

Department of Climate Change, Energy, the Environment and Water

# First Nations Guidelines for the NSW Electricity Infrastructure Roadmap

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Guidance on engaging with local Aboriginal communities on electricity infrastructure projects to increase income and employment opportunities for Aboriginal people

May 2025





## Acknowledgement of Country

The Department of Climate Change, Energy, the Environment and Water acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

First Nations Guidelines for the NSW Electricity Infrastructure Roadmap

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## Minister's foreword

I recognise the Traditional Owners of the lands across NSW and pay my respects to Elders past and present. I acknowledge the many Aboriginal clans and language groups across NSW and recognise their continuing connection to country.

The Electricity Infrastructure Roadmap (the Roadmap) is a once-in-a-generation opportunity for Aboriginal people to be part of and benefit from new energy infrastructure across NSW. The NSW Government is determined to ensure that this opportunity is not missed.

We have examined the existing First Nations Guidelines to make sure they align with the many activities taking place. Initiatives such as Closing the Gap and the national First Nations Energy Strategy.

We want to ensure that Aboriginal people can get good local jobs, can find ways to use their land for renewables projects and build capacity in Aboriginal led organisations to be partners in the energy transition.

The Guidelines include a revised structure that emphasises the importance of respectful engagement with local Aboriginal communities and practical guidance on co-ownership, shared-equity and other benefit-sharing arrangements. The Guidelines also apply to renewable energy proponents and give clear guidance on using industry and Aboriginal Participation Plans to realise the aspirations of the Roadmap.

Thank you to everyone who has had input into these revised guidelines.

Now let's make sure we turn the guidelines into action.



The Hon. Penny Sharpe MLC

Minister for Climate Change, Energy the Environment and Heritage

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# 1 Introduction to the Guidelines

The NSW Electricity Infrastructure Roadmap (the Roadmap) is the state's 20-year plan to transform our electricity system into one that provides affordable, clean and reliable energy for everyone. Working with communities, industry and Aboriginal people, the NSW Government is leading a once-in-a-generation upgrade of the NSW electricity network.

Through respectful engagement we can support local Aboriginal communities in NSW to determine their own futures and benefit from this once-in-a-generation energy transition.

The Roadmap is legislated through the *Electricity Infrastructure Investment Act 2020* (EII Act), which requires the Minister for Energy to issue guidelines on consultation and negotiation with local Aboriginal communities. The NSW Government has also designated the Roadmap as a strategic priority to support whole of government implementation.

The First Nations Guidelines set out the expectations for respectful engagement with local Aboriginal communities and their aspirations for increasing employment and income opportunities in the construction and operation of electricity infrastructure projects delivered under the Roadmap.<sup>1</sup>

There are 2 parts to the First Nations Guidelines:

1. The general First Nations Guidelines (or the Guidelines, this document).
2. The region-specific First Nations Guidelines (the region-specific Guidelines).

To date, three region-specific Guidelines have been published for the Central-West Orana, Hunter-Central Coast and South West regions.<sup>2</sup>

The General Guidelines *apply to relevant electricity infrastructure projects under the Roadmap*. It sets out the high-level principles for respectful engagement and outlines various ways to increase employment and income opportunities for local Aboriginal communities.

The Region-specific Guidelines *apply to relevant electricity infrastructure projects under the Roadmap occurring within that region*. For each of the five renewable energy zones (REZs), the region-specific Guidelines outline the local Aboriginal communities' goals and aspirations for income and employment opportunities, as well as their preferred method of engagement with Roadmap project proponents and Government.

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## 1.1 Why are the Guidelines needed?

The purpose of the Guidelines is to promote genuine and meaningful engagement and consultation with local Aboriginal communities on generation, storage and network infrastructure project proposals under the Roadmap. These consultations are undertaken for the purposes of increasing employment and income opportunities for the local Aboriginal community.

The Guidelines achieve this purpose in three ways, by:

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<sup>1</sup> Section 4(1) EII Act.

<sup>2</sup> Guidelines for the New England and Illawarra regions are to be published in 2025 and 2026, respectively.

1. Providing proponents with **practical guidance on how to engage respectfully** with local Aboriginal communities (see section 2).
2. Outlining various ways in which local Aboriginal communities and proponents could collaborate to **improve economic opportunities for Aboriginal people and communities** through renewable energy, storage and network infrastructure projects under the Roadmap (see section 3).
3. Setting out the **reporting, compliance and enforcement of Industry and Aboriginal Participation Plans** that Roadmap entities should establish, and proponents should follow to increase income and employment for local Aboriginal communities (see section 4).

### 1.1.1 What the Guidelines do not provide

The Guidelines do not provide:

- an alternative avenue to addressing issues around grievances and reparations regarding matters of cultural heritage, Native Title or land rights.
- legal advice on the matters covered by the Guidelines under other legislation or policies. If necessary, stakeholders should seek independent legal advice.

The requirement to engage with local Aboriginal communities under the Guidelines is in addition to and does not replace or change any other engagement requirements.

Proponents should be aware that there may be other consultation obligations and processes under other NSW and Federal legislation concerning cultural heritage, environmental, social or other impacts of proposals. These obligations and processes are not altered by these Guidelines.

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## 1.2 How should local Aboriginal communities, proponents and Roadmap entities use the Guidelines?

Project proponents for renewable energy, storage and network infrastructure should apply the Guidelines when engaging with local Aboriginal communities and preparing an Industry and Aboriginal Participation Plan (IAPP) for a project proposal, or a tender or bid for:

- long-term energy service agreements (LTESAs)
- access rights
- priority transmission infrastructure projects
- REZ network infrastructure projects,

The Minister, Consumer Trustee and Infrastructure Planner must take the Guidelines into account when exercising certain functions under the EII Act and *Electricity Infrastructure Investment Regulation 2021* (EII Regulation) (see Figure 1) and the Minister may impose conditions on proponents to give effect to the Guidelines.<sup>3</sup>

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<sup>3</sup> Section 4, EII Act; Clause 41, EII Regulations.




Figure 1: How should local Aboriginal communities, proponents and Roadmap entities use the Guidelines

<p>How each stakeholder should apply the First Nations Guidelines</p>	<p>Local Aboriginal communities</p> 	<p>The Guidelines should be used to:</p> <ol style="list-style-type: none"> <li>1. understand what is expected of proponents when engaging with local Aboriginal communities.</li> <li>2. identify the most relevant and beneficial employment and income opportunities for your community and consult with proponents to achieve those opportunities (see Section 3).</li> </ol>
	<p>Proponents</p> 	<p>The Guidelines should be used to:</p> <ol style="list-style-type: none"> <li>1. engage with local Aboriginal communities in accordance with their engagement protocols (see Section 2).</li> <li>2. consider the ways to increase income and employment opportunities for local Aboriginal communities based on the community's aspirations and goals (see Section 3).</li> <li>3. develop an Aboriginal Participation Plan outlining the opportunities for increasing income and employment (see Section 4).</li> </ol>
	<p>Minister for Energy</p> 	<p>The Guidelines must be taken into account when:</p> <ol style="list-style-type: none"> <li>1. directing a network operator to carry out a REZ network infrastructure project or a priority transmission infrastructure project.</li> <li>2. considering land use planning, environmental and heritage matters, and the views of the local community where a proprietary transmission infrastructure will be located.</li> </ol>
	<p>Consumer Trustee</p> 	<p>The Guidelines must be taken into account when:</p> <ol style="list-style-type: none"> <li>1. making rules for competitive tender bids</li> <li>2. determining the terms and conditions of a LTESA</li> <li>3. conducting a competitive tender for LTESAs</li> <li>4. recommending a LTESA to the Financial Trustee.</li> </ol>
	<p>Infrastructure Planner</p> 	<p>The Guidelines must be taken into account when preparing an assessment or recommendation for REZ network infrastructure projects to the Consumer Trustee</p> <p>The Guidelines should also be taken into account when dispersing funds raised through REZ access schemes for employment and community purposes.</p>

## 1.3 What we heard: findings from a review of the Guidelines

The Guidelines will be reviewed every two years. This is the first review of the Guidelines since its publication in August 2022. Targeted stakeholder consultations provided insight into whether the Guidelines are meeting community expectations and NSW state priorities.<sup>4</sup>

**Figure 2: Summary of consultation findings and consequent improvements to the Guidelines**

	Consultation findings	Improvements to the Guidelines
	<b>Alignment with existing best practice strategies, guides and principles</b>	
	<p>Further guidance to support First Nations people to play a key role in renewable energy transition have been developed since publication of the Guidelines in 2022.</p> <p>Alignment with these documents will minimise confusion for local Aboriginal communities and project proponents. It will also make it easier for stakeholders to implement consistent best practice guidance on engaging with local Aboriginal communities.</p>	<p>Where possible, the Guidelines adopt the existing best practice principles, strategies and guidance on the role of First Nations people in renewable energy transition.</p> <p>In particular, the Guidelines ensure alignment with the:</p> <ul style="list-style-type: none"> <li>• <i>First Nations Clean Energy Network's Best Practice Principles for Clean Energy Projects</i></li> <li>• <i>Clean Energy Council's Leading Practice Principles: First Nations and Renewable Energy Projects</i></li> <li>• <i>The Australian Government's First Nations Clean Energy Strategy</i>.</li> </ul>
	<b>Include additional long-term and self-determined opportunities to increase employment and income for local Aboriginal communities</b>	
	<p>Through co-ownership, shared-equity and broader-benefit sharing arrangements local Aboriginal communities can harness the economic benefits of renewable energy projects in a sustainable way where they enjoy the right to self-determination.</p>	<p>The Guidelines include co-ownership and equity and other ways of benefit sharing as opportunities to increase income and employment for local Aboriginal communities. Such opportunities can have greater participation in and governance of projects, fostering empowerment and economic benefits for generations to come.</p>
	<b>The structure of the Guidelines should clearly show how to respectfully engage with local Aboriginal communities for the purpose of increasing employment and income opportunities and this is linked to the Aboriginal Participation Plan</b>	
	<p>Stakeholders highlighted the importance of having guidance on early and genuine engagement upfront. Instead of including the engagement principles as a schedule, it should be highlighted as the critical element in the Guidelines.</p> <p>The overall structure of the Guidelines could be improved to provide practical guidance to stakeholders on how to apply the Guidelines.</p>	<p>The structure of the Guidelines has been amended to:</p> <ol style="list-style-type: none"> <li>1. Provide clear guidance on engaging respectfully with local Aboriginal communities to increase employment and income opportunities (Section 2).</li> <li>2. Outline the possible ways to increase employment and income for local Aboriginal communities (Section 3).</li> <li>3. Provide guidance on developing, reporting and complying with Industry and Aboriginal Participation Plans to increase employment and income for local Aboriginal communities (Section 4).</li> </ol>

<sup>4</sup> The Department consulted the Energy Corporation of NSW, AEMO Services Ltd, Aboriginal Affairs, the Commonwealth Department of Climate Change, Energy, the Environment and Water, National Indigenous Australians Agency, Clean Energy Council, First Nations Clean Energy Network and the NSW Aboriginal Land Council.



### 1.3.1 Alignment with the National Agreement on Closing the Gap

The Guidelines are guided by the priority reforms to accelerate improvements in the Nations Agreement on Closing the Gap (the Agreement), including:

1. supporting genuine formal partnerships and shared decision-making with First Nations peoples in all electricity infrastructure projects under the Roadmap
2. building the community-controlled sector through initiatives that increase income and employment opportunities for local Aboriginal communities
3. transforming government organisations so they work better for First Nations people to achieve the First Nations outcomes under the EII Act
4. improving access and reporting of data at a community level so that local Aboriginal communities can make informed decisions when engaging with electricity infrastructure projects under the Roadmap
5. increasing economic prosperity, business growth and employment for First Nations people NSW through the clean energy transition (NSW specific)

There are 17 Socio-Economic Outcomes within the Agreement to measure the progress of Closing the Gap. The Guidelines directly contribute to the achievement of the following outcomes:

- *Socio-Economic Outcome 8*: Strong economic participation and development of Aboriginal people and communities.
- *Socio-Economic Outcome 15*: Aboriginal people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.
- *Socio-Economic Outcome 17*: Aboriginal people have access to information and services enabling participation in informed decision-making regarding their own lives.

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## 2 Engage respectfully with local Aboriginal communities

Proponents should engage respectfully with local Aboriginal communities for the purpose of increasing employment and income opportunities for the local Aboriginal community. Respectful engagement is essential to building genuine and trusted relationships. It should occur from the initial planning stages of new electricity infrastructure projects and throughout a project's lifecycle under the Roadmap.

This section provides practical guidance on engaging respectfully with local Aboriginal communities in relation to renewable energy, storage and network infrastructure under the Roadmap, including to:

- 2.1 Ensure cultural safety
- 2.2 Identify appropriate people and communities for engagement
- 2.3 Plan and resource for early and genuine engagement
- 2.4 Understand capacity of local Aboriginal communities and build capacity where possible.

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## 2.1 Ensure cultural safety

As a foundation for respectful engagement proponents should ensure cultural safety across their organisation. Cultural safety can be defined as an environment which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need.<sup>5</sup>

A strong understanding of the social and cultural landscape, including First Nations history and heritage, can help to foster cultural safety. This will often be a learning process where organisations listen, learn and reflect.

Cultural safety extends beyond cultural awareness towards proactive actions to help create culturally safe experiences and interactions for First Nations people. The Clean Energy Council's Leading Practice Principles: First Nations and Renewable Energy Projects provides minimum and leading practice guidance for ensuring cultural competency, see pages 68 – 73.

The Australian Evaluation Society's First Nations Cultural Safety Framework provides detailed guidance on ensuring culturally safe evaluation practice. Further resources on cultural safety training and assessment tools are referenced in Appendix D: Further resources.

### Proponents – Questions to assess and develop cultural safety

1. Do you have a clear understanding of the journey from cultural awareness to cultural competency to cultural safety?
2. Do you listen to and respect what First Nations people tell you, even if it is difficult to hear? Are you able to adapt your approach in response to criticisms on cultural safety?
3. Have you considered how your business-as-usual ways of working could present barriers to First Nations people?
4. Do you have organisation-wide cultural competency training, conducted by a First Nations certified training organisation?
5. What resources have you explored to determine how to support cultural safety in your work and organisation?

Source: Adapted from NSW Treasury's First Nations Investment Framework (2024).

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## 2.2 Identify appropriate people and communities for engagement

At a minimum proponents should engage with:

- Aboriginal people who have Native Title rights and interests, within the meaning of the *Native Title Act 1993* (Cth), in relation to the land to which the relevant projects relates
- the Local Aboriginal Land Council for the area to which the relevant project relates

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<sup>5</sup> NSW Treasury First Nations Investment Framework: A guide to design, economic appraisal and evaluation of First Nations Initiatives, 2024, page 16.

- other Aboriginal persons prescribed by the *Electricity Infrastructure Investment Regulation 2021* (NSW).<sup>6</sup>

As best practice and to promote fulsome community engagement, proponents could also engage with a wider group of Aboriginal people. See Table 1 for a list of relevant First Nations community stakeholders that proponents could seek to engage in the development of their project.

**Table 1: Examples of First Nations community stakeholders**

Organisations
<p><b>Native title holders or claimants</b> – represented by Prescribed Bodies Corporate and Registered Native Title Bodies Corporate. These organisations are listed on the <a href="#">National Native Title Register</a>, <a href="#">Register of Native Title Claims</a>, and the <a href="#">Prescribed Body Corporate website</a>.</p>
<p><b>Aboriginal Land councils</b> – the <a href="#">NSW Aboriginal Land Council</a> and <a href="#">Local Aboriginal Land Councils</a>. Aboriginal land councils can include members who have cultural association with the land and/or members who reside in the area or have sufficient association with the area, or members elected for a region.</p>
<p><b>Regional alliances</b> – the <a href="#">nine Aboriginal Regional Alliances</a> operating under Local Decision Making and their respective member organisations.</p>
<p><b>Peak representative bodies</b> – for example, the <a href="#">NSW Coalition of Aboriginal Peak Organisations</a> and its member organisations.</p>
<p><b>Aboriginal Community-Controlled Organisations</b> – including local service providers, many of which are members of national and state peak bodies</p>
<p><b>Other Traditional Owner groups</b> – best identified in consultation with local community members.</p>
<p><b>Other First Nations organisations</b> – including corporations that may be registered with the <a href="#">Office of the Registrar of Indigenous Corporations (ORIC)</a>, associations, cooperatives, or other local or regional governance bodies, or groups representing specific cohorts.</p>
Individuals
<p><b>Elders</b> – highly respected cultural knowledge holders recognised and acknowledged as such by their community. Contact an appropriate representative body, such as the Local Aboriginal Land Council or Aboriginal Regional Alliance, to first understand local cultural protocols before exploring the appropriateness of seeking introduction to an Elder.</p>
<p><b>Aboriginal Owners</b> – Aboriginal people with a cultural association with lands of cultural significance listed under the <i>Aboriginal Land Rights Act</i> (1983). The Office of the Registrar under this legislation maintains a list of Aboriginal owners.</p>
<p><b>Other subject matter experts</b> – this could include leading First Nations professionals or researchers with expertise in a specific field, or local community representatives with relevant skills, knowledge or interests.</p>

Source: Adapted from NSW Treasury's First Nations Investment Framework (2024).

For proponents developing a project within one of the five REZ regions, a First Nations Outcomes team has been established in the Energy Corporation of NSW (EnergyCo) to help coordinate consultation, engagement and implementation of programs and initiatives that deliver outcomes to local Aboriginal communities.

<sup>6</sup> Definition of local Aboriginal community under section 4(7) of the EII Act. The EII Regulation does not currently prescribe any other Aboriginal persons as falling within the definition of “local Aboriginal community”.

## Proponents – For projects within REZs, contact the First Nations Outcomes team

1. Contact the First Nations Outcomes team at [firstnationsoutcomes@energyco.nsw.gov.au](mailto:firstnationsoutcomes@energyco.nsw.gov.au) outlining:
  - a. Details of the project, including the location of the project.
  - b. Any engagements you've already undertaken with First Nations communities for the project.
  - c. The income and employment opportunities for First Nations people that the project offers.

If there is an established First Nations Working Group within that region, the First Nations Outcomes team will coordinate and support engagement between you and the working group. The Working Group can also help to make connections with the broader local Aboriginal community as appropriate.

## Proponents – Guidance for projects outside the REZ regions

1. Consider who has an interest in the land, including interests extending beyond land tenure.
2. Conduct desktop research of the local area to identify
  - a. Relevant Traditional Owners, Custodians or First Nations communities
  - b. Representative organisations such as Land Councils, Aboriginal Corporations, Elders Council, language centre, or Prescribed Body Corporate
  - c. Community principles for engagement, potentially identified on the Registered Aboriginal Parties' or Land Councils' websites
  - d. Impacts of previous projects or any significant events that may still affect the community.
3. Contact First Nations peak bodies in the relevant area for further information on the community and cultural context, such as native title service providers and healthcare providers.
4. Map relevant community stakeholders and develop a local Aboriginal community engagement plan
5. Ask people or organisations with connections to the community for advice.
6. Ask 'is there anyone else we should speak to'? If so, ask for an introduction.
7. Where there is more than one Traditional Owner or First Nations group, ensure you are engaging fairly with all.
8. Spend time with community to understand who has decision-making authority on certain topics and other governance elements.

Source: Clean Energy Council's Leading Practice Principles: First Nations and Renewable Energy Projects, page 26.

## 2.3 Plan and resource for early and genuine engagement

Early and genuine engagement with local Aboriginal communities will:

- show respect and demonstrate commitment to working genuinely with the local Aboriginal communities

- acknowledge and allow space for consideration of the commitments and priorities of local Aboriginal communities
- identify the full range of First Nations people and communities to engage
- help to maximise the opportunities for First Nations people and communities in the renewable energy transition.

The [Leading Industry Guidance](#) provides minimum and leading practice guidance for proponents on early engagement, see pages 27 – 29.

### **2.3.1 Prioritise listening from initial engagement onwards**

Focus the initial meetings on taking the time to introduce each other and being clear on the purpose of engagement. Proactive listening by both the First Nations people and communities and proponent is important to demonstrate a commitment to working genuinely together.

Proponents should be guided by First Nations people and communities on their preference for future communication and ways of working together. First Nations people and communities will have their own priorities and aspirations which will start to shape and inform the direction of the consultation as the project progresses.

Proponents should understand this and maintain flexibility while being transparent and honest about any firm limitations on the project timing and scope. Managing expectations and not making commitments that proponents cannot uphold is important to maintaining a genuine and long-term relationship with the local Aboriginal community.

### **2.3.2 On Country and in-person meetings are important**

Meeting in-person, including on Country, is generally the preferred way to build relationships with First Nations people and communities. This is a way to show respect for the First Nations people and community, recognising the deep significance of Country, and the intent to develop meaningful relationships.

### **2.3.3 Ask and understand the local community protocols**

Proponents should seek advice from the First Nations community organisations or representatives to understand the local community protocols on First Nations engagement and consultation. Plans for engagement should be flexible, including postponing arrangements where First Nations people or communities have cultural obligations such as Sorry Business or cultural events during NAIDOC Week.

### **2.3.4 Allow for adequate resourcing for genuine engagement**

Inadequate resourcing can be damaging to genuine engagement and could exacerbate the consultation fatigue that many First Nations people and communities experience. Where relevant, the use of any cultural expertise or knowledge in the development and operation of the project needs to be valued appropriately.



### **Proponents – Questions to assess whether adequate time and resourcing has been allocated for early and genuine engagement**

1. Have you taken the time to identify and introduce yourself to all the appropriate First Nations people and communities you are intending to engage with?
2. What allowance has been made in the project timeframes and budget to establish new relationships? Who will lead this process within your organisation?
3. What capacity does your team have to travel to meet with First Nations people and communities on Country?
4. Has your team researched local community protocols? Who will you reach out to for guidance?
5. What allowance has been made in the budget to meet the costs that the First Nations people or communities might incur? How are you valuing their cultural expertise?
6. Have you considered resourcing a dedicated and experienced First Nations liaison for engagement with local Aboriginal communities?

Source: Adapted from NSW Treasury's First Nations Investment Framework (2024)

## **2.4 Understanding the capacity of local Aboriginal communities**

When engaging with local Aboriginal communities it is important to recognise, and not assume, their capacity for engagement. Over-consultation of local Aboriginal communities is a common problem that leads to consultation fatigue and stretched capacity for engagement.

Proponents should take steps to identify and alleviate consultation fatigue and stretched capacity. As best practice, proponents could also work with the local Aboriginal community to build their capacity in a sustainable and self-determined way.

### **Proponents – Practices to understand, alleviate and build capacity**

- Be clear in the full extent of the engagement and consultation and ask about the capacity of the local Aboriginal community or organisation to meet this.
- If capacity is stretched, determine best ways to alleviate capacity concerns. This could include:
  - Adequately compensating the local Aboriginal community or organisation for their participation and cultural knowledge.
  - Build in extra time into the project timeline to allow for extended timeframes for engagement and consultation, including time to support learning of the project itself.
  - Collaborate with other entities or government where possible to create coordinated strategies and support for the local Aboriginal community or organisation.
- Practices to build capacity of the local Aboriginal community or organisation:
  - Facilitate education on renewable energy, including the role that First Nations people have in renewable energy transition.
  - Provide or fund management, project governance and financial literacy training as appropriate and relevant.

Source: Adapted from Clean Energy Council's Leading Practice Principles: First Nations and Renewable Energy Projects, page 33.

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## 3 Identify opportunities to increase employment and income for local Aboriginal communities

This section outlines a range of ways to increase employment and income for local Aboriginal communities. Proponents should apply the respectful engagement principles outlined in Section 2 of the Guidelines to identify the opportunities that are most appropriate for the relevant local Aboriginal community.

This section provides guidance on ways to increase income and employment opportunities for local Aboriginal communities, including:

- 3.1 Aboriginal participation through employment and procurement
- 3.2 Co-ownership or shared equity arrangements with Aboriginal people
- 3.3 Agreements for benefit sharing with local Aboriginal communities
- 3.4 Programs and support offered by the NSW Government.

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### 3.1 Aboriginal participation through employment and procurement

Local Aboriginal communities can participate in the electricity infrastructure projects through employment of Aboriginal people and procurement of Aboriginal businesses.

Proponents should achieve *at least 3% First Nations participation* in their projects. This percentage can be achieved using *one or a combination* of the following:

- the Total Project Contract Value (TPCV) to be subcontracted to Aboriginal businesses<sup>7</sup>
- the contract's Australian based full-time equivalent (FTE) workforce that directly contribute to the contract be Aboriginal or Torres Strait Islander people.
- the contract value to be applied to the cost of education, training or capacity building for Aboriginal staff or businesses directly contributing to the contract.

These participation targets should be embedded into downstream contracts to ensure that First Nations participation is achieved at all levels of the project under the Roadmap.

Increasing the minimum First Nations participation to 3% brings the target closer to the aspirational goals of local Aboriginal communities which range from 7.5% to 20% in the region-specific First Nations Guidelines published to date.

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<sup>7</sup> The definition of 'Aboriginal businesses' is consistent with the [Aboriginal Procurement Policy](#), (2021). This means an Aboriginal business that has at least 50% Aboriginal ownership and is recognised through an appropriate organisation, such as Supply Nation or the NSW Indigenous Chamber of Commerce.

## Proponents – First Nations participation targets for projects within each REZ region

Each First Nations Region-specific Guidelines includes the economic participation goals and aspirations of the local Aboriginal communities within that region:

- 20% in Central-West Orana
- 7.5% in Hunter Central Coast
- 10-12% in South West.

If your project is occurring in these regions, you should refer to the relevant region-specific Guideline to understand the participation goals and aspirations of the local Aboriginal communities within that region. Where possible, proponents should work towards achieving these goals and aspirations.

If the project is occurring in a region where the region-specific Guidelines do not apply, or have not yet been developed, proponents should undertake respectful, early and meaningful engagement with local Aboriginal communities to understand their Aboriginal participation priorities and aspiration.

This will assist in informing targets, planning and attainment of sustainable benefits for the local Aboriginal community. Establishment of a dedicated Aboriginal Participation and Outcomes team or project lead by proponents will help to drive progress in the agreed commitments and initiatives.

### 3.1.1 Procurement of goods and services from Aboriginal businesses

Procurement of goods and services, particularly from local Aboriginal community businesses, is another opportunity to increase Aboriginal economic participation in electricity infrastructure projects under the Roadmap. See Table 2 for various directories which can help to identify appropriate Aboriginal businesses.

Refer to the region-specific Guidelines to understand the local Aboriginal community's priorities and aspirations for procurement of Aboriginal businesses within the community. Central-West Orana, Hunter-Central Coast and the South-West region Guidelines all listed the following as priority activities:

- Procurement of goods and services from Aboriginal-owned businesses should be prioritised where there is adequate capacity and capability across all contract levels and roles and for short-term, long-term and recurring work.
- Build local Aboriginal business capability and capacity to tender for work packages and other income opportunities available under the development and operation of the REZ. To achieve this, early engagement with local Aboriginal businesses is critical and issuing tenders for smaller work packages enables greater participation.

**Table 2: Directories to help identify First Nations businesses**

Directory	Overview	Tips for searching
<a href="#">Supply Nation: Indigenous Business Direct</a>	A database of verified First Nations-owned businesses.  Proponents can become a member with Supply Nation which provides:	<ul style="list-style-type: none"><li>• Database is publicly available</li><li>• Available 'service' categories include:<ul style="list-style-type: none"><li>○ construction</li></ul></li></ul>

	<ul style="list-style-type: none"> <li>• training and development to build their supplier diversity program.<sup>8</sup></li> <li>• a dedicated relationship manager who can help develop a tailored supplier diversity action plan.</li> </ul>	<ul style="list-style-type: none"> <li>○ manufacturing and equipment hire</li> <li>○ recruitment and labour hire</li> </ul>
<a href="#">Yarpa</a>	Maintains a directory of First Nations business members. Proponents can also register as a member to promote procurement opportunities through this network.	<ul style="list-style-type: none"> <li>• Please contact Yarpa at <a href="mailto:info@yarpa.com.au">info@yarpa.com.au</a></li> </ul>
<a href="#">NSW Indigenous Chamber of Commerce</a>	<p>NSWICC officers end to end program consultancy, advice and facilitation services to assist proponents to maximise their social and economic impact, including achieving First Nations workforce planning targets.</p> <p>NSWICC also has an NSW Aboriginal Business Portal.</p>	<ul style="list-style-type: none"> <li>• Please <u>contact</u> NSWICC.</li> </ul>
<a href="#">Office of Registrar of Indigenous Corporations (ORIC)</a>	Includes a public register of corporations registered under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth)	<ul style="list-style-type: none"> <li>• Corporation register is publicly available</li> <li>• Search is by corporation names or numbers</li> </ul>

## Proponents – Leading practice to increase Aboriginal business procurement opportunities

Establish an Aboriginal business procurement strategy for renewable energy, storage and network infrastructure Roadmap projects that:

- Identifies appropriate and effective communication strategies for promoting opportunities
- Embeds procurement and employment targets for third party contractors through Aboriginal Participation Plan requirements
- Ensures future owners/operators are bound to existing supplier agreements. This includes transitioning relationships with First Nations suppliers
- Provides targeted and coordinated support to build First Nations capacity to tender for work packages, for example providing briefings/training to support local supplier's ability to meet project needs
- Supports education, training, and business development initiatives for First Nations entrepreneurs
- Help with sourcing finance for First Nations business, such as providing loan guarantees
- Hold regular Indigenous procurement briefings with local and regional First Nations businesses.

Source: Adapted from Clean Energy Council's Leading Practice Principles: First Nations and Renewable Energy Projects, page 57.

<sup>8</sup> Supplier diversity is a global movement designed to harness planned and budgeted procurement spend and redirect it to traditionally under-represented businesses where it can create social good and give businesses a strong competitive advantage, see [Supply Nation | Join Supply Nation as a corporate organisation](#)

### 3.1.2 Employment of Aboriginal people should consider community priorities

Proponents should focus on providing Aboriginal people with longer term operational roles, which may require additional training or study compared to entry level construction positions. Long-term and sustainable employment is central to closing the gap in socioeconomic indications. For local Aboriginal community members this provides an opportunity for them to remain on country and contribute to their community.

Refer to the relevant region-specific Guideline to understand the local Aboriginal community's priorities and aspirations for employment of Aboriginal people within the community. Central-West Orana, Hunter-Central Coast and the South-West region Guidelines all listed the following as priority activities:

- Consider joint ventures or partnership opportunities through adjustments to work packages to support Aboriginal participation while building skills, capability and capacity.
- Advance specific opportunities in employment and training for Aboriginal women, Aboriginal people with disabilities, youth and persons facing pre-employment challenges.

#### **Proponents – Leading practices to increase employment opportunities for local Aboriginal communities**

Establish a local and culturally safe Aboriginal employment strategy (ideally co-designed with local Aboriginal community) for renewable energy, storage and network infrastructure Roadmap projects that:

- Engages the local community to identify which jobs fit the community's economic, social and cultural needs
- Sets targets throughout the project lifecycle for First Nations employment, including in maintenance and operations as this provides long-term employment outcomes
- Embeds targets in contracts with third parties, EPCs and sub-contractors to ensure future owners/operators are bound to existing agreements
- Assigns accountability for employment targets to senior HR personnel
- Regularly reports back to the local community on how targets are being met
- Undertakes skills analysis for the local community and broader region and provides training accordingly
- Provides pre-employment support and mentoring for First Nations job seekers
- Supports sustainable and future focused training and skills development, including high school initiatives and apprenticeships
- Funds First Nations scholarships for training courses, including through collaborations with other developers and proponents
- Focuses on upskilling and leadership opportunities to drive learning and career development and ensure First Nations people are not limited to entry-level roles
- Includes the development and implementation of a retention strategy, including monitoring and reporting to community and company governance
- Supports or establishes community education programs to increase knowledge of renewable energy.



### 3.1.3 Training for local Aboriginal peoples

The skills gap between local Aboriginal peoples and the employment opportunities available on renewable energy projects can be a challenge in realising the minimum employment targets.<sup>9</sup> This is why the cost of education, training or capacity building for Aboriginal staff or businesses directly contributing to the contract can be accounted towards the recommended 3% minimum target.

Timely and adequate training and pre-employment programs to support employment for Aboriginal people is a key priority outlined in each of the region-specific Guidelines, including:

- Investment in pre-employment training and upskilling opportunities to promote skills development and transferability.
- Support existing or, if necessary, establish new community education and training programs and schedules to increase workforce skills, capabilities and readiness.

Where possible, the training should be planned in consultation with the local Aboriginal community ahead of project construction to ensure appropriately trained Aboriginal candidates can be employed on renewable energy projects.<sup>10</sup>

## 3.2 Co-ownership and shared equity arrangements with Aboriginal peoples

Local Aboriginal community ownership of, or equity in, a renewable energy, storage or network infrastructure project under the Roadmap could increase the community’s income in a sustainable and self-determined way. Recognising Aboriginal people as partners and beneficiaries leads to the development of meaningful projects that have support and trust by the local Aboriginal community.

There are various ways to set up co-ownership and equity, see Table 3.

It is up to the local Aboriginal community and the proponent to negotiate the most appropriate approach for both parties.

Table 3: Different types of ownership arrangements with Indigenous peoples

Ownership type	Key features
General partnership	<ul style="list-style-type: none"><li>• Project is owned by Indigenous people and a commercial proponent (50% Indigenous owned; 50% business owned).</li><li>• Ownership is shared equally between both parties with shared decision- making and equally distributed earnings.</li><li>• Compared to a limited partnership or a minority equity ownership, the required capital, time and effort will be higher.</li></ul>
Limited partnership	<ul style="list-style-type: none"><li>• Project is owned by Indigenous people and a commercial proponent, but not equally (25% to50% Indigenous owned; 50% to75% business owned).</li></ul>

<sup>9</sup> Clean Energy Council, Leading Practice Principles: First Nations and Renewable Energy Projects, 2024, page 51.

<sup>10</sup> Clean Energy Council, Leading Practice Principles: First Nations and Renewable Energy Projects, 2024, page 53.

- Ownership is split depending on the percentage.
- This can be a highly flexible model with liability and risks distributed at the negotiated and agreed levels.

#### **Minority equity ownership**

- Indigenous people own equity in the project (25% or less Aboriginal-owned; 75% or more non-Aboriginal proponent owned)
- Indigenous people would essentially be acting as shareholders.
- Indigenous people won't have an active role in project planning or administration but will receive the dividends distributed by the business.

Source: Adapted from Indigenous Peoples and the Just Transition on Exploring Shared Prosperity: Indigenous Leadership and Partnerships for a Just Transition, 2024, page 14.

### **3.2.1 Ensure fair, respectful and transparent negotiations**

Negotiation between the local Aboriginal community and proponent is crucial to developing a co-ownership or equity arrangement that is most appropriate for both parties. These negotiations need to be conducted in good faith, ensuring fairness, respect, and transparency.

There should be a foundation of trust and respect for the local Aboriginal community's customs and protocols. Transparency of the potential benefits and risks of the investment is also important during negotiation, including the timing of when the benefits and risks are expected to be realised.

#### **Proponents – Questions to assess and ensure fair, respectful and transparent negotiations**

- Have you planned for effective negotiation that factors in time for dedication to relationship and trust-building?
- Have you shared all the project's benefits, risks, goals, investor expectations and priorities with the local Aboriginal community and confirmed their understanding?
- Do you have a clear understanding of the local Aboriginal community's goals and priorities for the co-ownership or equity arrangement?
- Consider what inputs and activities are expected from the local Aboriginal community once they are engaged as an owner. Ensure that these expectations are appropriately communicated and understood by the local Aboriginal community.
- Consider how the local Aboriginal communities who have ownership in the project can be involved through co-governance such as seats on Boards and/or committees.
- Determine whether interpreters or cultural navigators need to be engaged in the negotiation process.

Source: Adapted from Clean Energy Council's Leading Practice Principles: First Nations and Renewable Energy Projects, 2024, page 60; Indigenous Peoples and the Just Transition's Guide on Exploring Shared Prosperity: Indigenous Leadership and Partnerships for a Just Transition, 2024, page 34.

## Local Aboriginal communities – Questions to assess and ensure fair, respectful and transparent negotiations

- Have you considered how your community/group should be represented during the negotiations? See [First Nations Clean Energy Network's negotiating guide](#) for detailed guidance on how to act as a collective and ensure appropriate representation.
- Is there an agreed understanding of priorities and goals for entering into the co-ownership or equity arrangements? Has this been communicated to the proponent?
- Have you communicated to the proponent the appropriate engagement protocols required for respectful negotiations?
- Do you have all the information required to make an informed decision? In particular, do you understand all the risks associated with the proposed co-ownership or equity arrangement?
- Have you considered what additional independent and expert advice is needed to ensure fair negotiations and arrangements – e.g., legal advice, financial advice?

Source: Adapted from First Nations Clean Energy Network's Clean Energy Negotiations Guide for First Nations, 2022.

## 3.3 Agreements for benefit sharing with local Aboriginal communities

In addition to co-ownership and economic participation, negotiated benefit agreements between proponents and Indigenous people across the world are becoming increasingly common.<sup>11</sup>

These arrangements can be various, including revenue sharing through community development funds or supporting development of alternative skills and employment opportunities. The common theme or goal amongst these arrangements is the economic and social benefits to local Aboriginal communities.

### 3.3.1 Principles of benefit sharing

The Clean Energy Council has developed the following principles which provides a useful framework for developing or assessing the appropriate benefit sharing strategy between proponents and local Aboriginal communities, see Table 4.

Table 4: Key principles of benefit sharing

Principle	Description
<b>Appropriate</b>	<p>Benefit sharing is tailored to local circumstances, culture and needs.</p> <p>The benefits are perceived as being appropriate and proportionate to the scale of the project and the level of change or disturbance experienced by local Aboriginal communities.</p> <p>The local Aboriginal community provides guidance on how benefit sharing can create a positive, lasting and meaningful impact for them. The proponent works with the community to develop specific benefit sharing strategies that respond to their unique local context and need.</p>

<sup>11</sup> Indigenous Peoples and the Just Transition's Guide on Exploring Shared Prosperity: Indigenous Leadership and Partnerships for a Just Transition.

<b>Flexible</b>	<p>Benefit sharing is an aspect of project development that will greatly benefit from being open to community involvement, influence and negotiation. Having the flexibility to respond to local context will ensure benefit sharing has the best and biggest positive impact (for locals and for the project).</p> <p>The lifecycle of renewable energy developments is significant, and community can change during this time. Therefore, it is important to build in flexibility so that benefit sharing can evolve with community needs.</p>
<b>Transparent</b>	<p>The benefit sharing strategy is transparently available to the local Aboriginal community and provides a clear and understandable rationale for the various programs and who is eligible to participate. Benefit sharing is managed in a transparent and accountable way that involves local stakeholders.</p> <p>Benefits share the proceeds of the project and build positive relationships. Benefit sharing should not come with conditions of silence or consent.</p>
<b>Integrated</b>	<p>Benefit sharing seeks to integrate the proponent and the project as valuable community members by building links and relationships with the community.</p> <p>The benefit sharing approach is integrated with the company's broader approach to community engagement and project development.</p>
<b>Mutually beneficial</b>	<p>The approach is designed to bring mutual benefit to local communities, the project and its owners and financiers.</p>
<b>Strategic</b>	<p>Benefit sharing creates a positive legacy in the local community and seeks to bring ongoing and lasting value to the local area. The programs seek to integrate benefit sharing opportunities with broader strategies by building local partnerships.</p> <p>Benefits should be provided from at least the start of the construction and throughout the operational phase. One-off initiatives do not provide ongoing sustainability or support.</p>

Source: Clean Energy Council, A Guide to Benefit Sharing Options for Renewable Energy Projects, 2019, page 4.

## 3.4 Programs and support offered by NSW Government

NSW Government also offers various programs and support in helping increase employment and income opportunities for local Aboriginal communities, see Table 5. The Guidelines can also inform the development of priorities for these programs.

**Table 5: Programs and support offered by NSW Government to achieve First Nations outcomes**

Program	Overview of the program
<b>Community and Employment Benefit Program (CEBP)</b>	<p><b>Overview:</b> The CEBP will contribute to the long-term prosperity of host regions by funding community-led initiatives, public infrastructure and First Nations projects.</p> <p>Partnerships and programs to support local employment and small business development, including skills development, training and opportunities are also being developed.</p> <p><b>Program design and funding:</b> The design and funding of the CEBP can be slightly different for each REZ.</p> <p>\$70 million in funding is available for Stage 1 of the CEBP in the Central-West Orana REZ. This funding is available through 4 grant streams:</p>

- *Local Community Fund*: Community and First Nations projects that improve local amenity and foster community connections.
- *Local Community Small Grants*: Supports small-scale events, initiatives or projects that deliver tangible benefits for local and First Nations communities.
- *First Nations Fund*: Projects that empower local Aboriginal organisations, create job opportunities and enhance outcomes for Aboriginal people.
- *Legal Infrastructure Fund*: Funding for eligible councils to work with communities to deliver infrastructure projects and boost liveability.

**Further resources:** See [Community and Employment Benefit Program | EnergyCo](#)

#### **First Nations Outcomes Team in EnergyCo**

The First Nations Outcomes team coordinates consultation, engagement and implementation of programs and initiatives that deliver outcomes to local Aboriginal communities under the Electricity Infrastructure Roadmap

The team will support each of the region-specific First Nations Working Groups in:

- Liaising with proponents during the development of their Aboriginal Participation Plans.
- Coordinating and supporting the Working Groups to engage and negotiate with proponents from project inception through to project delivery and operation.

Proponents within each REZ region should reach out to the First Nations Outcomes team as the first port of call when seeking to engage with the region-specific Working Groups. The First Nations Outcomes Team can also connect proponents with the Working Group to help identify opportunities to increase employment and income for the local Aboriginal community, leveraging good practice in particular regions.

**Contact details:** The team can be contacted at [firstnationsoutcomes@energyco.nsw.gov.au](mailto:firstnationsoutcomes@energyco.nsw.gov.au).

#### **Other grants and funding**

Various other grants and funding for Aboriginal people and communities in NSW can be found at: [Grants and funding for Aboriginal people NSW | NSW Government](#)

## **4 Reporting, compliance and enforcement of the opportunities to increase employment and income for local Aboriginal communities**

The Minister, Consumer Trustee and Infrastructure Planner must take the First Nations Guidelines into account when exercising certain functions under the EII Act, see Figure 1. This can be done by requiring proponents to prepare and implement an IAPP for relevant projects under the Roadmap.

This requirement is consistent with the NSW Aboriginal Procurement Policy (APP). The APP does not apply outside of NSW Government contracts but does provide a useful guide for reporting on the consultation and negotiation with local Aboriginal communities, regarding relevant projects under the Roadmap. Under the APP, progress on meeting commitments must be reported by suppliers and verified. Similar reporting obligations on commitments under IAPPs should be considered by the Minister, Consumer Trustee and Infrastructure Planner.



The Infrastructure Planner should impose the requirement to prepare and implement an IAPP on the Network Operator via contractual arrangements.

For an infrastructure proposal to which a LTESA would apply, the Consumer Trustee should impose an eligibility requirement on proponents to develop and include an IAPP as part of a bid. The Consumer Trustee has taken the Guidelines into account through the design of the LTESA tender rules which ensures that renewable energy projects meet standards for social, environmental and economic outcomes, including local Aboriginal community engagement and benefit-sharing. These requirements are outlined in the Tender Guidelines and reinforced through the eligibility and merit criteria.<sup>12</sup>

### **Consumer Trustee and Infrastructure Planner – Further guidance on how to take the Guidelines into account**

The following additional recommendations could be made by the Consumer Trustee and Infrastructure Planner with regards to LTESAs and network infrastructure projects respectively:

- Consider the track record of proponents in consultation and negotiation with local Aboriginal communities through any previous breaches of Aboriginal cultural heritage, environmental and racial discrimination protection laws.
- Include a criteria on First Nations engagement where the proponent is required to set out a strategy for best practice First Nations engagement in alignment with the First Nations Guidelines.

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## **4.1 Priority employment and income opportunities committed to Industry and Aboriginal Participation Plans (IAPPs)**

Once proponents respectfully engage with the local Aboriginal community, they should develop an IAPP that outlines the employment and income opportunities which the local Aboriginal community has identified as key priorities.

The IAPP should:

- Demonstrate the respectful engagement protocols the proponent has undertaken with local Aboriginal communities as per the Guidelines and region-specific Guidelines, where relevant.
- Outline any ways in which the proponent is building capacity of the local Aboriginal community, where relevant.
- Commit to, or exceed, the 3% First Nations economic participation requirement, including reasons if the requirement cannot be committed to.
- Identify any other opportunities the local Aboriginal community has identified as a priority, including co-ownership or shared equity, as alternative social license benefits.
- Detail how progress on meeting the commitments will be reported and how the report can be transparently shared and verified with the local Aboriginal community.

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<sup>12</sup> Tender Guidelines and rules for each Roadmap tender is [published by AEMO Services](#).

Refer to the relevant [AEMO Services Tender Documents](#) and [EnergyCo](#) for relevant IAPP templates. Where a template is not available, see Appendix C: Industry and Aboriginal Participation Plan template.

#### 4.1.1 Consideration of IAPPs by Roadmap decision makers

Roadmap decision makers refer to entities appointed under the Roadmap that have relevant decision-making functions under the EII Act, in particular the NSW Minister for Energy, the Infrastructure Planner, Consumer Trustee and Regulators.

When taking the Guidelines into account in the exercise of their relevant statutory functions under the EII Act, Roadmap decision makers should consider the level of detail provided in the IAPPs and whether there is sufficient detail about the commitments to provide employment and income opportunities to the local Aboriginal community, including:

- how closely the commitments reflect the opportunities outlined in the Guidelines and/or the community aspirations outlined in the region-specific Guidelines
- whether these commitments will allow for the local Aboriginal community to receive long-term and self-determined benefits
- the transparency of the commitments made and how to verify progress, including whether IAPPs have sufficient detail about the local Aboriginal community's endorsement and how proponents propose to measure, verify and report to the community on progress towards agreed outcomes
- the extent to which a proponent's IAPP delivers, or is likely to deliver, on the priority activities and long-term goals and aspirations in the region-specific First Nations Guidelines.

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## 4.2 Reporting of IAPP commitments

Section 50(2) of the EII Act requires LTES operators to provide information to the Minister every year about the extent to which the LTES operator is creating employment and supporting industry in New South Wales. This includes commitments relevant to Aboriginal people and businesses. As per section 50(4) of the EII Act, the Minister must table a report which summarises the information from LTES operators in both Houses of Parliament.

The regulator, Independent Pricing and Regulatory Tribunal (IPART), prepares an annual report on the Consumer Trustee, Financial Trustee, Infrastructure Planner's exercise of functions under the EII Act.<sup>13</sup> This report must include information required by the Minister. The Minister may require information about consultation with local Aboriginal communities and IAPPs including income and employment commitments made and results.<sup>14</sup>

The [Renewable Energy Sector Board's Plan](#) is reviewed every 2 years, which includes a review of the First Nations participation requirements in the Board's plan.

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<sup>13</sup> Section 70, EII Act.

<sup>14</sup> See [NSW Electricity Infrastructure Roadmap Annual Report to the Minister | IPART](#).

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## 4.3 Compliance and enforcement of IAPP commitments

Once the proponent is successful in a bid for a LTESA, access right, priority transmission infrastructure project or REZ network infrastructure project, the commitments in the IAPP become contractually binding. This makes the proponent accountable for achieving the commitments.

The Consumer Trustee and Scheme Financial Vehicle have monitoring, reporting and compliance responsibilities in relation to LTESAs and access right bids. The Infrastructure Planner has similar responsibilities in relation to network infrastructure projects.

The Scheme Financial Vehicle and Infrastructure Planner have several enforcement options if LTES operators or network operators do not deliver on their commitments such as notices of non-compliance and cure plans. The Consumer Trustee and Infrastructure Planner regularly meet with proponents to ensure compliance and monitor progress.

The Consumer Trustee and Infrastructure Planner should consider Recommendation 7 of the Board's Plan in their monitoring and compliance frameworks for social licence commitments.

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## 5 Evaluation and review of the Guidelines

The Guidelines will be reviewed at least every three years to ensure the objectives and requirements of the Guidelines are in line with community expectations and State priorities.

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## 6 Appendices

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### 6.1 Appendix A – Relevant sections of the EII Act

#### **3 Objects of Act**

(1) The objects of this Act are —

- (a) to improve the affordability, reliability, security, and sustainability of electricity supply, and
- (b) to co-ordinate investment in new generation, storage, network, and related infrastructure, and
- (c) to encourage investment in new generation, storage, network, and related infrastructure by reducing risk for investors, and
- (d) to foster local community support for investment in new generation, storage, network, and related infrastructure, and
- (e) to support economic development and manufacturing, and
- (f) to create employment, including employment for Aboriginal and Torres Strait Islander people, and
- (g) to invest in education and training, and
- (h) to promote local industry, manufacturing and jobs, and
- (i) to promote export opportunities for generation, storage, and network technology.

(2) The following objects also apply to Parts 4–6—

- (a) to increase employment and income opportunities for Aboriginal and Torres Strait Islander people in New South Wales, and
- (b) to promote consultation and negotiation with the traditional Aboriginal owners of land on which generation, storage and network infrastructure is proposed to be constructed or operated under this Act.

(3) A person or body exercising a function under this Act must do so in a way that is consistent with the objects of this Act.

#### **4 Consultation and negotiation with local Aboriginal communities**

- (1) The Minister is to issue guidelines about consultation and negotiation with the local Aboriginal community in relation to relevant projects for the purposes of increasing employment and income opportunities for the local Aboriginal community.
- (2) The Minister is to take the guidelines into account when exercising the Minister’s functions under Part 5, Division 2.

- (3) To give effect to the guidelines, the Minister may impose a condition on a direction under section 32 or an authorisation under section 36(2).
- (4) The consumer trustee is to take the guidelines into account when exercising the consumer trustee's functions under Part 6, Divisions 3 and 4.
- (5) To give effect to the guidelines, the consumer trustee may —
  - (a) include, in a recommendation to the Minister under section 31(1)(a), a recommendation that a condition be imposed on the Minister's direction, and
  - (b) impose a condition on an authorisation under section 31(1)(b).
- (6) The guidelines are to be published on the Department's website.
- (7) In this section —

*local Aboriginal community* includes —

- (a) an Aboriginal person who has native title rights and interests, within the meaning of the *Native Title Act 1993* of the Commonwealth, in relation to the land to which the relevant project relates, and
- (b) the Local Aboriginal Land Council for the area to which the relevant project relates, and
- (c) other Aboriginal persons prescribed by the regulations.

*relevant project* means —

- (a) a renewable energy zone network infrastructure project or priority transmission infrastructure project, and
- (b) an infrastructure project to which an LTES agreement applies.



## 6.2 Appendix B – Mechanisms for recognition of land rights

In NSW there are two mechanisms by which Aboriginal people can have their land rights recognised, see table 7.

**Table 7: Comparison of land rights and native title processes in NSW**

	<i>Aboriginal Land Rights Act 1983</i> (NSW)	<i>Native Title Act 1993</i> (Commonwealth)
Aim	To provide land rights and to vest land in NSW to Aboriginal peoples through a process of lodging claims for certain Crown lands. As the amount of land set aside for Aboriginal persons has been progressively reduced without compensation and in recognition of the ongoing disadvantage suffered.	Provide a process for legal recognition of the traditional communal, group, or individual rights and interests which Aboriginal people have in land and water. To address past injustice by providing a process to recognise and protect the native title in addition to providing processes to reach agreements or provide compensation.
Claimants	Properly constituted Aboriginal Land Councils can make claims	A person or persons authorised by the native title claim group
Land that can be subject to a claim	Crown land that is: <ul style="list-style-type: none"> <li>♦ able to be lawfully sold or leased, or is reserved or dedicated for any purpose</li> <li>♦ not lawfully used or occupied</li> <li>♦ not needed or likely to be needed for residential purposes or an essential public purpose</li> <li>♦ not the subject of a registered native title claim or determination.</li> </ul> Land that is privately owned cannot be claimed or granted although some land vested in Property NSW may be claimable.	<ul style="list-style-type: none"> <li>♦ vacant Crown land</li> <li>♦ national parks</li> <li>♦ state forests</li> <li>♦ Crown reserves</li> <li>♦ some types of non-exclusive leases</li> <li>♦ some land covered by permissive occupancies and licences</li> <li>♦ inland waters and the sea.</li> </ul> With some minor exceptions, land that is privately owned cannot be subject to native title rights and interests because the exclusive interest in land extinguishes native title.
Lodgement of claim	Claims must be lodged with the Registrar of the Aboriginal Land Rights Act	Claims must be lodged with the Federal Court of Australia
Decision-maker	The NSW Minister administering the Crown Land Management Act	Federal Court of Australia
Requirement	Traditional connection to land does not need to be established. If the Minister is satisfied that the lands are 'claimable Crown land' as defined in section 36 of the Act the land must be granted to an Aboriginal Land Council.	The native title will only be determined by the Court to exist where claimants can establish that they are the Traditional Owners for the area claimed, i.e. they have maintained a continuing connection with the area through the acknowledgment and observance of traditional laws and customs and ongoing practice of rights and interests.
Outcomes	NSW Aboriginal Land Council or a Local Aboriginal Land Council may: <ul style="list-style-type: none"> <li>♦ acquire and manage land as an economic base for Aboriginal communities</li> </ul>	Legal recognition of native title, i.e. the traditional communal, group, or individual rights and interests which Aboriginal people have in land and water.

	<ul style="list-style-type: none"> <li>♦ make claims</li> <li>♦ negotiate Aboriginal Land Agreements.</li> </ul>	<p>Act provides processes to:</p> <ul style="list-style-type: none"> <li>♦ reach agreements with the government and other parties, such as farmers and miners</li> <li>♦ have a say about acts that affect native title</li> <li>♦ be compensated for extinguishment of native title which occurred after 31 October 1975.</li> </ul>
Holder of land rights	Land successfully claimed is held by a local or NSW Aboriginal Land Council.	<p>Traditional owners who have been recognised through the Court process as native title holders.</p> <p>Native title holders are required to form a Prescribed Body Corporate to represent them as a group and manage their rights and interests after a determination by the Court. The Act also provides for some rights in land and waters by a person or persons who hold native title even where a claim has not been made, such as where an act is proposed to be done that affects native title.</p>
Resulting land/ land-use rights	<ul style="list-style-type: none"> <li>♦ Freehold title, including the right to certain minerals in the land, subject to any native title that exists in the land.</li> <li>♦ Leaseback or joint management arrangements of land to be managed as national parks.</li> <li>♦ May negotiate Aboriginal Land Agreements that may deal with a range of matters, including land swaps, joint management of land, and compensation.</li> <li>♦ May make agreements with other landowners or persons in control of the land to access land for hunting, fishing and gathering and have rights to apply for access permits.</li> <li>♦ Aboriginal Land Councils also have consultation rights in relation to Aboriginal culture and heritage and have functions to protect and promote Aboriginal cultural heritage.</li> </ul>	<p>Native title is a property right and may include rights to:</p> <ul style="list-style-type: none"> <li>♦ access and camp on an area</li> <li>♦ visit and protect important places</li> <li>♦ hunt, fish and gather food and bush medicine</li> <li>♦ in some cases, possess, occupy, use and enjoy the area</li> <li>♦ certain procedural rights where an act affecting native title is proposed to be done.</li> </ul>

Source: Adapted from 'Comparison of Land Rights and Native Title in NSW fact sheet', NSW Aboriginal Land Council.

There may be circumstances where both land rights and native title coexist. Proponents need to research the existing interests, and the nature of those interests, in the areas that are proposed for development. These interests may not appear in the 'usual' title searches.

The National Native Title Tribunal (NNTT) maintains 3 registers of native title information and 2 other databases, see table 8.

**Table 8: Registers and databases maintained by the National Native Title Tribunal**

Register	Purpose
Register of Native Title Claims	Information about claimant applications that have satisfied the registration test
National Native Title Register	Information about the determination of claimant, non-claimant, compensation, and revised native title determination applications by the Federal Court, High Court, or a recognised body
Register of Indigenous Land Use Agreements	Information about Indigenous Land Use Agreements made between people who hold or may hold native title in the area and other people, organisations, or governments
Native Title applications, registration decisions, and determinations database	<p>Current information on all native title determination applications that are provided to the Registrar by the Federal Court, including all claimant applications (whether or not they have passed the registration test), non-claimant applications, compensation applications, and revised determination applications</p> <p>This database contains summaries of the native title determination applications, including the current status of applications, and provides a link to extracts from the Schedule of Native Title Applications</p>
Future Act applications and determinations database	<p>Summaries of all future act determination applications made to the NNTT</p> <p>Summaries of all future act determinations made by the NNTT, including NNTT Members' written reasons for determination decisions</p>

Source: 'About Registers & Applications, Determinations & Decisions', National Native Title Tribunal.

## 6.3 Appendix C – Industry and Aboriginal Participation Plan template

### Industry and Aboriginal Participation Plan for the First Nations Guidelines – Increasing employment and income opportunities from electricity infrastructure projects under the NSW Electricity Infrastructure Roadmap

- This participation plan will report on:
  - the respectful engagement approaches, including ongoing engagement
  - negotiated and agreed on economic outcomes with the local Aboriginal communities
  - agreed reporting outcomes
- The participation plan must consider the respectful engagement principles and employment and income opportunities outlined in the First Nations Guidelines.
- If the tender bid or network recommendation is accepted, the commitments in the participation plan become part of the contractual arrangement.
- Roadmap entities can require proponents to provide progress reports on the commitments.
- In completing the participation plan, the proponent should note this process is for the First Nations Guidelines and does not satisfy other consultation and reporting requires in other Acts.

Tendering organisation	
Tender reference	
Project name & ID	
Project location	<suburb and postcode or region where the project will take place>
Project start date	<exact date if known, or estimate>
Project end date	<estimate or expected end date>
Estimated project value (\$)	
Project spend <sup>15</sup>	

<sup>15</sup> Exclusion: For the purposes of determining the Aboriginal economic participation requirements, the project spend does not include spending on CAPEX or procurement of goods and services that are not available domestically or locally.

The project spend is the contract value minus the proposed exclusions.

Respectful engagement with local Aboriginal communities	
Which local Aboriginal community group or organisations were engaged with?	
How was this engagement undertaken?	<ul style="list-style-type: none"> <li>• Was the First Nations Outcomes team contacted?</li> <li>• Were the respectful engagement principles in the general First Nations Guidelines followed?</li> <li>• Where relevant, where the engagement protocols outlined in the region-specific Guidelines followed?</li> </ul>
What were the outcomes of the engagement?	
Outline the plan for ongoing engagement and reporting back to the local Aboriginal community	
Increasing employment and income opportunities for Aboriginal people	
<p><u>Aboriginal economic participation requirements</u></p> <p>The participation plan must demonstrate that proposals include one or a combination of the following:</p> <ul style="list-style-type: none"> <li>• at least 3% of the contract value to be subcontracted to Aboriginal-owned businesses</li> <li>• at least 3% of the contract's Australian based workforce (FTE) that directly contribute to the contract to be Aboriginal or Torres Strait Islander peoples</li> <li>• at least 3% of the contract value to be applied to the cost of education, training or capacity building for Aboriginal staff or businesses directly contributing to the contract.</li> </ul> <p>All proposed commitments in the plan must be credible and go towards building sustainable employment and income opportunities for the local Aboriginal community.</p> <p>Commitments must be measurable, verifiable and reportable. A report of progress to the local Aboriginal community may also be required.</p> <p>Where relevant, proponents should also consider the Aboriginal economic participation goals outlined in the region-specific Guidelines.</p>	
Sub-contracting plans	<p>Include:</p> <ul style="list-style-type: none"> <li>• the portion of Aboriginal participation that will be directed to Aboriginal owned businesses through sub-contracting</li> </ul>

	<ul style="list-style-type: none"> <li>• identify opportunities for Aboriginal-owned businesses in your supply chain</li> <li>• methods for verifying that businesses are at least 50% Aboriginal-owned</li> <li>• name and ABN of the Aboriginal-owned business that will be sub-contracted for delivery of the project</li> <li>• any other Aboriginal stakeholder engagement plans included as part of the sub-contract.</li> </ul>
Employment plans	<p>Include:</p> <ul style="list-style-type: none"> <li>• total estimates project workforce (FTE):</li> <li>• estimated Aboriginal FTE<sup>16</sup></li> <li>• the identified roles for First Nations employees and the skills required for these roles. Where possible, the majority of the roles should be central to the goods/services being delivered and located within local communities.</li> <li>• the identified ways to source suitable Aboriginal employees.<sup>17</sup></li> </ul>
Education, training or capability-building plans	<p>Include:</p> <ul style="list-style-type: none"> <li>• the portion of the Aboriginal participation requirements that will be directed to education, training or capacity building for Aboriginal staff or businesses</li> <li>• details of the programs or support being offered.<sup>18</sup></li> </ul>
Supply chain plans	<p>Include any ways you plan to source suitable goods and services from Aboriginal-owned businesses; for example, attending meet the buyer events in region-specific communities; collaboration with Aboriginal-owned business supplier groups.</p>
Reporting on progress to the Aboriginal community	<p>Outline the proposed plan to provide progress reports to the local Aboriginal community, including frequency and engagement process.</p>

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<sup>16</sup> E.g. total workforce x 3% (or the percentage agreed).

<sup>17</sup> For example, through collaboration with the region-specific First Nations working group, Aboriginal employment service providers, Local Aboriginal Land Councils or local business organisations, advertising through Aboriginal-owned media outlets or hosting community information sessions.

<sup>18</sup> E.g. pre-training, ongoing and upskilling programs for Aboriginal employees or plans to build capacity of Aboriginal-owned businesses that are directly contributing to the project.



### Other ways to increase employment and income opportunities for the local Aboriginal community

The participation plan should also demonstrate any other actions to increase employment and income opportunities for the local Aboriginal community, such as:

- Co-ownership or equity arrangements
- Benefit-sharing opportunities

These arrangements must be negotiated and agreed on by the relevant Aboriginal stakeholders.

Co-ownership or equity arrangements	Include: <ul style="list-style-type: none"><li>• name and contact details of the Aboriginal stakeholders who are, or will be, part of the co-ownership arrangement</li><li>• details of the co-ownership or equity arrangement</li><li>• an overview of any ongoing involvement by the Aboriginal stakeholders as owners in the project</li></ul>
Benefit-sharing agreements	Include: <ul style="list-style-type: none"><li>• name and contact details of the Aboriginal stakeholders who are, or will be, part of the benefit-sharing agreement.</li><li>• a copy of the negotiated benefit sharing agreement, if finalised, or outline the plan for developing and finalising the agreement.</li><li>• details of the benefits that are agreed to be shared.</li><li>• an overview of any ongoing involvement by the Aboriginal community as part of the benefit-sharing agreement.</li></ul>

### **Past First Nations participation compliance history**

Please indicate whether and how you have previously performed against Aboriginal participation requirements (government or non-government contracts).	<p>If your business is currently or has previously been subject to participation requirements, please advise the project, contracting agency, participation requirements, and the business's performance against the requirements (Were the commitments met? If not, why not, etc.).</p> <p>If your business has no experience with Aboriginal participation requirements, evidence can be provided of your business's commitment to employ Aboriginal staff or to use Aboriginal-owned suppliers through:</p> <ul style="list-style-type: none"><li>• previous track record of Aboriginal employment and use of Aboriginal-owned suppliers, including by providing examples or case studies</li></ul>
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	<ul style="list-style-type: none"> <li>• a Reconciliation Action Plan (RAP) or similar that provides a business commitment to Aboriginal employment and Aboriginal-owned supplier targets.</li> </ul>
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## 6.4 Appendix D – Further resources

### 6.4.1 Respectful engagement

#### 6.4.1.1 Cultural safety

The Australian Evaluation Society's [First Nations Cultural Safety Framework](#) provides guidance on ensuring culturally safe evaluation practice. This framework provides proponents with practical information on practises, roles and responsibilities.

Some examples of cultural safety training and assessment tools include:

- [Cultural Capability Guide](#) (NSW Public Service Commission, 2023).
- [Aboriginal and Torres Strait Islander cultural safety framework – Cultural safety continuum reflective tool](#) (Victorian Department of Health, 2021).
- [Aboriginal and/or Torres Strait Islander cultural capability toolkit](#) (Victorian Public Sector Commission 2022).
- [Aboriginal Cultural Competence Training](#) (Reconciliation NSW, n.d.).
- [Aboriginal and Torres Strait Islander Cultural Capability Framework](#) (Australian Public Service Commission 2019).
- [Core Cultural Learning](#) (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2023).
- [Cultural Safety Training](#) (Victorian Aboriginal Community Controlled Health Organisation, 2024).
- [Education and Training](#) (National Centre for Cultural Competence, University of Sydney 2024).

#### 6.4.1.2 Case studies on First Nations community engagement for renewable energy projects

Indigenous Energy Australia, with input from Institute for Sustainable Futures, University of Technology Sydney, has developed a series of case studies on electricity generation, storage and transmission projects that demonstrate best practice engagement, benefit-sharing and capacity building with Aboriginal communities, found here: [case studies of best practice](#).