

9 February 2024

First Nations Clean Energy Strategy Taskforce
Department of Climate Change, Energy, the Environment and Water
FNCES@dcceew.gov.au

Dear Sir/Madam

FIRST NATIONS CLEAN ENERGY STRATEGY CONSULTATION PAPER

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to provide feedback on the First Nations Clean Energy Strategy Consultation Paper.

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members are Australian and international asset owners and institutional investors with over \$1 trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in managing ESG investment risk and exercising active ownership to strengthen investment outcomes. Active ownership, including the management of climate related risk, allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage.

For a number of years, ACSI has undertaken a program of work related to company engagement with First Nations people. We recognize the investment risk when companies have poor relationships with First Nations people and continue to advocate for improvements in the standards of company engagement. This includes better protection of cultural heritage and adherence to the standards embedded in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the principle of Free, Prior and Informed Consent (FPIC).

Summary

ACSI has long recognised that a company's long-term success is intrinsically linked to its ability to engage effectively with its stakeholders. For companies that interact with First Nations people, there are opportunities to engage in a way that is constructive and mutually beneficial. The First Nations Clean Energy Strategy is an important mechanism to embed and standardise constructive and mutually-beneficial relationships between companies and First Nations people. ACSI's submission focuses on the role of companies and government in facilitating equitable participation for First Nations people in the transition. We recognise that the Strategy speaks to a wider range of stakeholders, and we would suggest that the Strategy be explicit about which stakeholders it is targeting for the various activities and responsibilities. This will enable all stakeholders to play an active role with greater certainty about how they should contribute to the Strategy's objectives.

ACSI welcomes the First Nations Clean Energy Strategy ('the Strategy') Consultation Paper and broadly supports the proposals. We make the following suggestions to strengthen or complement the Strategy:

- Undertake law reform to improve industry standards of engagement and negotiation with First Nations people.
- Increase resourcing, capacity-building and access to capital for First Nations organisations, including by incentivising investment into clean energy projects that embed genuine partnership with First Nations people. Barriers should also be addressed so that First Nations people are able to participate in the governance, leadership and ownership of clean energy projects.
- Continue without delay the process of law reform co-designed with the First Nations Heritage Protection Alliance to improve cultural heritage laws.

- Facilitate jobs and business opportunities for First Nations people that are culturally safe and support career development and leadership of First Nations people.
- Undertake ongoing monitoring and public reporting against the Strategy.

The above points are outlined in further detail below.

Improved standards of engagement and negotiation

In order for Australia to take full advantage of the energy transition as an opportunity for mutual benefit for First Nations communities and industry, it is fundamental that First Nations communities are partners in the design, implementation and decision-making of projects and the energy transition more broadly.

ACSI strongly encourages the Government to establish clear legal frameworks embedding requirements for constructive engagement between clean energy companies and First Nations people. This includes setting standards that reflect the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including Free, Prior and Informed Consent (FPIC). Processes of engagement and negotiation with First Nations people that are carefully planned from the outset, transparent, and consistent with the standards of FPIC promote certainty for all parties involved, including investors.

ACSI members expect their investee companies to engage in good faith with First Nations communities according to the principles of FPIC, to achieve mutually beneficial outcomes. Companies should recognise and mitigate power imbalances in negotiation and ensure that First Nations groups are sufficiently well resourced to negotiate and effectively protect their rights and cultural heritage. Likewise, when companies are engaging with a First Nations representative organisation, they should ensure that the organisation has the consent from the community to represent them. Our expectations of companies are outlined further in [ACSI's Policy on Company Engagement with First Nations People](#). We encourage these standards to be embedded in regulation and note that they are based on internationally recognised principles such as UNDRIP and FPIC. Such standards would support constructive engagement between companies and First Nations people and advance the objectives of the Strategy.

When companies fail to uphold the rights of First Nations people, this can result in human, social and cultural costs. There are also clear investment risks when companies engage poorly with First Nations people, which can stem from production implications, project cancellations or delays, legal fees, reputational damage, difficulties retaining employees, and even physical damage where conflict arises. For further details on the investment risk of poor company engagement with First Nations people, see ACSI's research report, '[Company Engagement with First Nations People](#)'. Company boards are ultimately accountable for a company's engagement with First Nations people, so they should have appropriate oversight of the company's practices and also establish a culture that seeks equitable and genuine partnership with First Nations people.

Setting high standards and embedding UNDRIP into Australian law would promote consistency across company practice and provide increased assurance that risks will be adequately managed and mitigated in clean energy projects. Without higher legal standards, it is difficult for investors to assess the true nature of companies' relationships with First Nations people and the extent to which rights are being respected. Likewise, a regulatory environment that is misaligned with the objectives of the Strategy may limit company actions to achieve the objectives. This is likely to cause ongoing uncertainty and financial risk for investors.

First Nations communities should be involved in design and implementation not only at the project level, but also at the system level. The Strategy itself, as well as the decisions of relevant policy-makers and other organisations (e.g. Australian Energy Market Commission, the Clean Energy Finance Corporation etc) should be guided by the expertise of First Nations people.

There is a high degree of overlap between the principles of a just transition, nature and biodiversity loss and First Nations equity. It will therefore also be important that any regulatory changes are aligned and coordinated with other legal frameworks and policy changes, such as reforms to cultural heritage laws and the Environment Protection and Biodiversity Conservation (EPBC) Act, and the work of the Net Zero Economy Authority.

Capacity development, resourcing and access to capital

Participating in the clean energy transition and seeking business opportunities will demand significant capacity and resourcing from First Nations organisations. Likewise, the important work that First Nations organisations undertake to protect their lands, communities and cultural heritage (e.g. negotiating agreements, establishing and monitoring cultural heritage management plans etc) requires significant funds, human resources and expertise. It is important that First Nations groups and organisations are sufficiently well-resourced to take advantage of opportunities in the clean energy transition and effectively negotiate agreements. ACSI therefore supports increased resourcing and capacity-building for First Nations organisations. This should be a joint responsibility of Government, industry and First Nations organisations.

Barriers should also be addressed, for example through guidance, so that First Nations people are able to participate in the governance and ownership of clean energy projects. This will be important for First Nations communities to benefit equitably and consistently from clean energy projects on Country. First Nations ownership of clean energy projects should not only facilitate greater equity for First Nations communities, but could also support beneficial project outcomes by facilitating faster approvals, de-risking projects, strengthening social license to operate and growing shareholder value over the long term.

In order to achieve this, an important aspect of the Strategy should be to address the barriers that First Nations people face in accessing capital. The Government should play a role in incentivising investment into clean energy projects that are First Nations-led or that prioritise mutually beneficial partnerships with First Nations people. For example, this could be through blended finance or other financial incentives.

Cultural heritage protection

ACSI strongly supports the need for higher standards of cultural heritage protection to be embedded into law in Australia. We therefore welcome the inclusion of cultural heritage protection as an important principle within the Strategy. We suggest that the Strategy explicitly define cultural heritage as both tangible and intangible. Destruction of cultural heritage continues to happen on a regular basis in Australia. This is not only devastating for Australia's First Nations communities, it also presents a financial risk for investors that are invested in the companies that fail to protect cultural heritage. ACSI members expect their investee companies to achieve high standards of cultural heritage protection, as outlined in [ACSI's Policy on Company Engagement with First Nations People](#).

ACSI has therefore been very supportive of the process to reform federal cultural heritage protection laws, co-designed with the First Nations Heritage Protection Alliance. It is important that this law reform process does not lose momentum. ACSI supports implementation of the recommendations in "A Way Forward - Final report into the destruction of Indigenous heritage sites at Juukan Gorge", the report of the Joint Standing Committee on Northern Australia from October 2021. The necessary reforms to Australia's cultural heritage laws should be implemented without delay, to ensure that the clean energy transition happens in a way that protects rather than destroys cultural heritage.

Creating culturally safe jobs and business opportunities

ACSI supports the aims of the Strategy to strengthen the workforce and business opportunities for First Nations people in the clean energy transition. It will be important not only to create jobs and business opportunities, but also to ensure there is a clear and accessible pipeline for career development and leadership opportunities for First Nations people. Likewise, cultural safety must be proactively and conscientiously embedded in employer practices. This is particularly important given the evidence showing significant gaps in cultural safety and respect in Australian workplaces – see for example the [Gari Yala](#) report and [Indigenous Employment Index](#). Mandatory cultural safety training is one important mechanism to reduce harm and improve industry engagement with First Nations people.

Ongoing monitoring and reporting against the Strategy

In order to support effective implementation of the Strategy, it would be useful for the Strategy to be accompanied by a reporting framework that tracks specific, time-bound and measurable outcomes. ACSI would also encourage the Government to report publicly on the implementation and outcomes of the Strategy on an annual basis.

I trust our comments are of assistance. Please contact me or Romy Faulkner, Senior Analyst - Policy and Advocacy (rfaulkner@acsi.org.au) should you require any further information.

Yours faithfully,



Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors