



New South Wales

Electricity Infrastructure Investment Amendment Regulation 2024

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 objects of this regulation are as follows—

- (a) to make further provision relating to transfers of network infrastructure under the *Electricity Infrastructure Investment Act 2020* (**the Act**), Part 5, Division 3, including partial transfers,
- (b) to require regulators under the Act to share information with each other to enable the making of a contribution determination,
- (c) to apply the *Competition and Consumer Act 2010* of the Commonwealth, section 44AAEC to the Act and the regulations,
- (d) to make minor amendments consequent on the enactment of the *Energy Amendment (Long Duration Storage and Investment) Act 2024*.

Electricity Infrastructure Investment Amendment Regulation 2024

under the

Electricity Infrastructure Investment Act 2020

1 Name of regulation

This regulation is the *Electricity Infrastructure Investment Amendment Regulation 2024*.

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 21, heading

Omit “the Act, s 42”. Insert instead “the Act, ss 38(10)(a) and 42”.

[2] Clause 21(1)(a)–(c)

Omit the paragraphs. Insert instead—

- (a) a network operator is subject to an authorisation in relation to network infrastructure, and
- (b) all or part of the network infrastructure to which the authorisation relates is transferred from the network operator (the *transferor*), and
- (c) the authorisation provider approves the transferee being taken to be a network operator to whom the Act, Part 5, Division 3 applies—
 - (i) for all of the network infrastructure, or
 - (ii) for the part of the network infrastructure transferred.

[3] Clause 21(3)–(3B)

Omit clause 21(3). Insert instead—

- (3) If all of the network infrastructure is transferred to the transferee, a revenue determination that, immediately before the approval, applied to the transferor, is taken to apply to the transferee on the approval of the authorisation provider.
- (3A) If part of the network infrastructure is transferred to the transferee, the regulator must, on the approval of the authorisation provider—
 - (a) make a revenue determination in relation to the transferee and the transferred network infrastructure, or
 - (b) if satisfied the making of a revenue determination is not required in the circumstances—carry out an adjustment of, or review and remake, another revenue determination that applies to the transferee in accordance with clause 54AA(3).
- (3B) Despite subclause (3), if an adjustment is carried out of a revenue determination that applied to the transferor before a transfer—
 - (a) the transferor is required to pay any amount payable to the scheme financial vehicle relating to the period before the transfer, and
 - (b) the scheme financial vehicle is required to pay any amount payable to the transferor relating to the period before the transfer.

[4] Clause 35 Contribution determination—matters to be taken into account—the Act, s 56(6)

Insert “, another regulator” after “planner” in clause 35(1)(d).

[5] Clause 39A

Insert after clause 39—

39A Regulators to share information—the Act, s 64(4)

A regulator must, if requested to do so by another regulator that is making a contribution determination (the *second regulator*), give the second regulator information the second regulator considers reasonably necessary to enable the making of the contribution determination.

[6] Clause 42E

Insert after clause 42D—

42E Application of Competition and Consumer Act 2010 of Commonwealth, section 44AAEC—the Act, s 79

The *Competition and Consumer Act 2010* of the Commonwealth, section 44AAEC extends to and has effect for the purposes of the Act and this regulation.

[7] Clause 51, heading

Omit “the Act, ss 38(10)(f) and 40”. Insert instead “the Act, ss 38(10)(f), 40 and 42”.

[8] Clause 51(2)(a)

Insert “, including circumstances where network infrastructure to which the revenue determination relates is transferred” after “circumstances”.

[9] Clause 52 Information to be included in revenue determination—the Act, s 38(10)(d)

Insert “or by” after “paid to” in clause 52(1).

[10] Clause 53 Publication of revenue determinations and related information—the Act, s 38(10)(f)

Insert “or by” after “paid to” in clause 53(1)(b).

[11] Clause 53A Revenue determination ceases to have effect—the Act, s 38(10)(f)

Insert at the end of the clause, after the note—

- (2) Despite subclause (1), a provision in a revenue determination about the adjustment of amounts may have effect after the expiry of the revenue determination.

Note— See also the Act, section 38(3B), which provides that a provision of a revenue determination about the adjustment of amounts may have effect after the expiry of the relevant authorisation.

[12] Clause 54AA

Insert after clause 54—

54AA Review and remake or adjustment of determinations for transfers—the Act, ss 38(10)(f), 40 and 42

- (1) This clause applies if the transfer of part of network infrastructure to which an authorisation relates is approved under clause 21(1)(c)(ii).
- (2) The regulator must, as soon as practicable—
- (a) review and remake the revenue determination that applies to the transferor, or
- (b) carry out an adjustment of the revenue determination if—
- (i) the determination includes provision for the adjustment of amounts included in the determination in circumstances where part of the network infrastructure is transferred by the network operator, and
- (ii) the regulator is satisfied reviewing and remaking the determination is not required in the circumstances.

- (3) If the regulator does not make a revenue determination in accordance with clause 21(3A)(a), the regulator must, as soon as practicable—
 - (a) review and remake another revenue determination that applies to the transferee, or
 - (b) carry out an adjustment of another revenue determination that applies to the transferee if—
 - (i) the determination includes provision for the adjustment of amounts included in the determination in circumstances where network infrastructure is transferred to the transferee, and
 - (ii) the regulator is satisfied reviewing and remaking the determination is not required in the circumstances.
- (4) Before reviewing and remaking a revenue determination under this clause, the regulator must consult the following—
 - (a) if the determination is to be reviewed and remade under—
 - (i) subclause (2)(a)—the transferor, or
 - (ii) subclause (3)(a)—the transferee,
 - (b) the consumer trustee,
 - (c) the infrastructure planner,
 - (d) other persons the regulator considers appropriate.