



# Capacity Investment Scheme

## Tender 3: National Electricity Market – Dispatchable Capacity

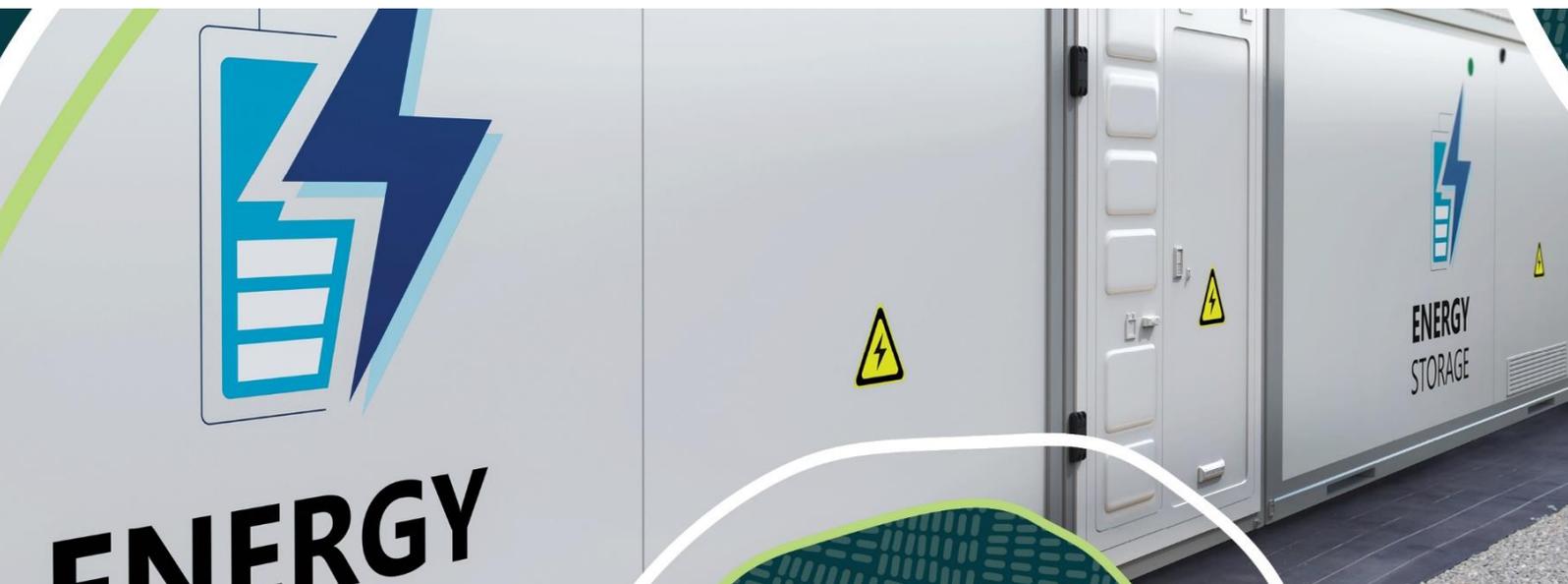
### First Nations and Social Licence Market Briefing Note

#### Guidance on Merit Criteria 4, 5, 8 and 9.

November 2024

The Department of Climate Change, Energy, the Environment and Water recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge Aboriginal and Torres Strait Islander Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to their Elders past, and present.

Indigenous knowledge is critical to living sustainably in Australia. The knowledge that Aboriginal and Torres Strait Islander peoples hold as Custodians of Australia's land and natural resources can and should underpin a fair and just transition.



# Policy context

The Australian Government is committed to promoting an orderly and positive net zero economic transformation for Australia, its regions, industries, workers and communities.

As the energy transition develops, genuine and long-lasting economic and social value creation and partnerships must emerge between the clean energy industry and communities to better support and seize the opportunities of a net-zero economy. When the Australian Government provides funds to support the delivery of clean energy projects, it expects that clean energy proponents will make meaningful social licence commitments to actions that will bring about positive change by:

- undertaking and practising high quality community and First Nations engagement throughout the life cycle of developing and operating clean energy projects;
- delivering community and First Nations economic and social benefits that are strategically targeted to the needs of local communities and First Nations peoples and tailored to feedback received, preferably through co-design activities;
- delivering Australian Local Content commitments that support Australian industry and provide manufacturing opportunities to help develop local supply chains, including renewable energy components and materials; and
- applying high labour employment standards and providing skills and training opportunities for Australian workers to support the development and capacity of Australia's clean energy workforce.

Separate to the delivery of the Capacity Investment Scheme (**CIS**), the Australian Government is developing a range of policy responses and strategies to support the energy transition that are expected to intersect with the CIS. These include the development and implementation of the:

- Future Made in Australia (**FMA**) program, including the application of the Community Benefit Principles that are expected to apply to FMA designated activities
- First Nations Clean Energy Strategy
- National Energy Workforce Strategy
- Net Zero Economy Authority's Energy Industry Jobs Plan
- implementing recommendations from the Community Engagement Review conducted by the Australian Energy Infrastructure Commissioner (i.e., potential introduction of a developer rating scheme).

As these strategies and policy responses are further developed, future CIS tenders may include relevant policy positions and program support measures when these are relevant to the scope and objectives of the CIS.

# Purpose

The purpose of this briefing note is to provide additional information to assist Proponents in preparing quality Bids that address the following criteria for the CIS Tender 3 – National Electricity Market (**NEM**) Dispatchable Capacity (**Tender 3**):

- Merit Criterion 4 (**MC 4**) – First Nations engagement
- Merit Criterion 5 (**MC 5**) – Community engagement
- Merit Criterion 8 (**MC 8**) – First Nations Commitments
- Merit Criterion 9 (**MC 9**) – Social Licence Commitments

Collectively, the **First Nations and Social Licence Criteria**.

The weightings associated with each of the First Nations and Social Licence Criteria are set out in Table 1 and Table 3 of the Tender 3 Guidelines.

Projects assessed as having low merit against any individual Merit Criterion (including the First Nations and Social Licence Criteria) may not be further assessed and may not be progressed to the next stage of assessment.

Commitments made by Proponents will become contractually binding in the Capacity Investment Scheme Agreement (**CISA**) they sign, and will be subject to monitoring and enforcement conditions if a Proponent is successful in the Tender 3 Process.

## Why it is important that Proponents invest in better First Nations and Social Licence outcomes?

- ✓ Drives better social and economic outcomes for First Nations communities, local communities and regional Australia.
- ✓ Assists the transition to renewables by building positive local experiences with clean energy developers.
- ✓ Helps facilitate the timely delivery of future projects.
- ✓ Reduces delays and costs across the life of projects.

Fostering and enabling greater economic opportunities for First Nations communities, local community support, employment opportunities, shared community benefits and development of Australian supply chains are key principles for the rollout of the CIS.

## First Nations engagement and commitments

First Nations peoples are important partners in the clean energy transformation. The Australian Government is committed to meaningful engagement with First Nations peoples to achieve our priorities, while contributing to Closing the Gap.

In planning for and undertaking engagement activities with First Nations peoples, Proponents should consider applying the [Leading Practice Principles: First Nations and Renewable Energy Projects](#) guide (the **Guide**) for engaging with Australia's First Nations peoples on renewable energy projects.

The principles outlined in the guide are:

1. Engage respectfully
2. Prioritise clear, accessible and accurate information
3. Ensure cultural heritage is preserved and protected
4. Protect Country and environment
5. Be a good neighbour
6. Ensure economic benefits are shared
7. Provide social benefits for community
8. Embed land stewardship
9. Ensure cultural competency
10. Implement, monitor and report back

The assessment of MC 4 will include consideration of the Proponent's approach to engagement strategies and understanding of Traditional Owners and First Nations communities (**First Nations communities**). The assessment of MC 4 is looking for evidence of respectful and productive engagement with First Nations communities, and for First Nations communities to be afforded genuine social and economic opportunities and partnerships.

The assessment of MC 8 will include consideration of the Proponent's commitments to First Nations outcomes. If Proponents are successful, commitments made in response to MC 8 will become contractually binding for delivery under the CISA. Examples of commitments include opportunities for equity and revenue sharing and energy offtake agreement models for First Nation communities. Further details are in Table 2 below.

Proponents that can successfully meet the "what we are looking for" components in MC 4 and MC 8 of the Tender 3 Guidelines (Section 3.2.1 and 3.2.2, respectively) will be attributed higher merit.

# First Nations and Social Licence criteria

This briefing note should be read in conjunction with:

- MC 4, MC 5, MC 8 and MC 9 in Section 3.2.1 and Section 3.2.2 of the Tender 3 Guidelines;
- the draft CISA;
- the MC 8 and MC 9 Returnable Schedules; and
- the Project Bid and Financial Value Bid forms.

The Financial Value Bid form and MC 8 and MC 9 Returnable Schedules will be available to Proponents who progress to Stage B of the assessment process.

In the event of any inconsistency between this note and the draft CISA, the Tender 3 Guidelines, the Project Bid form or the Financial Value Bid form, then, in descending order of priority, the:

- Tender 3 Guidelines;
- Project Bid form;
- Financial Value Bid form; and
- draft CISA,

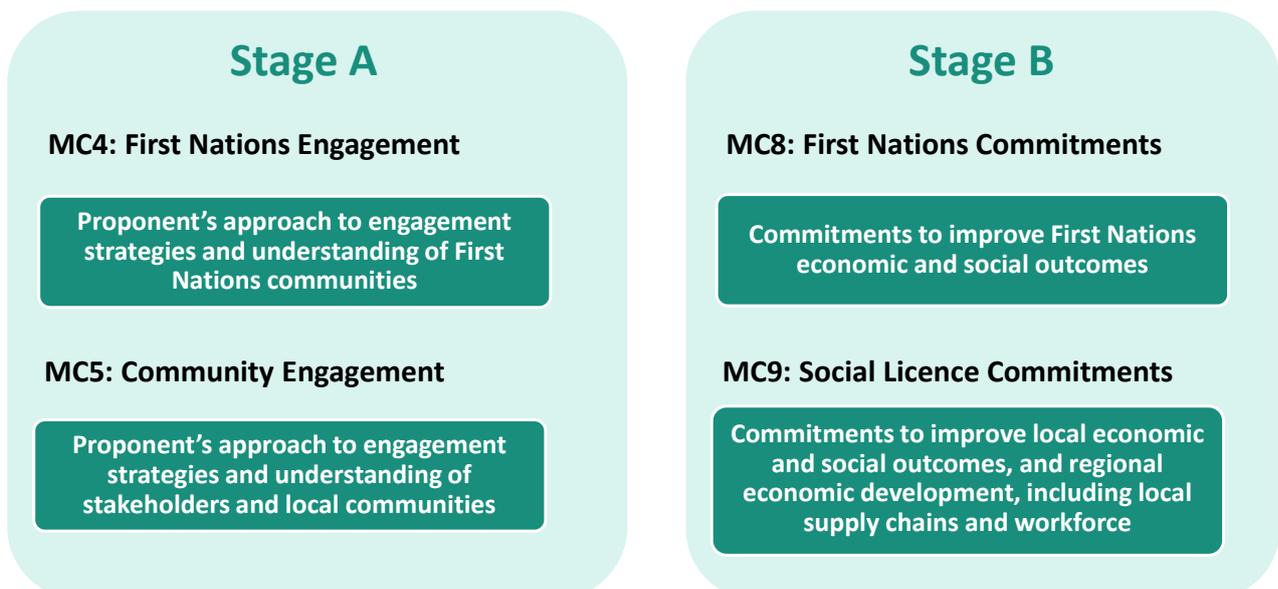
will prevail over the content of this note to the extent of the inconsistency.

Capitalised terms have the meaning given to them in the documents listed above, with the same order of priority in the event of any inconsistency.

In accordance with Section 3.2.1 and Section 3.2.2 of the Tender 3 Guidelines, as part of the Bid responses, Proponents must:

- demonstrate an understanding of, and engagement with, relevant First Nations communities, stakeholders, and local communities in their responses to MC 4 and MC 5; and
- provide First Nations and Social Licence Commitments in their responses to MC 8 and MC 9

as illustrated below:



Proponents are referred to:

- MC 4 – First Nations engagement in section 3.2.1 of the Tender 3 Guidelines.
- MC 5 – Community engagement in section 3.2.1 of the Tender 3 Guidelines.
- MC 8 – First Nations Commitments in section 3.2.2 of the Tender 3 Guidelines.
- MC 9 – Social licence Commitments in section 3.2.2 of the Tender 3 Guidelines.

The definitions of ‘First Nations Commitments’ and ‘Social Licence Commitments’ are contained in the Tender Guidelines and the draft CISA:

- **First Nations Commitments** are binding commitments in relation to First Nations economic and social outcomes that are offered by the Proponent for inclusion in the CISA in relation to the proposed Project, pursuant to MC 8.
- **Social Licence Commitments** are binding commitments made by the Proponent in relation to the proposed Project, as described in MC 9, with the purpose of improving local economic and social outcomes and regional economic development, including use and development of local supply chains and workforce, Local Content and community benefit sharing.

Proponents must demonstrate in their Bid how their strategies and approaches to achieving their proposed First Nations Commitments and Social Licence Commitments will drive meaningful change and positive outcomes for the communities in which they seek to operate. Under the CISA, the First Nations and Social Licence Commitments made by Successful Proponents will become contractually binding, with specified consequences for failures to achieve the contracted commitments.

# Assessing First Nations Engagement, and First Nations Commitments

The quality of a Proponent’s approach and implementation of First Nations engagement practices will be competitively assessed. Bids should provide evidence of:

- early and culturally aware engagement with First Nations communities; and
- a clear articulation that shows a deep understanding of the Project’s impacts on related First Nations communities.

To inform their engagement and development of commitments, Proponents should consider the [Leading Practice Principles: First Nations and Renewable Energy Projects](#) guide for engaging with Australia’s First Nations peoples on renewable energy projects.

Bids that demonstrate high-quality First Nations engagement, that is based on better practice approaches, with a strong link between engagement activities (MC 4) and the development of related First Nations Commitments (MC 8)—with a clear strategy to achieve the commitments—will be assessed favourably and score higher, all else being equal.

Table 1 and Table 2 outline the policy intent for the First Nations engagement and commitments Merit Criteria (MC 4 and MC 8, respectively) and provide examples that may support quality responses in Bids. Further information on what the Australian Government is looking for can be found in MC 4 and MC 8 in Sections 3.2.1 and 3.2.2 of the Tender 3 Guidelines, respectively.

**Table 1 MC 4 – First Nations engagement**

Element	Policy intent	Examples of what we are looking for
First Nations engagement	Proponent engagement activities build trust and establish respectful relationships with local and neighbouring First Nations communities.	<ul style="list-style-type: none"> <li>✓ Application of better practice approaches to:                             <ul style="list-style-type: none"> <li>○ Identifying affected First Nations communities, including rights-holders, and undertaking initial scoping and engagement activities.</li> <li>○ Consideration of and applying free, prior and informed consent.</li> <li>○ Efforts and actions to build capacity of First Nations organisations and provide support for them to meaningfully engage.</li> <li>○ Proponent’s assessment and action to implement cultural heritage management, access to country and management of intangible cultural heritage throughout the life of the Project, and land and environmental management practices.</li> <li>○ Effective communication and management of Project impacts that promote trust and meaningful engagement.</li> </ul> </li> <li>✓ A clear articulation and summary of engagement activities and outcomes with First Nations communities that has occurred to date as well as planned engagement in the future, and a description and evidence about how these engagement activities have been designed in partnership with First Nations communities.</li> <li>✓ For Projects located in NSW, <a href="#">Section 3.3.2</a> of the Tender Guidelines sets out additional Bid requirements.</li> </ul>

**Table 2 MC 8 – First Nations Commitments**

Element	Policy intent	Examples of what we are looking for
First Nations Commitments	First Nations peoples are provided with opportunities to increase economic and social benefits through enabling equitable partnerships.	<ul style="list-style-type: none"> <li>✓ Ownership, revenue sharing and energy offtake agreement models for First Nations communities.</li> <li>✓ Partnering with First Nations employment services during pre-construction to support hiring, training and ongoing management of First Nations workforce.</li> <li>✓ Funding commitments to subcontract with First Nations businesses. Proponents should consider taking necessary steps to enable First Nations suppliers to meaningfully engage in procurement processes, thereby building their capacity and improve the likelihood of First Nations business suppliers being successful.</li> <li>✓ Scholarships with local universities and/or TAFEs to support First Nations individuals such as those transitioning from the agricultural and mining sectors to the renewable energy sector.</li> <li>✓ Funding to support work readiness (e.g., driver’s licence attainment, secure accommodation, pre-apprenticeship training).</li> <li>✓ For Projects located in NSW, <a href="#">Section 3.3.2</a> of the Tender Guidelines sets out additional Bid requirements.</li> <li>✓ For Projects that are not located in NSW, Bids that can demonstrate commitments similar to those outlined in the NSW Renewable Energy Sector Board Plan objectives for First Nations participation will be assessed favourably and score higher, all else being equal.</li> </ul>

# Assessing Community Engagement

The quality of a Proponent’s community engagement will be competitively assessed under MC 5 – Community engagement.

To inform engagement activities and the development of commitments, Proponents should consider applying the better practice approaches referred to in the Clean Energy Council’s [Guide to Benefit Sharing Options for Renewable Energy Projects](#). Proponents are encouraged to apply the [International Association for Public Participation \(IAP2\) Public Participation Spectrum](#) or similar principles, to the community engagement approach.

Bids that demonstrate the following will be assessed favourably:

- detailed understanding of the relevant local community and stakeholders;
- high-quality level of community engagement both undertaken to date and in the future, based on better practice approaches; and
- strong link between local community and stakeholder engagement activities (MC 5) and the development of related local community and stakeholder benefit commitments (MC 9) with a clear strategy to achieve them.

Bids should provide evidence of early and collaborative engagement that has formed an understanding of the local community and stakeholders (including any issues faced by the local community), the Project’s impacts on them and provide evidence that the engagement activities and feedback from community has been used to help identify opportunities for social and economic advancement and to address community concerns.

Table 3 outlines the policy intent for what the Australian Government is looking for from Proponents when engaging with communities on their Projects and provides examples of valued contributions that could support quality Bid responses. Further information of what the Australian Government is looking for in responses to MC 5 can be found in the MC 5 table in Section 3.2.1 of the Tender 3 Guidelines.

For Projects located in NSW, Section 3.3.2 of the Tender Guidelines sets out additional Bid requirements.

**Table 3 MC 5 – Community engagement**

Element	Policy intent	Examples of what we are looking for
Community engagement	Proponent engagement activities build trust and establish respectful and well-informed relationships with local communities and stakeholders.	<ul style="list-style-type: none"> <li>✓ Evidence of building trust and good relationships with stakeholders and local communities that are a result of stakeholders and local communities being well informed.</li> <li>✓ Evidence of having considered or incorporated the feedback from the local community during Project design, development, and future implementation.</li> <li>✓ Evidence of past stakeholder and local community engagement activities, including who was consulted and what communication tools were used and the outcomes achieved, as well as future plans for engagement.</li> <li>✓ Evidence of engagement activities that incorporate 'involve' level participation elements under the IAP2 spectrum will be assessed favourably and score higher, all else being equal.</li> </ul>

# Assessing Social Licence Commitments

Bids that demonstrate a strong link between engagement activities (MC 5) and the development of related Social Licence Commitments (MC 9) – with a clear strategy to achieve them – will be assessed favourably and score higher, all else being equal.

Table 4 outlines the policy intent for what the Australian Government is looking for from Proponents in responses to MC 9 and provides examples of valued contributions that could support quality Bid responses.

Further information of what the Australian Government is looking for in responses to MC 9 can be found in Section 3.2.2 of the Tender 3 Guidelines.

**Table 4 MC 9 – Social Licence Commitments**

Element	Policy intent	Examples of what we are looking for
<b>Shared community benefit commitments</b>	To encourage the establishment of programs and/or initiatives that have long-lasting and meaningful positive impacts on the local community. The quality and positive impact of proposed initiatives will be valued over the quantum of initiatives and may span across communities.	<ul style="list-style-type: none"> <li>✓ Inviting local community to coinvest in the Project with profit sharing arrangements with community members. This can be implemented by Projects that are in construction or that are already in operation.<sup>1</sup></li> <li>✓ Novel approaches to electricity access schemes by which local communities benefit from lower prices and/or greater energy security through access to small scale solar and battery installations. Optimised infrastructure to benefit neighbouring community upgrades to degraded land/waterways located near to the Project.</li> <li>✓ Commitments to minimise adverse environmental impacts and maintain high biosecurity standards.</li> <li>✓ Community benefit funds that address needs identified within the community.</li> </ul>
<b>Local Content</b>  <i>Local Content means: goods, services and resources produced, manufactured, or supplied within Australia and New Zealand.</i>	To maximise use of Local Content and to incentivise Projects to actively source Local Content or incorporate Local Content when possible, including locally sourced materials and suppliers that support the development of local supply chains, including in renewable components and materials.	<ul style="list-style-type: none"> <li>✓ Funding research and development programs to drive innovation within local and Australian supply chains.</li> <li>✓ Sourcing goods and services from local suppliers.</li> <li>✓ Funding to build the capacity of the local manufacturing sector.</li> <li>✓ Commitment to complete an Australian Industry Participation Plan.</li> <li>✓ Bids that can demonstrate commitments similar to those outlined in the NSW Renewable Energy Sector Board Plan objectives for supply chains will be assessed favourably and score higher, all else being equal.</li> </ul>
<b>Local Employment</b>	To encourage investment in local employment including skills, high labour standards, training, and capacity building to support the development of the renewable energy workforce.	<ul style="list-style-type: none"> <li>✓ Evidence of workplace agreements between Proponents and organisations including with unions (e.g., agreed memoranda of understanding) that meet high standard approaches to employment conditions, qualifications and training.</li> <li>✓ Appointment of a regional economic development lead to engage with local businesses to maximise use of the local industry over the Project life.</li> <li>✓ Appointment of a renewable workforce participation lead who is employed to engage with the community in developing the design of initiatives, implement workforce skilling and pre-employment programs and</li> </ul>

<sup>1</sup> Note specific opportunities for economic contribution for First Nations groups should be included in MC 8 during Stage B.

Element	Policy intent	Examples of what we are looking for
		<p>initiatives, including for underrepresented and disadvantaged groups, and adopt and maintain labour standards.</p> <ul style="list-style-type: none"> <li>✓ Contribution to, or funding of, locally based vocational education and training courses and actively working with existing government and industry bodies to deliver new training to meet industry needs.</li> <li>✓ Establishment of a learning hub for the Project’s local schools to support early-stage education on renewable energy concepts, over operational life of the Project.</li> <li>✓ Funding scholarships for school leavers, internships, mentoring programs and return to work programs for women and mature age workers.</li> <li>✓ Bids that use the Australian Skills Guarantee major construction project targets as the basis for setting local employment targets for apprentices/trainees and for female employment will be assessed favourably and score higher, all else being equal.</li> </ul>

For Projects located in NSW, Section 3.3.2 of the Tender Guidelines sets out additional Bid requirements. Bids in jurisdictions other than NSW are encouraged to make commitments similar to those outlined in the NSW Renewable Energy Sector Board Plan (**RESB**) objectives for supply chain, employment, skills and knowledge transfer, First Nations participation, and fair and ethical practices, and should they choose to make such commitments their bids will be assessed favourably and score higher, all else being equal.

### First Nations and Social Licence Commitments for Projects in NSW

In accordance with Section 3.3 of the Tender 3 Guidelines, Projects in NSW applying for a CISA must take into account the First Nations Guidelines regarding consultation and negotiation with First Nations communities and the RESB when developing First Nations and Social Licence Commitments in responses to MC 8 and MC 9, respectively. First Nations and Social Licence Commitments made in responses to MC 8 and MC 9 will be assessed against the minimum requirements and stretch goals set out in Table 7 in the Tender Guidelines, based on considerations in the NSW RESB. Proponents should note that:

- Minimum requirements and stretch goals do not apply to matters not listed in Table 7 in the Tender Guidelines (Minimum requirements and stretch goals related to MC 8 and MC 9).
- If a Project is not able to commit to any particular minimum requirement, the Proponent should stipulate the level of commitment to which it can commit for the relevant requirement and demonstrate best efforts made to achieve the minimum requirements with detailed justifications.

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