



New South Wales

Electricity Infrastructure Investment Amendment (Performance Audits) Regulation 2023

under the

Electricity Infrastructure Investment Act 2020

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Electricity Infrastructure Investment Act 2020*.

PENNY SHARPE, MLC
Minister for Energy

Explanatory note

The object of this regulation is to provide for performance audits of entities under the *Electricity Infrastructure Investment Act 2020*, including by making provision for—

- (a) the frequency and scope of audits, and
- (b) the auditing standards to be applied in audits, and
- (c) reporting on the outcome of an audit.

This regulation is made under the *Electricity Infrastructure Investment Act 2020*, section 67.

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1 Name of regulation

This regulation is the *Electricity Infrastructure Investment Amendment (Performance Audits) Regulation 2023*.

2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Electricity Infrastructure Investment Regulation 2021

[1] Clause 3 Definitions

Insert in alphabetical order—

audit subject, for Part 13—see clause 68.

auditor, for Part 13—see clause 68.

[2] Part 13

Insert after clause 67—

Part 13 Performance audits—the Act, s 67

68 Definitions

In this part—

audit subject means the following—

- (a) the consumer trustee,
- (b) the financial trustee,
- (c) the scheme financial vehicle,
- (d) the infrastructure planner,
- (e) the energy security target monitor,
- (f) the regulator.

auditor means the following—

- (a) for an audit of the performance of the energy security target monitor—the person appointed by the Minister under the Act, section 67(3),
- (b) for an audit of the performance of the regulator—the person appointed by the Minister under the Act, section 67(3),
- (c) otherwise—the regulator.

69 Annual audit plans

- (1) The regulator must prepare an annual audit plan setting out the routine performance audits the regulator plans to undertake in the following year.
- (2) In preparing an annual audit plan, the regulator must consult—
 - (a) each audit subject the regulator proposes to audit under the plan, and
 - (b) the appointor of each audit subject, and
 - (c) the Auditor-General.
- (3) An annual audit plan must be published on the regulator's website at least 1 month before the beginning of the relevant year.
- (4) In this clause—

year means a period of 12 months commencing on 1 July.

70 Frequency of audits

- (1) This clause applies to the audit of an entity under the Act, section 67(1).
- (2) The regulator may conduct a routine performance audit of the entity no more than once every 5 years.

- (3) If a routine performance audit of an entity identifies matters of high risk, the regulator may conduct a follow-up audit of the entity and assess whether or not the entity has taken action to address identified matters of high risk, including action recommended by the regulator.
- (4) The regulator may also conduct a performance audit whenever the regulator—
 - (a) reasonably suspects the entity may be unable to effectively undertake its functions under the Act, or
 - (b) receives information that indicates the entity may—
 - (i) be incompetent, or
 - (ii) have engaged in misconduct, or
 - (iii) lack capacity.

71 Scope of audits

- (1) In determining the scope of an audit, the auditor must consider the following—
 - (a) high risk areas of the audit subject's functions,
 - (b) the administrative burden imposed on the audit subject by the audit,
 - (c) external control and assurance measures relevant to the audit subject including under the following—
 - (i) the *Corporations Act 2001* of the Commonwealth,
 - (ii) the *Government Sector Audit Act 1983*,
 - (iii) the *Public Governance, Performance and Accountability Act 2013* of the Commonwealth.
- (2) In determining the scope of an audit, the auditor—
 - (a) must consult the following—
 - (i) the audit subject,
 - (ii) the appointor of the audit subject, and
 - (b) may consult the Auditor-General.

72 Guidelines

- (1) The regulator must develop guidelines about how the regulator proposes to conduct performance audits of entities under the Act, section 67(1) (the **guidelines**).
- (2) The guidelines must include the following—
 - (a) guidance on how the auditor may—
 - (i) give notice of an audit, and
 - (ii) consult on the scope of an audit, and
 - (iii) consult the audit subject on adverse comments or findings proposed to be included in an audit report, and
 - (iv) audit more than 1 audit subject at the same time,
 - (b) examples of what may—
 - (i) constitute incompetence, misconduct or incapacity on the part of the audit subject, or
 - (ii) compromise the ability of an audit subject to effectively carry out its functions,
 - (c) guidance on the roles and responsibilities of the auditor and the audit subject.

- (3) The guidelines may include other matters the regulator considers appropriate.
- (4) In developing or reviewing the guidelines, the regulator must—
 - (a) consult the Minister and audit subjects, and
 - (b) consider the submissions made.
- (5) The guidelines must be published on the regulator’s website.
- (6) The regulator must publish the guidelines under this clause before undertaking the first performance audit under this part.

73 Conduct of audits

- (1) An audit under this part must be conducted in accordance with—
 - (a) the Australian Auditing Standards, and
 - (b) the equivalent international standards.
- (2) In conducting an audit, the auditor must, without limitation, assess the following—
 - (a) the extent to which the audit subject, in exercising functions and complying with obligations under the Act, is acting efficiently, effectively and economically,
 - (b) the exercise of the audit subject’s functions under the Act,
 - (c) compliance with the audit subject’s obligations under the Act.
- (3) The auditor must notify the Minister before commencing an audit.
- (4) If there is a conflict or inconsistency between a provision of the Australian Auditing Standards and a provision of an equivalent international standard, the provision of the Australian Auditing Standards prevails to the extent of the conflict or inconsistency.
- (5) In this clause—

Australian Auditing Standards means the *Australian Auditing Standards* issued by the Auditing and Assurances Standards Board from time to time.

international standards means the international standards on auditing issued by the International Auditing and Assurance Standards Board.

74 Obligation to give information to auditor

An audit subject must, if requested to do so by an auditor, provide information to the auditor that the auditor considers reasonably necessary for the audit.

75 Reporting

- (1) An audit report must, as soon as practicable after the audit is completed, be published—
 - (a) if the regulator is the auditor—on the regulator’s website, or
 - (b) otherwise—on the Department’s website.
- (2) Before publishing an audit report, the auditor must—
 - (a) consult the audit subject, and
 - (b) give a copy of the report to—
 - (i) the Minister, and
 - (ii) the audit subject.

- (3) The auditor may decide not to publish part of an audit report if satisfied it is not appropriate, taking into account the following—
 - (a) the public interest,
 - (b) the extent to which publishing the part of the report would disclose information that is confidential or commercially sensitive,
 - (c) the effect of publishing the part of the report on competitive assessment processes.