



New South Wales

Energy Legislation Amendment Act 2023 No 49

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New South Wales

Energy Legislation Amendment Act 2023 No 49

Act No 49, 2023

An Act to amend the *Electricity Infrastructure Investment Act 2020* in relation to the functions of the energy security target monitor and other matters; and to amend the *Energy and Utilities Administration Act 1987* in relation to the governance arrangements for the Energy Corporation.
[Assented to 12 December 2023]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Energy Legislation Amendment Act 2023*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 2—on a day or days to be appointed by proclamation,
- (b) otherwise—on the date of assent to this Act.

Schedule 1 Amendment of Electricity Infrastructure Investment Act 2020 No 44

[1] Section 18 Disclosure of protected information

Insert after section 18(1)(a)—

- (a1) to AEMO under subsection (1A), or

[2] Section 18(1A) and (1B)

Insert after section 18(1)—

- (1A) The energy security target monitor may disclose protected information to AEMO if the monitor considers it necessary when exercising the monitor's functions under section 12 or 13.
- (1B) AEMO must not disclose protected information disclosed to it under subsection (1A).

[3] Section 31 Consideration of recommendations by infrastructure planner

Insert after section 31(5)—

- (6) The regulations may make further provision about the following—
- (a) the exercise of the consumer trustee's functions under this section,
- (b) requiring the infrastructure planner to give information to the consumer trustee.

[4] Section 36 Application of Division

Omit "section 34(2)" from section 36(3). Insert instead "section 34(3)".

[5] Section 44 Infrastructure investment objectives

Omit section 44(3)(b). Insert instead—

- (b) construction of long-duration storage infrastructure with at least—
- (i) storage of 16 gigawatt hours, and
- (ii) capacity of 2 gigawatts.

[6] Section 45 Planning by consumer trustee

Insert "approximately" before "every" in section 45(2)(b).

[7] Section 51 Risk management framework

Omit section 51(6) and (7). Insert instead—

- (6) The Minister may—
- (a) require the regulator to review an approved risk management framework, and
- (b) require the consumer trustee to amend the risk management framework in accordance with a recommendation by the regulator arising from the review.

[8] Section 55 Payments out of Fund

Insert after section 55(a)—

- (a1) money authorised by the Minister to cover the administrative costs of the scheme financial vehicle,

[9] Section 59 Energy security target monitor

Omit section 59(2). Insert instead—

- (2) In the absence of an appointment, the Secretary must exercise the functions of the energy security target monitor.

[10] Section 60 Consumer trustee

Omit section 60(2). Insert instead—

- (2) In the absence of an appointment, the Secretary must exercise the functions of the consumer trustee.

[11] Section 71 Delegation

Insert after section 71(3)—

- (4) The Secretary may, when exercising a function of the energy security target monitor under section 59(2) or the consumer trustee under section 60(2), delegate the function to an employee of the Department.

[12] Section 73 Personal liability

Insert after section 73(3), definition of *protected person*, paragraph (e)—

- (e1) the Secretary when exercising the functions of—
 - (i) the energy security target monitor under section 59(2), or
 - (ii) the consumer trustee under section 60(2),

[13] Section 73(3), definition of “protected person”, paragraph (f)

Omit “paragraphs (a)–(e)”. Insert instead “paragraphs (a)–(e1)”.

[14] Section 76 Penalty notices

Omit section 76(6), definition of *authorised officer*. Insert instead—

authorised officer means the following—

- (a) the energy security target monitor,
- (b) a person of a class prescribed by the regulations.

Schedule 2 Amendment of Energy and Utilities Administration Act 1987 No 103

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

Board means the Board of the Corporation.

Board member means a member of the Board appointed by the Minister under section 7(2).

Chief Executive Officer means the person employed in the Public Service under the *Government Sector Employment Act 2013* as the Chief Executive Officer of the Corporation.

Public Service employee has the same meaning as in the *Government Sector Employment Act 2013*.

[2] Section 3(1), definition of “Corporation”

Omit “section 7”. Insert instead “section 6”.

[3] Part 3

Omit the part. Insert instead—

Part 3 Energy Corporation

Division 1 Constitution of Corporation

6 Constitution of Corporation

- (1) There is constituted by this Act a corporation with the corporate name of the Energy Corporation of New South Wales.
- (2) The Corporation is taken to be the continuation of the Corporation constituted under this Act, section 7 immediately before the repeal of that section by the *Energy Legislation Amendment Act 2023*.
- (3) The Corporation is a NSW government agency.
Note— See the *Interpretation Act 1987*, section 13A.
- (4) The Corporation is subject to the control and direction of the Minister.
- (5) The Department and the Corporation must, to the maximum extent possible, act in a complementary way to achieve a unified administration of this Act and other Acts conferring or imposing functions on the Corporation.

Division 2 Management of Corporation

7 Constitution of Board of Corporation

- (1) There is to be a Board of the Corporation.
- (2) The Board consists of at least 3 and not more than 8 Board members appointed by the Minister.
- (3) The Minister must appoint Board members who, in the Minister’s opinion, have skills and experience that—
 - (a) are relevant to the administration of the Corporation, and
 - (b) will assist the Corporation in exercising its functions.

- (4) At least 1 Board member must have skills and experience in community engagement.
- (5) The Minister must appoint a Board member as Chairperson of the Board.
- (6) Schedule 1 contains provisions about the members and procedure of the Board.

8 Functions of Board

The Board has the following functions—

- (a) to determine the policies of the Corporation and give directions to the Chief Executive Officer in relation to the functions of the Corporation,
- (b) other functions conferred or imposed on the Board by this Act or another law or prescribed by the regulations.

9 Staff of Corporation

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Corporation to exercise its functions.

Note— The *Government Sector Employment Act 2013*, section 59 provides that the persons employed for the Corporation, or whose services the Corporation makes use of, may be referred to as officers or employees, or members of staff, of the Corporation. The *Constitution Act 1902*, section 47A precludes the Corporation from employing staff.

10 Control and management of Corporation

- (1) All decisions relating to the functions of the Corporation must be made by or under the authority of the Board.
- (2) The Chief Executive Officer is responsible for the day-to-day management of the affairs of the Corporation, subject to the policies and directions of the Board.
- (3) An act, matter or thing done in the name of, or on behalf of, the Corporation by or under the authority of the Board or the Chief Executive Officer is taken to have been done by the Corporation.
- (4) A direction of the Minister under section 6(4) prevails over a policy or direction of the Board to the extent of an inconsistency.

Division 3 Miscellaneous

10A Delegation

- (1) The Corporation may delegate the exercise of any of its functions, other than this power of delegation, to the following—
 - (a) the Chief Executive Officer,
 - (b) an advisory committee established by the Corporation under section 10B,
 - (c) a Public Service employee,
 - (d) a person of a class prescribed by the regulations.
- (2) The Corporation may subdelegate a function delegated to the Corporation by the Minister to the persons specified in subsection (1), unless the Minister otherwise provides in the instrument of delegation.

- (3) The Chief Executive Officer may delegate the exercise of any of the Chief Executive Officer's functions, other than this power of delegation, to the following—
 - (a) a member of staff of the Corporation,
 - (b) a person of a class prescribed by the regulations.
- (4) The Chief Executive Officer may subdelegate a function delegated to the Chief Executive Officer by the Minister or the Corporation to the following, unless the Minister or the Corporation otherwise provides in the instrument of delegation—
 - (a) a member of staff of the Corporation,
 - (b) a person of a class prescribed by the regulations.

Note— The Minister's functions may be delegated under section 45.

10B Advisory committees

- (1) The Corporation may establish advisory committees to give advice and assistance to the Corporation in connection with the Corporation's functions.
- (2) The procedure for calling advisory committee meetings and conducting business at advisory committee meetings must, subject to this Act and the regulations, be determined by the Corporation.
- (3) The Corporation may dissolve an advisory committee.

10C Protection from personal liability

- (1) A protected person, or an individual acting under the direction of a protected person, is not personally subject to civil liability for anything done or omitted to be done—
 - (a) in good faith, and
 - (b) for the purposes of exercising functions under this Act or the regulations.
- (2) The liability instead attaches to the Crown.
- (3) In this section—

civil liability includes an action, claim or demand.

protected person means the following—

 - (a) the Corporation,
 - (b) a Board member,
 - (c) the Chief Executive Officer.

[4] Part 4, heading

Omit “the Corporation”. Insert instead “**Energy Corporation**”.

[5] Sections 12A and 12B

Insert after section 12—

12A Corporation's service delivery priorities

The Corporation must determine the Corporation's service delivery priorities, having regard to the Minister's expectations for service delivery established by a Statement of Expectations issued to the Corporation by the Minister, if any.

12B Statement of corporate intent

- (1) The Corporation must, before the beginning of each financial year, prepare a statement of corporate intent for the financial year.
- (2) The statement of corporate intent must—
 - (a) be made in accordance with any regulations, and
 - (b) specify the following—
 - (i) the Corporation's service delivery priorities,
 - (ii) other matters prescribed by the regulations.
- (3) The statement of corporate intent must be consistent with a Statement of Expectations issued to the Corporation by the Minister no later than 4 months before the beginning of the financial year to which the statement relates.
- (4) The Corporation must, as far as practicable, exercise its functions in accordance with the statement of corporate intent.
- (5) The regulations may make provision about statements of corporate intent, including the following—
 - (a) the preparation of statements,
 - (b) consultation on draft statements,
 - (c) publication of statements.
- (6) This section is subject to a requirement made under this Act, including a requirement in a direction by the Minister under this Act.

[6] Section 21 Inquiries into energy matters

Omit section 21(2)(a). Insert instead—

- (a) an advisory committee established by the Corporation under section 10B, or

[7] Section 21(5)

Insert after section 21(4)—

- (5) The regulations may make provision about the travelling expenses and compensation that may be paid to persons attending or giving evidence at an inquiry or examination under this section.

[8] Section 36 Provisions relating to the Corporation

Omit the section.

[9] Sections 42 and 43

Omit the sections.

[10] Section 45

Omit the section. Insert instead—

45 Delegation of Minister's functions

- (1) The Minister may delegate the exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation, to the following—
 - (a) the Secretary,
 - (b) the Corporation,

- (c) a committee established by the Minister under section 34W,
 - (d) a person of a class prescribed by the regulations.
- (2) The Secretary may subdelegate a function, delegated to the Secretary by the Minister, to a Public Service employee, unless the Minister otherwise provides in the instrument of delegation.

Note— See also section 10A, which enables the Corporation and the Chief Executive Officer to subdelegate functions delegated to them by the Minister.

[11] Section 46A Penalty notices

Omit “or the Secretary” from section 46A(6).

[12] Section 53 Regulations

Omit section 53(2).

[13] Schedule 1

Insert before Schedule 2—

Schedule 1 Members and procedure of Board of Energy Corporation

section 7(6)

1 Terms of office of Board members

- (1) Subject to this schedule and the regulations, a Board member holds office for the term, not more than 3 years, specified in the instrument of appointment.
- (2) A Board member may be re-appointed but must not hold office for a cumulative total of more than 9 years.

2 Remuneration

A Board member is entitled to be paid the remuneration, including travelling and subsistence allowances, determined by the Minister from time to time.

3 Acting Board members

- (1) The Minister may, from time to time, appoint a person to act in the office of a Board member during the illness or absence of the Board member or a vacancy in office.
- (2) When acting in the place of the Board member, the acting Board member has all the functions of the Board member and is taken to be a Board member.
- (3) The Minister may remove a person from the office to which the person was appointed to act under this clause.
- (4) This clause does not operate to confer the Chairperson’s functions on a person acting in the office of the Board member who is the Chairperson.

4 Vacancy in office of Board member

- (1) The office of a Board member becomes vacant if the Board member—
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by written instrument addressed to the Minister, or
 - (d) is removed from office by the Minister under subclause (2), or

- (e) is absent from 3 consecutive Board meetings of which reasonable notice has been given to the Board member, unless the Board member is—
 - (i) on leave granted by the Minister, or
 - (ii) excused by the Minister for having been absent from the meetings, or
- (f) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the Board member's creditors or makes an assignment of the Board member's remuneration for the creditors' benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a Board member from office.

5 Filling of vacancy in office of Board member

If the office of a Board member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

6 Vacancy in office of Chairperson

- (1) The Chairperson of the Board vacates office as Chairperson if the Chairperson—
 - (a) is removed from office by the Minister under subclause (2), or
 - (b) resigns the office by written instrument addressed to the Minister, or
 - (c) ceases to be a Board member.
- (2) The Minister may remove the Chairperson from office as Chairperson.

7 Disclosure of pecuniary and other interests

- (1) This clause applies if—
 - (a) a Board member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a Board meeting, and
 - (b) the interest appears to raise a conflict with the proper performance of the Board member's duties in relation to the consideration of the matter.
- (2) The member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Board meeting.
- (3) Particulars of a disclosure made under this clause must be recorded by the Board and made available to any person on request.
- (4) It is sufficient disclosure of the nature of an interest relating to a specified company, body or person if the Board member has previously disclosed that the Board member—
 - (a) is a member of, or employed by, the company or body, or
 - (b) is a partner of, or employed by, the person, or
 - (c) has some other specified interest relating to the company, body or person.

- (5) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Board otherwise determines—
 - (a) be present during a deliberation of the Board about the matter, or
 - (b) take part in a decision of the Board about the matter.
- (6) A member who has a direct or indirect pecuniary or other interest in a matter to which a disclosure relates must not—
 - (a) be present at the time the Board is making a determination under subclause (5), or
 - (b) take part in the making of the determination.
- (7) A contravention of this clause does not invalidate a decision of the Board.
- (8) This clause applies to a member of an advisory committee established by the Board under section 10B and the advisory committee in the same way as it applies to a Board member and the Board.

8 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a Board member.
- (2) If, by or under any Act, provision is made for either of the following, the provision does not operate to disqualify the person from holding the office and also the office of a member, or from accepting and retaining any remuneration payable to the person under this Act as a Board member—
 - (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office,
 - (b) prohibiting the person from engaging in employment outside the duties of that office.

9 General procedure

The procedure for calling Board meetings and conducting business at Board meetings must, subject to this Act and the regulations, be determined by the Board.

10 Quorum

The quorum for a Board meeting is a majority of Board members for the time being.

11 Presiding Board member

- (1) The Chairperson of the Board must preside at a Board meeting.
- (2) If the Chairperson is absent from a Board meeting, a Board member elected by the Board members present at the meeting must preside at the meeting.
- (3) The presiding Board member has a deliberative vote and, if there is an equality of votes, a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a Board meeting at which a quorum is present is the decision of the Board.

13 Transaction of business outside meetings or by electronic means

- (1) The Board may, if it thinks fit, transact its business—

- (a) by the circulation of papers, by email or other electronic means, among all members, or
 - (b) at a meeting at which all or some Board members participate by telephone or other electronic means, but only if a Board member who speaks on a matter at the meeting can be heard by the other Board members.
- (2) If the Board transacts its business by the circulation of papers under subclause (1)(a), a written resolution approved in writing by a majority of the Board members is taken to be a decision of the Board made at a Board meeting.
 - (3) The Chairperson and other Board members have the same voting rights as at an ordinary Board meeting for the purposes of—
 - (a) a meeting held in accordance with subclause (1)(b), or
 - (b) the approval of a resolution under subclause (2).
 - (4) A resolution approved under subclause (2) must be recorded in the minutes of the Board meeting.

14 First meeting

The Minister may call the first meeting of the Board.

[14] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1(1)—

another Act that amends this Act

[15] Schedule 2

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provision consequent on enactment of Energy Legislation Amendment Act 2023

Advisory committees

- (1) An existing committee is taken, on the commencement of the amending Act, Schedule 2[3], to be an advisory committee established by the Corporation under section 10B, as inserted by the amending Act.
- (2) In this clause—
 - amending Act*** means the *Energy Legislation Amendment Act 2023*.
 - existing committee*** means a committee established by the Secretary under section 10 that was in existence immediately before the commencement of the amending Act, Schedule 2[3].

[Second reading speech made in—

Legislative Assembly on 21 November 2023

Legislative Council on 28 November 2023]