for which applications will not be accepted for a specified period;
 - clarify the relevant factors to consider in making licence and permitting decisions;
 - clarify licence renewal, transfer and surrender provisions;
 - extend the time period associated with a commencement of enforcement proceedings to provide sufficient time to investigate complex and difficult environmental offences;
 - transfer function of reviewing decisions from the Minister to the Northern Territory Civil and Administration Tribunal.

Climate change



- Recent net-zero by 2050 commitment.
- There are a number of deliverables noted in the NT's Climate Change Response 3 Year Action Plan, many due in 2022.
- Includes finalisation of an Emissions Reduction Strategy, which is currently in development.
- The ERS will establish interim emission targets and a pathway that steps the NT towards achieving the net zero emissions by 2050 target.
- It will 'identify stages, interim targets, timeframes, and potential approaches/mechanisms to achieve the net zero emissions by 2050 target and maximise the opportunities for Territorians.
- A draft ERS is expected to be released for public comment in 2022, and completed by mid-2022.

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Australian Capital Territory



6

Queensland



Waste Levy

Changes to Waste Levy Operation



- On 1 July 2019, the *Waste Reduction and Recycling (Waste Levy) Amendment Act 2019* became an Act of Parliament.
- From 1 July 2022, more changes to the operation of the waste levy in Queensland will take place.
- The levy zone will be **divided into 2 new zones**:
 - metro zone – comprised of 12 local government areas in South-East QLD, including Noosa and Toowoomba; and
 - regional zone – comprised of remaining 27 local government areas in the current levy zone
- Current **levy rates will increase** at different rates in the new zones. All the levy rates in:
 - the metro zone will increase annually by \$10 per tonne until the general levy rate reaches \$145 per tonne on 1 July 2027. All levy rates will then increase annually in line with the CPI.
 - the regional zone will increase in line with the consumer price index each year.
- **From 1 July 2023, the annual payment to councils will be reduced** year on year until it reaches 20% of the 2021-2022 payment for:
 - councils in the metro zone; and
 - regional councils in Bundaberg, Cairns, Fraser Coast, Gladstone, Mackay, Rockhampton, Townsville).

Waste Levy

Changes to Waste Levy Operation (Cont.)



- For all other eligible councils, payments will continue at 100% from 1 July 2023.
- Annual payments to councils is proposed to be reviewed again in 2025.
- From 1 July 2023, the **levy exemption for clean earth disposed to landfill will be removed**. Disposal of clean earth into landfill will be charged at the general waste levy rate of the levy zone it is generated in.
- Additionally, rules for the levy exemption for waste used by landfill operators for operational purposes will be reviewed (with changes to be in place by 1 July 2023).

A photograph of a solar farm in the foreground and a wind farm in the background under a sunset sky. The solar panels are arranged in neat rows, and the wind turbines are silhouetted against the colorful sky. The word "Questions?" is overlaid in white text in the center of the image.

Questions?

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