

# Electricity Infrastructure Investment Regulation 2021

[2021-102]



New South Wales

## Status Information

### Currency of version

Historical version for 10 September 2021 to 11 November 2021 (accessed 23 November 2024 at 12:48)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2026

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Electricity Infrastructure Investment Regulation 2021



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Electricity Infrastructure Investment Regulation 2021*.

### 2 Commencement

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

### 3 Definitions

In this Regulation—

**advocate** means the electricity infrastructure jobs advocate.

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

**Board** means the board for manufacturing and construction in the NSW renewable energy sector established under section 7 of the Act.

**joint chairperson** means either of the 2 members appointed as the joint chairperson of the Board under section 7(3) of the Act.

**member** means any member of the Board.

**plan** has the same meaning as in Part 2 of the Act.

**the Act** means the *Electricity Infrastructure Investment Act 2020*.

#### Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

## Part 2 NSW renewable energy sector board and electricity

## **infrastructure jobs advocate**

### **Division 1 The Board—the Act, s 7(7)**

#### **4 Functions of Board**

- (1) The Board may advise the Minister on any matter to which a plan may relate.
- (2) The Board must review a plan under section 7(4)(b) of the Act at least once every 2 years after the plan is approved by the Minister.

#### **5 Objectives of plan**

For the purposes of section 8(1)(d) of the Act, the following objectives are prescribed—

- (a) to protect the financial interests of NSW electricity customers,
- (b) to be consistent with Australia’s international trade obligations.

#### **6 Term of office**

- (1) An appointed member holds office for a term of 3 years and may be re-appointed.
- (2) A person may not be appointed as an appointed member for more than 9 years in total, whether or not consecutively.

#### **7 Members and procedures of the Board**

Schedule 1 contains provisions relating to the members and procedures of the Board.

### **Division 2 The advocate—the Act, s 11(5)**

#### **8 Employment and remuneration**

- (1) The office of the advocate is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to the office, except as provided by this clause.
- (2) The following provisions of, or made under, the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the advocate—
  - (a) provisions relating to the band in which an executive will be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive,
  - (d) provisions relating to the termination of employment of an executive.

- (3) For the purposes of applying the provisions of the *Government Sector Employment Act 2013* to the advocate under subclause (2), a reference to the employer of a Public Service senior executive is taken to be a reference to the Minister.

## **9 Vacancy in office**

The office of the advocate becomes vacant if the advocate—

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns from the office by written instrument to the Minister, or
- (d) is removed from office, or

### **Note—**

The advocate may be removed under the *Government Sector Employment Act 2013*, section 41 or Part 6.

- (e) becomes bankrupt or insolvent, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the advocate's remuneration for the creditors' benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more, or
- (h) is convicted outside of New South Wales of an offence that, if committed in New South Wales, would be punishable by imprisonment for 12 months or more.

## **10 Disclosure of pecuniary and other interests**

- (1) This clause applies if—
- (a) the advocate has a direct or indirect pecuniary or other interest in a matter about which the advocate is advising, or is about to advise, the Minister, and
  - (b) the interest appears to raise a conflict with the proper performance of the advocate's duties in relation to advising on the matter.
- (2) For the purposes of subclause (1), the advocate is not taken to have a pecuniary or other interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence the advice the advocate might give to the Minister.
- (3) The advocate must, as soon as possible after the relevant facts have come to the advocate's knowledge, disclose the nature of the interest to the Minister.
- (4) It is sufficient disclosure of the nature of an interest relating to a specified company, body or person that arises after the date of the disclosure if the advocate has

disclosed that the advocate—

- (a) is a member, or is in the employment, of the company or other body, or
  - (b) is a partner, or is in the employment, of the person, or
  - (c) has some other specified interest relating to the company, body or person.
- (5) If a disclosure made under this clause relates to a matter about which the advocate is advising, particulars of the disclosure must be included in the advice to the Minister about the matter.

#### **11 Code of conduct**

The Minister may issue a code of conduct for the advocate.

### **Part 2A Energy security targets**

#### **12 Interpretation**

Words used in this Part have the same meaning as in the *National Electricity Rules*.

#### **13 Calculating maximum demand—the Act, s 12(3)**

- (1) In calculating the maximum demand for a financial year, the energy security target monitor must—
- (a) take into account the most recent forecast of maximum demand for sent out generation in New South Wales in summer, as published by AEMO, and
  - (b) adjust the forecast to reflect the maximum demand as generated by generating units in New South Wales in summer.
- (2) In calculating the maximum demand for a financial year, the energy security target monitor must also take into account the forecast of use of distributed energy resources in New South Wales in the financial year, as specified in the most recent statement of opportunities.

- (3) In this clause—

***distributed energy resource*** means a device, not directly connected to network infrastructure, that can generate or store electricity.

#### **14 Calculating firm capacity—the Act, Dictionary, definition of “firm capacity”**

- (1) In calculating the firm capacity for a financial year, the energy security target monitor must take into account the following capacity—
- (a) the capacity of scheduled generating units in New South Wales in the summer of the financial year,

- (b) the capacity of semi-scheduled generating units in New South Wales in the summer of the financial year,
  - (c) the capacity of non-scheduled generating units in New South Wales, as the energy security target monitor considers appropriate,
  - (d) the capacity of interconnectors in New South Wales, operating under normal conditions,
  - (e) the capacity from demand response, other than capacity expected to be available under the reliability and emergency reserve trader.
- (2) In calculating the firm capacity for a financial year, the energy security target monitor must also take into account the capacity of the following if, in the energy security target monitor's opinion, the capacity is likely to be available to NSW electricity customers in the financial year—
- (a) generating units listed, at the time of the calculation, as existing or committed on the generation information page,
  - (b) generating units that will be constructed and operated under an LTES agreement,
  - (c) generating units that will be constructed under funding programs run by, or on behalf of, a NSW or Commonwealth government agency,
  - (d) interconnectors for which a revenue determination has been made under rule 6A.4 of the *National Electricity Rules*,
  - (e) interconnectors for which a determination has been made under the Act, section 38,
  - (f) interconnectors under a priority transmission infrastructure project to which a direction under the Act, section 32(1)(b) relates.
- (3) In calculating the firm capacity for a financial year, the energy security target monitor must also take into account information about demand side participation, as specified in the most recent statement of opportunities.

**15 Additional information for calculating firm capacity—the Act, Dictionary, definition of “firm capacity”**

- (1) In calculating the capacity of generating units for the purposes of clause 14, the energy security target monitor must take into account information on the generation information page.
- (2) In calculating the capacity of semi-scheduled generating units and non-scheduled generating units for the purposes of clause 14, the energy security target monitor must take into account—



- (a) information about the amount of electricity produced, at times of peak demand in summer over the past three financial years, by generating units that use variable renewable energy sources, for example, the sun, waves and wind, and
  - (b) based on the information in paragraph (a)—the amount of electricity likely to be produced, at times of peak demand in summer in the financial year, by generating units that use each variable renewable energy source.
- (3) In calculating the capacity of interconnectors for the purposes of clause 14, the energy security target monitor must take into account information about interconnectors operating under normal conditions, as specified in the most recent—
- (a) Inputs, Assumptions and Scenarios Report, and
  - (b) ISP methodology.

#### **16 Energy security target monitor reports—the Act, s 13**

- (1) In preparing a report under the Act, section 13(1), the energy security target monitor must take into account each scenario and the sensitivities relating to each scenario, as specified in the most recent statement of opportunities, to the extent they relate to New South Wales.
- (2) The report must include the following for each scenario and the sensitivities relating to each scenario, to the extent they relate to New South Wales—
  - (a) the energy security target monitor's forecast of variations to—
    - (i) the maximum demand, and
    - (ii) the firm capacity, and
    - (iii) any target breach,
  - (b) an analysis of the factors that might affect the forecast of variations to a target breach, for example, whether generating units that are being constructed or have been committed will be constructed on time.

### **Part 3 Miscellaneous**

#### **17 Appointment of consumer trustee—the Act, s 66(5)(a)**

- (1) A person may be appointed as consumer trustee only if the person is a company limited by guarantee.
- (2) The company limited by guarantee must—
  - (a) have AEMO as a member, and
  - (b) not have any other members except for one or more of the following—

- (i) the Crown in right of the Commonwealth,
  - (ii) the Crown in right of New South Wales,
  - (iii) the Crown in right of another State or Territory, and
- (c) be a subsidiary of AEMO, and
- (d) have a constitution that sets out—
- (i) objects that are not inconsistent with the exercise of the functions of the consumer trustee, and
  - (ii) the functions of the company’s members, and
- (e) enter into an agreement with AEMO that deals with—
- (i) the governance arrangements of the company, and
  - (ii) the provision by AEMO of services to assist the company in exercising its functions as consumer trustee.

(3) This clause applies only to the first person appointed as consumer trustee under the Act, section 60.

## **Schedule 1 Members and procedures of NSW renewable energy sector board**

clause 7

### **1 Payment of allowances**

An appointed member is entitled to be paid allowances to reimburse the member for expenses, including travel and accommodation, as determined by the Minister.

### **2 Vacancy**

- (1) The office of an appointed member becomes vacant if the appointed member—
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by written instrument to the Minister, or
  - (d) is removed by the Minister under subclause (2), or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member’s creditors or makes an assignment of the member’s remuneration for their benefit, or

(f) becomes a mentally incapacitated person, or

(g) 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 an appointed member from office at any time.

### **3 Disclosure of pecuniary and other interests**

(1) If—

(a) a 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 member's duties in relation to the consideration of the matter,

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.

(2) A disclosure by a member at a Board meeting that the member—

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in a matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of a disclosure made under this clause must be recorded by the Board and made available to any person on request.

(4) 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 that relates to the matter, or

(b) take part in a decision of the Board that relates to the matter.

(5) The member who made the disclosure may be present at the time the Board is making a determination under subclause (4) but must not take part in the making of the determination.

(6) Before making a determination under subclause (4), the Board must consult with a person who has relevant experience in probity and conflicts of interest.

(7) A contravention of this clause does not invalidate a decision of the Board.

#### **4 General procedure**

(1) The joint chairpersons together may call a Board meeting at any time.

**Note—**

Section 7(5) of the Act requires the Board to meet at least once every 6 months.

(2) The joint chairpersons together must call a Board meeting if requested by a simple majority of the members.

(3) The procedure for the calling of Board meetings and for the conduct of business at those meetings is, subject to the Act and this Regulation, to be determined by the Board.

#### **5 Presiding member**

(1) Each joint chairperson is to preside at alternate Board meetings, as agreed to by both joint chairpersons or, in the absence of an agreement, as determined by the Secretary.

(2) In the absence of the joint chairperson nominated to preside at a Board meeting, the other joint chairperson is to preside at the meeting.

(3) In the absence of both joint chairpersons at a Board meeting, a member elected by the members who are present at the meeting is to preside at the meeting.

#### **6 Quorum**

(1) The quorum for a Board meeting is a majority of the members for the time being, subject to subclause (2).

(2) The quorum must consist of at least—

(a) 1 member appointed under section 7(2)(a)(i), (ii) or (vii) of the Act, and

(b) 1 member appointed under section 7(2)(a)(iii)–(vi) of the Act, and

(c) 1 member appointed under section 7(2)(a)(viii) of the Act, and

(d) 1 member appointed under section 7(2)(a)(ix) of the Act, and

(e) the Energy Corporation.

#### **7 Voting**

(1) A decision supported by the majority of votes cast at a Board meeting at which a quorum is present is the decision of the Board, subject to subclauses (2)–(4).

(2) A majority must consist of—

- (a) a majority of the votes cast by the members appointed under section 7(2)(a)(i)–(vii) of the Act, and
  - (b) a majority of the votes cast by the members appointed under section 7(2)(a)(viii) and (ix) and (c) of the Act and the Energy Corporation.
- (3) If there is an equality of votes among the votes cast by the members specified in subclause (2)(a), the member who is also appointed as joint chairperson under section 7(3)(a) of the Act has a second or casting vote.
- (4) If there is an equality of votes among the votes cast by the members specified in subclause (2)(b), the member who is also appointed as joint chairperson under section 7(3)(b) of the Act has a second or casting vote.

## **8 Transaction of business outside meetings or by telecommunication**

- (1) The Board may, if it thinks fit, transact any of 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 members participate by telephone, audio-visual link or other means, but only if a member who speaks on a matter at the meeting can be heard by the other 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 members, as specified in clause 7 of this Schedule, is taken to be a decision of the Board made at a Board meeting.
- (3) For the purposes of a meeting held under subclause (1)(b) or the approval of a resolution under subclause (2), each member has the same voting rights as at an ordinary Board meeting.
- (4) A resolution approved under subclause (2) is to be recorded in the minutes of the Board meeting.

## **9 Alternate members**

- (1) An appointed member may, at any time with the approval of the Secretary, appoint a person to act in the place of the appointed member during the absence or illness of the member.
- (2) While acting in the place of the appointed member, the alternate member has all the functions of the appointed member and is taken to be an appointed member.
- (3) The Secretary may delegate the Secretary's function under subclause (1) to an employee of the Department.

**10 Minutes**

The Board must keep minutes of each Board meeting and the minutes must include all decisions of the Board.

**11 Code of conduct**

The Minister may issue a code of conduct for appointed members.

**12 First meeting**

The Secretary may call the first Board meeting as the Secretary thinks fit.