



# NSW *Emerging Energy Program Guidelines*

*February 2019*

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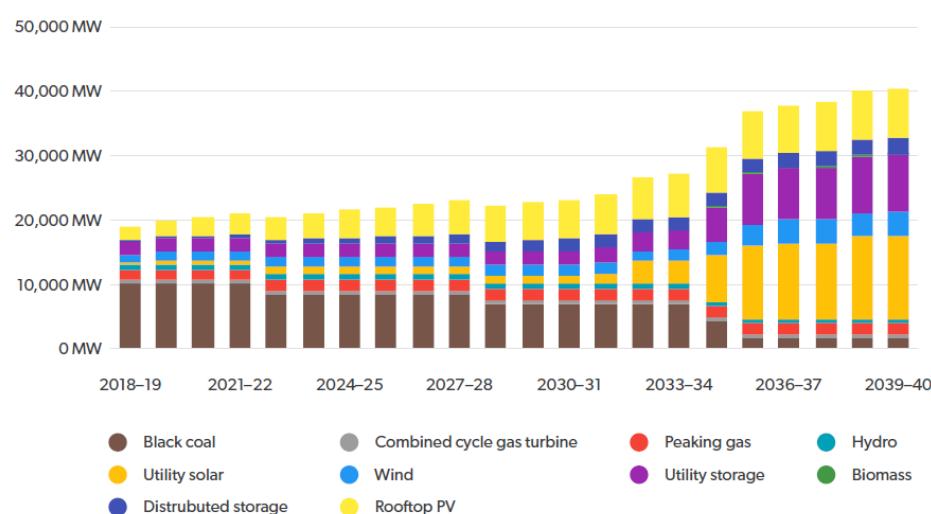
# 1 What is the Emerging Energy Program?

The Emerging Energy Program is a NSW Government grant program administered by the NSW Department of Planning and Environment. The program is designed to support the commercialisation of electricity projects with a minimum capacity of five megawatts (MW) that use emerging, dispatchable technology as defined in these NSW Emerging Energy Program Guidelines.

## 1.1 The NSW energy system

The NSW energy system is in transition. Our generation mix is changing, with more variable generation entering the system and older power stations scheduled for retirement. Our system has a current peak demand of around 15,000 MW. In February 2019, there is almost 20,000 MW of new generation either with, or seeking, NSW planning approval. However, the majority of this proposed new generation capacity is variable in nature.

New dispatchable, emerging energy resources will be needed in the system over the next two decades to support the NSW energy system transition. The scale of the investment challenge is illustrated in Figure 1.



**Figure 1 Projection for NSW electricity capacity under the Australian Energy Market Operator 2018 Integrated System Plan neutral economic scenario with storage initiatives**

## 1.2 The NSW Emerging Energy Program

The NSW Government has developed this program to support the commercialisation of new, large-scale electricity projects in NSW that use emerging, dispatchable technology. The program aims to bring forward a pipeline of dispatchable electricity projects that help drive emerging technologies down the cost curve to support an orderly transition to a clean, reliable and affordable energy future. The program is technology-neutral and aims to leverage private sector investment and support jobs in regional NSW.

These guidelines:

- provide the framework for the operation and administration of the program
- detail the program objectives
- set out the available funding, eligibility and merit criteria for awarding funding under the program
- provide information about the opportunity for joint funding, such as with the Australian Renewable Energy Agency (ARENA), how funding will be awarded, and where to find more information.

Definitions of key terms used in the guidelines are provided at the end of this document. The guidelines contain important information for applicants and should be read in conjunction with the program website and any other program documentation.

## 1.3 Program objectives

The program objectives are as follows:

### 1.3.1 Enhance electricity system reliability and security in NSW

The NSW Government recognises that a secure and reliable electricity system requires a range of services to be available. The program encourages emerging, dispatchable technologies that can supply energy at times of peak demand and following contingency events<sup>1</sup>. The program also seeks to accelerate projects that can provide system reliability and security services. This includes ancillary services supplying Australian Energy Market Operator's (AEMO) existing markets for Frequency Control Ancillary Services (FCAS), as well as projects which have the potential to address any emerging electricity system needs such as fast frequency response<sup>2</sup> and inertia<sup>3</sup>.

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<sup>1</sup> As defined by the National Electricity Rules, contingency event means an event affecting the power system which AEMO expects would be likely to involve the failure or removal from operational service of one or more generating units and/or transmission elements.

<sup>2</sup> According to AEMO, fast frequency response generally refers to the delivery of a rapid active power increase or decrease by generation or load in a timeframe of two seconds or less, to correct a supply-demand imbalance.

<sup>3</sup> Power systems with high inertia can resist large changes in the power system frequency arising from contingency events that lead to an imbalance in supply and demand.

### **1.3.2 Promote competition in the National Electricity Market (NEM) to place downward pressure on wholesale electricity prices to promote affordability for NSW electricity users**

Competition in the wholesale and retail electricity markets is a key driver of energy affordability. In its Retail Electricity Pricing Inquiry 2018, the Australian Competition and Consumer Commission (ACCC) found that “elevated prices have generally been driven by high and entrenched levels of concentration in the market, combined with fuel cost source factors...”<sup>4</sup>. To transition to a clean, reliable and affordable energy future, competition should work to deliver lower prices for consumers. Projects will be positively assessed if they can demonstrate that they will enhance competition in the wholesale and/or retail electricity markets in NSW.

### **1.3.3 Promote diversification of electricity supply through the development of new, dispatchable technologies at utility scale**

Under the program a dispatchable technology is defined as an electricity technology that can demonstrate the ability to manipulate output or load in response to one or more of the price signal(s) in the NEM. The AEMO considers dispatchability in detail in its Power System Requirements<sup>5</sup> and defines the three key features of dispatchability as: controllability, flexibility and firmness. A project must demonstrate the ability and intention to deploy a dispatchable technology and the intention to register with AEMO under the National Electricity Rules or be capable of participating in AEMO’s central dispatch process.

Emerging technologies are defined under the program as electricity technologies that can achieve a Technology Readiness Level (TRL) of 9 and a Commercial Readiness Index (CRI) score of 2 to 5, as defined in ARENA’s Advancing Renewables Program (ARP) guidelines and Appendix A.

### **1.3.4 Reduce greenhouse gas emissions<sup>6</sup>**

For projects that generate electricity, the emissions intensity maximum limit is 0.5 tonnes of carbon dioxide equivalent per megawatt hour (CO<sub>2</sub>-e/MWh) of electricity generated by the project. This is based on projected NSW system average emissions intensity in 2032 under AEMO’s ‘Neutral Planning Scenario with Storage’ in the 2018 Integrated System Plan.

Projects that do not generate electricity, for example energy storage or demand response, must demonstrate how the project will assist in the operation of a low-emissions NSW electricity system.

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<sup>4</sup> ACCC, Retail Electricity Pricing Inquiry—Final Report, p. vii.

<sup>5</sup> [aemo.com.au/-/media/Files/Electricity/NEM/Security\\_and\\_Reliability/Power-system-requirements.pdf](http://aemo.com.au/-/media/Files/Electricity/NEM/Security_and_Reliability/Power-system-requirements.pdf)

<sup>6</sup> Consistent with section 34F of the *Energy and Utilities Administration Act 1987* (NSW).

## 1.4 Contact and timing

Please refer to the program website for up-to-date information on the program, including key dates. The program website is available at [energy.nsw.gov.au/emerging-energy](http://energy.nsw.gov.au/emerging-energy).

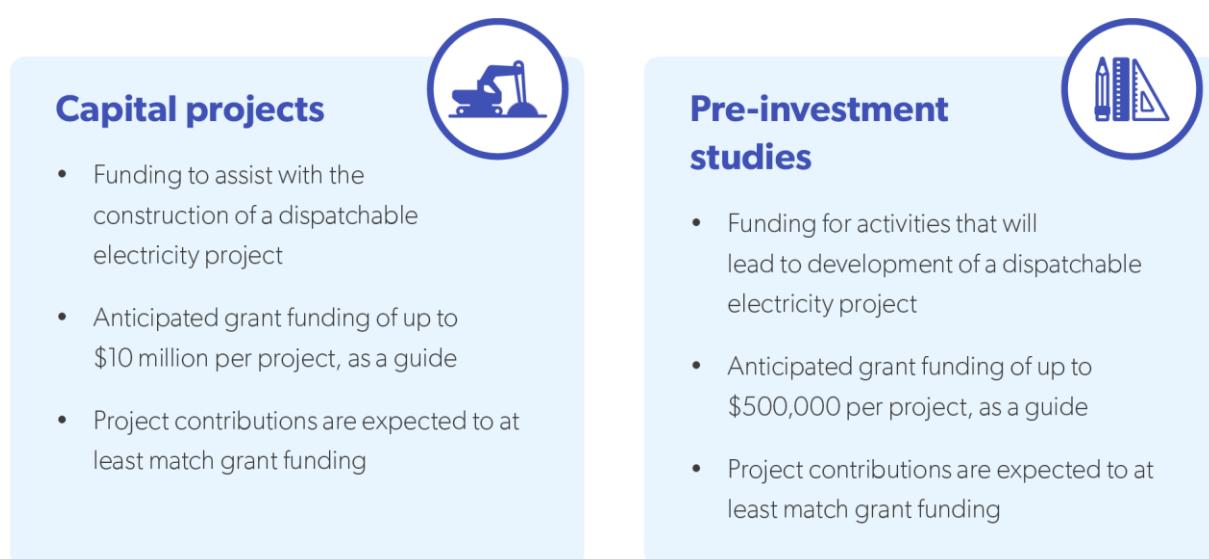
Any questions on the program should be emailed to [emergingenergy.program@planning.nsw.gov.au](mailto:emergingenergy.program@planning.nsw.gov.au).

## 1.5 Program funding

The NSW Government's priority is to co-fund projects with the private sector that will be developed in the near term. Any grant funding provided being the minimum required for a project to proceed. The program will provide grant funding to contribute to capital projects and pre-investment studies, identified individually as a project, as detailed in Figure 2.

There is no minimum grant amount. The maximum grant amount available is the limit of grant funding under the \$55 million program. Anticipated grant funding per capital project and pre-investment study are shown in Figure 2. However, the Department may choose to award higher amounts at its discretion to support achievement of the program objectives.

The Department's strong preference is for grant funds to be distributed by June 2022, with Department grant funding at least matched by project contributions to eligible project expenditure within this period, with higher contributions favoured. Payment of grant funding will be based on verifiable project milestones. As a part of their application, applicants will be required to provide suggested milestones and associated payment amounts to occur upon satisfaction of each milestone.



**Figure 2 Overview of project funding<sup>7</sup>**

<sup>7</sup> Anticipated grant funding presented in Figure 2 is provided as market guidance only and the NSW Government will determine the amount and structure of funding allocated to successful projects or otherwise made available from the total grant funds.

Project contributions, including equity and debt funding, are expected to at least match grant funding. Projects with higher contributions will be favoured. Applicants must demonstrate that the project requires the requested amount of grant funding to proceed. Non-cash contributions (in kind contributions) are not preferred and should not be included in the budget submitted with applications under the program.

Applicants are advised to seek professional advice on the taxation treatment of grant funding provided by the Department under the program, prior to applying. The Department does not provide taxation advice.

## 1.6 Exclusions

The NSW Government will not fund the following under the program:

- activities that directly relate to NSW Government planning assessment processes, such as: biodiversity studies; heritage studies; noise, air quality and traffic studies; and water, waste and hazardous material studies
- upgrades of existing electricity projects that do not materially increase the capacity of the existing plant. Upgrades that materially increase the capacity of the existing plant may be considered at the Department's discretion if they meet the eligibility criteria
- applications for funding received from ineligible applicants
- project expenditure undertaken prior to entering into a Funding Agreement with the Department for the project or after the completion date for the project specified in the Funding Agreement, unless otherwise approved by the Department
- research and development activities, including the education and training of students. For clarification, project activities may include research components to the extent these are part of a larger activity focused on the deployment and commercialisation of an electricity project that meets the project eligibility requirements under the program.

## 1.7 Joint program funding opportunity

Applications for funding under the Emerging Energy Program may have the opportunity to receive joint funding from the Department and ARENA's Advancing Renewables Program (ARP) and/or another funding body.

The Department will, where possible, endeavour to streamline the application process for joint funding.

Applicants that would like their project considered by ARENA to receive joint funding must:

- submit an application under the ARENA ARP prior to close of the relevant NSW Emerging Energy Program application period

- consent to their Emerging Energy Program application and associated information being shared with ARENA.

Applicants seeking joint funding from ARENA will be required to comply with ARENA's application and assessment processes. Where applicants have applied for joint funding with the Department and ARENA, ARENA will undertake an assessment and funding process separate to the program.

Joint funding will be assessed on a case-by-case basis. Where applicants apply for joint funding, the Department expects the funding gap identified for a project to remain consistent across all applications for funding.<sup>8</sup> If an applicant is awarded joint funding, the amount of funding awarded by each joint funder will be determined by the joint funders and any such funding will be provided under separate funding agreements. Applicants that are unsuccessful in obtaining joint funding may still be considered for support under the program.

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<sup>8</sup> For example, an applicant seeking joint funding from the Department and ARENA for a capital project that requires \$10 million of grant funding to proceed, should state the same \$10 million funding gap in applications submitted to the Department and ARENA.

# **2 Eligibility and merit criteria**

An application must meet the eligibility criteria to progress to the next stage of assessment against the merit criteria.

## **2.1 Eligibility criteria**

To be eligible for grant funding, an application must meet all eligibility criteria including applicant eligibility, project eligibility and eligible activities.

### **2.1.1 Eligible applicant**

The applicant must:

1. hold an Australian Business Number (ABN)
2. be:
  - a. an Australian entity duly incorporated under the *Corporations Act 2001* (Cth) and hold and comply with all necessary authorisations that are material to the conduct of the business of the applicant, or
  - b. a Commonwealth entity under section 10 of the *Public Governance, Performance and Accountability Act 2013* (Cth), or
  - c. an Australian State or Territory owned body corporate, or a subsidiary of an Australian State or Territory owned body corporate, or
  - d. an Australian State or Territory local government or council

In some limited circumstances a legal entity other than that listed above may be accepted as an eligible applicant. Any other entity that wants to apply to the program should contact the Department.

3. not be subject to any insolvency event, including the subject of an order or resolution for winding up or dissolution (other than for the purposes of reconstruction or amalgamation) or the appointment of a receiver, liquidator, administrator or similar
4. be the legal and beneficial owner of, or have all necessary rights to use, any intellectual property necessary to carry out the project

5. agree to enter into an agreement with the Department to publicly share knowledge and information about, and resulting from, the project described in the application
6. disclose any legal proceedings or investigation including, litigation, arbitration, mediation or conciliation that are taking place, pending or (to the best of the applicant's knowledge, after having made proper enquiry) threatened against you or a related body corporate (as defined in the *Corporations Act*)
7. materially comply with:
  - a. all obligations under employment contracts, industrial agreements and awards
  - b. all codes of conduct and practice relevant to conditions of service and to the relations between the Applicant and the employees employed by the applicant
  - c. all applicable Workplace Health and Safety legislation
8. hold all insurances required by law to be effected by the applicant
9. not be named on the list of persons and entities on the Australian Department of Foreign Affairs and Trade sanctions list<sup>9</sup>.

Applicants should note that the funding recipient (if different to the applicant) must always comply with the eligibility criteria set out above. The Department will only enter into a Funding Agreement with the proposed recipient assessed by the Department at the time of application or an entity that is majority owned and controlled by the proposed recipient assessed by the Department at the time of application. If at the time of the application the recipient is expected to be a different legal entity to the applicant, the applicant must clearly specify that this is the case in its application and provide all details of the expected recipient.

### **2.1.2 Eligible project**

Applicants must demonstrate to the satisfaction of the Department that they are planning to develop an electricity project that:

1. is connected to the NSW NEM region
2. has a minimum project capacity of 5 MW alternating current (AC)
3. meets the program's definitions of emerging technology and dispatchable technology
4. reduces greenhouse gas emissions<sup>10</sup>, refer to Section 1.3
5. is registered or intends to register with AEMO under the National Electricity Rules or be capable of participating in AEMO's central dispatch process
6. would not have gone ahead in the near term without the support of the program

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<sup>9</sup> See: [dfat.gov.au/international-relations/security/sanctions/pages/sanctions.aspx](http://dfat.gov.au/international-relations/security/sanctions/pages/sanctions.aspx)

<sup>10</sup> Consistent with section 34F of the *Energy and Utilities Administration Act 1987* (NSW)

7. is the subject of an application for grant funding under only one of the program application streams i.e. a pre-investment study grant or a capital project grant
8. primarily involves activities that take place in Australia.

### **2.1.3 Eligible activities**

Applicants must demonstrate to the satisfaction of the Department that the activities described in their application are eligible. Eligible activities relate directly to the project and may differ between capital projects and pre-investment studies. As a guide, eligible activities can include:

- activities directly related to the development of an eligible project
- activities directly related to undertaking the final investment decision for an eligible project.

The Department may also approve other eligible activities.

## **2.2 Merit criteria**

To be competitive an application must address all merit criteria. The merit criteria apply to applications for funding for both capital projects and pre-investment studies. Only applications that are assessed as satisfying the eligibility criteria will proceed to be assessed against the merit criteria. Applications will be individually assessed against the merit criteria and may also be assessed with select groups of applications in a portfolio analysis to determine the contribution to the program objectives of groups of high-merit applications.

The merit criteria, and how applicants can demonstrate the merit of their project against the criteria, are listed below.

### **2.2.1 Contribution to program objectives**

Projects will be assessed against each of the following program objectives:

- enhance electricity system reliability and system security in NSW
- promote competition in the NEM to place downward pressure on wholesale electricity prices to promote affordability for NSW electricity users
- promote diversification of electricity supply through the development of new, dispatchable technologies at utility scale
- reduce greenhouse gas emissions.<sup>11</sup>

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<sup>11</sup> Consistent with Section 34F of the *Energy and Utilities Administration Act 1987* (NSW)

## **2.2.2 Readiness to connect and secure approvals**

The following will be considered when assessing each project's readiness to connect and secure approvals:

- engagement with the relevant network service provider and AEMO, including a credible pathway to achieving an offer to connect from the network service provider and agreement on Generator Performance Standards
- relevant planning and environmental approvals to begin construction or demonstrate a plan to deliver the necessary processes and activities required to receive all approvals
- a robust strategy to secure the support of the local community and the project's social licence to operate, including evidence that community engagement has occurred or will start soon, how the applicant will respond to the results of the community engagement, and details on initiatives to share the benefits developed by the project with the community
- any other approval, licence, consent, authority or permit that may be required (including, for example, in relation to the *Competition and Consumer Act 2010* (Cth), *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and or the *Foreign Acquisitions and Takeovers Act 1975* (Cth)).

## **2.2.3 Financial viability and commercial attractiveness**

The following will be considered when assessing each project's financial viability and commercial attractiveness:

- the viability of the project business case (including market competitiveness of the project and legal and contractual arrangements), business structure, key partners and roles
- the need for grant funding, including demonstration that the grant funding requested is the minimum amount required for the project to proceed. This should be demonstrated by the provision of detailed financial modelling of the project,<sup>12</sup> including proposed milestones for grant payments
- the proposed level of private sector contributions (please note commentary under Section 1.5 in this respect), including the split between equity and debt, to deliver the project and the applicant's financial capacity and access to the proposed contributions. This should include the provision of letters of support, term sheet or similar to evidence all required equity and debt funding
- the value for money for the NSW Government if the project were to receive grant funding under the program, including metrics such as the estimated number of NSW jobs created by the project and the value of investment in NSW

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<sup>12</sup> This is expected to include clear articulation and evidence of an economic gap in the project funding. For instance, in the case of a capital project, a financial model and analysis that demonstrates an economic gap between the project returns and the applicant's investment hurdle, including the basis of all assumptions.

- the expected time to financial close and commercial operations, with appropriate evidence and supporting documentation for the proposed timeline should the project be successful in obtaining funding under the program
- in the case of a pre-investment study application, the likelihood of the project reaching a final investment decision in the near term and how the project would contribute to the program objectives if it was to be developed.

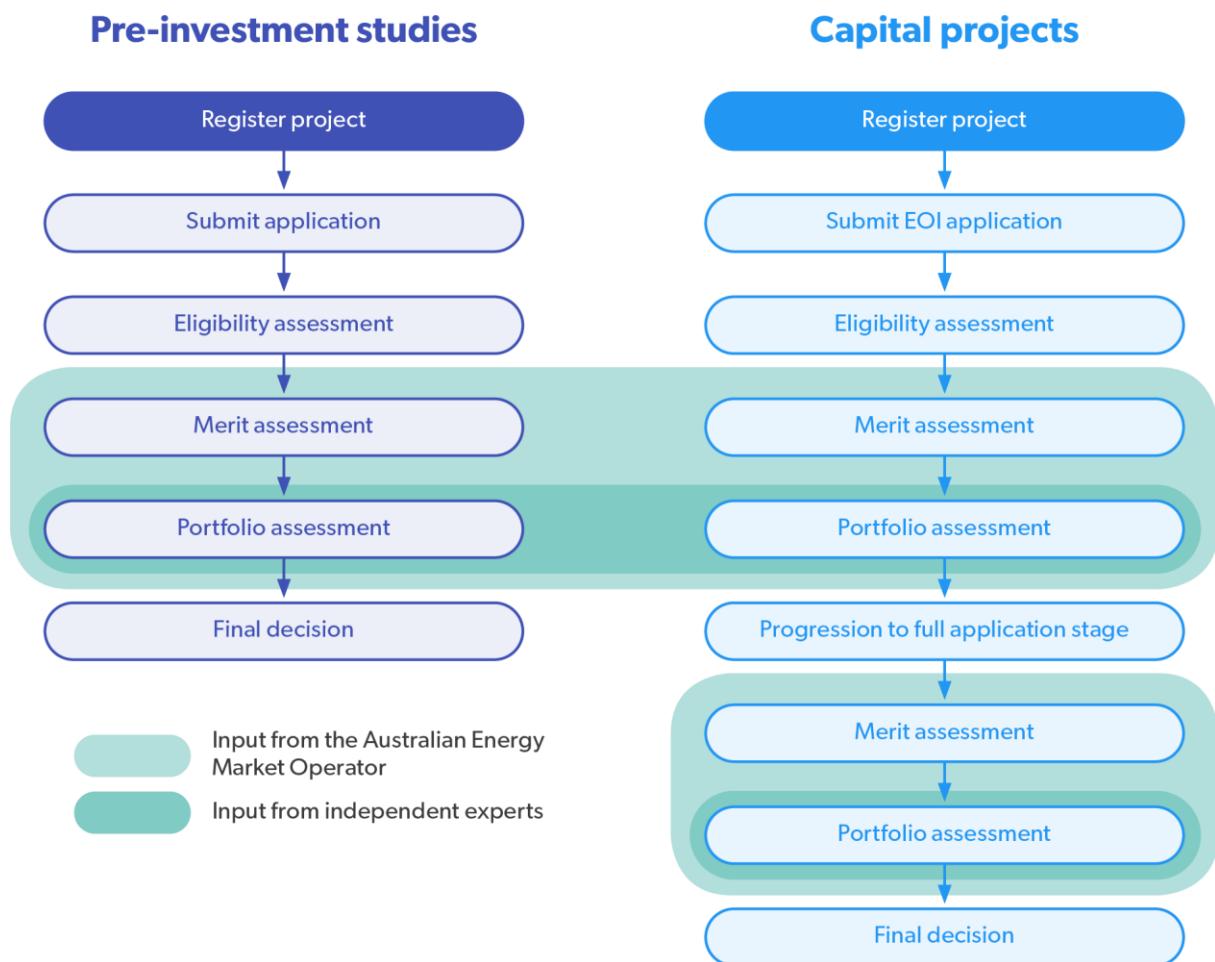
#### **2.2.4 Capacity to deliver the project and other characteristics**

The following will be considered when assessing each applicant's capacity to deliver the project, and other applicant and project characteristics:

- the applicant and project participants' track record and experience in successfully delivering similar projects and the availability of resources and expertise to execute the project successfully
- an understanding of the technology and delivery risks, and the appropriateness of the proposed risk mitigation measures to reduce project risk
- a comprehensive application for knowledge sharing, including what knowledge would be shared, how the knowledge would be shared and the value of the knowledge, including demonstrating how the knowledge will reduce barriers to future commercialisation of the technology in NSW
- the level of change required to the program template Funding Agreement for pre-investment studies or the Commercial Principles for capital projects. Fewer, less substantive proposed changes will be assessed more favourably.

# **3 Application and assessment process**

The program's application and assessment process is competitive. For pre-investment studies there will initially be a registration process, then full application. For capital projects, there will be registration, then expression of interest (EOI), followed by full application. Eligibility and merit criteria will be assessed at both the EOI and full application stages. A high-level overview of the process is illustrated in Figure 3.



**Figure 3 High-level program application and assessment process**

## **3.1 Registration and application process**

### **3.1.1 Registration**

Following the opening of registration on the program's website,<sup>13</sup> all applicants will be required to submit a separate registration for each project they would like to participate in the program.

Information requested at registration may include:

- project name
- description
- location
- application stream (capital project or pre-investment study)
- if joint funding will be sought from the Department and ARENA or any other sources of grant funding, as described in Section 1.7 above.

### **3.1.2 Expression of interest (capital projects only)**

An EOI process is being undertaken for applicants for capital project grants only. The process for EOI release, submission and assessment will follow the steps outlined below, in accordance with the timeline stated on the program website. The EOI process will run as follows:

1. an EOI application form for capital projects will be provided by the Department for applicants to complete
2. applicants may submit questions regarding their application by email to the Department. At its discretion, the Department may choose to make questions and clarifications available to all applicants (without releasing commercially sensitive or confidential information). EOIs must include information specified by the Department, but this is not intended to be resource-intensive for applicants to complete
3. EOI responses received after the closing time will be deemed 'late' and be registered separately. A late response will be admitted for assessment at the Department's discretion
4. The Department and its advisers will assess the EOIs against the eligibility criteria to determine the eligible applications. Only eligible applications will be assessed against the merit criteria.

### **3.1.3 Full application**

Separate full application forms will be released for the pre-investment study and capital project streams. While the breadth of information requested will be the same, differing levels of detail will be requested for capital projects and pre-investment studies.

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<sup>13</sup> [energy.nsw.gov.au/renewables/emerging-energy/clean-energy-initiatives#/emerging-energy-program](http://energy.nsw.gov.au/renewables/emerging-energy/clean-energy-initiatives#/emerging-energy-program)

The process for full application release, submission and assessment will follow the steps outlined below, in accordance with the timeline stated on the program website. The process will run as follows:

1. for pre-investment studies, applicants will be invited to submit a full application after registration. For capital projects, those shortlisted at the EOI stage will be invited to submit a full application. The Department will issue a full application form to applicants
2. applicants may submit questions regarding their application to the Department by email. At its discretion, the Department may choose to make questions and clarifications available to all applicants, (without releasing commercially sensitive or confidential information)
3. full applications must include comprehensive information to allow the Department to undertake a detailed assessment of the proposed project against the eligibility criteria and merit criteria. Further guidance on the information required will be included in the full application form provided by the Department
4. full applications must be submitted by the closing date. Responses received after the closing date will be deemed 'late' and be registered separately. A late response will be admitted for assessment at the Department's absolute discretion
5. the Department and its advisers will assess full applications to determine the successful grant funding recipients. Applicants should be aware that the Department may require due diligence of an applicant's project to be undertaken as a part of the Department's assessment (see Section 3.2 below for further details).

Based on factors, such as information received during the EOI process or changes in the market, the Department reserves the right to announce any amendment to the above process. For example, the Department may choose to permit full applications to be submitted by parties who did not respond to the EOI or who were not shortlisted through the EOI process.

## 3.2 Assessment process

Applications must be completed in full and include all the information specified. If you do not provide the specified information in the format required, the Department may seek supplementary information or clarification from you or it may assess your application as unsuccessful.

Applications must be assessed as satisfying all eligibility criteria before they can proceed to the merit assessment stage. Only eligible applications will be assessed against the merit criteria. The program merit criteria apply to applications in both the pre-investment studies and capital projects streams.

The Department may seek advice on the merit assessment of an application from a panel of advisers, which may include AEMO, ARENA, external consultants or advisers. The Department may seek clarification from applicants in relation to any matter arising from the assessment of the EOI or full application. Applications that fail to meet one or more of the eligibility criteria, or that the Department assesses to be of low merit against one or more merit criteria, will be considered unsuccessful.

For pre-investment studies, the Department will assess all eligible full application responses against the merit criteria.

For capital projects, the EOI responses will be used to shortlist projects for the full application. Responses to the full application will then be assessed against the eligibility criteria and merit criteria.

For both pre-investment studies and capital projects, eligible applications will be individually assessed against the merit criteria and may also be assessed with select groups of eligible applications in a portfolio analysis to determine the contribution to the program objectives of groups of high-merit applications.

Where applicants have applied for joint funding with the Department and ARENA, ARENA may undertake its own independent assessment and funding process.

The Department reserves all rights to amend these guidelines and the application processes described herein. Applicants should note that this includes altering the process for the capital project application stream, which may be amended based on factors such as information received during the EOI process or changes in the market. For example, amendments may include, but are not limited to, allowing submission of full applications by parties who did not respond to the EOI or who were not shortlisted through the EOI process.

### 3.3 Due diligence

At any time during the assessment process the Department may undertake due diligence on an application. Due diligence may include, but is not limited to:

- inviting applicants to present their application to the Department and/or the Department's consultants and advisers
- commissioning or completing research, analysis and modelling to support assessments
- contacting identified project participant organisations, ARENA, AEMO and or the relevant network service provider to confirm or verify elements of your application
- contacting any relevant federal, state, territory and international government agency about your application
- disclosing information by applicants to the Department (and its advisers) of any material reasonably required by the Department in respect of the matters the subject of the eligibility criteria and merit criteria.

Where an applicant has also applied to ARENA for joint funding, the Department will work with ARENA to share due diligence resources, where possible, to minimise the burden on applicants. Due diligence by the Department, and the applicant's cooperation with this, is likely to have a material impact on the Department's assessment of an application.

In addition, applicants should be aware that:

- the completion of due diligence to the satisfaction of the Department may also be required to satisfy one or more criteria for release of funding under the Funding Agreement
- where project contributions are expected to include debt financing, the Department may require access to, and reliance on, professional due diligence commissioned by debt financiers to satisfy one or more criteria for release of funds under the Funding Agreement. Accordingly, applicants will need to liaise with the Department to facilitate appropriate terms and arrangements when engaging with debt financiers.

### **3.4 Final decision**

The Department has discretion to reject, refuse or cease to assess an EOI or full application at any time if the Department is of the view (in its absolute discretion) that an EOI or full application is unlikely to be successful.

The Department's decision is final in all matters, including:

- the approval of applications for funding
- the amount of grant funding awarded
- the terms and conditions of funding.

Resubmission of EOIs or full applications, or requests for re-review, will not be accepted (unless otherwise decided by the Department).

The Department will advise applicants in writing about the outcome of the assessment of their application.

# **4 Funding arrangements**

## **4.1 Funding Agreement and Commercial Principles**

Successful applicants must enter into a Funding Agreement with the Department to receive program grant funds. This agreement will detail the applicant's, and any other relevant parties', obligations in relation to the project.

### **4.1.1 Pre-investment studies Funding Agreement**

A template Funding Agreement, representing terms the Department considers appropriate, is available on the program website for applicants submitting a full application for pre-investment study funding.

The Department does not encourage departures from the template Funding Agreement. However, where the applicant cannot accept the terms of the template Funding Agreement in its current form, it may provide a departures table (in the form provided) that clearly sets out and substantiates the requested departure.

Where an applicant does not submit a departures table, it will be deemed to have accepted the terms of the template Funding Agreement. Where an applicant does submit a departures table, the departures table will be taken as an exhaustive list of the applicant's comments on the template Funding Agreement.

Applicants should be aware that pre-investment full applications will be assessed on a competitive basis, and departures are likely to have an adverse effect on the Department's assessment of an application.

Applicants should be aware that the Department expects the terms of an executed Funding Agreement to reflect the applicant's careful and diligent expectations for the project's development. For example, applicants should ensure that there is a rigorous and realistic basis for the milestone timing, associated payment and outcomes for the project as set out in the Funding Agreement.

Details of the process for management and variation of the Funding Agreement are set out in the Funding Agreement.

### **4.1.2 Capital project Commercial Principles**

A set of Commercial Principles – which represent how the Department expects funding arrangements for capital projects to be provided and the outcomes these will achieve – is available on the program website for applicants submitting an EOI application for capital projects.

EOI applicants are invited to provide feedback on the terms set out in the Commercial Principles. If an EOI applicant expects that material departures from the position presented in the Commercial

Principles would be needed by that applicant, then the reasons should be explained clearly. Applicants should be aware that EOI applications will be assessed on a competitive basis, and departures are likely to have an adverse effect on the Department's assessment of an EOI application.

When the full application for capital projects is released, depending on the Department's assessment of the EOI process, the Department expects to provide one of the following:

- full form template Funding Agreement
- term sheet
- revised set of Commercial Principles, and applicants may be invited to provide feedback on the terms.

Applicants for capital project funding will be required to execute a full form Funding Agreement with the Department (reflecting the Department's final position with respect to the terms on which capital project funding will be provided to an applicant) in order to receive funding. Details of the process for management and variation of the Funding Agreement will be set out in the Funding Agreement.

## 4.2 Funding offers

All offers to negotiate and any payment of funds by the Department under the program are subject to the execution of a Funding Agreement with the Department. Applicants who receive an offer to negotiate must keep the offer confidential until the execution of a Funding Agreement by the applicant and the Department. Any public communication by the applicant regarding the project between the time of application submission and execution of the Funding Agreement can only be done with the Department's prior consent. The Department may withdraw its negotiation offer if the applicant does not comply with this requirement.

## 4.3 What can program funding be used for?

Program funding must be used only for Eligible Expenditure on the project. Applicants will be required to identify objectively verifiable milestones and prepare budgets reflecting the Eligible Expenditure required for each milestone (which will be set out in the Funding Agreement).

Eligible Expenditure is expenditure related directly to the undertaking of the project and is discussed in Appendix B. This guidance must be adhered to in the preparation of the budget that is submitted with an EOI or full application and as part of the regular milestone reporting required of successful grant recipients.

## 4.4 How the Department will monitor your project

Successful applicants that enter into a Funding Agreement with the Department will be required to provide reporting in line with the requirements of the executed Funding Agreement and the NSW

Climate Change Fund. The Department will monitor the progress of your project by assessing reports you submit and may conduct site visits to confirm details of your reports. Occasionally the Department may need to re-examine claims, seek further information or request an independent audit of claims and payments.

## 4.5 How will the Department share knowledge and publish information?

The NSW Government may publicly announce and/or publish the following information associated with successful projects:

- name of the recipient
- title of the project
- description of the project and its aims
- amount of grant funding awarded.

The Department will publish certain information on the NSW Government tenders website ([tenders.nsw.gov.au](http://tenders.nsw.gov.au) or other authorised website) about Funding Agreements for successful projects where the total estimated value of the project is \$150 000 or more. Information will be published as required under Division 5 of Part 3 of the *Government Information (Public Access) Act 2009*.

The NSW Government will share or publish information about any project when required under law.

Further, a condition of program funding is agreement to publish a formal document about the project to inform industry and the broader community about the project's development and findings (Knowledge Sharing Plan). The terms of the Funding Agreement will include an obligation on the recipient to comply with a Knowledge Sharing Plan for the project that is approved by the Department.

## 4.6 Work health and safety

All organisations have obligations under relevant work health and safety law (as persons conducting a business or undertaking) to ensure the health and safety of workers so far as is reasonably practicable and that the health and safety of other persons is not put at risk from their undertakings.

This obligation includes applicants ensuring that safe systems of work are in place for each of the activities conducted in support of the project. The Department expects applicants to be committed to health and safety management in the proposed project.

# **5 Further information**

## **5.1 Commencement and authority for the guidelines**

These guidelines have been approved by the Department. The guidelines may be varied from time to time or revoked. The Department has the authority to award funding under the program and execute and vary the agreements that allow the NSW Government to provide this funding.

## **5.2 Limitations**

### **5.2.1 No representation, warranty or guarantee**

The Department and its employees, agents and officers (the Department parties) do not give any representation, warranty or guarantee, whether express or implied, in relation to the information contained in any materials released by the Department associated with the program (program materials) including their completeness, accuracy, currency or reliability or the process by which they were prepared. None of the Department parties give opinions regarding, legal, accounting, regulatory, taxation or any other matters. Without limiting the foregoing, nothing in the program materials is or should be regarded as advice in relation to those matters.

Nothing contained in the program materials is or may be relied upon as a promise, guarantee, representation or warranty.

### **5.2.2 No obligation to update**

The program materials, the information contained herein and the matters to which it relates may be amended, updated or withdrawn at any time, at the Department's discretion. However, the Department parties do not accept any responsibility to update, supplement or correct the program materials, nor to inform applicants about any matter that may affect the program materials.

### **5.2.3 No liability**

Each Department party expressly disclaims all liability for any loss or damage incurred by any person arising from, or because of, any person's use of or reliance on any information, statement, opinion or matter (express or implied) contained in, derived from, or omitted from the program materials, except for any liability which cannot be excluded as a matter of law.

#### **5.2.4 Other limitations**

The program materials are not an offer, recommendation or invitation by any Department party in respect of any contract or commitment and (subject to a Funding Agreement being fully executed) nothing in the program materials will form the basis of any contract or commitment.

You must rely entirely upon your own investigations, review and analysis in relation to your assessment of whether or not to apply to and participate in the program.

### **5.3 Confidentiality and disclosure of information**

Unless otherwise stated, any commercial-in-confidence information provided by you as part of, or in connection with, a registration, application or negotiation process will be treated confidentially by the Department.

The Department may disclose commercial-in-confidence information provided by you to the following parties:

- the Minister or Minister's office
- the NSW Ombudsman and Audit Office of NSW
- Department staff, consultants and advisers
- ARENA
- AEMO
- any agency or body of the NSW Government, or any other organisation or individual considered by the Department to have a need or an entitlement to know that information (including any federal, state or territory agency or body), where that need or entitlement to know that information arises out of or in connection with the Department's assessment, verification or due diligence of any aspect of your application
- where authorised or required by law to be disclosed, to those parties.

If the Department discloses commercial-in-confidence information to any of the above parties, it will inform the party that the information is strictly confidential. The Department will otherwise only disclose commercial-in-confidence information provided by you with your consent.

### **5.4 Complaints**

Complaints concerning the program should be emailed to [emergingenergy.program@planning.nsw.gov.au](mailto:emergingenergy.program@planning.nsw.gov.au).

Complaints will, in the first instance, be reviewed by the Department. If the Department cannot resolve the complaint within 30 business days of receipt, the Department will provide details of a nominated complaints and review officer from the Department's Customer Service and Complaints Unit who will

advise the next steps. If the complaint is still not resolved satisfactorily, the NSW Ombudsman can be reached for external review of the administrative actions of the Department.

## 5.5 Conflict of interest

The Department will administer conflict of interest procedures for the program, including procedures for all staff to declare their interests.

All consultants and advisers engaged by the Department to assist in delivery of the program will be required to disclose any conflicts of interest they may have in relation to applicants and may be excluded from work if required under the Department probity procedures.

## 5.6 Program evaluation

The Department will evaluate the program to determine the extent to which funded activities contributed to achieving the program objectives. We may use information from your application and project reports for this purpose. The Department may also interview you or ask you for more information to help us understand how the grant impacted you and to evaluate how effective the program was in achieving its objectives. Without limiting any specific reporting or evaluation requirements (or similar) set out in any Funding Agreement you execute with the Department, we may contact you up to two years after you finish your project for more information to assist with this evaluation.

## 5.7 Grant acknowledgement

Without limiting Section 4.2 (and subject to any specific requirements in an executed Funding Agreement), if you make a public statement about a project funded under the program, you are required to acknowledge the support provided by the Department. We suggest using the following:

“This project received grant funding from the NSW Government and [other funding body – where applicable].”

## 5.8 The Department’s discretion

Notwithstanding anything else in these guidelines, by applying, applicants acknowledge and agree the Department has the right (in its absolute discretion) to reject, refuse to consider or cease to assess an application, at any time, if the Department is of the view (in its absolute discretion) that an application is unlikely to be successful.

## **5.9 No contract or liability**

Despite any part of these guidelines, or any other documentation that forms part of this process (in part or together), by applying, applicants:

- acknowledge that neither the applicant nor the Department intend to create any contract or other relationship under which the Department is obliged to conduct the process in relation to the program in any manner or at all, and that there is in fact no such contract or other relationship in existence
- accordingly, acknowledge that neither this document, nor any submission will create any legal or other obligation upon the Department to conduct the process in any manner or at all
- release the Department from any claim it might otherwise have been able to make or bring against the Department, arising out of or in connection with the Department's conduct of, or failure to conduct, the process in any manner or at all.

## **5.10 Further information**

Potential applicants and interested parties should refer to the program website for up-to-date information on the program at [energy.nsw.gov.au/emerging-energy-program](http://energy.nsw.gov.au/emerging-energy-program).

Any questions or clarifications can be sent in writing to  
[emergingenergy.program@planning.nsw.gov.au](mailto:emergingenergy.program@planning.nsw.gov.au).

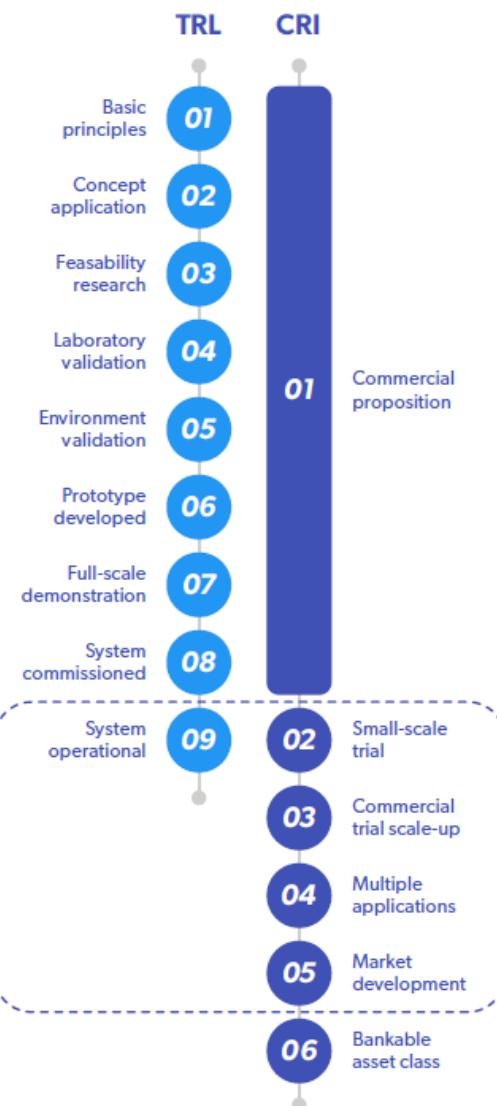
# 6 Appendices

## 6.1 Appendix A – Technology and commercial readiness

As outlined in Section 2.1, to be eligible, projects applying for funding under the Emerging Energy Program must achieve a TRL of 9 and CRI of 2 to 5. ARENA's Advancing Renewables Program Guidelines provide formal definitions for these levels and should be referred to for this purpose<sup>14</sup>.

To qualify for a TRL of 9, the full-scale system must have been previously operated across all expected operating conditions. This means the technology must have progressed past all initial commissioning, demonstration, and prototype stages. A project with a CRI of 2 to 5 means the project has been tested commercially in some setting (small or large scale) but is not yet considered as a bankable or a mature commercial technology.

Figure 4 outlines the TRL and CRI levels and highlights the stages of development applicable under the Emerging Energy Program.



**Figure 4 Technology and Commercial Readiness**

<sup>14</sup> Available at arena.gov.au/assets/2017/05/ARENA\_ARP\_Guidelines\_FA\_Single\_Pages\_LORES.pdf

## **6.2 Appendix B – Eligible Expenditure**

These Eligible Expenditure guidelines specify the kinds of expenditure that are eligible for activities funded under the program. These guidelines will be recognised in the Funding Agreement and must be followed when preparing the budget submitted with an application and as part of the regular milestone reporting and annual financial reporting required of recipients of grant funding under the program. The Department may update these guidelines from time to time, so please make sure you have the current version available from the program website.

Once a Funding Agreement is executed for a project, the Department will make payments when the project makes satisfactory progress and meets agreed milestones. Payments must be spent on Eligible Expenditure in line with these guidelines and the Funding Agreement. Where a recipient is in any doubt as to the eligibility of some of the expenditure on their proposed project, the recipient should discuss the matter with the Department. The Department will consider the request and may decide about the eligibility of the expenditure.

### **6.2.1 Milestone payments**

The proportion of Eligible Expenditure to be paid at each milestone will be determined on a case-by-case basis, as part of Funding Agreement negotiations. The Funding Agreement will require recipients to provide financial reports detailing Eligible Expenditure on the project for each milestone period.

### **6.2.2 General principles**

The following general principles apply when considering Eligible Expenditure:

- a. Eligible Expenditure is expenditure related directly to the undertaking of the project
- b. Eligible Expenditure is calculated as the GST inclusive amount less any GST credits the recipient or its representative member is entitled to claim
- c. non-cash contributions (in-kind contributions) are not preferred and should not be included in the budget submitted with applications under the program. Separately to the project budget, applicants will be provided the opportunity to request approval for inclusion of in-kind expenditure in the project budget, where they can demonstrate to the satisfaction of the Department that the in-kind expenditure could satisfy the program Eligible Expenditure guidelines
- d. expenditure is generally not Eligible Expenditure if it is undertaken prior to the signing of the Funding Agreement or after the completion date for the project specified in the Funding Agreement
- e. opportunity costs are not Eligible Expenditure
- f. where resources are used on a project and on unrelated activities elsewhere in the recipient organisation, the cost of those resources should be apportioned to the project, based on the proportion of those resources that were used by the recipient in undertaking the project

- g. related party transactions must be treated on an 'at-cost' basis, without mark-up, unless the recipient can demonstrate to the satisfaction of the Department, that the transaction has been calculated on an arm's-length basis
- h. generally accepted accounting principles are to be followed and it must be possible to track expenditure relating to the project through a recipient's accounting system to meet the financial reporting and audit requirements in the Funding Agreement. Further details are set out below.

### **6.2.3 Eligible Expenditure**

Eligible Expenditure includes the following:

- a. expenditure on the preparation of contracts entered into for the purposes of undertaking the activities required for the conduct of the project, subject to the ineligible expenditure constraints detailed in the following section. Further detail on this head of expenditure is set out below
- b. labour expenditure, such as salaries and wages, including reasonable on-costs for personnel employed directly on the project. Labour on-costs include: workers' compensation insurance, employer contributions to superannuation, recreation and sick leave, long service leave accrual and payroll tax. Further detail on this head of expenditure is set out below
- c. administrative expenses, including expenses incurred on communications, accommodation, computing facilities, travel, recruitment, printing and stationery, where such expenses are related directly to the project
- d. expenditure for plant installed for the project at the full delivered cost of the plant GST inclusive, less any GST credits the recipient is entitled to claim
- e. expenditure on plant used for the construction of a project, calculated on the basis of hire or lease costs, and running costs directly related to the construction of the project, such as rent, power, fuel and repairs and maintenance
- f. expenditure on activities that directly contribute to, or enable knowledge sharing, including database development, websites, applications and reports
- g. expenditure on legal, audit and accounting costs related directly to the project
- h. expenditure related to the raising of funds for the project, or the formation of consortia or joint ventures or other partnering arrangements, where such activities can be related directly to the project
- i. expenditure such as relevant licence fees or intellectual property purchase costs, where the recipient needs to access specific technology to undertake the project.

#### **6.2.4 Ineligible expenditure**

Ineligible expenditure includes, but is not limited to, the following:

- a. activities that directly relate to NSW Government planning assessment processes, such as: biodiversity studies; heritage studies; noise, air quality and traffic studies; and water, waste and hazardous material studies
- b. expenditure related to the general operations and administration of the recipient entity that the recipient could reasonably be expected to be undertaken in the normal course of business. This includes research institution overheads, for example, which may be calculated as 125 per cent of research staff salaries for laboratory-based research
- c. expenditure on activities that a local, state, territory or Commonwealth government agency has the responsibility to undertake
- d. interest on loans for new and pre-existing capital items used for the project
- e. expenditure on the acquisition of land for a project
- f. sales or promotional activities that do not support directly the successful completion of the project
- g. membership fees, donations, or any other expenditure that the Department determines does not support directly the successful completion of the project
- h. expenditure that does not support directly the successful completion of the project.

#### **6.2.5 Labour**

Eligible labour expenditure is the gross amount paid or payable to an employee of the recipient entity. Eligible salary includes any components of the employee's total remuneration package that are itemised on their Pay As You Go annual payment summaries submitted to the Australian Taxation Office.

Recipients must provide evidence to demonstrate the amount of time that an employee spent on the project. Evidence to support eligible expenditure on labour could include timesheets, job cards or diaries. Labour costs cannot be claimed based on an estimation of the employee's worth to the company, where no cash has changed hands.

#### **6.2.6 Contract expenditure**

Eligible contract expenditure is the cost of any activities to support the project performed for the recipient by another organisation. Work to be performed on a project must be the subject of a written contract, including a letter or purchase order, which specifies the nature of the work to be performed for the recipient and the applicable fees, charges and other costs payable. The written contract must be executed prior to the commencement of the work undertaken under the contract.

It is not a requirement for contracts to be in place at the time an applicant submits an application to the Department. However, for major items of contract expenditure, such as purchases of major items of

hardware to be incorporated in the project, applicants will be expected to have some form of documentary evidence, such as written quotes from suppliers, to substantiate the expenditure included in the financial estimates.

Where the contractor and the recipient are not at ‘arm’s-length’, the amount assessed for work performed will be an amount considered to be a reasonable charge for that work and contain no unacceptable overheads and no element of ‘in group profit’. Organisations considered not at ‘arm’s-length’ include related companies and companies with common directors or shareholders.

#### **6.2.7 Overseas expenditure**

Department funded expenditure incurred by a recipient outside of Australia, other than for equipment or materials, must be limited to no more than 10 per cent of total the Department grant funds, except in exceptional circumstances that must be justified by the recipient and agreed to in writing by the Department before the expenditure takes place.

Following execution of a Funding Agreement with the Department, project expenditure on goods and services overseas may be subject to approval by the Department as specified in the Funding Agreement.

#### **6.2.8 Accounting systems**

Recipients are required to have in place suitable accounting systems and to provide to the Department assurances that the accounting system used by the recipient and any consortium partners allows for the separate and accurate identification of contributions and Eligible Expenditure on the project.

A clear audit trail of all program funding contributions and Eligible Expenditure must also be available on request and as required to meet the requirements in the Funding Agreement.

## 6.3 Appendix C – Definitions and acronyms

<b>ABN</b>	Australian Business Number
<b>AEMO</b>	Australian Energy Market Operator
<b>Applicant</b>	An entity referred to in these guidelines that applies for grant funding under the program.
<b>Application</b>	Submission of an application form, including EOI and full application, for funding under the capital project or pre-investment study application streams under the program.
<b>Application form</b>	The document or documents issued under the program for applicants applying for funding under the program.
<b>ARENA</b>	Australian Renewable Energy Agency (ABN 35 931 927 899).
<b>Capital project</b>	A capital project as described in Figure 2 and Section 1.5.
<b>Co-fund</b>	Financial support of a successful project under the program provided by the Department and a private sector entity or entities.
<b>Commercial-in-confidence information</b>	Any information that discloses your financing arrangements, cost structure, profit margins or full base case financial model; intellectual property for which you have an interest; any matter the disclosure of which would place you at a substantial commercial disadvantage.
<b>Commercial principles</b>	A set of principles made available by the Department which broadly represent how the Department expects funding arrangements for capital projects to be provided and the outcomes this will achieve.
<b>Commercial Readiness Index (CRI) 2 to 5</b>	The technology and/or business case for a project that has been tested commercially in some setting (small or large scale) and it is not yet considered as a bankable or a mature commercial technology. See Appendix A for further details.
<b>Conflict of interest</b>	A situation where a person decides or exercises a power in a way that may be, or may be perceived to be, influenced by either material personal interests (financial or non-financial) or material personal associations.

<b>Corporations Act</b>	<i>Corporations Act 2001 (Cth)</i>
<b>Department</b>	The NSW Government department which has the responsibility for the administration of the program, which at the time of publishing of these guidelines is the NSW Department of Planning and Environment.
<b>Dispatchable technology</b>	A dispatchable technology is an electricity technology that can demonstrate the ability to manipulate output or load in response to one or more of the price signal(s) in the NEM. AEMO considers dispatchability in detail in their Power System Requirements <sup>15</sup> and defines the three key features of dispatchability as: controllability, flexibility and firmness. A project must demonstrate the ability and intention to deploy a dispatchable technology and the intention to register with AEMO under the national electricity rules or be capable of participating in AEMO's central dispatch process.
<b>Eligible application</b>	An application for grant funding under the program that the Department has determined is eligible for assessment in accordance with these guidelines.
<b>Eligibility criteria</b>	The eligibility criteria set out in Section 2.1.
<b>Eligible Expenditure</b>	Expenditure of the kind defined as eligible in Appendix B.
<b>Emerging technology</b>	Electricity technologies that can achieve a Technology Readiness Level (TRL) of 9 and a Commercial Readiness Index (CRI) of 2 to 5. See Appendix A for further details.
<b>EOI</b>	Expression of interest
<b>Fast frequency response</b>	The delivery of a rapid active power increase or decrease by generation or load in a timeframe of two seconds or less, to correct a supply-demand imbalance and assist in managing power system frequency. For further details see the AEMO Working Paper — Fast Frequency Response in the NEM <sup>16</sup> .
<b>FCAS</b>	Frequency Control Ancillary Services. A market mechanism employed by AEMO specifically to correct imbalances between supply and demand which cannot be addressed through the central dispatch process which

<sup>15</sup> [aemo.com.au/-/media/Files/Electricity/NEM/Security\\_and\\_Reliability/Power-system-requirements.pdf](http://aemo.com.au/-/media/Files/Electricity/NEM/Security_and_Reliability/Power-system-requirements.pdf)

<sup>16</sup> [aemo.com.au/Electricity/National-Electricity-Market-NEM/Security-and-reliability/FPSSP-Reports-and-Analysis](http://aemo.com.au/Electricity/National-Electricity-Market-NEM/Security-and-reliability/FPSSP-Reports-and-Analysis)

follows the forecast average demand movement. For further details see the AEMO's Guide to Ancillary Services in the NEM<sup>17</sup>.

<b>Financial close</b>	The point at which a project has signed financing agreements and all the required conditions contained in them have been met.
<b>Full application</b>	A full application as described in Section 3.1.
<b>Funding agreement</b>	An agreement between the Department and a recipient under which program funding is provided to the recipient.
<b>Guidelines</b>	This approved framework for the operation and administration of the program. This document will be amended and updated as needed to be current and accurate.
<b>Joint funder</b>	A non-private sector party, such as ARENA, who provides financial support to a project that the Department also provides financial support to under the program.
<b>Joint funding</b>	Financial support of a project under the program by the Department and a non-private sector party such as ARENA.
<b>Knowledge Sharing Plan</b>	Definition provided in Section 4.5 of these guidelines.
<b>Merit criteria</b>	The merit criteria set out in Section 2.2.
<b>Minister</b>	The Minister with responsibility for the program, which at the time of publishing for these guidelines is the NSW Minister for Energy and Utilities.
<b>MW</b>	megawatt
<b>NEM</b>	National Electricity Market
<b>Network</b>	Unless stated otherwise, the electricity system operated by the network service provider for the project. This may be either a distribution network service provider or a transmission network service provider.

<sup>17</sup> [aemo.com.au/-/media/Files/PDF/Guide-to-Ancillary-Services-in-the-National-Electricity-Market.pdf](http://aemo.com.au/-/media/Files/PDF/Guide-to-Ancillary-Services-in-the-National-Electricity-Market.pdf)

<b>Network service provider</b>	The entity who engages in the activity of owning, controlling or operating an electricity transmission or distribution system and who is registered by AEMO as a network service provider.
<b>NSW</b>	The State of New South Wales
<b>Opportunity costs</b>	Any benefits or production lost due to the allocation of resources to the project ahead of any other possible activities by the recipient.
<b>Plant</b>	Includes all project equipment involved in generating, utilising, storing or transmitting electrical energy.
<b>Pre-investment study</b>	A pre-investment study project as described in Figure 2 and Section 1.5.
<b>Program</b>	The NSW Emerging Energy Program described in these guidelines.
<b>Program objectives</b>	The program objectives set out in Section 1.3.
<b>Project</b>	A project described in an application for funding under the program. This includes applications for capital projects and pre-investment studies.
<b>Project capacity</b>	Nominal MW rating of the limiting factor across a project's technical capability, network connection agreement and proponent-indicated operational intentions, for either electricity export to the network or curtailment of existing electricity demand on the network.
<b>Recipient</b>	An applicant that has been offered funding under the program and has entered into a Funding Agreement with the Department in relation to the program.
<b>System reliability</b>	The ability of the electricity system to supply adequate power to satisfy consumer demand, allowing for credible generation and transmission network contingencies.
<b>System security</b>	The safe scheduling, operation and control of the power system on a continuous basis in accordance with the principles set out in clause 4.2.6 of the National Electricity Rules.

**Technology  
Readiness Level  
(TRL) 9**

The full-scale technology to be employed in a project must have been previously operated across all expected operating conditions. This means the technology must have progressed past all initial commissioning, demonstration, and prototype stages. See Appendix A for further details.