



NEW SOUTH WALES POLICY OVERVIEW: FIRST PEOPLES AND CLEAN ENERGY

New South Wales Policy Overview: First Peoples and Clean Energy

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Executive Summary

Energy landscape in New South Wales

The NSW Government has announced ambitious plans to transform the energy system from reliance on coal-fired power to 80% renewable energy by 2030. The *Electricity Infrastructure and Investment Act 2020* (NSW) passed in 2020, gave effect to the [NSW Electricity Infrastructure Roadmap](#).

The Roadmap is the Government's plan to transform the electricity system. To deliver the NSW Electricity Infrastructure Roadmap, the government announced five Renewable Energy Zones (**REZs**) where they will coordinate investment in transmission and generation to achieve these targets.

REZs have been declared in the Central-West Orana, New England, South West, Hunter-Central Coast and the Illawarra Region.

The Government says it will also build about 4,000 kilometres of new transmission infrastructure in the next 20 years. The NSW Electricity Infrastructure Roadmap includes measures to realise Aboriginal interests in the energy transition plans. These are captured through the necessity of proponents in the REZs to address identified local Aboriginal aspirations as set out in the [First Nations Guidelines](#).

The changing nature of NSW's electricity generation over time can be viewed [at this resource](#).

The energy transition and Aboriginal people in NSW

The energy transformation in New South Wales has included a range of initiatives for First Nations people. At present, Aboriginal Working Groups in the REZs are undertaking the responsibility of negotiating outcomes with renewable energy proponents.

These Aboriginal Working Groups have been the first point of contact in relation to the [First Nations Guidelines](#) and review Aboriginal Participation Plans which are a requirement of the competitive tender process called [Long-Term Energy Service Agreements](#).

The Aboriginal Working Groups that have been established in REZs, comprised of the local and regional Aboriginal organisations (for example, Local Aboriginal Land Councils, native title interest

groups and Aboriginal leading service organisations) rely on Aboriginal organisations participating in an unpaid and unresourced capacity.

Nevertheless, Aboriginal Working Groups have undertaken significant responsibilities.

The three areas covered in this policy overview are:

1. Population overview
2. Aboriginal land estate, politics, organisation and governance;
3. Energy Policy

Information in this document should not be relied upon as legal advice. Each situation will be different and you should obtain and rely on legal advice for your own situation.

This report has been prepared to provide background and context for the Federal Government's Roundtable consultation as the First Nations Clean Energy Strategy is being developed.

Thanks to the team at the University of Technology Sydney (Indigenous Land and Justice Research Group and Institute for Sustainable Futures) for assisting to compile this overview.

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First Peoples population and demographics in New South Wales

The state of NSW had a First Nations population of around 278,000 people in June 2021, representing 3.4% of the total population of the state and just over one third of First Nations people in Australia (see [Australian Bureau of Statistics](#)).

The First Nations population of NSW is among the fastest growing in Australia.

Between 2016 and 2021, the First Nations population of NSW increased by almost 74,000 persons (ABS, 2021; ABS, 2016). This implies a population growth rate of 5.0% per year over this period, an extraordinarily fast growth rate. Rapid population growth is not a new phenomenon, with the First Nations population of NSW growing by an average of 4.6% per year over the last 25 years (ABS, 2006). Continued growth at a rate of 4.6% per year for a further 25 years would see the First Nations population exceed one million in 2046.

The First Nations population of NSW is young, with a median age of 23 compared to 39 for the general population of NSW, with one third of the Indigenous population younger than 15 years old, and 6% are 65 years or older.

The region with the largest and fastest growing First Nations population region in NSW is the Central and North Coast, where 35% of the First Nations population were counted in the 2021 Census, growing at a rate of 7% per year since 2016. This was the only region of NSW that saw a net increase in population due to mobility between 2016 and 2021. The other major population centre is the Sydney – Wollongong region, where 31% of the First Nations population live. Where the greatest proportion of Aboriginal and Torres Strait Islander people live were Brewarrina (51.4% of the total LGA population), Central Darling (36.5%), Coonamble (33.9%), Bourke (30.3%) and Walgett (21.2%).

In NSW most Aboriginal and Torres Strait Islander households were owned either with a mortgage (28.5%) or owned outright (15.9%) and rental housing was through a real estate agent (28.0%) or rented through a housing authority (11.8%).

Aboriginal land estate, politics and governance

In NSW, Aboriginal peoples' rights to and interests in land are recognised predominantly through the state-level *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) and the national-level *Native Title Act 1993* (Cth) (**NTA**).

The ALRA and the NTA have been in force for 40 and 30 years, respectively, however, the land estate recovered under each has been highly limited with land claims under the ALRA slow to be processed and native title determinations long and protracted. The two laws are different in their approach and recognise different and overlapping rights and interests.

Aboriginal Land Rights

The NSW Government's recognition of Aboriginal Land Rights in NSW was a social justice package that included three key features:

1. a land recovery mechanism for recovering limited and available Crown Land,
2. Aboriginal Land Council network, comprised of 120 autonomous Local Aboriginal Land Councils (LALCs) who are supported by the NSW Aboriginal Land Council, and
3. a 15-year compensation fund.

Half of the compensation fund was to be set aside in an investment account to fund the network into the future and the other half to fund Aboriginal Land Council enterprises.

The rationale for land rights in NSW was to realise Aboriginal political and economic power. Economic power was to be achieved through the Aboriginal-initiated enterprises funded from the 15-year funding stream and political power through LALCs, that have a presence in most towns and cities in NSW.

Since the enactment of the ALRA in 1983, NSW Aboriginal Land Councils (ALCs) **have lodged 53,800 land claims.**

Of these, **38,200 land claims**, equivalent to 70% of land claims lodged over the last 40 years, covering approximately 1.12 million hectares of Crown land, **await determination** by the relevant NSW Government department in 2022.

In terms of land recovery, a fraction of 1% of NSW has been repossessed by LALCs. LALC land includes land claims, former missions and reserves along with privately purchased and bequeathed properties. The estate is mostly held in freehold title, and some is of high social, cultural, conservation, economic and biodiversity significance.

As much as 80% of the ALC estate is zoned conservation.

The ALRA enables land to be transferred back to member based LALCs as freehold land.

LALC membership is open to all Aboriginal and Torres Strait Islander peoples based on your contemporary place of residence or cultural connection.

Since 1996, if Crown Land needed for nature conservation is of Aboriginal cultural significance, a 'buy-back' arrangement can be negotiated. This enables LALCs to obtain ownership of the land and to then lease it back to the government for use as a national park or another form of conservation reserve under a joint management arrangement. This process requires formal recognition of Aboriginal Owners – those people with a cultural association and knowledge of that landscape - to actively participate in the management and care of their Country.

NTA and ALRA

Lands claimed and granted under the ALRA on or after 28 November 1994 (the date at which the *Native Title (New South Wales) Act 1994* (NSW) commenced), have overlaid native title rights and interests on title. For many LALCs this complicates their ability to engage in any land dealing in relation to their land because of the potential existence of native title.

Under s 42 of the ALRA, LALCs must obtain a determination from the Federal Court of Australia that native title does not exist in the land they own under the ALRA before they can undertake any land dealings including sell, lease or agree to an easement over that land.

This requires the land owning LALC to make a non-claimant application to the Federal Court to seek a determination that native title does not exist. In the last decade LALC applications to the Federal Court have rapidly increased as land dealing activity is increasingly pursued. The bulk of the NSW Aboriginal land estate under the ALRA was claimed after November 1994.

Native Title rights and interests

A decade after the NSW Government announced self-determination and passed the ALRA, the High Court, overturned the 'legal fiction' of *terra nullius* (empty land, or land belonging to nobody) that the British had used to justify claiming Australia without recognition of Aboriginal and Torres Straits Islander peoples' occupation and unique connection to the land, and without agreement or payment.

Common law recognition of native title rights was subsequently legislated with the passing of the Commonwealth *Native Title Act 1993* (Cth) (NTA).

This was followed by complementary legislation in the New South Wales Parliament: the *Native Title (New South Wales) Act 1994* (NTNSW). The purpose of the NTNSW Act included the validation of previous land dealings by the New South Wales Government and measures to continue native title rights over land recovered under the ALRA (as described above).

Native title, if established, confirms the water and lands in question have always been held by the Traditional Owners (native title holders), so recognises 'pre-existing' rights and interests that have not been extinguished.

Native title cannot be claimed in areas where the law says it has been extinguished. Areas where native title may be claimed include vacant Crown land, National Parks, State Forests, Crown reserves, some types of non-exclusive leases, land covered by permissive occupancies and licences and Inland waters and the sea (noting that professional advice should be sought).

At the time of writing, there have only been 18 native title determinations in NSW, there are a further 8 Native Title claims registered and awaiting determination. That [National Native Title Tribunal](#) has [mapping resources](#) that show where these determinations and claims are located.

There are [ten Prescribed Body Corporates \(PBC\) in NSW](#). PBCs are entities that the native title holders are required to establish when the Federal Court of Australia makes a positive native title determination. There are also 1,450 registered Indigenous Land Use Agreements (ILUAs) in NSW, of which only a small number (104) outline co-management arrangements. The National Native Title Tribunal [keeps a register](#) of these ILUAs.

The NSWALC has compared a [fact sheet comparing native title and land rights](#) under the ALRA, which is another useful resource.

What about laws for the protection of Aboriginal cultural heritage?

In NSW, Aboriginal culture and heritage is managed under the *National Parks and Wildlife Act 1974* (NSW).

The care, protection and management of Aboriginal cultural heritage in NSW has long been identified as inadequate. Central to the organising for land rights recognition was the role of the [NSW National Parks and Wildlife Service](#) (NPWS) and desire to strengthen Aboriginal self-determination in culture and heritage management.

For 40 years, state governments have been in discussion with the Aboriginal community about reforms to Aboriginal culture and heritage laws. These reforms have variously called for separate legislation to manage Aboriginal culture and heritage, Aboriginal ownership of, and right to local level control of Aboriginal culture and heritage recognised in legislation along with recognition of Aboriginal understandings and definitions of Aboriginal culture and heritage. At the level of

management, that Aboriginal led culture and heritage management plans be devised with agreed access and restrictions, process for settling disputes and governance with Aboriginal Affairs portfolio.

NSW is the **only Australian state** not to have stand-alone Aboriginal cultural heritage legislation.

The inadequacy of Aboriginal protection laws in NSW can be seen in the number of permits granted that allow for the destruction of Aboriginal cultural heritage and where unauthorised destruction takes place, for minimal fines. This largely happens without the consultation of Aboriginal people.

The ALRA outlines that LALCs have responsibility to 'take action to protect the culture and heritage of Aboriginal persons in the Council's area' and to promote broader community awareness of Aboriginal culture and heritage.

Are First Nations organised around traditional ownership structures or do other institutional arrangements exist?

Under the ALRA, membership of LALCs appreciates that NSW Aboriginal people have been dispossessed of their lands and have cultural and historical associations to land based on patterns of migration and movement and enduring traditions. This is reflected in the LALC membership criteria - LALCs are open to any adult Aboriginal person who resides within the LALC's boundaries or who has an association with the area of the LALC and you can be a member of more than one LALC.

There are also provisions that acknowledge Aboriginal persons who are culturally associated with country as registered Aboriginal Owners.

Native Title is based on descent and legally recognises the ongoing connection of a people to country pre-dating colonisation. Most families and nation groups will spend years pursuing their native title rights through the courts and recognition as Traditional Owners by the State is a celebratory and emotional reckoning.

The two laws, and the recognition that each confers, are often viewed as sponsoring differing types of recognition and confer different rights. Some LALCs are working to recognise Traditional Owners within the structures and decision making and finding ways for both regimes to strengthen land interests. Protection of Aboriginal cultural heritage reforms are also discussed in terms of knowledge and rights to speak for country.

What rights and interests to land do First Nations hold in the jurisdiction? Are there First Nations land / native title claims remaining to be resolved? What opportunities exist to develop projects on the tenure held by First Nations?

Whereas across northern Australia land justice is often described as post-determination, in NSW Aboriginal communities and Traditional Owners continue to pursue land justice and have long encountered significant delays in the process.

NSW Aboriginal Land Rights Act

The NSW Aboriginal land estate is comprised of land and properties recovered under the ALRA land claims mechanism, purchased by LALCs on the open market, bequests to LALCs, and (what

remained) of the former Aboriginal reserves and missions once held by the Aborigines Protection Board (APB; later Aborigines Welfare Board).

Land that can be recovered under the ALRA is confined to certain types of ‘available Crown Land’.

Where Crown land is not being used and is unoccupied, and is not otherwise needed, such as for housing or an essential public purpose, and is not part of a claim under the NTA, the Minister/s then vests the land in the LALC.

A successful land claim will usually result in the LALC being granted a fee simple interest in the land, or freehold ownership. Land recovered under the ALRA also includes rights to mineral resources or other natural resources (except for gold, silver, coal, petroleum or uranium) - a unique entitlement compared to most other freehold landowners in NSW.

As a percentage of the NSW land estate, Aboriginal people organising through their LALCs have repossessed a fraction of 1%. This land recovery is uneven across the state with some LALCs unable to recover land and others have become the largest landowners, second to the government in their area.

Land tenure snapshot

- 17.0 % of New South Wales is covered by native title determinations.
- 0.3% of New South Wales is owned or controlled by Aboriginal member based LALCs under the ALRA.

Statute	Aim	Landowner	Form of title	Private sale	Leasing or subleasing
<i>Aboriginal Land Rights Act 1983</i> (NSW)	Provides for the grant of certain Crown land to local Aboriginal land councils.	Local Aboriginal Land Councils or the NSW Aboriginal Land Council (NSWALC).	Freehold (except Western Division - leasehold).	Yes, subject to NSWALC approval.	Yes, subject to NSWALC approval.
<i>Native Title Act 1993</i> (Cth)	To provide for the recognition / protection of native title, future dealings, making claims.	Registered Native Title Body Corporates and Prescribed Body Corporates	Native Title (exclusive or non-exclusive)	No	Yes, subject to an Indigenous Land Use Agreement

The following map shows the land tenure across NSW

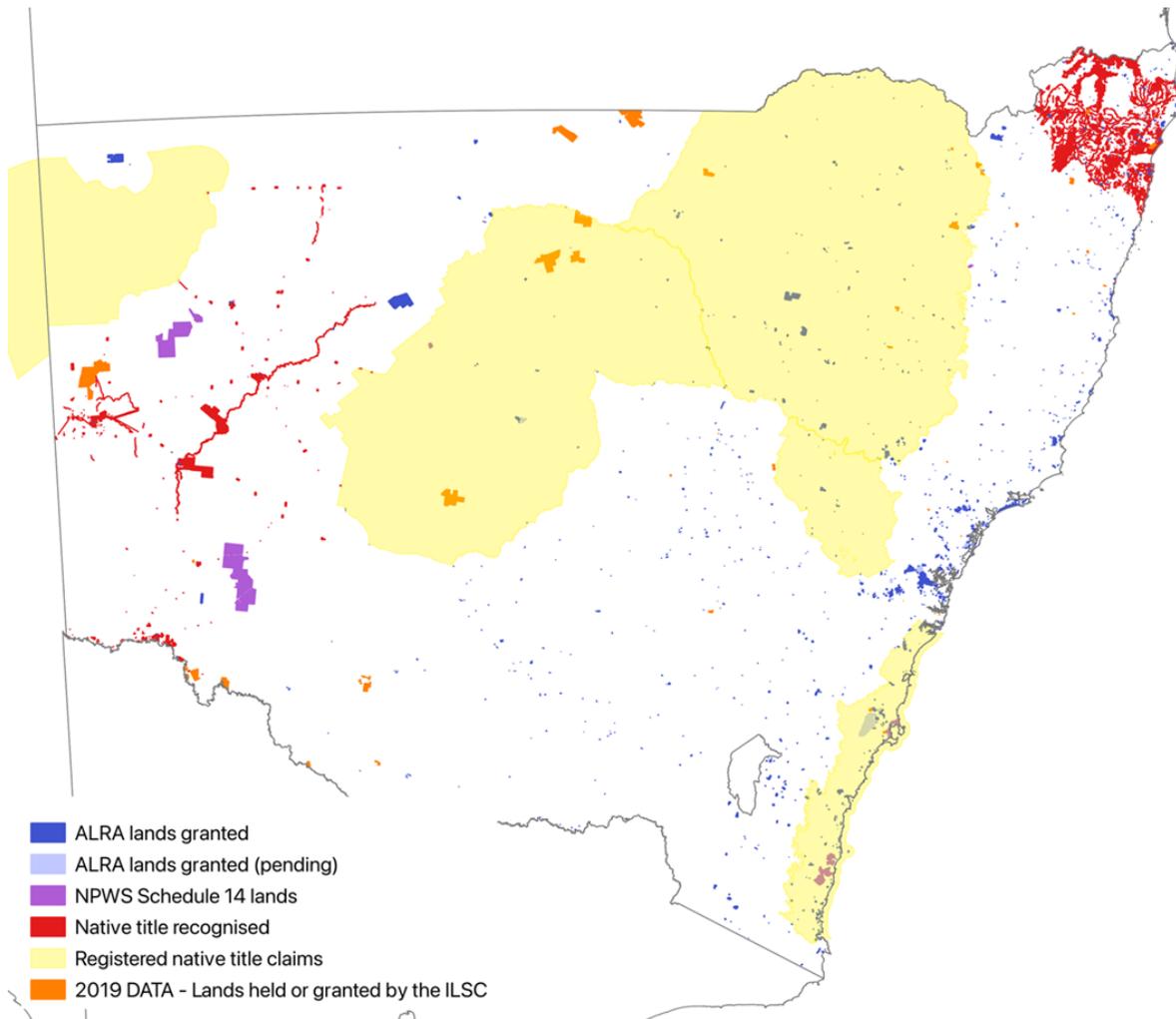


Figure 1: Map of the Aboriginal Land Estate in NSW. Sources: [Crown Lands NSW](#), [SEED NSW](#), [National Native Title Tribunal](#), [Indigenous Land and Sea Corporation](#).

What are the prominent First Nations institutions in the jurisdiction? (e.g. land, housing, health, employment, education, economic development)

In NSW a range of structures have evolved to provide local level and statewide Aboriginal representation to government on funding and services.

The [NSW Coalition of Aboriginal Peak Organisations](#) (NSW CAPO) seeks to change the way government works with Aboriginal services and sector and is made up of peak Aboriginal community-controlled organisations in NSW:

- the [NSWALC](#)
- [Aboriginal Legal Services](#)
- the [NSW Child, Family and Community Peak Aboriginal Corporation](#) (AbSec)
- [First Peoples Disability Network](#)
- [Link up NSW](#)
- [Aboriginal Education Consultative Group](#) (AECG)
- [Aboriginal Health and Medical Research Council](#) (AH&MRC) and [BlaQ Aboriginal Corporation](#).

[NSW CAPO](#), through the national [Coalition of Aboriginal and Torres Strait Islander Peaks](#), is a signatory to the National Agreement on Closing the Gap (National Agreement) and works in partnership with the NSW Government on implementation of the agreement.

Unique to NSW are the nine [Aboriginal Regional Alliances/Assemblies](#) (ARAs).

ARAs represent regional Aboriginal communities and engage with the NSW Government's Local Decision Making program to support local Aboriginal organisations negotiate with Government about the design and delivery of services to their communities. Some ARAs also have a history of agreement-making with the Commonwealth Government (e.g. through the Empowered Communities initiative, or Regional Partnership Agreements).

Local Aboriginal Land Councils (LALCs) are often central organisations in both NSW CAPO and local decision making.

Does the state/territory government provide funding or support to First Nations representative organisations in any way, and specifically for renewable energy outcomes (e.g. PBCs, Land Councils, Traditional Owner Corporations, etc.)?

The [NSW Aboriginal Land Council network](#) is self-funded. This funding base is drawn from the NSWALC Statutory Investment Fund that is valued at \$598.7 million (on 30 June 2022).

The NSW Aboriginal Land Council network comprises the state office and about 120 autonomous LALCs.

LALCs are present in most towns and cities of NSW, and many have been in operation since commencement of the ALRA in 1983.

LALCs receive an annual allocation to support their office functioning and have access to additional funds via community and enterprise development grants scheme administered by NSWALC. As well, there are zone offices that provide administration support, elected Council and a range of member benefit schemes including funeral support and education scholarships.

Aboriginal Traditional Owners are recognised too, under native title laws, and are mostly supported by [NTSCORP](#), the Native Title Service Provider for NSW.

NTSCORP receives annual grants from the Commonwealth Government. Most of the PBCs in NSW are defined as 'small' according to the categorisation by the [Registrar of Aboriginal Corporations](#). The National Native Title Tribunal's [Native Title Vision](#) has a map of NSW which helps to show where native title determinations are located along with the identity of PBCs (that map also shows areas where native title determination applications have been made).

Within the REZs there has been no funding and minimal support provided to First Nations people.

The Aboriginal Working Groups that have been established in REZs, comprised of the local and regional Aboriginal organisations (for example, LALCs, native title interest groups and Aboriginal leading service organisations) rely on Aboriginal organisations participating in an unpaid and unresourced capacity.

Nevertheless, Aboriginal Working Groups have undertaken significant responsibilities:

- developing the Region-specific First Nations Guidelines that capture the priorities of their region

- acting as an intermediary between Aboriginal community and renewable energy proponent, and
- providing feedback on Aboriginal Participation Plans of renewable energy proponents applying for government tenders.

Community benefit funds have been established in NSW, but none are First Nations-specific (indeed the recently released [Draft Energy Policy Framework](#) released by NSW's [Department of Planning and the Environment](#) includes a proposed 'Benefit Sharing Guidelines' which includes no mention of First Nations people or interests).

In October 2023, The Central-West Orana REZ received a \$128 million downpayment to fund community priorities and long-term legacy projects in the region.

The funding will be shared with local councils, community, First Nations organisations, renewable energy companies and stakeholders and will be used to fund community projects and employment opportunities that deliver direct benefits for the region. The program is set to expand to other REZs. It is not clear how these resources will be divided, and how much will be dedicated to First Nations initiatives.

Transmission infrastructure and NSW's Strategic Benefit Payment Scheme

The NSW Government has also announced the [Strategic Benefit Payments Scheme](#), which compensates private landholders for hosting certain infrastructure associated with major transmission projects.

This scheme will see Transgrid pay landholders \$200,000 per kilometre of transmission hosted, per kilometre of transmission hosted, paid out in annual instalments over 20 years.

Under the scheme, public landholders are ineligible for payment.

The authors have sought clarification from the [Energy Corporation of NSW](#) as to whether Aboriginal holders, both LALCs and Registered Native Title Body Corporates (i.e. PBCs), qualify as private or public landholders of this scheme and at the time of publication, they were yet to confirm the eligibility of Aboriginal landholders to receive benefits under the scheme.

Do First Nations representative organisations have capacity and capability to negotiate and conclude complex agreements and undertake strategic commercial activities?

LALCs have the power to purchase, exchange, lease, hold, dispose of and otherwise deal with property subject to member agreement, and approval by NSWALC as regulator.

Any land dealings are subject to detailed processes to confirm member support and approval by NSWALC. The purpose of the ALRA, as set out in s 3, is to, among other aspects, acquire and manage land and other assets and investments, and provision of community benefit schemes.

LALCs also have the authority to establish corporations that can operate at 'arms-length' from the LALC. Each LALC is required to develop a Community Land and Business Plan (CLBP) that guides their aspirations, including development, of their land.

A few LALCs on the east coast, where land has been of residential development interest, and high resale value, have capitalised their land holdings. These LALCs hold valuable land and have cash assets to support a host of services and initiatives, sponsor further land development and have

staff to lead corporate engagement. One LALC has established a tourism venture, another a café and some LALCs have come together to lead a regional cultural festival.

Most LALCs outside population centres are staffed by one person, have some land assets but are constrained by, among other things, social and economic networks to support enterprise development.

At present, Aboriginal Working Groups in the REZs are undertaking the responsibility of negotiating outcomes with renewable energy proponents.

These Aboriginal Working Groups have been the first point of contact in relation to the First Nations Guidelines and review Aboriginal Participation Plans which are a requirement of the competitive tender process (Stevenson, per comms 2023). In October 2023, the First Nations Guidelines for the Central-West Orana Region announced the establishment of a First Nations Outcomes team within Energy Co. that would support Aboriginal Working Groups and take over as the first point of contact for energy infrastructure proponents to ensure that Aboriginal organisations are not inundated with requests.

Contribution to the group is without funding and relies on Aboriginal organisations participating in an unpaid capacity, and in addition to their usual functions. As such, they urgently require greater support and resources, as well as access to technical expertise to negotiate complex agreements and decision-making tools, to enter into partnerships with renewable energy proponents and maximise benefits for Aboriginal people in renewable energy developments. Negotiations to realise Aboriginal aspirations to date have exclusively, and it would appear minimally, involved a focus on jobs and business supply in renewable energy projects.

What rights and interests to land and waters do First Nations hold in the jurisdiction? Are there First Nations land / native title claims remaining to be resolved? What opportunities exist to develop projects on the tenure held by First Nations?

Outstanding land claims under the ALRA is a significant and long identified issue in the realisation of land justice in NSW.

Local Aboriginal Land Councils and NSWALC since enactment of the ALRA in 1983 have lodged [53,800 land claims](#).

Of these, [38,200 land claims](#), equivalent to 70% of land claims lodged over the last 40 years, covering approximately 1.12 million hectares of Crown land, await determination by the relevant NSW Government department in the year 2022.

There are indications that the Government is addressing this with the dedication of personnel and improved structures to process Aboriginal land claims in a more timely manner.

From 1 July 2022 to 30 June 2023: 782 land claims were lodged; 776 claims have been resolved, 545 granted (including part granted) and 231 refused or withdrawn. Of the 231 claims that were refused or withdrawn, 90 claims were refused because the same land was granted in another claim. Of the 545 positive land claims determination in the period July 2022- June 2023, 4,109 hectares of land has been granted to 67 different LALCs.

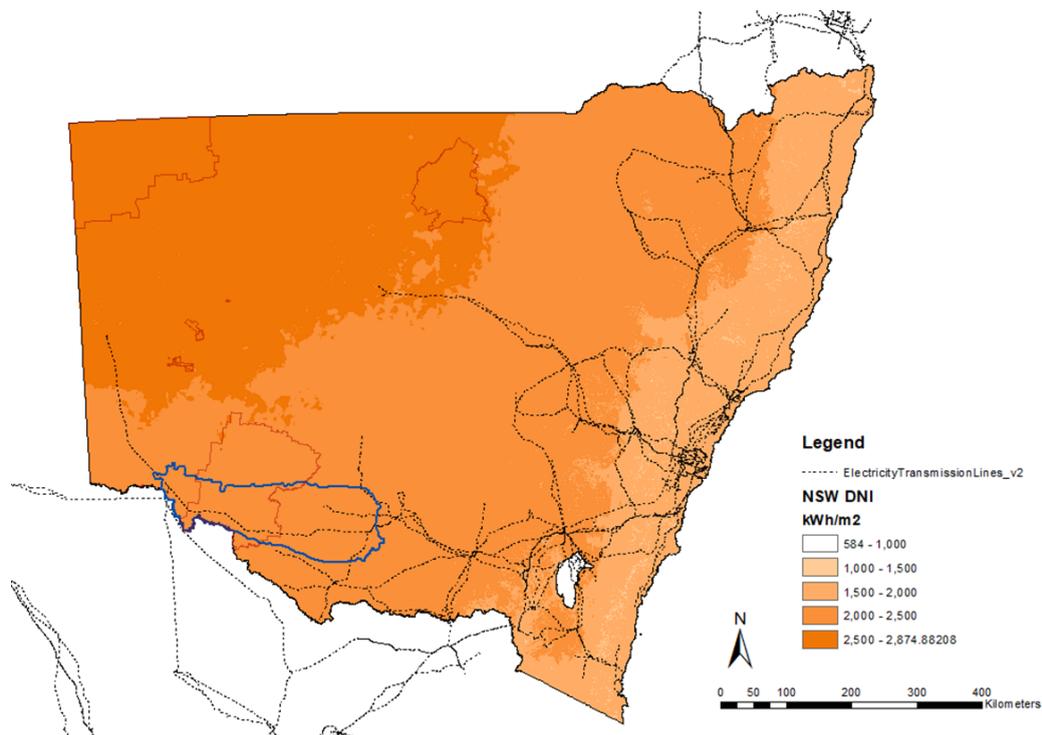
The recognition of native title rights and interests in NSW has similarly been slow and protracted. There are currently 8 claims awaiting determination covering more than one-third of NSW.

Research reveals, and as represented in the maps below, significant wind and solar potential across NSW and where LALCs hold significant land assets, including in the slated REZs.

The inclusion of the necessity of proponents to consult with Aboriginal communities and negotiate key outcomes are largely confined to Indigenous procurement and employment. There is no necessity to involve Aboriginal landholders in projects in the REZ and outside the REZ there is no incentive for renewable energy operators to demonstrate best practice.

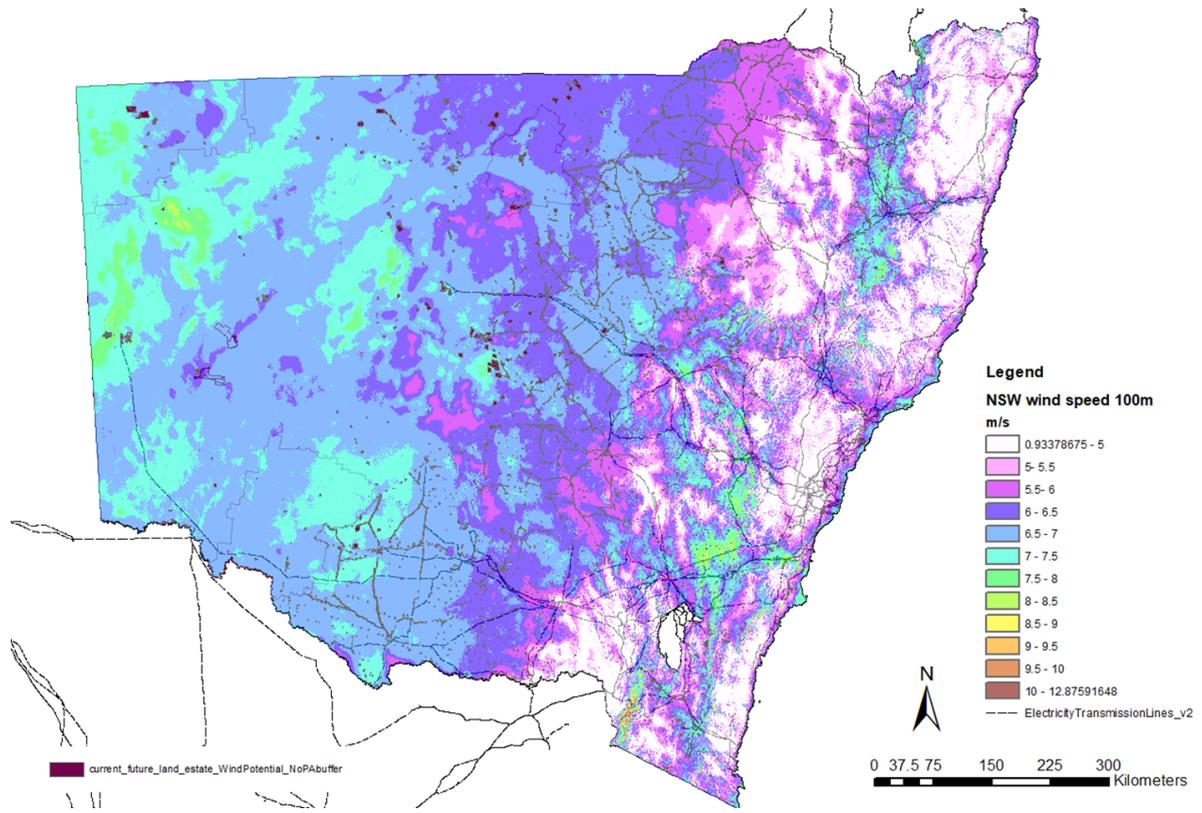
Solar potential in NSW

Direct Normal Irradiation in NSW and study areas – most NSW (including all study areas) is covered by areas $DNI \geq 1,000$ kWh/m²



	Current land estate		Current and future land estate	
	km2	MW	km2	MW
NSW	447.09	11,177.20	8,302.29	207,557.25

Wind potential and wind speed (m/s) in NSW



The energy transition and First Peoples

A description of the levers, capacities and capabilities to negotiate an equitable benefit?

The [NSW Electricity Infrastructure Roadmap](#) includes measures to realise Aboriginal interests in the energy transition plans.

These are captured through the necessity of energy proponents to address local Aboriginal interests and are formalised through the [First Nations Guidelines](#).

The First Nations Guidelines are comprised of two parts:

1. a General Guideline, applicable to all five REZs with an engagement framework detailing how renewable energy proponents will best engage with communities, and
2. a Region-Specific Guideline for each REZ.

The Region-Specific Guidelines are developed by Aboriginal Working Groups in each REZ and are aimed at capturing the local needs and aspirations of Aboriginal communities in the regional area.

The Aboriginal Working Groups are comprised of the local and regional Aboriginal organisations (for example, LALCs, native title interest groups and other relevant Aboriginal organisations) that operate in each region, but membership to the group is voluntary and relies on Aboriginal organisations participating in an unpaid capacity, and in addition to their usual functions. (It is worth noting also that renewable energy projects and transmission will also likely be developed outside of the identified REZs and on a range of scales.)

Long Term Energy Service Agreement Tenders

The NSW Government is implementing a relatively holistic approach to renewable energy development using a multi-criteria approach to the renewable energy and storage auctions that encompasses socioeconomic factors beyond price.

For the first time in Australia, renewable energy auction criteria in NSW evaluate the projected benefits for First Nations communities.

The procurement process for the approval of Long-Term Energy Service Agreements (LTESAs) includes mandatory requirements and incentives to increase employment, training and participation by First Nations businesses.

Under the tender criteria released for the first round of LTESAs, there is a minimum requirement of 1.5% First Nations participation (unless otherwise stated by Region-Specific Guidelines) and a [‘stretch goal’ of 10% First Nations participation](#) has been set which creates an incentive for projects to achieve higher levels of employment, training and contracting.

Applicants for LTESAs will be required to comply with the Aboriginal Procurement Policy which specifies a minimum 1.5% of contract value to be subcontracted to Aboriginal businesses.

Approval of LTESAs require preparation of an [Aboriginal Participation Plan](#) ‘outlining how a prospective supplier will employ and train Aboriginal people or use Aboriginal-owned businesses in supply opportunities’.

The [NSW Renewable Energy Sector Board's plan](#) (2022) recommends complementary measures for implementation by the NSW Government including:

- strategies to promote First Nations participation, such as an engagement strategy with Traditional Owner groups and engagement with the industry to create inclusive workplaces and recruitment strategies
- establishing a Skills and Workforce Development group for each REZ which includes First Nations guidelines
- reducing barriers to First Nations small and medium-sized enterprises.

Under the [Electricity Infrastructure Investment Act 2020 \(NSW\)](#) (**EII Act**), renewable energy projects cannot be awarded LTESAs or access rights to the grid if 'there is significant opposition from the community in the local area to the proposed infrastructure' (EII Act 29(4a)).

Community Benefit Funds

Renewable Energy projects will make annual contributions to community benefit funds that will be disbursed in REZs to fund investment in local infrastructure, services, training and recreation.

The [Consumer Trustee](#) will also have oversight of a fund which will be used for 'community purposes' (EII Act s 26(2)), including Aboriginal stakeholders.

At the time of writing, the governance, criteria and operations for these funds are still under development in consultation with Aboriginal and non-Aboriginal organisations operating within the REZs.

First Nations Guidelines

The [General Guidelines](#) encourage proponents to consider and prioritise the use of Aboriginal-owned land for 'access agreements, ownership and development of Renewable Energy Zone Infrastructure projects...where legally, culturally, and environmentally practicable, and following relevant local community advice about respectful and appropriate land use'.

However, it is stipulated that the Guidelines 'are not intended to present an alternative avenue to address issues around grievances and reparations regarding matters of cultural heritage, native title or land rights'.

If the First Nations Guidelines are to work well in practice with the participation of First Nations communities, there will need to be resourcing, capacity-building and support for Aboriginal Working Groups participating in the roll-out of the REZs.

Strategic planning and capacity building

Strategic planning and capacity building with Aboriginal communities is a missing piece in NSW Renewable Energy Plans to date.

Aboriginal communities need to develop their own local- and regional-level renewable energy strategy identifying what they want from this momentous economic change.

For LALCs, resources are needed to support on-country planning to identify opportunities for ownership of midscale (e.g. 1-10 MW) and smaller-scale (up to 1 MW) renewable energy projects. Much of the strategic planning that has been initiated by the Aboriginal Land Council Network, in partnerships with researchers and other experts.

For example, in February 2023, [LALCs in the Western Region participated in workshops](#) to learn about the economic opportunities in the energy transition and to discuss how they would like to engage with the renewable energy developments planned for their area.

What are key and recent issues relating to economic development and First Nations in the jurisdiction?

Two recent reforms aimed at streamlining land claiming processes (Aboriginal Land Agreements (ALAs)) and improving development pathways for the LALCs (Aboriginal Land SEPP) have, through close collaboration with the Department of Planning and Environment, improved the strategic economic potential for the LALC's land holdings.

But despite positive sentiments, including from Government, there are still systemic barriers to these reforms proving effective for LALCs.

Identified constraints include land zoning, where more than 80% of LALC land is zoned conservation; the overlay of native title rights and interests limits the ability of LALCs to deal in their land, and planning barriers, including a hostile public and increased (and expensive) procedural burden in a system designed for 'for profit' developers.

The ALA process that introduces the ability for LALCs to negotiate strategic land outcomes including the return of land outside of the claims process and potentially other benefits, with government, although positive, is still to be proven.

Are there other points that might be of relevance to First Nations outcomes in the jurisdiction (e.g. are there special programs or support that is available in this jurisdiction).

Researchers based at the University of Technology and University of New South Wales have been [working with LALCs to assess the renewable energy potential and climate change impacts](#) on their land holdings. This research work is focused on pre-feasibility work to support LALCs grow their capacity to be more involved in energy transformation and understand the possibilities and the risks in various renewable energy projects.

Role of EnergyCo in delivering Aboriginal outcomes

In November 2023, the NSW Government announced that the Energy Corporation of NSW (EnergyCo) will build a '[First Nations Outcomes Team](#)' which they say will ensure local Aboriginal communities are better supported to reap the benefits of the renewable energy transition.

The First Nations Outcomes Team appears to be focused on training and employment outcomes in NSW's REZs.

What do we know about existing relationships between First Nations and the renewable energy sector in the jurisdiction?

[Research reveals LALCs are interested in the new economies of renewable energy.](#)

LALCs say that renewable energy projects are likely to be less environmentally destructive, they seek energy security and need to be innovative as they seek to create jobs, opportunities, and services for their people to remain on country in otherwise rapidly declining rural economies.

The First Nations Guidelines have been in operation in the Orana REZ trial site. There has been no evaluation of the experience of the Aboriginal community panel at the time of writing. However, we do know that the Aboriginal community panel are without resources, training, experience or capacity that would be required to enter into negotiation with renewable energy proponents to achieve identified community priorities.

Are there energy security/access/justice issues for First Nations in the jurisdiction. If so, what are they and why do they exist? Which section of the First Nations population is most impacted?

Several communities report energy security issues including end of line infrastructure breakdown that compromises food and medical treatment. A few communities rely on diesel generators for back up. This is expensive and polluting. Most LALC housing are not fitted with renewable energy and face high energy costs.

Is there finance / funding available for First Nations renewable energy projects?

There is presently no specific finance or funding available for First Nations renewable energy projects just in NSW.

Information about potential Commonwealth / Australia-wide funding options can be [found here](#).

What are the key policies, programs and initiatives relating to renewable energy in the jurisdiction

NSW is seeking to engineer a rapid transformation of its electricity system from one based on coal-fired power to renewable energy by 2030.

Before the last decade, 80-90 per cent of NSW's electricity was sourced from coal power, supplemented primarily by Snowy Hydro and gas power stations to meet demand peaks.

Under the *Electricity Infrastructure Investment Act 2020* (NSW), NSW has legislated targets of 12,000 Megawatts (MW) of renewable energy generation and 2,000 MW of long-duration storage by 2030 which would lead to greater than 80 per cent renewable energy.

To deliver the NSW Electricity Infrastructure Roadmap, NSW is developing Renewable Energy Zones (REZ) in five regions to coordinate the investment in transmission and generation to achieve these targets. The NSW delivery model includes social and employment goals such as improving First Nations employment and income opportunities through infrastructure procurement and First Nations Guidelines for each REZ.

Under the [NSW Electricity Infrastructure Roadmap](#), NSW has also set a goal of becoming an 'energy superpower' with programs to develop hydrogen hubs, industrial decarbonisation and heavy manufacturing.

NSW's energy efficiency programs are also noteworthy.

NSW was the first jurisdiction in the world to implement a greenhouse gas price, which evolved into the [Energy Savers Scheme](#), and there are a range of programs designed to increase energy efficiency and reduce households, businesses and consumer energy bills.

Energy markets and policy

This section provides an overview of NSW energy markets and policy encompassing:

- Current energy mix
- Renewable energy project pipeline & the schedule for coal plant closures
- NSW Electricity Infrastructure Roadmap: the policy framework for the transition of the energy system in NSW
- Clean Energy Targets and Strategies: an overview of the key targets and strategies
- Policy summaries: brief summaries of the key policies for renewable energy, energy storage, renewable hydrogen, energy efficiency and low-income households.

Current energy mix

The contribution of different sources to electricity demand in NSW in the past year is summarised in Figure 1:

- Whilst coal-fired power is in decline, it is still the dominant source of electricity providing over 60% of demand over the past year.
- The share of renewable energy was just over 29%, led by rooftop solar (9.3%), wind farms (7.9%) solar farms (7.4%) and hydro (4.6%).
- Gas generation accounts for just under 2%.
- Almost 10% of demand was met through electricity imported from other states.

Notably, the price delivered by NSW renewable energy sources into the wholesale electricity market is lower than coal and gas.

28 Nov 2022 – 10 Dec 2023			
Detailed 	Energy GWh	Contribution to demand	Av.Value \$/MWh
Sources			
 Solar (Rooftop)	7,621	10.3%	\$44.31
 Solar (Utility)	6,287	8.5%	\$53.45
 Wind	5,711	7.7%	\$90.05
 Hydro	3,398	4.6%	\$161.85
 Battery (Discharging)	40	0.05%	\$187.56
 Gas (OCGT)	373	0.5%	\$303.05
 Gas (CCGT)	1,006	1.4%	\$149.82
 Distillate	3.4	0.005%	\$570.18
 Bioenergy (Biogas)	67	0.09%	\$71.61
 Coal (Black)	43,139	58.1%	\$109.31
 Imports	7,677	10.3%	-\$67.34
Loads			
 Exports	-1,093	-1.5%	\$109.74
 Pumps	-590	-0.8%	\$23.99
 Battery (Charging)	-50	-0.07%	\$45.56
Net	73,589		
Renewables	23,084	31.1%	

Figure 1: Electricity Generation, NSW, November 2022 - December 2023

Source: OpenNem. <https://opennem.org.au/energy/nsw1/?range=1y&interval=1w>. Accessed 5 December 2023.

Renewable Energy Project Pipeline & Coal Closures

The latest version of AEMO’s Generator Information illustrates the project pipeline in NSW (Figure 2).

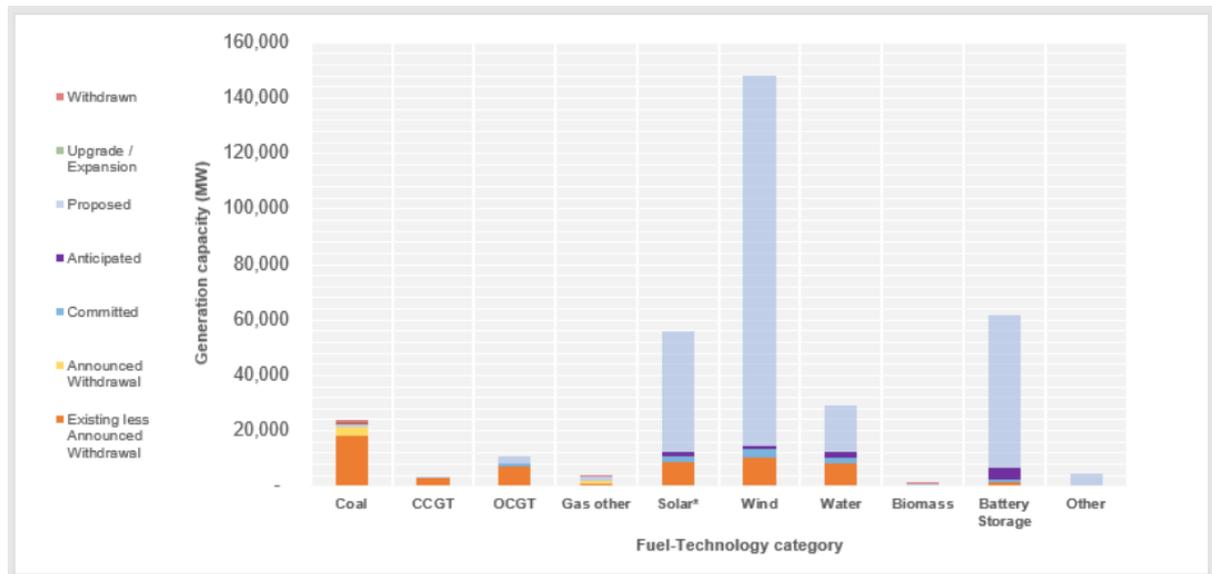


Figure 2: Electricity Project Pipeline, NSW, August 2023

Source: [AEMO, Generator Information](#). Accessed 10 August 2023.

The key points to note are:

- There is approximately 3400 Megawatts (MW) of solar farms, just over 2000 MW of wind farms and 60 MW of battery storage operating in NSW;
- There is a very large pipeline of wind farms (around 42,500 MW), battery storage (around 16,600 MW) and solar farms (around 13,300 MW). However, a very small proportion of projects are ‘committed’ (i.e. they have reached financial close and are proceeding to construction);
- 2880 MW of coal-fired power is announced for withdrawal (Ering), following on from Liddel (1500 MW), with just over 5400 MW of capacity of other operating coal fired power;
- There is 500 MW of combined-cycle gas stations and 1500 MW of open-cycle gas stations, with a further 1070 MW of committed open-cycle gas station capacity.

The current schedule for coal plant closures in NSW is:

- Eraring (2025): 2880 MW
- Vales Point B (2028): 1320 MW
- Bayswater (2033): 2640 MW
- Mount Piper (2040): 1400 MW

NSW Electricity Infrastructure Roadmap

The NSW Electricity Infrastructure Roadmap is a 20-year plan to transition NSW from a coal-based to renewable energy system. In 2020, the NSW Government passed the Electricity Infrastructure Investment Act (2020), establishing a framework to implement the Roadmap. Under the EII Act, NSW legislated a target of 12 Gigawatts (GW) of renewable energy and 2 GW of storage by 2030.

Five 'Renewable Energy Zones' (REZs) were declared to coordinate investment in generation and transmission in regional NSW:

- Central-West Orana
- New England
- South-West
- Hunter-Central Coast
- the Illawarra region.

The key mechanism through which the renewable energy and storage targets will be met are a series of auctions for [Long-Term Energy Supply Agreements](#) or LTESAs.

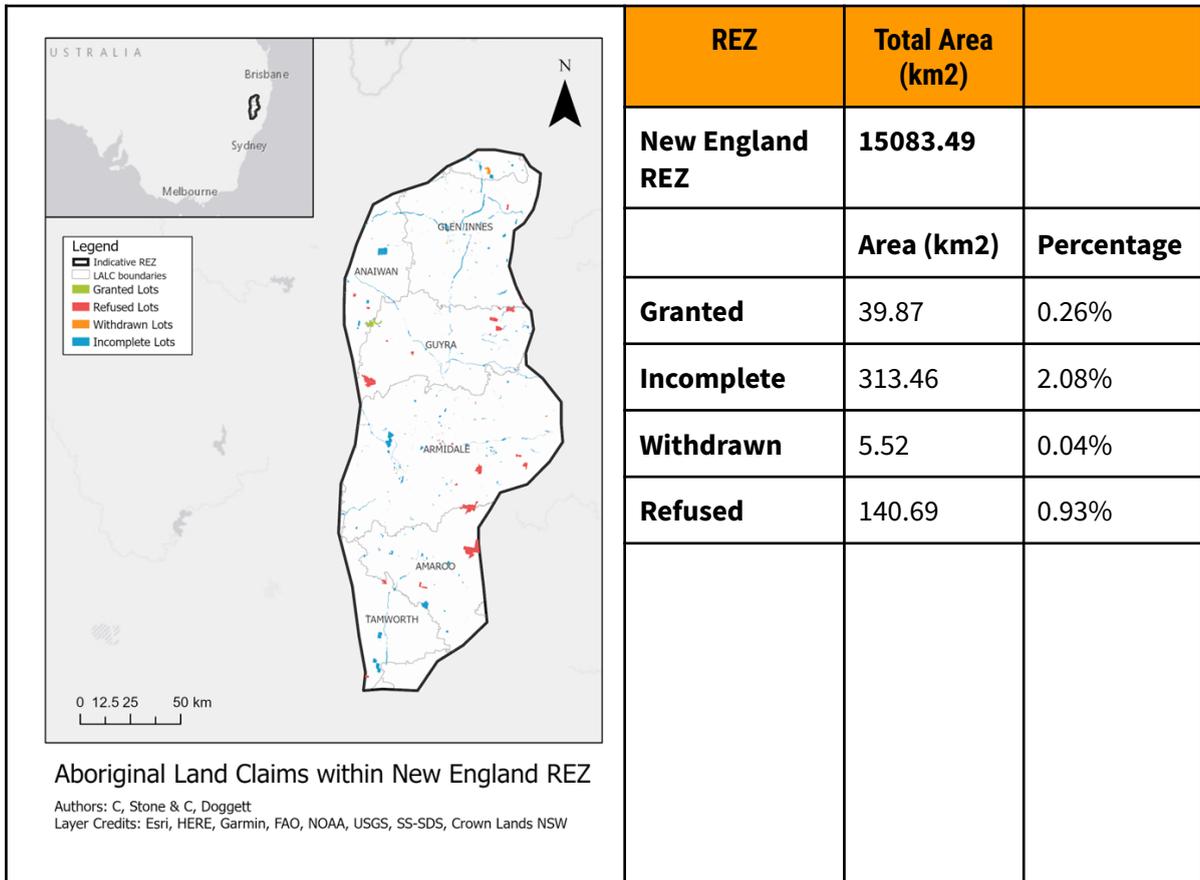
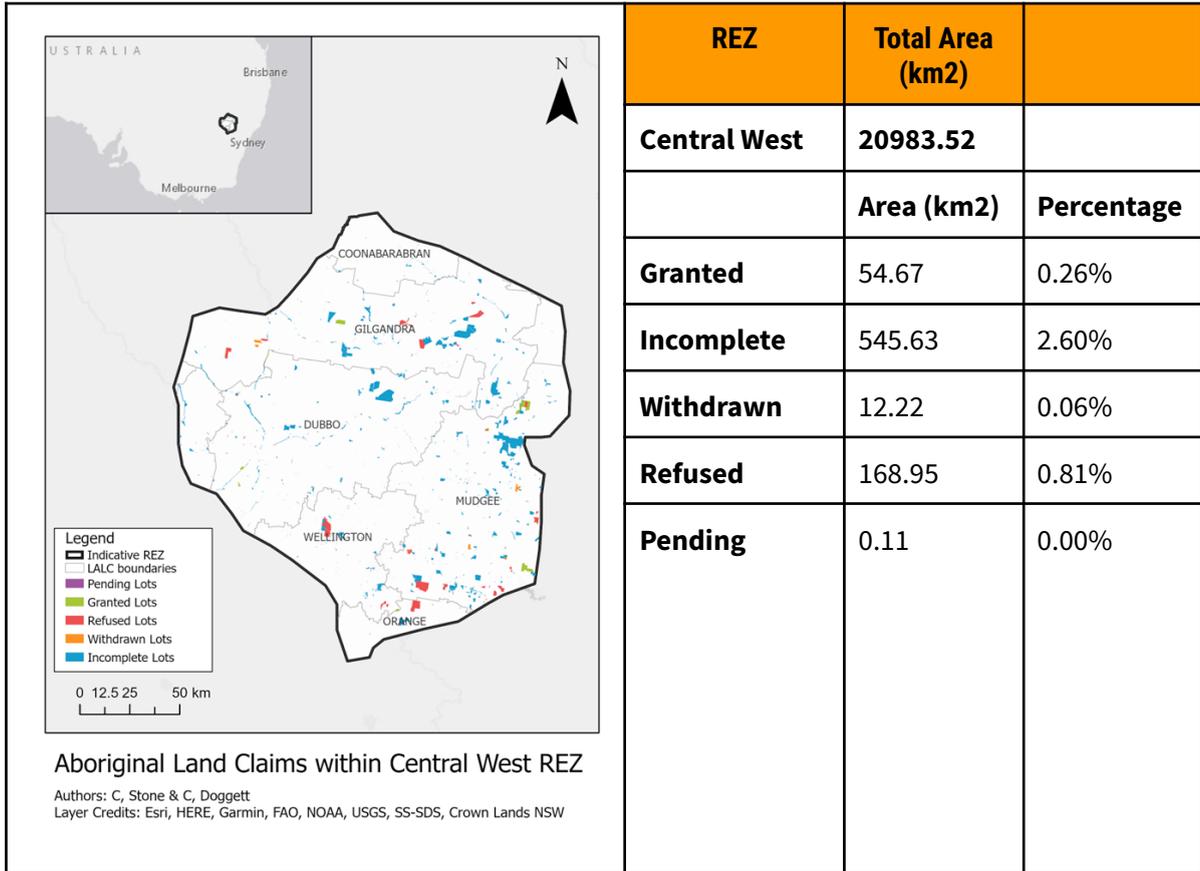
LTESAs will provide a guaranteed minimum price which will enable the project to secure finance. The bids for the third round have closed with further rounds to occur. In addition to price and delivery quality, the criteria for the LTESAs include:

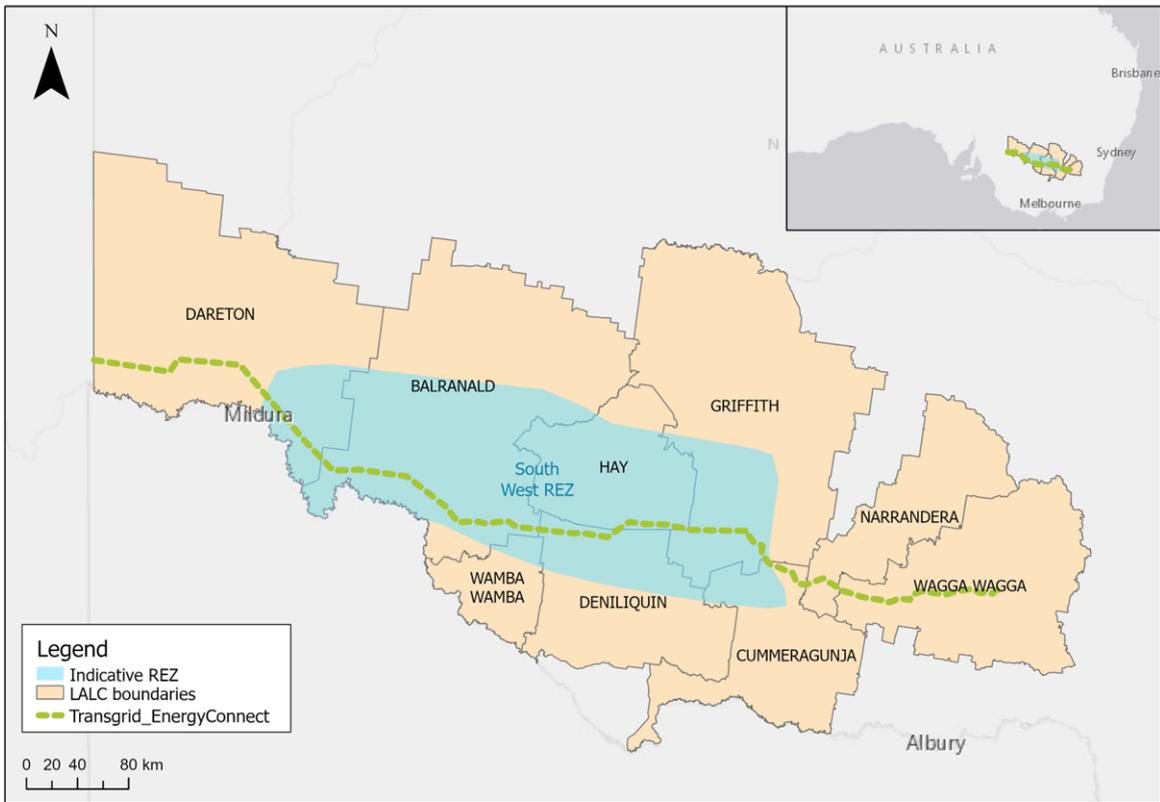
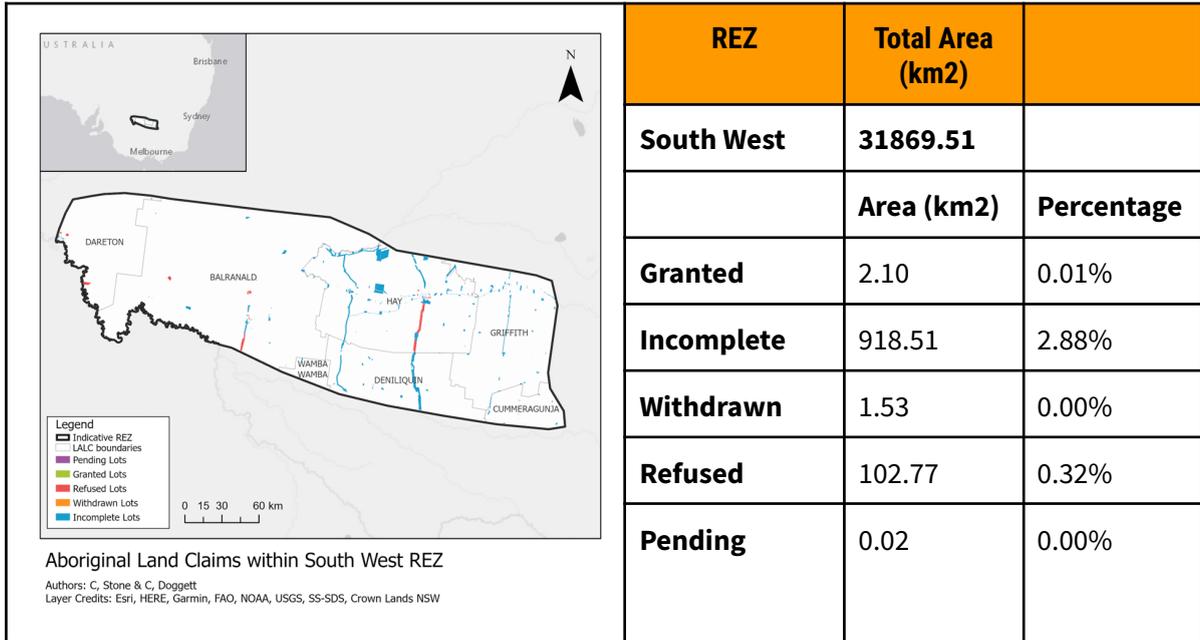
- socio-economic benefits such as increasing local content and employment,
- community benefits, engagement and support
- benefits for Aboriginal communities.

Applicants for LTESAs will be required to comply with the [Aboriginal Procurement Policy](#) which specifies a minimum 1.5% of contract value to be subcontracted to Aboriginal businesses and 1.5% of the full-time equivalent workforce, and training expenditure, for Aboriginal or Torres Strait Islanders. Under the tender criteria, a 'stretch goal' of 10% First Nation participation has been set. There is no public information at this point on the content within projects awarded LTESAs in rounds 1 and 2.

Under s 4(4) of the EII Act, the Consumer Trustee is required to take account of the Guidelines for Consultation and Negotiation with First Nations Communities (herein First Nations Guidelines) in carrying out its functions. The First Nations Guidelines include a core document (applicable to all REZs), and a set of Guidelines within each REZ developed with the input of local and regional Aboriginal organisations. First Nations Guidelines have been developed for the Central West Orana REZ and are under development for the New England REZ.

The following pages show data on Aboriginal land in relation to REZs in NSW.





Key Energy Market Institutions

The NSW Government has produced a map of the key energy market institutions delivering the NSW Electricity Infrastructure Roadmap (see Figure 3).

There is one transmission network operator and three distribution network operators:

- [Transgrid](#) is the operator of the [transmission network](#)
- the [distribution network](#) is split between three operators:
 - [Ausgrid](#) (Sydney and outskirts)
 - [Endeavour Energy](#) (South-Coast, North-West of Sydney from Parramatta) and
 - [Essential Energy](#) (regional areas).

The NSW Electricity Infrastructure Roadmap

Various organisations and stakeholders are working together to deliver the energy transformation in New South Wales.

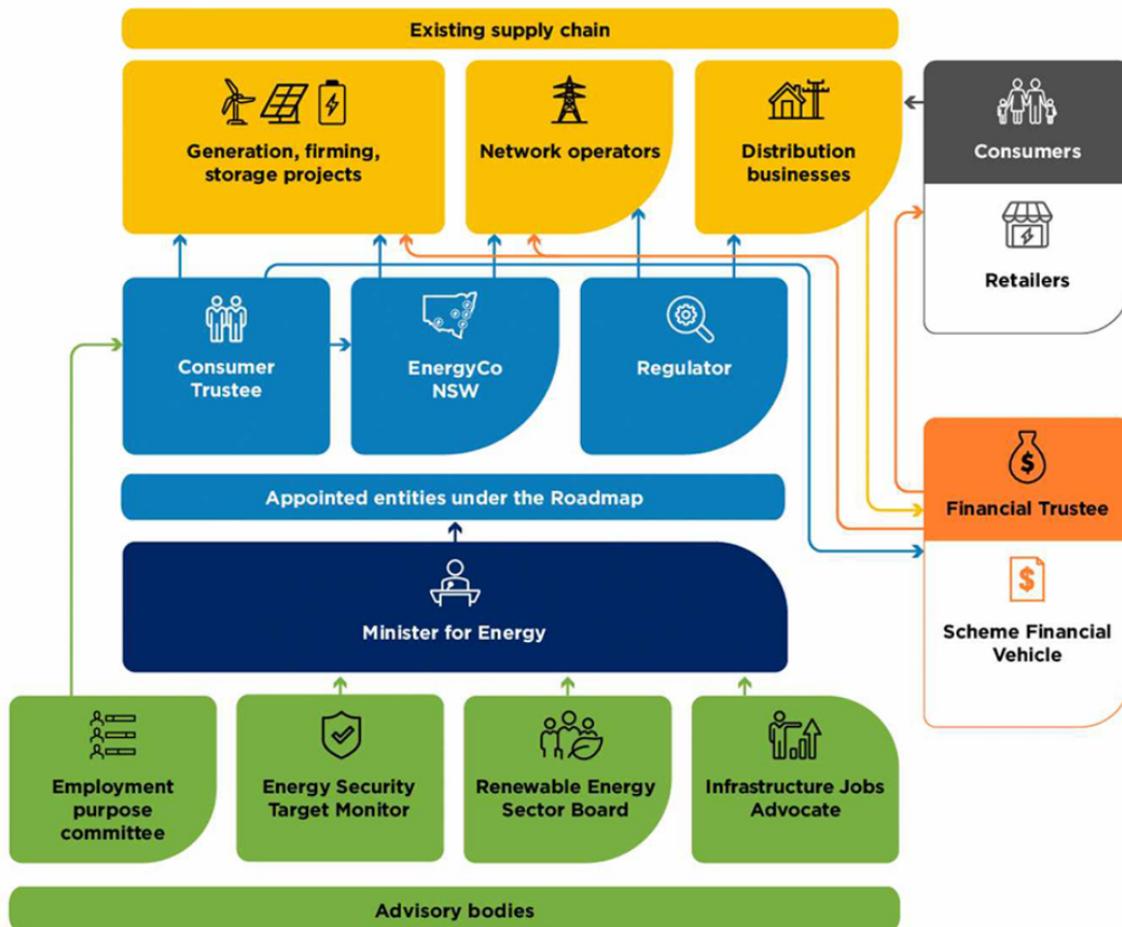


Figure 3: NSW Electricity Infrastructure, Key Bodies

The key entities delivering NSW's Electricity Infrastructure Roadmap

- **Consumer Trustee:** [AEMO Services Ltd](#), a subsidiary of the [Australian Energy Market Operator](#) (AEMO), was appointed as the NSW Consumer Trustee.

The role of the Customer Trustee is to plan investment in generation, storage, firming and network infrastructure, including administering tenders for Long-Term Energy Service Agreement

- [The Energy Corporation of NSW \(EnergyCo\)](#): EnergyCo is responsible for planning the location of the REZs and contracting and overseeing the suppliers delivering the transmission network infrastructure to connect the generation built in the REZs to the electricity grid.

A range of advisory bodies and supporting roles have been established as part of the Electricity Infrastructure Roadmap

- [Renewable Energy Sector Board \(RESB\)](#): the RESB, which comprises representatives from the energy industry, unions, heavy industry and electricity consumer bodies, was established by the former Minister for Energy. The RESB advises on action to increase the sustainable growth and competitiveness of local industries and realise benefits for local workers and communities.
- [Electricity Infrastructure Jobs Advocate](#): the Jobs Advocate, Dr Mark Apthorpe, advises the Minister for Energy on strategies and incentives to encourage investment, development, workforce development, employment, education and training in the energy sector as New South Wales transitions to renewable energy. The focus is on regional NSW and road, rail and port infrastructure required in the regions to promote export opportunities for generation, storage and network technology.
- [Energy Security Target Monitor](#): AEMO has been appointed in this role to set a 10-year energy security target

Other notable energy bodies in NSW

- [Independent Pricing and Regulatory Tribunal](#): regulatory, monitoring and licencing functions for the energy sector. IPART also has roles under the Electricity Infrastructure Investment Act, such as to prepare an annual report and performance audits of the entities delivering the Electricity Infrastructure Roadmap.
- NSW Government agencies: the key bodies are the [Office of Environment and Heritage](#) and the [Department of Planning, Industry and Environment](#).

Clean Energy Targets and Strategies

In addition to the renewable energy targets in the Electricity Infrastructure Investment Act, there are a range of other clean energy targets and strategies.

Policy Domain	Targets and Strategies
Greenhouse Gas Emissions	The target is not yet legislated. A target of 50% reduction by 2030 and net zero emissions by 2050 were included in the NSW Climate Change Policy Framework.

Renewable Energy	Under the EII Act, the target is 12 GW of generation capacity and 2 GW of long-duration storage (> 8 hours) by 2030.
Energy Efficiency	The NSW Government has committed to increasing the target for the Energy Savings Scheme from 8.5% to 13% of retailer electricity sales by 2030. The Energy Efficiency Action Plan is the overarching strategy for energy efficiency
Renewable Hydrogen	The NSW Hydrogen Strategy includes 2030 targets: <ul style="list-style-type: none"> ● 110,000 tonnes of annual green hydrogen production; ● 700 MW of electrolyser capacity; ● reduce the cost of green hydrogen to under \$2.80 per kilogram; ● 10% gas network blending of hydrogen; ● 10,000 hydrogen vehicles; ● 100 refuelling stations; ● 20% of NSW Government vehicles.
Gas & Electrification	The NSW Electricity Strategy is the overarching strategy for the sector. There are no targets for gas or electrification.
Low-income households	No targets but there are a range of initiatives (see below).

Key Renewable Energy Policies and Programs

The major renewable energy policies have been outlined under the NSW Electricity Infrastructure Roadmap but there are some other programs.

Policy/Program Title	Key Initiatives
Regional Community Energy Fund	The \$30 million Regional Community Energy Fund to address challenges and improve energy reliability, and the integration of renewables, in regional communities.
Pumped Hydro Recoverable Grants	The \$50 million program provides recoverable grants to project developers to assist with the cost of early stage, detailed feasibility studies.

Key Energy Storage Policies

The main program for large-scale storage are the auctions for LTESAs implemented as part of the NSW Electricity Infrastructure Roadmap.

As part of the Federal Government [Capacity Investment Scheme](#), there is additional funding to add 550 MW to the LTESA auctions.

Energy Efficiency and Demand Management

Some of the key programs to increase energy efficiency are national schemes or regulations.

NSW has a well-developed range of energy efficiency schemes within the Energy Security Safeguard (the [Energy Savings Scheme](#), the [Peak Demand Reduction scheme](#)) and a range of other energy efficiency programs for businesses, councils and households.

Policy/Program Title	Key Initiatives
Energy Savings Scheme	The Energy Savings Scheme is the primary energy efficiency policy mechanism in NSW. It requires retailers to surrender Energy Savings Certificates equivalent to 9.5% of their sales with the target set to increase to 13% by 2030. Energy Savings Certificates can be created by a range of eligible energy savings activities for households, businesses and industry (e.g. installing more efficient lighting in commercial buildings), creating a financial incentive for energy efficiency. The scope of the scheme has been gradually increased over time.
Peak Demand Reduction Scheme	The PDRS is the first market-based/certificate scheme in Australia to create incentives for demand flexibility (i.e. shifting the time of consumption). Under the PDRS, retailers are required to surrender Peak Reduction Certificates equivalent to 0.5% of peak demand, which under legislation will increase to 10% by 2030. Certificates are generated by recognised activities that reduce peak demand.
Sustainable Councils Program	The Sustainable Councils program partners with regional councils and Joint Organisations (JOs) to build capacity within councils to transition sustainably towards net zero emissions.
Sustainability Advantage Program	The Sustainability Advantage program works with over 800 medium and large organisations to accelerate the adoption of sustainable practices, saving these organisations over \$120 million per annum.

Key Renewable Hydrogen Policies

The [NSW Hydrogen Strategy](#) includes three key pillars for the development of Renewable Hydrogen. There is no reference to First Nations or Aboriginal people in the Hydrogen Strategy.

Policy/Program Title	Key Initiatives
Pillar 1: Enable Industry Development	Key initiatives include: <ul style="list-style-type: none">• developing a state-wide strategic hydrogen infrastructure plan;• port infrastructure assessments;• hydrogen ready regulatory frameworks;• skills development; and• investing in R&D innovation projects.
Pillar 2: Lay Industry Foundations	Key initiatives include: <ul style="list-style-type: none">• establishing hydrogen hubs (Hunter and Illawarra), other strategic locations (Wagga Wagga, Moree, Parkes and Narrabri special activation precincts and the REZs); and• a hydrogen refuelling network.
Pillar 3: Drive Rapid Scale	Key initiatives include the Renewable Fuels Scheme and the Net Zero Industry and Innovation program (funding for heavy industry/greenhouse emitters to invest in new technologies including hydrogen use).
Renewable Fuels Scheme	The Renewable Fuels Scheme is a market-based certificate scheme like the ESS and PDRS. Natural gas retailers and large users need to buy or create certificates for green hydrogen production equivalent to their share of the annual scheme target. The scheme target will increase from 90,000 GJ (2024) to 8 million GJ by 2030.

Key Policies for Local Workforce, Industry and Businesses

Policy/Program Title	Key Initiatives
Workforce and training	<p>NSW does not have a clean energy training fund or program. However, there are some initiatives associated with the REZs:</p> <ul style="list-style-type: none"> • Renewable energy project developers are required to meet employment and training commitments as part of auctions for Long-Term Energy Supply Agreements • Renewable energy developers are required to make contributions for ‘employment purposes’ as part of access fees for the REZs. • The NSW Government is currently developing a skills strategy for the Central-West Orana REZ.
<u>Renewable Energy and Low Carbon Manufacturing</u>	<p>There are two major programs:</p> <ul style="list-style-type: none"> • \$250 million in grant funding to develop components for the renewable energy and electric vehicle sectors. • \$300 million to develop manufacturing of low carbon products and materials
<u>Net Zero Industry and Innovation Plan</u>	<p>There are three investment priorities for the program:</p> <ul style="list-style-type: none"> • Priority 1: deploy opportunities to reduce industrial emissions (\$200 million); • Priority 2: accelerate strategic abatement opportunities (\$105 million) • Priority 3: develop low carbon infrastructure and industrial precincts (\$55 million)

Key Policies for Low-Income Households

Policy/Program Title	Key Initiatives
Low Income Household Rebate	<p>Eligible concession cardholders receive a \$285 rebate on their electricity bills per financial year. A one-pay \$500 payment is available for 2023-24 due to the very high price increases.</p>
Rebate swap for solar and energy efficient upgrades	<p>Low-income households are eligible for a free 3 kilowatt rooftop solar system in exchange for not receiving the low-income household rebate for 10 years – which saves money for both low-income households and government. For households not suitable for rooftop solar, there is a \$4000 rebate for energy efficiency upgrades. Eligible tenants within Land and Housing Corporation properties can also access the rebate swap.</p>

NSW Gas Rebate

Eligible card concession holders receive a \$110 rebate for retail gas bills.