

# Electricity Infrastructure Investment Regulation 2021

[2021-102]



New South Wales

## Status Information

### Currency of version

Historical version for 12 November 2021 to 13 April 2022 (accessed 23 July 2024 at 4:55)

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This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2026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

File last modified 12 November 2021

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New South Wales

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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.

**development pathway** means the development pathway referred to in the Act, section 45(1)(a).

**infrastructure investment objectives report** means a report prepared by the consumer trustee under the Act, section 45(1).

**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.
- (2A) In calculating the maximum demand for a financial year, the energy security target monitor may take into account major constraints on transmission infrastructure across different sub-regions of New South Wales, as specified in the most recent—
  - (a) Inputs, Assumptions and Scenarios Report, and
  - (b) ISP methodology.

(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.
- (4) In calculating the firm capacity for a financial year for the purposes of clause 14, the energy security target monitor may take into account major constraints on transmission infrastructure across different sub-regions of New South Wales, 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 2B Electricity infrastructure investment safeguard—the Act, Part 6**

### **16A Reliability standard—the Act, s 43**

For the purposes of the Act, section 43, definition of **reliability standard**, the following are prescribed—

- (a) until 30 June 2025—the interim reliability measure specified in the *National Electricity Rules*, clause 3.9.3C(a1),
- (b) from 1 July 2025—the reliability standard specified in the *National Electricity Rules*, clause 3.9.3C(a).

### **16B Content of infrastructure investment objective reports by consumer trustee—the Act, s 45**

- (1) An infrastructure investment objectives report must contain the following—
- (a) how the infrastructure required under the development pathway specified in the report will assist in achieving the infrastructure investment objectives,
  - (b) information about the expected timing, staging and sequencing of the construction of—
    - (i) the infrastructure required under the development pathway, and
    - (ii) REZ network infrastructure projects that may be required,
  - (c) a comparative assessment of the merits of constructing long-duration storage infrastructure that exceeds the minimum objective specified in the Act, section 44(3)(b) and firming infrastructure to meet the reliability standard,
  - (d) a forecast of wholesale electricity costs and costs for NSW electricity customers that are due to contributions required to be paid by distribution network service providers under the Act, section 58,
  - (e) details of the current, planned and expected construction and operation of infrastructure for the supply of electricity in New South Wales and the national

electricity market,

- (f) an analysis, including the methodology, of the risks to NSW electricity customers of early or delayed investment in infrastructure to which the Act, Part 6 applies,
  - (g) an estimate of the amount of electricity in gigawatt hours that is equivalent to the gigawatts of capacity required under the minimum objectives specified in the Act, section 44(3), using information in the 2020 Integrated System Plan published by AEMO under the *National Electricity Rules*.
- (2) An infrastructure investment objectives report, other than the first report prepared under the Act, section 45(2)(a), must also contain the following—
- (a) a description of the changes since the previous report to—
    - (i) the development pathway, and
    - (ii) the plan for competitive tenders under the Act, section 45(1)(b),
  - (b) the outcomes of tenders carried out since the previous report, including—
    - (i) the number of persons who made a bid in each tender, including the number of eligible and ineligible bids according to the rules made under the Act, section 47(5), and
    - (ii) the number of LTES agreements recommended by the consumer trustee after each tender, and
    - (iii) the number of LTES agreements entered into,
  - (c) details of the infrastructure constructed, or proposed to be constructed, under LTES agreements entered into, or agreed to be entered into, since the previous report,
  - (d) an assessment of the progress in achieving the minimum objectives specified in the Act, section 44(3),
  - (e) an assessment of the resilience of the NSW electricity system in relation to lulls in variable renewable energy sources, as it relates to the development pathway in the report, including by reference to climate modelling.

**16C Preparation of infrastructure investment objectives reports—the Act, s 45(4)**

- (1) The consumer trustee must take the following into account in preparing an infrastructure investment objectives report—
  - (a) any target breaches identified in the most recent energy security target monitor report,

- (b) the forecast of unserved energy from the most recent statement of opportunities published by AEMO under the *National Electricity Rules*,
  - (c) the most recent Integrated System Plan published by AEMO under the *National Electricity Rules*,
  - (d) market conditions, including supply chains and labour and capital constraints,
  - (e) the payments required to be made by the scheme financial vehicle under existing and planned LTES agreements,
  - (f) how the development pathway in the infrastructure investment objectives report will contribute to the object of the Act, specified in the Act, section 3(1)(a),
  - (g) the resilience of the NSW electricity system in relation to lulls in variable renewable energy sources, including by reference to climate modelling.
- (2) Subclause (1)(g) does not apply to the first infrastructure investment objectives report prepared under the Act, section 45(2)(a).
- (3) When preparing the development pathway for an infrastructure investment objectives report, the consumer trustee must—
- (a) take into account several scenarios for the construction of generation, long-duration storage and firming infrastructure in New South Wales, and
  - (b) analyse the resilience of the outcomes for each scenario, including in relation to—
    - (i) the reliability of supply, and
    - (ii) the financial exposure risks to NSW electricity customers.
- (4) This clause does not limit the matters the consumer trustee may take into account in preparing an infrastructure investment objectives report.

**16D Tendering for LTES agreements—the Act, s 47(3)(a)**

- (1) The consumer trustee must conduct a competitive tender in a way that—
- (a) encourages genuine competition between the persons making tender bids, and
  - (b) encourages competition between market participants, and
  - (c) encourages tender bids from persons who are not already parties to LTES agreements, and
  - (d) is transparent, open and fair for all persons making tender bids.
- (2) Subclause (1)(d) does not require the consumer trustee to disclose information the consumer trustee considers confidential or commercially sensitive.

- (3) When conducting a competitive tender, the consumer trustee must consider recent trends and changes in the following—
  - (a) electricity infrastructure technology,
  - (b) the national electricity market,
  - (c) the behaviour of customers and market participants.
- (4) The assessment of the financial value of a tender bid must consider the effect of the infrastructure proposed to be constructed and operated under an LTES agreement on the following—
  - (a) wholesale electricity costs,
  - (b) the costs of network infrastructure, including REZ network infrastructure projects, required to support the infrastructure that will be constructed and operated under the LTES agreement,
  - (c) the costs of other services associated with power system security,
  - (d) the payments that will be required to be made by the scheme financial vehicle under LTES agreements,
  - (e) other matters the consumer trustee considers relevant.
- (5) The consumer trustee must—
  - (a) ensure the costs to the consumer trustee of carrying out a competitive tender are reasonable, and
  - (b) minimise the costs of making a tender bid for the persons making tender bids.
- (6) In this clause—

**market participant** has the same meaning as in the *National Electricity Rules*.

**power system security** has the same meaning as in the [National Electricity \(NSW\) Law](#).

#### **16E Risk management framework—the Act, s 51(8)**

- (1) A risk management framework prepared by the consumer trustee must—
  - (a) mitigate the following risks—
    - (i) the risk that the cash balance of the Fund will not be sufficient to make the payments specified in the Act, section 55(b),
    - (ii) the risk to the financial interests of NSW electricity customers of unexpected or significant increases in the liabilities for payments by the scheme financial

vehicle under LTES agreements from year to year, and

(b) provide for risk management contracts that mitigate the risks specified in paragraph (a).

(2) A risk management contract entered into by the scheme financial vehicle under the risk management framework may consist of loans or repayable grants to the scheme financial vehicle.

### **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.

#### **18 Infrastructure planner recommendations about REZ network infrastructure projects—the Act, s 30(2)**

(1) The infrastructure planner must assess and make recommendations about network

operators who may be authorised or directed to carry out a REZ network infrastructure project.

- (2) The infrastructure planner may determine—
- (a) the extent of the assessment, and
  - (b) how the assessment will be carried out.

### **19 Penalty notices—authorised officers**

- (1) This clause applies if the AER is appointed as the regulator.
- (2) For the purposes of the Act, section 76(6), definition of **authorised officer**, the AER is prescribed.

## **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.

**Schedule 2 Penalty notice offences**

**1 Application of Schedule**

- (1) For the purposes of the Act, section 76(2)—
  - (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
  - (a) the limited kind of offence, or
  - (b) an offence committed in the limited circumstances.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty—corporations</b>	<b>Penalty—individuals</b>
<b>Offences under the Act</b>		
Section 17(1)	\$55,000	\$2,750
Section 18(4)	\$55,000	\$2,750
Section 75(1)	\$22,000	\$1,100