

Passed by both Houses



New South Wales

Energy Legislation Amendment (Clean Energy Future) Bill 2024

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

Energy Legislation Amendment (Clean Energy Future) Bill 2024

Act No _____, 2024

An Act to make miscellaneous amendments to various Acts relating to energy and associated matters.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Energy Legislation Amendment (Clean Energy Future) Act 2024*.

2 Commencement

This Act commences, or is taken to have commenced, as follows—

- (a) for Schedules 1, 2 and 3[1], [3]–[9], [11], [12], [19], [22], [23], [28]–[31] and [33]–[35]—on the date of assent to this Act,
- (b) for Schedule 4—on the commencement of the *Energy Legislation Amendment Act 2023*, Schedule 2,
- (c) otherwise—on a day or days to be appointed by proclamation.

Schedule 1 **Amendment of Electricity Infrastructure Investment Act 2020 No 44**

[1] **Section 34 Directions for priority transmission infrastructure projects**

Omit section 34(3)(a). Insert instead—

- (a) it is an appropriate response to—
 - (i) a target breach identified in an energy security target monitor report, or
 - (ii) a forecast system shortfall in system security services identified in the most recent integrated system plan published by AEMO under the *National Electricity Rules*, and

[2] **Dictionary**

Omit the definition of *priority transmission infrastructure project*, paragraph (b).

Insert instead—

- (b) is identified in or forms part of an infrastructure project identified in—
 - (i) the most recent integrated system plan published by AEMO under the *National Electricity Rules*, or
 - (ii) a project assessment draft report or project specification consultation report prepared under the *National Electricity Rules*.

[3] **Dictionary**

Insert in alphabetical order—

system security services means the following as referred to in the *National Electricity Rules*—

- (a) system strength services,
- (b) inertia network services,
- (c) network support and control ancillary services.

Schedule 2 Amendment of Electricity Supply Act 1995 No 94

[1] Section 93B

Insert after section 93A—

93B Operating a REZ network infrastructure project transmission system

- (1) A person must not operate a transmission system that is the subject of a network operator's authority under the *Electricity Infrastructure Investment Act 2020*, section 31(1)(b) without a transmission operator's licence granted under section 93A(2).

Maximum penalty—5,000 penalty units.

- (2) To avoid doubt—

- (a) the Minister may grant transmission operator's licences for this section, and
- (b) Schedule 2 applies to the granting, variation, transfer and cancellation of transmission operator's licences, and
- (c) the Minister may grant a transmission operator's licence under section 93A(2) for this section on an application made before the commencement of this section.

[2] Section 192 Recovery of distribution and transmission charges from green hydrogen producers

Omit section 192(1). Insert instead—

- (1) The regulations may provide for a scheme that limits the recovery by a network service provider of charges from a person who uses or intends to use electricity to produce green hydrogen.

[3] Section 192(4)

Omit section 192(4). Insert instead—

- (4) Without limiting subsections (1)–(3), the regulations may deal with the following—
- (a) specifying whether electricity is taken to be used to produce green hydrogen,
- (b) providing that the Minister may require persons to give information to the Minister about—
- (i) a network service provider's pricing methodology or tariff structure for the sale of electricity to another person to produce green hydrogen, or
- (ii) the production of green hydrogen, or
- (iii) other information that the Minister may reasonably require to assist in exercising the Minister's functions under this section, including for the purposes of determining whether a person is or continues to be subject to the scheme,
- (c) limiting the operation of subsection (1) to either or both of the following—
- (i) persons approved by the Minister,
- (ii) persons who own facilities, or parts of facilities, approved by the Minister,

- (d) prescribing eligibility criteria for applicants, and application requirements, for the Minister's approval,
- (e) matters relating to the granting and revocation of approvals.

[4] Schedule 4A Energy security safeguard schemes

Omit “means a customer that has classified any of its electricity loads as a market load and that is registered with the Market Operator as a market customer under” from clause 4(2), definition of *market customer*.

Insert instead “has the same meaning as in”.

[5] Schedule 4A, clause 10(2B)

Insert after clause 10(2A)—

- (2B) Despite subclauses (1)–(2A), the regulations may provide that a purchase or supply of electricity is not a liable acquisition for this part.

[6] Schedule 4A, clause 90(3A)

Insert after clause 90(3)—

- (3A) Despite subclauses (1)–(3), the regulations may provide that a purchase or supply of electricity is not a liable acquisition for this part.

Schedule 3 Amendment of Pipelines Act 1967 No 90

[1] Section 3 Definitions

Omit section 3(1), definition of *Department*. Insert instead—

Department means the department in which this Act is administered.

[2] Section 5B Information concerning unlicensed pipelines

Omit the section.

[3] Section 5E Applications for authorities to survey

Insert at the end of section 5E(2)(g)—

, and

- (h) must comply with other application requirements, if any, specified by the regulations.

[4] Section 11 Construction and operation of pipelines

Omit section 11(3). Insert instead—

- (3) It is not an offence against this section if a person carries out an act—

- (a) in an emergency and the following apply—

- (i) it is an emergency in which there is a likelihood of loss or injury,
- (ii) the act is carried out to avoid the loss or injury,
- (iii) the person notifies the Secretary of the act as soon as practicable, or

- (b) for the purpose of maintaining a pipeline in good order or repair and notifies the Secretary of the act as soon as practicable, or

- (c) in compliance with a direction under this Act or the regulations.

[5] Section 13 Manner of making applications for licences

Insert after section 13(1)(ga)—

- (gb) must be accompanied by other information or documents prescribed by the regulations,

[6] Section 13A Amendment of application for licence by inclusion or exclusion of lands

Insert “and” after “Minister,” in section 13A(3)(a).

[7] Section 13A(3)(b)

Insert “and” after “variation,”.

[8] Section 13A(3)(d)

Omit “fee (if any).”. Insert instead “fee, if any, and”.

[9] Section 13A(3)(e)

Insert after section 13A(3)(d)—

- (e) be accompanied by other information or documents prescribed by the regulations.

[10] Section 13A(4)(a), (b), (c) and (d)

Insert “and” at the end of the paragraphs.

[11] Section 13A(4)(db)

Insert after section 13A(4)(da)—

- (db) must be accompanied by other information or documents prescribed by the regulations, and

[12] Section 16A Cyber security directions

Omit the section.

[13] Section 18 Variation of licence area

Insert “and” at the end of section 18(4)(a), (b), (c) and (d).

[14] Section 18(4)(db)

Insert after section 18(4)(da)—

- (db) must be accompanied by other information or documents prescribed by the regulations, and

[15] Section 21A Extinguishment of easements etc after variation of licence area

Omit section 21A(3).

[16] Section 23 Directions as to the conveyance of substances

Omit the section.

[17] Section 24 Ceasing to operate pipeline

Omit the section.

[18] Section 26 Waste or escape of substances from pipelines

Omit the section.

[19] Section 27 Marking of route of pipeline and maintenance etc of property

Omit the section.

[20] Section 28 Directions

Omit the section.

[21] Section 31A Inquiries into matters relating to pipelines

Insert after section 31A(3)—

- (4) The regulations may deal with the powers and functions of a body or person conducting an inquiry or examination, including the following—
 - (a) the power to require attendance to give evidence, including on oath,
 - (b) the power to require production of information and documents,
 - (c) giving false or misleading evidence, information or documents,
 - (d) a failure to comply with a requirement under this subsection.

[22] Section 31B Evidence at inquiry

Omit the section.

[23] Section 35 Removal of property etc by licensee

Omit the section.

[24] Section 37 Licence fees

Omit “determined by the Minister” from section 37(1).

Insert instead “determined in accordance with the regulations”.

[25] Section 37(3)

Insert after section 37(2)—

- (3) If a licensee has failed to pay a fee referred to in subsection (1) by the due time, the licensee is liable to pay an additional amount calculated in accordance with the regulations.

[26] Section 38 Penalty for late payment

Omit the section.

[27] Section 46 True consideration to be shown

Omit the section.

[28] Section 48 Power of Minister to require information as to proposed dealings

Omit the section.

[29] Section 49 Production and inspection of books, records and documents

Omit the section.

[30] Section 58A, heading

Insert “and Secretary” after “Minister”.

[31] Section 58A(1)–(1B)

Omit section 58A(1). Insert instead—

- (1) The Minister may give a direction to a public authority having functions under this Act to exercise those functions at or within the time specified in the direction.
- (1A) The Minister or Secretary may give a direction to a person, including a licensee, to do a thing or carry out an activity at or within the times specified in the direction.
- (1B) A direction under this section must only be given in relation to a pipeline, including in relation to the following—
- (a) the preparation, amendment and implementation of pipeline management plans, pipeline decommissioning plans and pipeline abandonment plans,
 - (b) cyber security incidents,
 - (c) the conveyance of substances in pipelines,
 - (d) functions imposed or conferred on persons and bodies under this Act,
 - (e) the provision of information about a pipeline, including about a matter referred to in this subsection.

[32] Section 58A(2)

Insert “or (1A)” after “(1)”.

[33] Section 58A(4)

Insert after section 58A(3)—

- (4) The regulations may deal with matters relating to directions under this section, including the following—
 - (a) requirements or prerequisites before a direction may be given,
 - (b) the way a direction must be given,
 - (c) the content of a direction,
 - (d) making failure to comply with a direction an offence.

[34] Section 65

Omit the section. Insert instead—

65 Continuing offences

- (1) This section applies to a provision of this Act or the regulations requiring a person to do, or stop doing, something (a *continuing requirement provision*), regardless of whether—
 - (a) the requirement is imposed by a direction or notice or in another way, or
 - (b) the person is required to do or stop doing something within a specified period.
- (2) A person who is guilty of an offence because the person contravenes a continuing requirement provision—
 - (a) continues, until the requirement is complied with and despite the fact a specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (3) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide a penalty for a continuing offence.
- (4) This section does not apply to the extent that a requirement imposed on a person is revoked.

[35] Section 68 Prosecution of offences

Insert “or the regulations” after “this Act” in section 68(1).

[36] Section 69

Omit the section. Insert instead—

69 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to a matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision about the matters set out in Schedule 2.
- (3) The regulations may apply, adopt or incorporate, wholly or in part and with or without modification, a publication in force at a particular time or from time to time.

- (4) The regulations may create an offence punishable by a penalty not exceeding—
- (a) for an individual—5,000 penalty units or 5,000 penalty units for each day on which the offence occurs, or
 - (b) otherwise—10,000 penalty units or 10,000 penalty units for each day on which the offence occurs.

[37] Schedule 2

Insert after Schedule 1—

Schedule 2 Regulation-making powers

section 69(2)

1 Construction, maintenance and operation

Pipelines subject to this Act, including the following—

- (a) construction, maintenance and operation of a pipeline,
- (b) the alteration or reconstruction of a pipeline,
- (c) pipeline management planning,
- (d) pipeline management systems within the meaning of the relevant Australian Standard published by Standards Australia,
- (e) pipeline decommissioning planning,
- (f) cessation of operation of pipelines, including pipeline abandonment planning and circumstances under which pipelines must cease to be operated.

2 Licences

Licences, including the surrender and cancellation of licences and actions to be taken by former licensees after the surrender and cancellation of licences.

3 Inspections

The inspection of pipelines.

4 Registers

The keeping of registers under this Act.

5 Escape and ignition of substances

The escape or ignition of substances from a pipeline.

6 Damage to pipelines or land

The prevention of damage to pipelines or land used for the construction or operation of pipelines.

7 Pipeline land

Land used for the construction or operation of a pipeline, including the prevention of the occupation of land used for the construction or operation of pipelines.

8 Surveys

The carrying out of surveys for this Act.

9 Notifications and reports

Notifications and reports for this Act, including the following—

- (a) annual reports by licensees,
- (b) particulars to be included in a notification or report,
- (c) notifications required to be made by licensees about the following under section 21A—
 - (i) easements over land under the *Real Property Act 1900* being extinguished,
 - (ii) restrictions as to user in respect of that type of land ceasing to have effect.

10 Provision of information and documents

Requiring persons to give information and documents to the Minister or the Secretary, including requirements on or relating to the following—

- (a) a person who operates a pipeline of a kind referred to in section 5(1)(a)–(h),
- (b) a person lodging an instrument for approval under Part 4,
- (c) an instrument lodged with the Minister for approval under Part 4 or a transaction to which an instrument of that kind relates.

11 Cyber security directions

Providing that the Minister may direct a licensee to take action to—

- (a) respond to the impact of a cyber security incident on the licensee's information technology systems, or
- (b) prevent a cyber security incident having an impact on the licensee's information technology systems.

12 Directions about use of pipelines

Providing that the Minister may direct a licensee to use the licensee's pipeline to convey a specified substance.

13 Removal of property and making good land

Providing that the Minister may direct a licensee or former licensee to do the following—

- (a) remove property brought onto land in connection with a pipeline,
- (b) make good land damaged in connection with a pipeline.

14 Inspectors

Inspectors, including the following—

- (a) the power of an inspector to order a person to cease carrying out an activity if the inspector believes, on reasonable grounds, the activity is damaging or is likely to damage a pipeline or its apparatus or works,
- (b) consequences of failing to comply with an order,
- (c) appeals to the Land and Environment Court against inspectors' orders.

15 Transfers and other instruments creating interests

(1) Matters relating to the following—

- (a) a transfer of a licence, as referred to in section 42,

- (b) an instrument by which a legal or equitable interest affecting an existing or future licence is or may be created, assigned, affected or dealt with, whether directly or indirectly, not being an instrument of transfer, as referred to in section 45.
- (2) Without limiting subclause (1), requirements that a transfer or instrument must set out the true consideration for the transfer or instrument and other facts and circumstances affecting the amount of stamp duty payable for the transfer or instrument.

16 Auditing of pipeline management systems

Matters relating to the auditing of the pipeline management system, including the following—

- (a) appointment, termination and functions of auditors for pipeline management systems,
- (b) audit reports.

Schedule 4 Amendment of Energy and Utilities Administration Act 1987 No 103, as amended by Energy Legislation Amendment Act 2023 No 49

[1] Section 6 Constitution of Corporation

Insert after section 6(4)—

- (4A) The Corporation is also subject to the control and direction of the Secretary, but only to the extent necessary to enable the Secretary to exercise the Secretary's functions under this Act or another Act.

[2] Section 8 Functions of Board

Insert after section 8(a)—

- (a1) to ensure, as far as practicable, the proper and efficient performance of the functions of the Corporation and the Chief Executive Officer,

[3] Section 8(2)

Insert at the end of section 8—

- (2) To avoid doubt, the Board must not direct the Chief Executive Officer in relation to employer functions the Chief Executive Officer may have under the *Government Sector Employment Act 2013*, section 31.

[4] Section 8A

Insert after section 8—

8A Board committees

- (1) The Board may establish committees to assist the Board in connection with the Board's functions.
- (2) A committee need not include a member of the Board.
- (3) The procedure for calling meetings of a committee and conducting business at the meetings must be determined by the Board or, subject to a determination of the Board, by the committee.
- (4) The Board may dissolve a committee.

[5] Section 10 Control and management of Corporation

Omit "prevails" from section 10(4).

Insert instead "and a direction of the Secretary under section 6(4A) prevail".

[6] Section 10C Protection from personal liability

Insert after section 10C(3), definition of *protected person*, paragraph (c)—

- (d) a member of an advisory committee of the Corporation,
(e) a member of a committee of the Board.

[7] Sections 12B and 12C

Omit section 12B. Insert instead—

12B Corporate plan

- (1) The Corporation must, before the beginning of each financial year, prepare a corporate plan for the financial year.

- (2) The corporate plan must—
 - (a) be made in accordance with the regulations, if any, and
 - (b) specify the following—
 - (i) the Corporation's service delivery priorities,
 - (ii) other matters prescribed by the regulations.
- (3) The corporate plan 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 corporate plan relates.
- (4) The Corporation must, as far as practicable, exercise its functions in accordance with the corporate plan.
- (5) The regulations may deal with corporate plans, including the following—
 - (a) the preparation of corporate plans,
 - (b) consultation on draft corporate plans,
 - (c) the publication of corporate plans.
- (6) This section is subject to a requirement made under this Act, including a requirement in a direction by the Minister or the Secretary under this Act.

12C Corporation to give information to Minister

The Corporation must—

- (a) give the Minister the information relating to the Corporation's activities that the Minister may require, and
- (b) keep the Minister informed of the general conduct of the Corporation's activities and of significant developments in the Corporation's activities.

[8] Schedule 1 Members and procedure of Board of Energy Corporation

Omit clause 3(4). Insert instead—

- (4) To avoid doubt, the person acting in the office of the Board member who is the Chairperson has, when acting, all the functions of the Chairperson and is taken to be the Chairperson.

[9] Schedule 2 Savings, transitional and other provisions

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

Existing Chief Executive Officer of the Corporation

- (1) The person employed in the Public Service under the *Government Sector Employment Act 2013* as the Chief Executive Officer of the Corporation, immediately before the commencement of the *Energy Legislation Amendment Act 2023*, Schedule 2[3]—
 - (a) continues to be the Chief Executive Officer of the Corporation, and
 - (b) if a Public Service agency related to a department has been established to enable the Corporation to exercise its functions—is taken to have been appointed under the *Government Sector Employment Act 2013*, section 28 as the head of the Public Service agency.
- (2) To avoid doubt—
 - (a) the person referred to in subclause (1) (the *continuing CEO*) is to continue to be employed under the contract of employment in force

immediately before the commencement of the *Energy Legislation Amendment Act 2023*, Schedule 2[3], and

- (b) if the continuing CEO is taken to have been appointed under the *Government Sector Employment Act 2013*, section 28 as the head of a Public Service agency—the person exercising the employer functions of the Government of New South Wales in relation to the head of the agency may exercise the employer functions in relation to the continuing CEO.

Corporate plan for 2024–2025

Despite section 12B, the Corporation is not required to prepare a corporate plan for the 2024–2025 financial year.

Schedule 5 Amendments relating to financial benefits to landowners for transmission infrastructure

5.1 Electricity Supply Act 1995 No 94

[1] Section 44 Acquisition of land

Insert after section 44(3)—

- (4) Despite the *Land Acquisition (Just Terms Compensation) Act 1991*, section 55, a strategic benefit payment to which a person is entitled must be disregarded in determining the amount of compensation to which the person is entitled under that Act, Part 3.

- (5) In this section—

strategic benefit payment means a payment required to be made by the holder of a transmission operator's licence under a condition imposed on the licence by the Minister under Schedule 2, clause 6(2)(i).

[2] Schedule 2 Licences

Omit "(Sections 14 and 33)". Insert instead "sections 14 and 93A".

[3] Schedule 2, clause 6(2)(i)

Insert after clause 6(2)(h)—

- (i) a condition requiring the holder of a transmission operator's licence to—
- (i) make payments in relation to transmission infrastructure owned or operated by the holder, in accordance with guidelines (*strategic benefit payment guidelines*) issued by the Minister from time to time, and
- (ii) comply with the strategic benefit payment guidelines.

[4] Schedule 2, clause 6(6)–(8)

Insert after clause 6(5)—

- (6) The strategic benefit payment guidelines may provide for the following—
- (a) the eligibility of owners of land and holders of other interests in land on which transmission infrastructure is located to receive strategic benefit payments,
- (b) the transmission infrastructure in relation to which strategic benefit payments may be required,
- (c) the calculation of the amounts payable as strategic benefit payments,
- (d) complaints and dispute resolution,
- (e) the requirement to keep records and make reports,
- (f) other matters the Minister considers necessary.
- (7) The regulations may prescribe matters for which the strategic benefit payment guidelines must provide.
- (8) The strategic benefit payment guidelines must be published in the Gazette.

[5] Schedule 2, clause 12

Insert after clause 11—

12 Trust accounts for strategic benefit payments

- (1) This clause applies to the holder of a transmission operator's licence subject to a condition imposed under clause 6(2)(i).
- (2) The holder must keep a trust account in connection with strategic benefit payments required to be paid by the holder under the condition.
- (3) The holder must pay into the trust account amounts for strategic benefit payments required to be paid into the account by the condition.
- (4) Money in the trust account is held in trust for the persons entitled to receive strategic benefit payments.
- (5) Money not paid as a strategic benefit payment within 6 years after the money is paid into the trust account must be paid to the Treasurer for payment into the Consolidated Fund.
- (6) Payment of a strategic benefit payment required to be made from money paid to the Treasurer under subclause (5) must be made from the Consolidated Fund, which is appropriated accordingly.

[6] Schedule 6 Savings, transitional and other provisions

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

Part Provision consequent on enactment of Energy Legislation Amendment (Clean Energy Future) Act 2024

Determination of compensation

Section 44(4), as inserted by the *Energy Legislation Amendment (Clean Energy Future) Act 2024*, applies to the acquisition of land before the commencement of that Act, Schedule 5.2 if, before that date, the compensation to which the person is entitled under the *Land Acquisition (Just Terms Compensation) Act 1991*, Part 3 has not been determined.

[7] Dictionary

Insert in alphabetical order—

transmission operator's licence means a licence granted under section 93A.

5.2 Energy and Utilities Administration Act 1987 No 103

[1] Section 15 Acquisition of land

Insert after section 15(3)—

- (4) Despite the *Land Acquisition (Just Terms Compensation) Act 1991*, section 55, a strategic benefit payment to which a person is entitled must be disregarded in determining the amount of compensation to which the person is entitled under that Act, Part 3.
- (5) In this section—
strategic benefit payment has the same meaning as in the *Electricity Supply Act 1995*, section 44.

[2] Schedule 2 Savings, transitional and other provisions

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

Part Provision consequent on enactment of Energy Legislation Amendment (Clean Energy Future) Act 2024

Determination of compensation

Section 15(4), as inserted by the *Energy Legislation Amendment (Clean Energy Future) Act 2024*, applies to the acquisition of land before the commencement of that Act, Schedule 5.2 if, before that date, the compensation to which the person is entitled under the *Land Acquisition (Just Terms Compensation) Act 1991*, Part 3 has not been determined.

5.3 Land Acquisition (Just Terms Compensation) Act 1991 No 22

Section 55 Relevant matters to be considered in determining amount of compensation

Insert at the end of section 55—

Note— See also the *Electricity Supply Act 1995*, section 44(4) and the *Energy and Utilities Administration Act 1987*, section 15(4).