



Australian Government



First Nations investment screening approach

CEFC investment considerations

January 2022

The CEFC is a corporate Commonwealth entity established by the Australian Government under the Clean Energy Finance Corporation Act 2012 (CEFC Act).

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The CEFC acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture. We pay our respects to their Elders past, present and emerging.

Sustainable investing and Australia's First Nations peoples

The CEFC is a responsible investor, with a deep commitment to reconciliation with Australia's First Nations peoples. We recognise the potential benefits our investments can bring to Aboriginal and Torres Strait Islanders. We also recognise the importance of preventing or mitigating any potential negative impacts.

We have developed this approach to First Nations investment screening to better inform our own investment decision-making framework with respect to Aboriginal and Torres Strait Islander people. We also seek to positively influence the investment decisions of those we work with.

In developing this investment screening approach, we have benefited from the advice of First Nations representatives, government agencies, investors and industry participants. We recognise that:

- The relationship to country is of paramount importance to Australia's First Nations peoples
- The relationship to country is also inherent in activities in which the CEFC invests, given the potential impact on Australian land and waters
- The CEFC has a substantial investment footprint that covers urban, regional, rural and remote communities.

CEFC investment screening goals

All proposals

All CEFC investment proposals are screened for impacts on Aboriginal and Torres Strait Islanders, reflecting commitments we make through our core values, our Reconciliation Action Plan, Investment Policies and Environmental, Social and Governance (ESG) Policy.

Proposals relating to land

In addition, CEFC First Nations investment screening approach prioritises three main goals for proposals with projects specifically relating to land:

1. Identify and assess the impacts of our investments on Aboriginal and Torres Strait Islander people
2. Positively benefit Aboriginal and Torres Strait Islander people through our activities
3. Avoid or mitigate negative impacts that may be associated with our investments.

Sharing our approach with investors

The CEFC works closely with other investors, businesses and project developers to achieve emissions reduction. In investing to accelerate the decarbonisation of the Australian economy, we seek to address market gaps and financing impediments.

We are pleased to share our approach to First Nations investment screening in the interests of:

- Working with investors to lift expectations and practices around investment decisions impacting First Nations
- Identifying opportunities for First Nations businesses and peoples to participate in the clean energy sector, including identifying hurdles or barriers to participation
- Investigating measures to increase the participation of First Nations businesses and peoples in the clean energy sector and its supply chains.

About the CEFC: how we operate

The CEFC has a unique mission to accelerate investment in Australia's transition to net zero emissions. We work alongside co-financiers and equity investors to bring our capital investment experience to innovative financing models and new technologies which can accelerate investment in clean energy opportunities.

Investment opportunities are considered on a case-by-case basis, in the context of our long-standing commitment to environmental, social and governance matters.

Our approach to our work is founded on:

- **Our values:** to make a positive impact; to collaborate with others to make a difference; to champion integrity by being open and honest; and to embrace innovation by being open to new approaches and solutions
- **The CEFC Code of Conduct and Ethics:** Our commitment to operating with the highest standards and ethical behaviour is reflected in our Code of Conduct and Ethics
- **CEFC policies:** Our commitment to investing and operating sustainably, reflected in our Investment and ESG policies
- **CEFC Reconciliation Action Plan:** Recognition that achieving stronger cultural understandings and relationships with Aboriginal and Torres Strait Islander peoples is central to ensuring we are better informed in the decisions we make as a responsible investor, procurer, employer and industry leader. This is underpinned by our Reconciliation Action Plan.

CEFC Reconciliation Action Plan

The CEFC is at the start of our reconciliation journey. Our *Reflect* Reconciliation Action Plan recognises that as an organisation we can do more to encourage and build relationships with Aboriginal and Torres Strait Islander peoples and organisations.

By respecting and embracing the Traditional Custodians and Elders of Australia, we want to support the continuation of the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples. The development of our First Nations investment screening approach is an important demonstration of our commitment to reconciliation.



Creating a sustainable future: CEFC commissioned artwork by Wiradjuri artist Jordana

Understanding potential impacts: country, culture, people

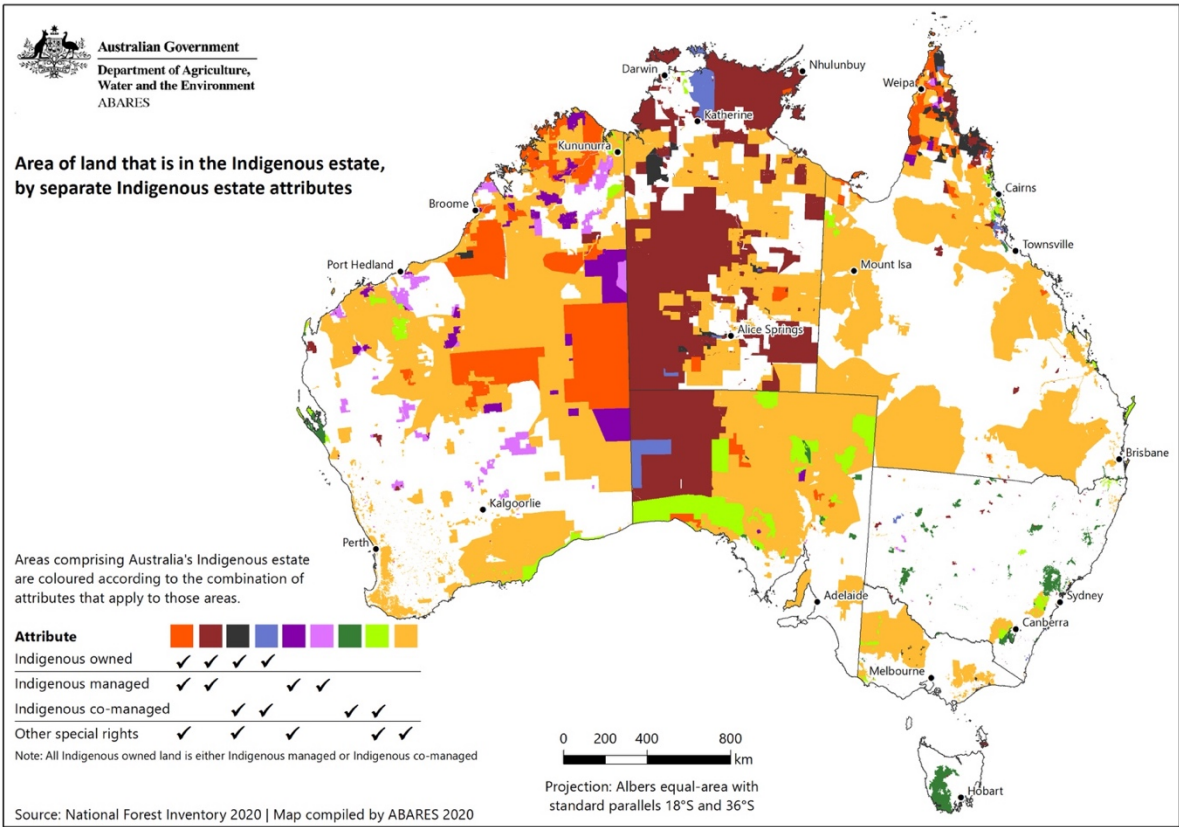
One of the first steps to understanding impacts of investment is overcoming misinformed stereotypes and assumptions about:

- The diversity of tenure held by First Nations, beyond native title
- Where Aboriginal and Torres Strait Islanders live
- The location of cultural heritage.

The National Indigenous Estate

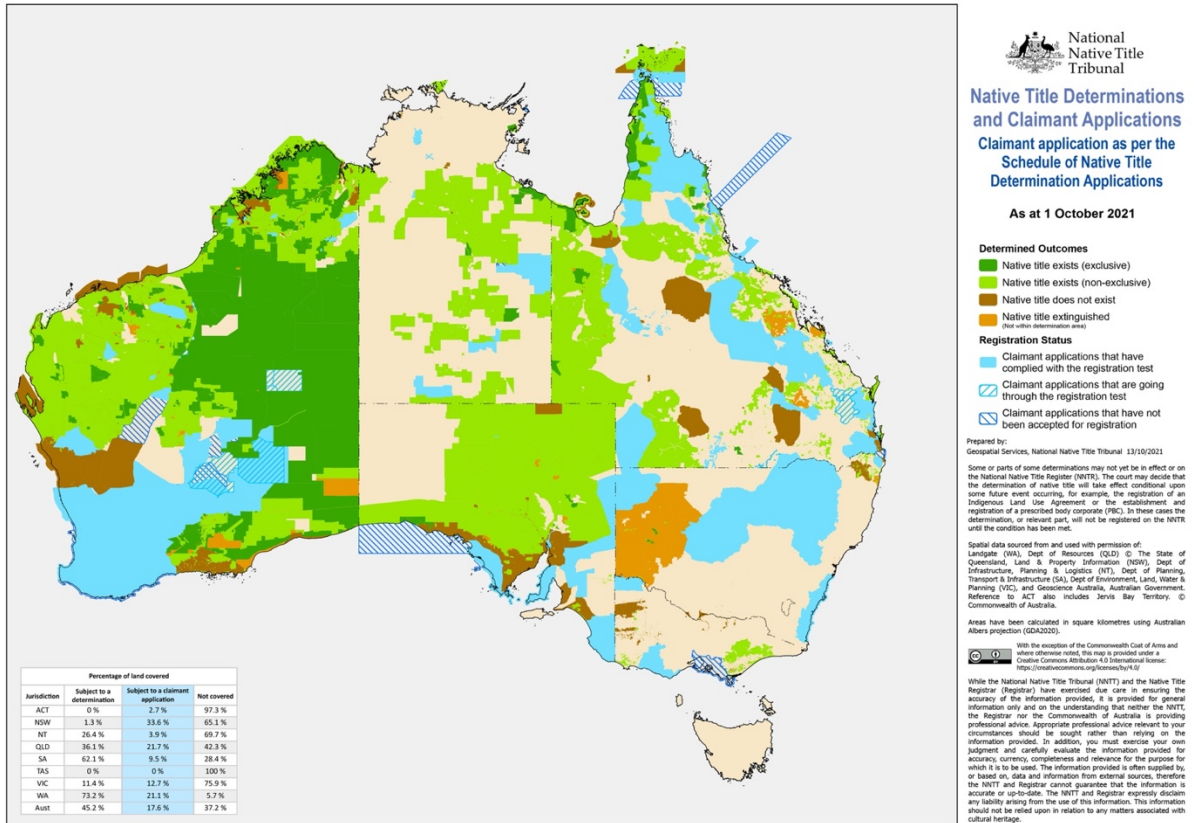
This map indicates where "indigenous" title (including but not exclusive to native title) or management existed in law at December 2020.

Figure 1: Australia's National Indigenous Estate: December 2020



This map shows the status of native title only (claimed, found to exist, found to be extinguished, held not to exist) at October 2021.

Figure 2: Native Title Determinations and Claimant Applications: October 2021



Indigenous Land Use Agreements

In considering where native title exists, the CEFC also considers any relevant Indigenous Land Use Agreements (ILUA). An ILUA is a voluntary agreement between native title parties and other people or bodies about the use and management of areas of land and/or waters. An ILUA can be made over areas where:

- Native title has been determined to exist in at least part of the area
- A native title claim has been made
- A native title claim has not been made.

Registered ILUAs bind all native title holders to the terms of the agreement. ILUAs also operate as a contract between the parties.

Additional information: [National Native Title Tribunal](#)

Figure 3: Statutory collective title schemes specifically for First Nations peoples

Commonwealth and Territories	Aboriginal Land Grant (Jervis Bay Territory) Act 1986 Aboriginal Land Rights (Northern Territory) Act 1976 Native Title Act 1993
New South Wales	Aboriginal Land Rights Act 1983
Queensland	Aboriginal Land Act 1991 Torres Strait Islander Land Act 1991
South Australia	Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 Maralinga Tjarutja Land Rights Act 1984
Tasmania	Aboriginal Lands Act 1995
Victoria	Traditional Owner Settlement Act 2010
Western Australia	Aboriginal Affairs Planning Authority Act 1972 Aboriginal Communities Act 1979

Cultural Heritage Protection

Australia's First Nations peoples are the representatives of the oldest continuing cultures in the world with more than 60,000 years of documented existence in this country, maintaining culture on land up to the present day. No matter where a project is located in Australia, cultural heritage protection should be presumed to be in place, including in metropolitan areas.

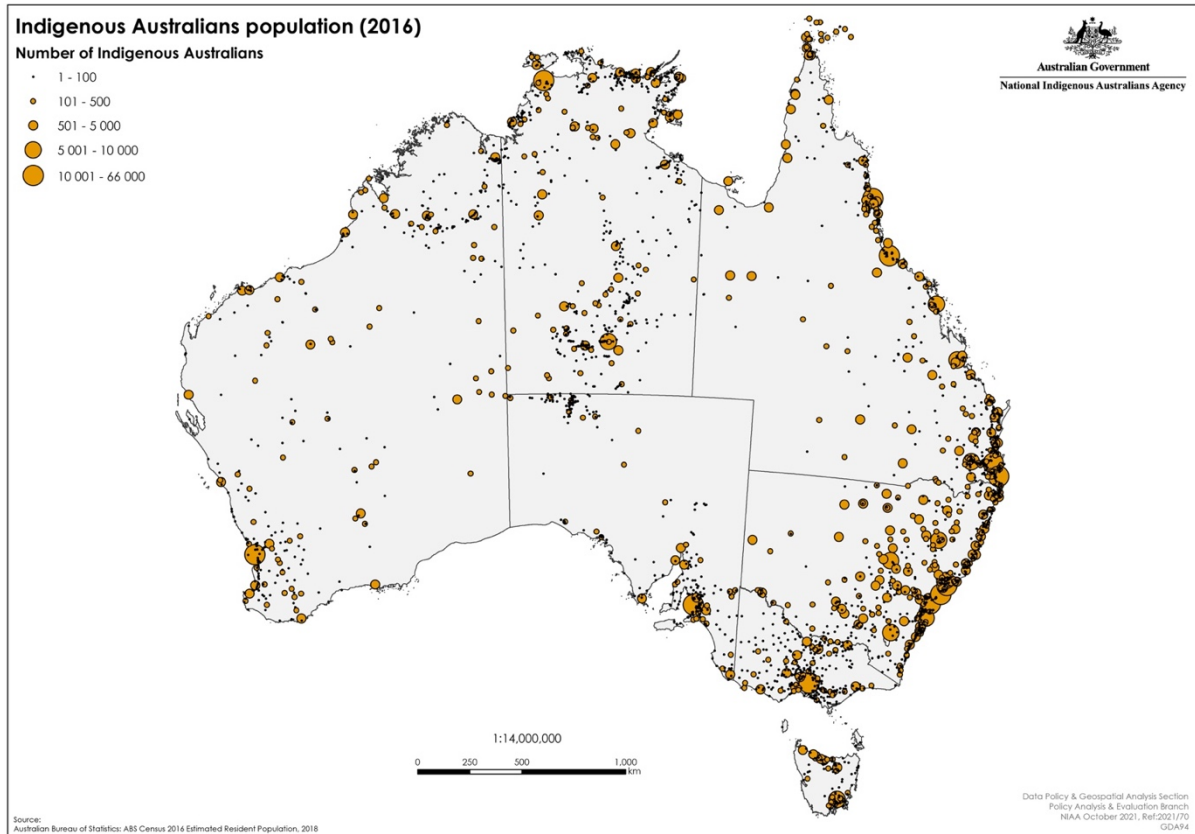
Figure 4: Australian cultural heritage protection by jurisdiction

Commonwealth	<u>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</u> <u>Environment Protection and Biodiversity Conservation Act 1999</u>
Australian Capital Territory	<u>Heritage Act 2004</u>
New South Wales	<u>Heritage Act 1977</u> <u>National Parks and Wildlife Act 1974</u>
Northern Territory	<u>Heritage Act 2011</u> <u>Northern Territory Aboriginal Sacred Sites Act 1989</u>
Queensland	<u>Aboriginal Cultural Heritage Act 2003</u> <u>Queensland Heritage Act 1992</u> <u>Torres Strait Islander Cultural Heritage Act 2003</u>
South Australia	<u>Aboriginal Heritage Act 1988</u>
Tasmania	<u>Historic Cultural Heritage Act 1995</u>
Victoria	<u>Aboriginal Heritage Act 2006</u> <u>Heritage Act 2017</u>
Western Australia	<u>Aboriginal Heritage Act 1972</u> <u>Aboriginal Heritage (Marandoo) Act 1992.</u>

Where Aboriginal and Torres Strait Islanders live

The majority of Aboriginal and Torres Strait Islander peoples live in Australia's cities and towns. Similar to cultural heritage, it should not be assumed – just because an activity is in a large metropolitan area, or is located in some other locations where native title may have been extinguished – that it will not have impact on Aboriginal and Torres Strait Islanders.

Figure 5: Where Aboriginal and Torres Strait Islanders live



Case Study: EnergyConnect

To accelerate the decarbonisation of the National Electricity Market, the CEFC has committed up to \$295 million to EnergyConnect, which is developing essential grid infrastructure to unlock additional renewable energy generation in New South Wales, Victoria and South Australia. EnergyConnect has committed to spending at least 2.5 per cent of the value of its Engineering, Procurement and Construction contract on Aboriginal and Torres Strait Islander workforce participation and procurement. An Aboriginal Participation Plan will also be developed and implemented detailing how the project will build capacity through encouraging joint ventures and alliances between Aboriginal and Torres Strait Islander suppliers to realise bid opportunities.

Reference:

https://www.industry.gov.au/sites/default/files/aip/energyconnect_aip_project_phase_summary_edits_21_july.pdf

Practical steps for investment screening

All proposals

As a responsible investor, the CEFC considers whether any proposed investment may have a significant impact on Aboriginal and Torres Strait Islanders people. The CEFC ESG Policy provides that First Nations and social engagement is a specifically relevant ESG factor in the assessment of desirable investment attributes. If a significant impact is identified, the CEFC considers any engagement that has already occurred or is underway, as well as opportunities for improved engagement and outcomes, including increased participation by Aboriginal and Torres Strait Islander businesses and peoples.

Proposals relating to land

The CEFC First Nations investment screening approach is structured around three critical areas:

1. *Identify* First Nations considerations
2. Assess the likely impact of identified issues
3. *Engage* with relevant First Nations people to secure positive outcomes.

Figure 6: Identify, assess, engage

1. Identify

The CEFC searches open-source information to identify native title and cultural heritage matters. We require counterparties to:

- Perform the required checks and searches regarding native title, or title held under the other forms of statutory Aboriginal and Torres Strait Islander title.
- Investigate the existence of recognised First Nations heritage values under relevant statutory schemes and registers
- Consider the potential for unregistered cultural heritage to exist on a project site
- Document due diligence actions.

2. Assess

Where a title or cultural heritage issue is identified, the CEFC will:

- Undertake additional due diligence to identify relevant information with respect to investment decisions
- Consider whether additional external expertise is required, including direct engagement with First Nations representatives.
- These actions are required for all project finance, and for other investment types relating to land – as considered on an investment-by-investment basis.

3. Engage

We expect counterparties to have ongoing engagement with First Nations people where native title and cultural heritage issues have been identified. We may require counterparties to undertake the following additional actions:

- Ensure any legally required approvals or agreements are obtained and entered into
- Engage with relevant First Nations peoples to ensure they have given free, prior and informed consent to the development
- Acknowledge First Nations people in announcements, events and ceremonies
- Identify positive economic benefits and opportunities for First Nations peoples, including financial returns, employment opportunities, education and training outcomes and the procurement of goods and services from First Nations businesses
- Ensure First Nations peoples have input into project design and approvals processes to mitigate potential impacts on title and cultural heritage
- Provide ongoing engagement and opportunities for access to the project area, respecting traditional laws, customs and care for Country
- Outline their approach to reconciliation with First Nations peoples

Questions to consider in developing investment screening processes

Counterparties seeking CEFC finance may find these questions useful in developing their own investment screening processes. The CEFC takes these issues into account when considering investment opportunities.

Figure 7: A considered approach

1. Getting started

- If the land is material to an investment proposal, is it on First Nations landholdings, affected by native title, native title claims or other forms of statutory Aboriginal and Torres Strait Islander title?
- Has the project been screened for the existence of significant First Nations heritage value?
- Is there another aspect of the proposal that has significant impact for Aboriginal and Torres Strait Islander peoples?
- Does the counterparty have an adequate engagement plan?
- How will the counterparty ensure reporting obligations are captured and shared with investors?

2. Where approvals and agreements are in place

- Has there been adequate engagement with First Nations involving sharing project information, resourcing of negotiations and providing independent advice?
- Have First Nations given free, prior and informed consent to the development?
- Have First Nations been informed of ongoing engagement processes including their rights of complaint?
- Are First Nations being appropriately acknowledged in announcements, events and ceremonies?

3. Reporting First Nations investment impacts

Has the counterparty specified and reported publicly on the potential for positive economic impact to Aboriginal and Torres Strait Islander peoples? Key factors include:

- Financial returns to Aboriginal and Torres Strait Islander peoples
- Employment opportunities, training and education outcomes
- Procurement opportunities, procedures and outcomes for goods and services from Aboriginal and Torres Strait Islander owned businesses
- Mitigation of impacts on the title of Aboriginal and Torres Strait Islander peoples and avoidance or mitigation of harm to First Nations cultural heritage
- Opportunities for ongoing First Nations access to the project area
- Corporate governance development on First Nations issues at the counterparty's organisational level.

Additional information: Responsible Investment Association Australasia - [Investor Toolkit – An Investor Focus on Indigenous Peoples' Rights and Cultural Heritage Protection](#)



About the CEFC

The CEFC has a unique mission to accelerate investment in Australia's transition to net zero emissions. We invest to lead the market, operating with commercial rigour to address some of Australia's toughest emissions challenges. We're working with our co-investors across renewable energy generation and energy storage, as well as agriculture, infrastructure, property, transport and waste. Through the Advancing Hydrogen Fund, we're supporting the growth of a clean, innovative, safe and competitive hydrogen industry. And as Australia's largest dedicated cleantech investor, we continue to back cleantech entrepreneurs through the Clean Energy Innovation Fund. With \$10 billion to invest on behalf of the Australian Government, we work to deliver a positive return for taxpayers across our portfolio.

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