

Re: Reconciliation Australia submission on the First Nations Clean Energy Strategy: Consultation Paper

Reconciliation Australia welcomes the opportunity to provide input on the First Nations Clean Energy Strategy. We acknowledge the work of the Department of Climate Change, Energy, the Environment and Water to identify opportunities for First Nations peoples and communities to lead and benefit from the clean energy transition.

Most importantly, we acknowledge the Indigenous governance systems that have sustained the natural environment for tens of thousands of years, as well as the unceded connection to Country of Aboriginal and Torres Strait Islander peoples in Australia.

About Reconciliation Australia:

Reconciliation Australia is the national organisation promoting reconciliation between the broader Australian community and Aboriginal and Torres Strait Islander peoples.

We believe a reconciled Australia is one where Aboriginal and Torres Strait Islander people participate equally and equitably in all areas of life, and the distinctive individual and collective rights and cultures of Aboriginal and Torres Strait Islander peoples are universally recognised and respected. That is, we have closed the gaps in life outcomes, and Aboriginal and Torres Strait Islander peoples are self-determining. To do so, we are dedicated to building relationships, respect and trust between Aboriginal and Torres Strait Islander peoples and other Australians.

Our Reconciliation Action Plan Program (RAP Program), has for 17 years supported organisations to engage with, and embed reconciliation throughout their organisation.

Reconciliation Action Plans (RAPs) seek to leverage the critical role that the corporate sector and community institutions can play in working with First Nations peoples, and organisations, to create culturally safe and inclusive environments that are free from racism, and value and respect First Nations knowledges, rights and interests through Free Prior and Informed Consent (FPIC). The RAP network currently consists of more than 2,400 corporate, government and non-government organisations, that are committed to actions to progress reconciliation.

As part of our work, we also engage across a range of barriers to reconciliation. We have led engagement on national reform processes, including constitutional reform. We are a member of the Close the Gap Campaign Steering Committee for Indigenous Health Equality, the Change the Record Campaign Steering Committee focused on incarceration and family violence, the National Anti-Racism Partnership and Strategy, and a supporting organisation of the Family Matters Campaign.

Reconciliation can only progress when Aboriginal and Torres Strait Islander peoples participate equally and equitably in all areas of life. A clean energy transition that is grounded in First Nations rights and self-determination and enacts equitable participation by Aboriginal and Torres Strait



Islander communities, can provide opportunity to progress reconciliation and advance economic and social outcomes for First Nations communities.

Implementation of the UNDRIP and FPIC into domestic law

Recent research indicates that for Australia to reach net zero by 2060, 43% of new renewable energy infrastructure needs be located on The Indigenous Estate¹. This represents an enormous opportunity for equity of ownership and economic benefits of clean energy projects for First Nations communities, but also significant potential risks.

Internationally, clean energy projects are being identified as means to further dispossession, exploitation and socio-economic exclusion for First Peoples² under the banner of positive environmental progress; what is increasingly referred to as ‘green colonialism’. Human and land rights infringements associated with clean energy projects have highlighted failures of the sector to meet international responsibilities to protect human rights³.

In the Australian context it has been stressed that “systems that do not appropriately incorporate [Free Prior and Informed Consent] FPIC and recognise First Nations rights, interests and responsibilities always have been problematic, and particularly so now, given the scale and pace of the energy transition that is now underway”⁴.

As the Australian clean energy transition escalates, it is critical that policies and legislation are aligned with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to avoid environmental, cultural and socio-economic impacts for First Nations peoples, and to promote opportunities for equitable participation in the clean energy economy. It is deeply problematic, that while clean energy companies have an inherent responsibility to respect human rights, Australian law does not currently require implementation of Free Prior and Informed Consent in accordance with the UNDRIP⁵.

Reconciliation Australia supports calls from Aboriginal and Torres Strait Islander leaders and organisations calling for immediate legal rights to Free Prior and Informed Consent⁶.

Specifically, the Native Title Act 1993 (Cth) must be amended to incorporate the right to Free Prior and Informed Consent, and to state that rights to lands and waters extend to renewable energy

¹ Net Zero Australia (July 2023) *How to make net zero happen Mobilisation report*, pg.11

² Indigenous Climate Action, *COP26 Negotiations Close: NDN Collective and Indigenous Climate Action Respond to Outcomes*, accessed at <https://www.indigenousclimateaction.com/entries/cop26-negotiations-close-ndn-collective-and-indigenous-climate-action-respond-to-outcomes>

³ Columbia Center on Sustainable Investment (April 2023) *Enabling a Just Transition; Protecting Human Rights in Renewable Energy Projects, A Briefing for Policy Makers* accessed at <https://ccsi.columbia.edu/content/enabling-just-transition-protecting-human-rights-renewable-energy-projects-0>.

⁴ Kneebone, J, n.d, *First Nations Risk and Opportunities for First Nations in Australia's clean energy transition*, Accessed at https://www.firstnationscleanenergy.org.au/risks_and_opportunities_for_first_nations_in_australia_s_energy_transition

⁵ Nicholson R, Turnbull E, Banyasz D, Ward G, Mikaelian L, (Nov 2023) *Nine-year check-in: Draft Binding Treaty on Business and Human Rights* Accessed at <https://www.allens.com.au/insights-news/insights/2023/11/nine-year-check-in-draft-binding-treaty-on-business-and-human-rights/#:~:text=For%20example%2C%20while%20Australia%20has,business%20in%20terms%20of%20obtaining>

⁶ National Native Title Council, (April 2023), *Media Release: There is no net zero economy without First Nations Policy Change*, accessed at https://nntc.com.au/media_releases/there-is-no-net-zero-economy-without-first-nations-policy-change/

projects. This is imperative to redress the current status in which Traditional Owners have little legal say over renewable and clean energy projects, profoundly undermining negotiation and decision-making power regarding access to lands and waters for projects⁷.

Reconciliation Action Plans for Clean Energy Organisations

Reconciliation Action Plans (RAPs) can play a vital role in scaffolding respectful, equitable and just relationships between clean energy companies and First Nations peoples and communities.

A number of clean energy organisations currently have an active RAP. For these companies having an endorsed RAP provide a clear organisational blueprint for progressive actions around the key pillars of relationships, respect, and opportunities.

Organisations with RAPs are increasingly going beyond the minimum requirements by mapping their RAP actions to align with the UNDRIP, to become vehicles for significant social and economic change for Aboriginal and Torres Strait Islander peoples. This shift is apparent across all industries and sectors.

Clean energy companies with RAPs that promote transformative relationships with First Nations communities can help to actualise the potential of the clean energy transition for First Nations people. This can be seen in examples of current RAP actions of clean energy organisations, that commit to advancing partnerships and economic benefits for First Nations communities:

“to ensure Aboriginal and Torres Strait Islander women, men and businesses are given every opportunity to not only participate in, but to benefit from this transition” (Beon Energy Solutions, 2022-24)⁸

“to create at least one partnership project focused on increasing participation of Aboriginal and Torres Strait Islander businesses and communities in the clean energy sector” (Clean Energy Finance Corporation 2022-24)⁹.

RAP frameworks may be especially pertinent for the significant number of international clean energy companies in the Australian landscape, by offering a critical framework for cultural and historical understanding and respect for the rights of First Nations peoples.

⁷ Native Title Act 1993 <https://www.legislation.gov.au/C2004A04665/latest/text>

⁸ Beon Reconciliation Action Plan, January 2022-2024, pg 2, Accessed at https://beon-es.com.au/wp-content/uploads/2022/03/Beon-energy_RAP-2022_V5.pdf

⁹ CEFC, Innovate Reconciliation Action Plan, page 27, May 2022–May 2024, Accessed at <https://www.cefc.com.au/media/urfhn0kc/cefc-first-nations-investment-screening-approach.pdf>

Conclusion

Reconciliation Australia is engaging pro-actively with the clean energy sector to increase the uptake of RAPs. We will continue to encourage these organisations to move their RAP actions from 'safe to brave' to advance the rights and opportunities of First Nations peoples in the clean energy transition.

While we acknowledge the urgency of climate change, and pressure to meet Australia's 2050 net zero emissions target, we strongly advocate for a considered, informed and circumspect clean energy transition process.

First Nations communities must be provided with sufficient time and resources to enable deliberation, ongoing negotiation and informed decision making about clean energy projects. These projects will not only have ongoing impacts for Industry and the environment, but for the inherent cultural and socio-economic rights of First Nations peoples, which must be upheld.

We thank the Department of Climate Change, Energy, the Environment and Water for the opportunity to respond to this important Strategy.