

# Energy and Utilities Administration Regulation 2021

[2021-418]



New South Wales

## Status Information

### Currency of version

Current version for 30 June 2023 to date (accessed 29 November 2024 at 4:31)

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This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2026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 30 June 2023

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New South Wales

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# Energy and Utilities Administration Regulation 2021



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Energy and Utilities Administration 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—

**committee** means a committee established by the Minister in accordance with the Act, section 34W.

**the Act** means the *Energy and Utilities Administration Act 1987*.

#### Note—

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

### 4 Members and procedures of committees

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

## Part 2 Net Zero Emissions Board

### 5 Definitions

In this Part—

**Net Zero Emissions Board** means the committee—

(a) established in accordance with the Act, section 34W, in and by the instrument of

establishment executed by the Minister, and

(b) known as the Net Zero Emissions and Clean Economy Board.

**Net Zero Plan** means a plan published by the Department, from time to time, relating to the objective of achieving net zero emissions in New South Wales by 2050, and includes the document titled *Net Zero Plan Stage 1: 2020-2030*.

## 6 Membership

(1) Subject to clause 7(1), the Minister may appoint a person as a member of the Net Zero Emissions Board if, in the opinion of the Minister, the person has substantial knowledge of, and significant experience in, at least 1 of the following areas—

- (a) the electricity industry,
- (b) the powerfuels industry,
- (c) the transport industry,
- (d) primary industries,
- (e) manufacturing,
- (f) technology and innovation,
- (g) heavy industries,
- (h) climate science,
- (i) climate or related public policy,
- (j) finance.

(2) The office of a member of the Net Zero Emissions Board is a part-time office.

## 7 Deputy chairperson

(1) The Minister must appoint the Chief Scientist as the deputy chairperson of the Net Zero Emissions Board.

(2) The Chief Scientist may, by written notice to the chairperson of the Net Zero Emissions Board, appoint a person as the proxy of the Chief Scientist at a meeting of the Board.

(3) The appointed proxy may act in the place of the Chief Scientist and, while acting, has the Chief Scientist's functions.

(4) In this clause—

**Chief Scientist** means the person employed in the Public Service as the Chief

Scientist and Engineer.

## **8 Functions**

- (1) The functions of the Net Zero Emissions Board are as follows—
- (a) to advise the Minister on the implementation and development of Net Zero Plans and other plans to achieve the emissions reduction objectives of the State, including advice on the following—
    - (i) policy development and program design,
    - (ii) grant assessment criteria,
    - (iii) funding proposals,
    - (iv) governance arrangements,
  - (b) to advise the Minister on funding or other support for applications, projects and other initiatives that relate to the Net Zero Plan,
  - (c) to advise the Minister on regulatory or other barriers to the uptake of greenhouse gas emissions reduction technologies in the State,
  - (d) to advise the Minister on, and develop, strategies for industry in the State to develop and implement competitive operating models involving low or zero greenhouse gas emissions,
  - (e) to advise the Minister on, and develop, strategies to attract low greenhouse gas emissions research and industries to the State,
  - (f) to provide the Minister with reports relating to emissions reduction and climate change, as the Minister may, from time to time, request,
  - (g) to advise the Minister on a particular policy or program on which the Minister requests advice.
- (2) In exercising its functions, the Net Zero Emissions Board must consider—
- (a) the emissions reduction objectives of the State, which are—
    - (i) to achieve net zero emissions by 2050, and
    - (ii) to achieve a reduction of at least 70% of 2005 emissions levels by 2035, and
    - (iii) to achieve a reduction of at least 50% of 2005 emissions levels by 2030, and
  - (b) the objective of the State to promote economic growth and employment, and
  - (c) whether it is in the public interest to make grant money recoverable from grant

recipients if their funded initiatives become highly profitable, and

- (d) that a greenhouse gas abatement funded under a Net Zero Plan should be considered only if it is in addition to an abatement that would have otherwise occurred.

## **Part 3 Miscellaneous**

### **9 Class of persons regulator may appoint as inspectors**

For the Act, Schedule 3, clause 13(1)(d), the class of persons who are persons or consultants made available to assist the AER under the [Competition and Consumer Act 2010](#) of the Commonwealth, section 44AAC are prescribed.

## **Schedule 1 Provisions relating to members and procedure of committees generally**

clause 4

### **1 Definition**

In this Schedule—

**member** means a member of a committee.

### **2 Membership**

(1) A committee must consist of the following members appointed by the Minister—

- (a) the chairperson,
- (b) the deputy chairperson,
- (c) at least 1, but no more than 7, other members.

(2) Each member may, subject to this Regulation, be appointed to a full-time office or a part-time office.

### **3 Chairperson**

(1) Of the members, 1 must be appointed as chairperson.

(2) In the absence of the chairperson, the deputy chairperson may act in the place of the chairperson and, while acting, has the chairperson's functions.

(3) The chairperson of a committee or, in the absence of the chairperson, the deputy chairperson, must preside at a meeting of the committee.

### **4 Term of office**

Subject to this Regulation, a member holds office for a period, not exceeding 5 years, as

specified in the member's instrument of appointment, but is eligible, if otherwise qualified, for re-appointment.

## **5 Remuneration**

- (1) The Minister may determine that a member is to be paid the following entitlements—
  - (a) remuneration, as determined by the Minister,
  - (b) allowances to reimburse the member for expenses that the member may incur, such as for travel or accommodation, in the exercise of functions carried out as a member.
- (2) In making a determination under subclause (1)(a), the Minister must consider the guidelines entitled *Classification and Remuneration Framework for NSW Government Boards and Committees* published by the Public Service Commission.

## **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by written instrument addressed to the Minister, or
  - (d) is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
  - (e) becomes bankrupt, applies to take the benefit of a 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) If the office of a member becomes vacant, a person must, subject to this Regulation, be appointed to fill the vacancy.

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

- (1) A member must, as soon as practicable after the relevant facts have come to the

member's knowledge, disclose the nature of a pecuniary or other interest at a meeting of the committee if—

- (a) the member has a pecuniary or other interest in a matter being considered or about to be considered at a meeting of a committee, 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.

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

- (a) is a director, 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 committee and made available to a person on request.

(4) After a member has disclosed the nature of an interest in a matter, the member must not, unless the committee otherwise determines—

- (a) be present during a deliberation of the committee with respect to the matter, or
- (b) take part in a decision of the committee with respect to the matter.

(5) For the purposes of making a determination under subclause (4), a member who has a pecuniary or other interest in a matter to which the disclosure relates must not—

- (a) be present during a deliberation of the committee for the purpose of making the determination, or
- (b) take part in the making of the determination.

(6) A contravention of this clause does not invalidate a decision of the committee.

## **8 Interests required to be disclosed**

(1) For the purposes of clause 7, an interest is an interest that a member has in a matter because of a reasonable likelihood or expectation of appreciable gain or loss, whether financial or otherwise, to the member or another person with whom the member is associated as provided by subclauses (3) and (4).

(2) A member does not have an interest in a matter if the interest is so remote or



insignificant that it could not reasonably be regarded as likely to influence a decision the member might make in relation to the matter.

- (3) A member is taken to have an interest in a matter if—
  - (a) a relative of the member has an interest in the matter, or
  - (b) a partner or employer of the member has a pecuniary interest in the matter, or
  - (c) the member, or a nominee, partner or employer of the member, is a member of a company or other body that has a pecuniary interest in the matter.
- (4) Despite subclause (3), a member is not taken to have a pecuniary interest in a matter—
  - (a) if the member is unaware of the relevant pecuniary interest of the relative, partner, employer or company or other body, or
  - (b) only because the member is a director of, or is employed by, a statutory body or is employed by the Crown, or
  - (c) only because the member is a member of a company or other body that has a pecuniary interest in the matter, provided the member has no beneficial interest in shares of the company or body.
- (5) In this clause, a reference to a **relative** of a member is a reference to—
  - (a) a spouse or de facto partner of the member, or
  - (b) a parent, child, sibling or step-sibling of the member or of the member's spouse or de facto partner, or
  - (c) another person with whom the member is in an intimate personal relationship.

## 9 Quorum

The quorum for a meeting of a committee is a majority of its members.

## 10 Voting

- (1) A decision approved by a majority of the voting members of a committee is the decision of the committee.
- (2) Subject to clause 12, a decision of a committee, including the reasons for the decision, must be recorded in writing in the minutes of the committee meeting at which the decision was approved.

## 11 General procedure

The procedure for the calling of meetings of a committee and for the conduct of business

at those meetings is, subject to this Regulation, to be determined by the committee.

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

- (1) A committee may, if it thinks fit, transact any of its business by the circulation of papers among all of its members, and a resolution in writing, approved by a majority of the members in writing, is taken to be a decision of the committee.
- (2) A committee may, if it thinks fit, transact business at a meeting at which members, 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.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the chairperson and each other member have the same voting rights as they have at an ordinary meeting of the committee.
- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meeting of the committee.
- (5) Papers may be circulated among members for the purposes of subclause (1) by email or other transmission of the information in the papers concerned.

## **13 Code of conduct**

- (1) The Minister may—
  - (a) approve a code of conduct to be observed by the members in carrying out the functions of a committee, and
  - (b) authorise changes to the code of conduct as recommended by the committee.
- (2) Compliance with an approved code of conduct is a condition of the appointment of a member to whom the code of conduct applies.
- (3) The code of conduct may identify conduct, whether involving an act or omission, that is likely to bring the committee or its members into disrepute.
- (4) The Minister may remove a member who has contravened a provision of an approved code of conduct if the provision is identified as a termination provision.

## **14 Subcommittees**

- (1) A committee may, on its own initiative or as requested by the Minister, establish subcommittees to assist the committee in the exercise of its functions.

- (2) The procedure for calling meetings of a subcommittee and for the conduct of those meetings is to be determined by the committee or, subject to a determination by the committee, by the subcommittee.
- (3) The committee may delegate to a subcommittee any of its functions, other than this power of delegation.