

2 February 2026

**Submission on The Future Made in Australia Community Benefit Principles public guidance**

This submission is made by the National Native Title Council (NNTC) to the Department of Industry, Science and Resources' consultation on the Future Made in Australia Community Benefit Principles public guidance.

The NNTC makes this submission in its capacity as the peak body for Australia's Native Title Organisations and other Traditional Owner organisations. The NNTC represents Native Title Representative Bodies (NTRBs) and Service Providers (NTSPs) as well as Prescribed Bodies Corporate (PBCs) recognised under the NTA and other equivalent Traditional Owner Representative Institutions (TORIs) established under Traditional Owner land rights legislation such as the Traditional Owner Settlement Act 2010 (Vic) (TOSA), the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) and the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA).

The NNTC's work is guided by a rights-based approach rooted in best practice standards, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Free, Prior, and Informed Consent (FPIC). It is a regular participant in a range of United Nations (UN) and regional international fora for addressing issues associated with the interaction between the resources sector and Indigenous Peoples across the globe. In addition to representing the interests of our members, the NNTC is a signatory to the National Agreement on Closing the Gap, the secretariat for the First Nations Heritage Protection Alliance (FNHPA) and Sea Country Alliance (SCA), the PBC Steering Group, and a member of both the First Nations Economic Empowerment Alliance with the Australian National University and the Coalition of the Peaks. This national leadership role of the NNTC is recognised by the Australian Commonwealth, state governments, and by key resources sector peak bodies.

This submission focuses on the Future Made in Australia guidance as it relates to Community Benefit Principles (CBF) 3 and 4, which concern engagement with First Nations communities and Traditional Owners and supporting them to participate and share in the benefits of the net zero transition.

The public guidance presents a significant opportunity to establish clear benchmarks for First Nations leadership, participation and economic benefit in the Future Made in Australia

agenda. However, the NNTC is concerned that the proposed minimum and threshold requirements are currently framed at a high-level and do not require measurable outcomes. As such, the guidance risks creating uncertainty for proponents, decision-makers and communities alike. Strengthening these requirements would better align Future Made in Australia support with existing community-led and Commonwealth standards for assessing First Nations engagement and economic participation.

The submission has three sections. Sections 1 and 2 address the guidance as it relates to Community Benefit Principles 3 and 4 respectively, identifying areas where the guidance could be strengthened by drawing on established Commonwealth and community-led benchmarks. Section 3 highlights the ongoing and critical issue of resourcing Traditional Owner Representative Institutions, which is required to effectively implement the Future Made in Australia agenda more broadly.

### **1. Community Benefit Principle 3**

As currently framed, the guidance with respect to the proposed minimum requirement for CBF 3 requires only evidence that engagement with communities has occurred and that impacted groups have been identified. It does not articulate what constitutes meaningful engagement, nor how the quality, depth or effectiveness of engagement will be assessed. This creates a strong incentive for a compliance-based approach focused on documenting consultation activities, rather than demonstrating how engagement has influenced project design, governance and decision-making.

This approach stands in contrast to established Commonwealth assessment frameworks, including the Capacity Investment Scheme (CIS), which apply a more structured and rigorous methodology to evaluating First Nations engagement in clean energy projects.

The First Nations participation and benefits sharing merit criteria under the CIS involve three elements:

- What is assessed – clearly defined elements that specify the aspects of engagement and participation to be evaluated;
- Characteristics of higher merit – explicit indicators of what stronger, more meaningful engagement and participation look like in practice; and

- Required supporting documentation – evidence proponents must provide to substantiate their claims.<sup>1</sup>

This structure enables transparent, outcome-focused assessment and provides clarity to proponents about expectations, while giving decision-makers a robust basis for comparing proposals.

In the context of engagement, the First Nations merit criteria assess proponents on matters including:

- the quality of engagement with Traditional Owners and First Nations communities;
- evidence of understanding of First Nations needs, aspirations and priorities;
- evidence of cultural capability, such as completion of cultural competence training; and
- the existence of governance arrangements and systems capable of supporting ongoing engagement and delivery of commitments.

The merit criteria further articulate the characteristics of higher merit and requires proponents to submit supporting documentation demonstrating how engagement arrangements are structured, resourced and capable of supporting informed participation over the life of the project.

To strengthen the Future Made in Australia public guidance on CBF 3, the guidance should require proponents to demonstrate that engagement with First Nations communities and Traditional Owners has been:

- **early**, commencing prior to key project design and siting decisions, rather than after project details have been substantially settled; and
- **appropriately resourced**, including support for community capacity, and access to independent advice.

For projects above the threshold, the guidance on CBP 3 should require proponents to demonstrate how:

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<sup>1</sup> Australian Government, *Capacity Investment Scheme Tender 8 Guidelines*, First Nations Merit Criteria (MC4), November 2025 pages 26-27, available at: <https://asl.org.au/tenders/-/media/A593C8DABF2B4ED8A3E13B5D8C7C9DA8.ashx>.

- **engagement with First Nations communities and Traditional Owners is consistent with the right to Free, Prior and Informed Consent (FPIC)**, including through evidence of an agreement with the relevant Traditional Owner Representative Institution (TORI).<sup>2</sup>
- **engagement has informed project design and delivery**, and
- **agreement / commitments will be reviewed** throughout the project, including as community priorities evolve.

A First Nations-led articulation of what meaningful engagement and Free, Prior and Informed Consent (FPIC) look like in practice is set out in the Dhawura Ngilan Business and Investor Initiative Guide.<sup>3</sup> This provides a specific and outcomes-focused articulation of good practice that would complement the Future Made in Australia public guidance.

FPIC is reflected in the CIS First Nations merit criteria in the characteristics of higher merit. It is also part of international investor frameworks, including the IFC Performance Standards and the Equator Principles. Including an FPIC expectation within the Community Benefit Principles would support investment certainty by mitigating legal, reputational and financial risks associated with cultural heritage impacts, environmental damage and disputes over social licence to operate. These risks, if left unaddressed, undermine the objectives of the Future Made in Australia economic development strategy.

## **2. Community Benefit Principle 4**

Currently, the guidance on CBP 4 proposes a target of at least 4 per cent First Nations employment. While employment targets are an important indicator, this approach is narrow and risks reducing First Nations participation to workforce numbers alone.

Again, this contrasts with the structured and outcome-focused approach taken under the CIS First Nations merit criteria. The CIS assesses First Nations participation using the same three-part framework: what is assessed, characteristics of higher merit, and required supporting documentation. This enables assessment of the quality and durability of participation.

Under the CIS, proponents are assessed on commitments relating to:

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<sup>2</sup> FPIC refers to the right of Traditional Owners to participate in decision-making and to give or withhold consent, through their representative institutions, to projects that affect their lands, waters or resources. In the case of native title lands and waters, these institutions are Prescribed Bodies Corporate (PBCs).

<sup>3</sup> First Nations Heritage Protection Alliance, Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia – Business and Investor Initiative Guide, 2023, pp. 36–37.

- shared benefits for local communities that provide economic and tangible social outcomes, informed by engagement and understanding of First Nations' needs, aspirations and priorities.
- local supply chain development, procurement targets, and support for First Nations business participation; and
- employment, workforce and capacity development that address barriers to workforce participation.

The CIS guidelines also assess the ability of the proponent to implement and deliver commitments. By contrast, the Future Made in Australia guidance does not currently articulate equivalent expectations, nor does it require proponents to demonstrate how benefits will be delivered, governed or sustained.

To better align CBP 4 with these established principles, the guidance should supplement the employment target with minimum expectations relating to:

- **procurement and supply chain opportunities for First Nations businesses.**

For projects above the threshold, the guidance should require proponents to demonstrate commitments through:

- **structured and long-term benefit-sharing arrangements**, including training, skills development and career progression for First Nations workers; procurement and supply chain opportunities; equity, revenue-sharing or other financial participation mechanisms; and support for community-defined development priorities. Proponents should also be required to articulate how benefits will be sustained beyond the construction phase and over the life of the project.

Aligning CBF 4 with the CIS approach would improve certainty for proponents and decision-makers and ensure that Future Made in Australia investments deliver enduring and meaningful benefits for First Nations communities.

### **3. Funding for Traditional Owner Representative Institutions**

Finally, the NNTC continues to emphasise the critical need for funding to ensure Traditional Owners can participate in the Future Made in Australia agenda. While billions have been allocated to proponents through *Future Made in Australia* support, little funding has been directed to Traditional Owners to be able to access the legal, financial and technical expertise needed to participate in negotiations about their Country.

Prescribed Bodies Corporate (PBCs), which hold rights to nearly 50% of Australia's land and waters, are the key institutions for these engagements. Most PBCs are undercapitalised -

60% are small and lack the resources, staff, or expertise to protect cultural heritage, environmental values, or provide Free, Prior and Informed Consent (FPIC). Without adequate support, projects face delays and legal, financial, and reputational risks. Funding Traditional Owner Representative Institutions is essential for meaningful engagement and the investment certainty Australia needs to reach its net zero goals.