

# Energy and Utilities Administration Act 1987 No 103

[1987-103]



New South Wales

## Status Information

### Currency of version

Historical version for 1 July 2023 to 13 July 2023 (accessed 18 May 2024 at 13:22)

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—

- **Previously named**  
Energy Administration Act 1987
- **Does not include amendments by**
  - [Water Industry Competition Amendment \(Review\) Act 2014 No 57](#) (not commenced)
  - [Water Industry Competition Amendment Act 2021 No 26](#) (not commenced)
  - Sch 3, cl 24(1) of this Act (Sch 3, cl 24(1) repeals Sch 3 on 30.6.2024)
  - [Statute Law \(Miscellaneous Provisions\) Act 2023 No 7](#) (not commenced — to commence on 14.7.2023)

### 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 3 July 2023

# Energy and Utilities Administration Act 1987 No 103



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# Energy and Utilities Administration Act 1987 No 103



New South Wales

An Act to constitute the Energy Corporation of New South Wales and define its functions; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Energy and Utilities Administration Act 1987*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act—

**area of operations**, in relation to Sydney Water Corporation, has the same meaning as it has in the *Sydney Water Act 1994*.

**Climate Change Fund** means the Climate Change Fund established under section 34E.

**contributions order** means an order under section 34J.

**Corporation** means the Energy Corporation of New South Wales constituted by section 7.

**corrosion protection system** has the same meaning as it has in the *Electricity Supply Act 1995*.

**Department** means the Department of Planning and Environment.

**designated energy users**—see section 34B.

**designated water users**—see section 34A.

**electrical equipment** means any appliance, wire, fitting, cable, conduit, meter, insulator, apparatus or material that uses, conveys or controls (or that is designed or intended to use, convey or control) electricity.

**electrical installation** has the same meaning as it has in the [Electricity Supply Act 1995](#).

**electricity supply authority** has the same meaning as it has in the [Gas and Electricity \(Consumer Safety\) Act 2017](#).

**energy** means energy, power or fuel.

**energy savings action plan** means a savings action plan relating to the use of energy.

**energy service** includes the supply or distribution of energy.

**financial year** means the year commencing 1 July.

**licensed distributor** means a person who is required to hold a distributor's licence under the [Electricity Supply Act 1995](#).

**local government area**, in relation to a local council, means the area within the meaning of the [Local Government Act 1993](#) of the council.

**public authority** means a public or local authority constituted by or under an Act other than this Act, and includes any other body prescribed by the regulations.

**regulation** means a regulation made under this Act.

**savings action plan** means a savings action plan prepared under Division 4 of Part 6A.

**savings measure**, in relation to energy or water, means a program, project or other measure—

- (a) to reduce the use of, or demand for, energy or water, or
- (b) to promote awareness or acceptance of the need to reduce the use of energy or water.

**savings order** means an order made under section 34D.

**Secretary** means the Secretary of the Department.

**State agency** means—

- (a) a public or local authority constituted by or under an Act (including a local

council), or

- (b) a Public Service agency, or
- (c) a statutory body representing the Crown, or
- (d) a State owned corporation (including any subsidiary of a State owned corporation) within the meaning of the [State Owned Corporations Act 1989](#).

**State water agency** means—

- (a) Sydney Water Corporation, or
  - (a1) Gosford City Council, or
  - (a2) Wyong Shire Council, or
- (b) any other State agency prescribed by the regulations that provides any water service in a water savings area,

and includes—

- (c) a licensed network operator or licensed retail supplier within the meaning of the [Water Industry Competition Act 2006](#), and
- (d) the Central Coast Water Corporation on and from the time when it is prescribed by the regulations to be a State water agency for the purposes of this definition.

**water savings action plan** means a savings action plan relating to the use of water.

**water savings area** means—

- (a) the area of operations of Sydney Water Corporation, or
  - (a1) the local government area of Gosford City Council under the [Local Government Act 1993](#), or
  - (a2) the local government area of Wyong Shire Council under the [Local Government Act 1993](#), or
- (b) any other area or areas of the State prescribed by the regulations for the purposes of this definition.

**water service** includes any of the following—

- (a) the storage or supply of water,
- (b) the disposal of waste water,
- (c) the provision of a sewerage, stormwater or drainage service.



**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) A reference in this Act to the allocation of energy or energy resources includes a reference to the allocation of energy or energy resources in the event that there is insufficient to meet demand.

(4) Notes included in this Act do not form part of this Act.

**4 Act binds the Crown**

This Act binds the Crown, not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Part 2 Objects**

**5 Objects**

(1) The objects of this Act in relation to energy are—

- (a) to secure the best management of the supply and use of energy in the State,
- (b) to provide an authoritative source of advice to the Government and the community on energy matters and their co-ordination,
- (c) to apply the State's energy resources, technologies and associated expertise to promote economic development and employment in the State,
- (d) to promote and maintain the efficiency and accountability of energy producers and suppliers and their responsiveness to community needs and expectations,
- (e) to promote the most cost-effective long term match of energy supply and demand, and
- (f) to promote the safe and effective utilisation of energy.

(2) In the administration of Acts relating to energy, regard shall, to the maximum extent possible having regard to the needs of the State and available resources, and subject to any directions of the Minister, be had to the objects of this Act.

(3) The objects of this Act in relation to water are—

- (a) to reduce the demand for water in water savings areas, and
- (b) to stimulate investment in innovative water savings measures for use in water savings areas, and
- (c) to increase public awareness and acceptance of the need to save water in water savings areas, and
- (d) to improve access to a wider range of water saving technologies in water savings areas, and
- (e) to encourage the use of non-potable water in water savings areas as an alternative to potable water.

## **Part 3 Administration**

### **6 (Repealed)**

### **7 Constitution of the Corporation**

- (1) There is constituted by this Act a corporation under the corporate name of the “Energy Corporation of New South Wales”.
- (2) The Department and the Corporation shall, to the maximum extent possible, so act in a complementary manner as to achieve a unified administration of this Act and other Acts conferring or imposing functions on the Corporation.

### **8 Management of the Corporation**

- (1) The affairs of the Corporation shall be managed by the Secretary.
- (2) A function of the Corporation may be exercised in the name of, or on behalf of, the Corporation by—
  - (a) the Secretary, or
  - (b) an officer or employee of the Department or of the Corporation with the authority of, and on behalf of, the Secretary.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Secretary, or with the authority of the Secretary, shall be deemed to have been done by the Corporation.
- (4) Functions of the Corporation may also be exercised in accordance with a delegation under this Act.
- (5) The Corporation is subject to the control and direction of the Minister.

## 9 Staff

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Corporation to exercise its functions.

### Note—

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Corporation makes use of) may be referred to as officers or employees, or members of staff, of the Corporation. Section 47A of the [Constitution Act 1902](#) precludes the Corporation from employing staff.

## 10 Committees

- (1) The Secretary may and shall, if directed to do so by the Minister, establish standing or special committees for the purpose of advising the Corporation in the exercise of its functions under this or any other Act.
- (2) The Secretary may appoint as a member of any such committee any person who, in the Secretary's opinion, appears to be qualified to be a member of the committee.
- (3) The Secretary shall appoint one of the members of a committee to be chairperson of the committee.
- (4) A committee may, subject to this section and to any directions of the Secretary, regulate its procedure in such manner as it thinks fit.
- (5) The Secretary may specify the number of persons who shall constitute a quorum of a committee.

## Part 4 Functions of the Corporation

### 11 Objects and general functions

- (1) The objects of the Corporation are—
  - (a) to carry out such investigations relating to the locating and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources as it considers appropriate or as the Minister directs,
  - (b) to plan the locating and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources in such manner as it considers appropriate or as the Minister directs,
  - (c) to assist and advise, and make reports and recommendations to, the Minister in respect of matters relevant to this Act and any other Act administered by the Minister,
  - (d) to review plans or draft plans for the development, extraction, provision,

allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources prepared by any energy undertakings operating in the State, and

- (e) in accordance with this Act, to acquire and dispose of energy and energy resources or operations connected with the locating and the development, extraction, provision, transportation, distribution, conservation or utilisation of energy and energy resources, and
- (f) to promote energy conservation and measures to increase the efficiency of energy supply, transmission and use.

(2) The Corporation—

- (a) has and may exercise the functions conferred or imposed on it by or under this or any other Act, and
- (b) without limiting any other provision conferring or imposing functions on it, may, subject to this Act, do all such things and engage in all such activities as are reasonably required for it to carry out its objects.

- (3) Nothing in this Act authorises the Corporation to engage in the generation of electricity or the supply of electricity except in connection with its own undertakings.
- (4) Except as provided by section 15, nothing in this Part authorises anything to be compulsorily acquired.

## **12 Functions**

(1) The Corporation may also do any or all of the following—

- (a) investigate the extent of the energy resources available within the State,
- (b) carry out, or commission the carrying out of, such inspections, tests, investigations, surveys, experiments, boring, drilling and exploration as it considers necessary or desirable to enable it to effectively exercise its functions under this or any other Act,
- (c) evaluate the future demands for energy and energy resources within the State and the capacity of the State to meet those demands, whether from internal resources or otherwise, and assess the impact of any lack of energy or energy resources on the development of the State or any part of the State,
- (d) promote the locating and the development, extraction, provision, transportation, distribution, conservation and utilisation of energy and energy resources,
- (e) (Repealed)
- (f) disseminate or promote the dissemination of information regarding the locating

and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources,

- (g) carry out, commission or co-ordinate research, development and demonstration with respect to any matter relating to energy or energy resources,
- (h) assist and co-operate with authorities of the Commonwealth and other States and Territories in the planning and co-ordination of policies related to energy and energy resources,
- (i) have consultations, and make arrangements, with any public authority in respect of the exercise or undertaking by that authority of anything within that authority's functions that may affect energy or energy resources,
- (j) undertake negotiations on behalf of, or in co-operation with, persons who are interested in making energy or energy resources available for use by the community,
- (k) formulate proposals to assist with the provision by a gas producing, extracting or transporting undertaking of a bulk supply of gas to a gas distributing undertaking including a scheme to enable that gas to be provided,
- (l) acquire a gas producing or distributing undertaking by agreement,
- (m) undertake, or cause to be undertaken, the construction of works or apparatus to be used for or in connection with the locating or the development, extraction, provision, transportation, distribution, conservation or utilisation of energy or energy resources,
- (n) maintain and operate any undertaking constructed or acquired by it under this or any other Act.

(1A) (Repealed)

(2) Without limiting subsection (1), the Corporation may—

- (a) promote and regulate the adoption of standards of plant, equipment, frequency and voltage for the generation, transmission, distribution and supply of electricity, and
- (b) promote and encourage the safety of persons and property in relation to electricity, and without limiting the generality of that function, promote and encourage the safety of persons and property in relation to—
  - (i) the installation, maintenance and use of electric lines, works, electrical installations and corrosion protection systems, and

- (ii) the sale or hire of electrical equipment, and
  - (c) without limiting the generality of paragraph (b), issue or publish public statements or warnings relating to—
    - (i) electrical equipment, electrical installations or corrosion protection systems that, in the opinion of the Corporation are, or are potentially, unsafe, and
    - (ii) safety in relation to electricity generally, and
  - (d) promote and encourage the development and use of the natural resources of the State in connection with the generation of electricity, and
  - (e) promote and encourage the use of electricity, especially its use for industrial and manufacturing purposes and for the purpose of primary production, and
  - (f) advise any person engaged in the generation, transmission, distribution or supply of electricity on all matters of and concerning such generation, transmission, distribution and supply, and
  - (g) consider the advisability of amending the law relating to the generation, transmission, distribution, supply and use of electricity, and report on that to the Minister, and
  - (h) do such other acts as may be necessary or expedient for those purposes.
- (3) The Corporation may exercise, in its own name, any function of an electricity supply authority under this or any other Act as if it were such an authority, if the Corporation is of the opinion that it is necessary to do so in order to protect the life or health of any person.
- (4) Except as provided by subsection (5), nothing in this Part limits or otherwise affects the functions of TransGrid (or any other energy transmission operator under the [Energy Services Corporations Act 1995](#)).
- (5) The Corporation may, in relation to TransGrid (or any other energy transmission operator under the [Energy Services Corporations Act 1995](#)), exercise the functions referred to in subsection (2) (a) and (b).

### **13 Review of plans and draft plans**

- (1) The Corporation shall review any plan or draft plan required to be submitted to the Corporation by or under any other Act.
- (2) In reviewing such a plan or draft plan, the Corporation may do any or all of the following—
  - (a) advertise the plan or draft plan in such manner as it considers appropriate,

- (b) cause the plan or draft plan to be published in such manner as it considers appropriate,
- (c) invite comments on the plan or draft plan from the public or any persons or groups,
- (d) conduct an inquiry under section 21,
- (e) refer the whole or part of the plan or draft plan to a consultant for review or comment by the consultant,
- (f) exercise any other relevant functions conferred or imposed on it by or under this or any other Act.

(3) Nothing in this section limits the exercise by the Corporation of any of its functions.

#### **14 Purchase etc of certain shares**

- (1) The Corporation may, on behalf of the Crown, negotiate and enter into agreements for the purposes of, or in connection with, the acquisition, holding, dealing with, and disposal of shares in any company having (whether expressly or otherwise) among its objects—
  - (a) the carrying out of investigations or research into energy or energy resources, or
  - (b) the locating, development, extraction, transportation, distribution, conservation, utilisation, acquisition or disposal of energy or energy resources.
- (2) Such an agreement may be entered into by the Corporation only with the approval of the Governor given on the recommendation of the Minister with the concurrence of the Treasurer.
- (3) Such an agreement may be executed, on behalf of the Corporation, only by 2 or more persons authorised for the purpose by the Governor on that recommendation and with that concurrence.
- (4) The Corporation may do all things authorised or required by such an agreement to be done and all incidental things, and may also do such things as are necessary or convenient to be done for the purpose of carrying into effect and implementing the terms of any such agreement.
- (5) Without affecting the generality of subsection (4), the Corporation may—
  - (a) acquire, hold, deal with and dispose of shares in a company to which an agreement entered into by it under this section relates, and
  - (b) do all such things as are appropriate by reason of its being a holder of any such shares, including the appointment of any director or directors of any such company.

- (6) Any appointment of such a director shall not be made except with the approval of the Minister and the Treasurer.
- (7) The fact that any director of a company so appointed is accustomed to act in accordance with the directions or instructions of a Minister of the Crown does not constitute that Minister a director of the company.

## **15 Acquisition of land**

- (1) The Corporation may, for the purposes of this Act or any other Act administered by the Minister, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) For the purposes of the [Public Works Act 1912](#), any such acquisition of land is taken to be for an authorised work and the Corporation is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34, 35, 36 and 37 of the [Public Works Act 1912](#) do not apply in respect of works constructed under this Act.

## **16 Power to accept gifts etc of property**

- (1) The Corporation may acquire by gift, bequest or devise any property for any of the purposes of this Act or any other Act administered by the Minister and may agree to carry out the conditions of the gift, bequest or devise.
- (2) The rule of law relating to remoteness of vesting does not apply to any condition of a gift, bequest or devise to which the Corporation has agreed.

## **17 Disposal of and dealings with land vested in Corporation**

- (1) The Corporation shall not sell, lease, exchange or otherwise deal with or dispose of land acquired by or vested in the Corporation except with the approval of the Minister and subject to such terms and conditions as the Minister may impose.
- (2) The Minister's approval is not required to a lease of land where the term of the lease is less than 3 years.

## **18 Contracts**

- (1) The Corporation may make and enter into contracts with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of its functions.
- (2) A contract under this section shall be deemed for the purposes of the [Constitution Act 1902](#) to be a contract for or on account of the Public Service of New South Wales.



## **19 Arrangements with public authorities**

- (1) The Corporation may enter into an arrangement or agreement with any public authority that—
  - (a) the public authority shall act as agent of the Corporation for the purposes of this Act or any other Act administered by the Minister, or
  - (b) the Corporation shall act as agent of the public authority for the purposes of this Act or any other Act administered by the Minister,on such terms and conditions as are agreed on between the Corporation and the public authority.
- (2) Notwithstanding anything in any other Act, any public authority may enter into any such arrangements or agreements and may do or suffer anything necessary or expedient for carrying out any such arrangements or agreements.

## **20 Arrangements for investigation and research**

The Corporation may enter into arrangements with—

- (a) a Minister of the Crown of any State, a Minister of State of the Commonwealth or a Department or instrumentality of any State or of the Commonwealth,
- (b) a university or another tertiary institution, or
- (c) any other body or person,

with respect to the conduct of any investigation, study or research that may be necessary or desirable to enable the Corporation to exercise its functions.

## **Part 5 Inquiries**

### **21 Inquiries into energy matters**

- (1) The Minister or the Corporation may conduct an inquiry, and the Corporation shall conduct an inquiry if directed to do so by the Minister, into—
  - (a) any matter relating to the locating or the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation or conditions of supply of energy or energy resources, or
  - (b) without affecting the generality of paragraph (a), any plan or draft plan referred to in section 11 or 13.
- (2) The Minister or the Corporation may, by order in writing, authorise, subject to the terms of the authorisation—
  - (a) a committee established under section 10, or

(b) any other person,

to examine, and report to the Minister or the Corporation on, any matter in connection with an inquiry.

(3) Nothing in this section limits the power of the Minister or the Corporation to conduct an examination in connection with an inquiry under this section, and the Minister or the Corporation may conduct such an examination even though another body or person has been authorised to do so.

(4) No matter or thing done by—

(a) a member of a committee, or

(b) any other person,

authorised under this section to examine, and report to the Minister or the Corporation on, any matter in connection with an inquiry shall, if the matter or thing was done in good faith for the purposes of the inquiry, subject the member or person personally to any action, liability, claim or demand.

## 22 Royal Commission powers at inquiries

(1) For the purposes of an inquiry or examination under section 21—

(a) the Minister, the person conducting it on behalf of the Corporation or the chairperson of the committee conducting it has the functions, protections and immunities conferred on a chairperson of a Royal Commission by Division 1 of Part 2 of the [Royal Commissions Act 1923](#), and

(b) a member of the committee conducting it has the functions, protections and immunities conferred on a commissioner by that Division.

(2) The [Royal Commissions Act 1923](#) (except section 13 and Division 2 of Part 2) applies to and in respect of an inquiry or examination under section 21.

## Part 6 Emergency provisions

### 23 Definitions

In this Part—

**AEMO** means the Australian Energy Market Operator Limited ACN 072 010 327.

**cyber security incident** means acts, events or circumstances involving, or likely to involve, 1 or more of the following—

(a) unauthorised access to computer data or a computer program,

(b) unauthorised modification of computer data or a computer program,

- (c) unauthorised impairment of electronic communication to or from a computer,
- (d) unauthorised impairment of the availability, reliability, security or operation of a computer, computer data or a computer program.

**declared form of energy** means a form of energy or energy resources specified in an order under section 24.

**form of energy or energy resources** means a form of energy or energy resources other than electricity.

**inspector** means a person authorised, for the time being, under section 31.

**place** includes a building, structure and mine.

**supply** includes the following—

- (a) distribution, provision, sale, storage and transport of energy or energy resources,
- (b) production or extraction of energy or energy resources.

**use** of energy includes consumption of energy.

## **24 Declaration of energy supply emergency**

- (1) The Premier may, by written order, declare an energy supply emergency if satisfied that—
  - (a) the supply of a form of energy or energy resources to the State or part of the State is disrupted to a significant degree, or
  - (b) the supply of a form of energy or energy resources to the State or part of the State is at risk of disruption to a significant degree, or
  - (c) due to a cyber security incident the operations of a person that supplies a form of energy within the State—
    - (i) are disrupted to a significant degree, or
    - (ii) are at risk of disruption to a significant degree.
- (2) A declaration under this section has effect from the date specified in the order.
- (3) A declaration under this section remains in force—
  - (a) for the period specified in the order, or
  - (b) if the order does not specify a period in which the declaration remains in force—until revoked by the Premier by written order.
- (4) As soon as practicable after making or revoking a declaration under this section, other

than a declaration made because of a cyber security incident, the Premier must arrange for the declaration or revocation to be—

- (a) made publicly available in the way the Premier considers appropriate, and
- (b) published in the Gazette.

## **25 Direction during energy supply emergency**

- (1) While a declaration under section 24(1)(a) or (b) is in force, the Minister may by order give directions the Minister considers reasonably necessary to respond to the energy supply emergency including directions for the following matters—
  - (a) to control, direct, restrict or prohibit the supply or use of a declared form of energy, whether generally or for a purpose specified in the direction,
  - (b) to direct a person who supplies a declared form of energy to supply it to a person specified in the direction,
  - (c) to direct a person to comply with the terms and conditions determined by the Minister for the supply of a declared form of energy,
  - (d) to direct a person to whom a declared form of energy is supplied to accept the declared form of energy,
  - (e) other matters the Minister considers necessary to give effect to—
    - (i) the declaration, or
    - (ii) a recommendation made by a qualified person under section 28.
- (2) A direction may—
  - (a) operate throughout the whole of the State or in a specified part of the State, and
  - (b) operate for a specified period, time or occasion, and
  - (c) be of general operation or have limited operation according to a time, place, circumstance, condition or restriction specified in the direction, and
  - (d) authorise a specified person to enter land or a building or structure, used for or in connection with the supply of the declared form of energy, and
  - (e) authorise a specified person to take possession or control of or use property, a business or an undertaking used for or in connection with the supply of the declared form of energy.
- (3) A direction may be revoked by the Minister.
- (4) A direction or revocation of a direction—

- (a) must be published in the Gazette and on publication is taken to have been served on or brought to the notice of all persons concerned or affected by it, and
  - (b) without affecting the application of paragraph (a)—may, if it applies to a specified person, be given to the person verbally or in writing.
- (5) If a direction or the revocation of a direction is given verbally under subsection (4)(b), written confirmation of the direction or revocation must be given to the person as soon as practicable.

## 26 Cyber security directions

- (1) While a declaration under section 24(1)(c) is in force, the Minister may, by written order, give a direction (a **cyber security direction**) to a person requiring the person to take the action the Minister considers reasonably necessary to—
- (a) respond to the impact of the incident on the person's information technology systems, or
  - (b) prevent the incident having an impact on the person's information technology systems.
- (2) The Minister's written order under subsection (1) must include a copy of the Premier's declaration of the energy supply emergency under which the cyber security direction is given.
- (3) A cyber security direction—
- (a) has effect for the period specified in the direction, and
  - (b) may be varied or revoked by a subsequent direction under this section.

## 27 Requirement to provide information

- (1) The Minister may, by written notice (an **information notice**), require a person to provide information for 1 or more of the following purposes—
- (a) to determine whether the supply of a form of energy or energy resources to the State or any part of the State has been, or is likely to be, disrupted to a significant degree,
  - (b) to determine whether there is, or is likely to be, a cyber security incident affecting the effective supply of a form of energy or energy resources to the State or any part of the State,
  - (c) to plan and prepare for the exercise of powers under this Part if the supply of a form of energy or energy resources is disrupted to a significant degree,
  - (d) the administration or execution of this Part.

- (2) Without limitation, an information notice given to a person may require the person to provide the following information to the Minister—
  - (a) information about a cyber security incident that the Minister reasonably believes affects the person,
  - (b) the person's plan to respond to cyber security incidents,
  - (c) information about the actions the person has taken, or intends to take, in response to a cyber security incident.
- (3) An information notice must specify—
  - (a) the way the information must be provided, and
  - (b) the reasonable time in which the information must be provided.
- (4) An information notice may be given whether or not a declaration of an energy supply emergency is in force.
- (5) A person must not—
  - (a) without lawful excuse fail to comply with an information notice given to the person, or
  - (b) provide information, in purported compliance with an information notice, that is false or misleading in a material respect.

Maximum penalty—

- (a) for a corporation—2,000 penalty units, or
  - (b) for an individual—100 penalty units.
- (6) In addition to service under section 43A, an information notice may be given to a person by—
  - (a) email, to an email address specified by the person for the giving of information notices, or
  - (b) another method authorised by the regulations for the giving of information notices.

## **27A Disclosure of information provided to Minister**

- (1) The Minister must not disclose information provided to the Minister under section 27 except—
  - (a) with the consent of the person who provided the information, or
  - (b) if the Minister is satisfied that the information is not confidential in nature, or

- (c) in connection with the administration or execution of this Act, or
  - (d) to AEMO, or
  - (e) to a person prescribed by the regulations for the purposes of this section, or
  - (f) in accordance with a requirement under an Act or law.
- (2) The Minister may give a direction to a person to whom the Minister has given information under subsection (1) prohibiting or restricting the person from disclosing the information if the Minister is satisfied that it is appropriate to give the direction because of the confidential nature of the information.
- (3) A person must comply with a direction given to the person under subsection (2).
- Maximum penalty—
- (a) for a corporation—2,000 penalty units, or
  - (b) for an individual—100 penalty units.

## **28 Appointment of qualified person to investigate certain industrial matters**

- (1) In this section—

**industrial matter** has the same meaning as in the [Industrial Relations Act 1996](#).

**qualified person** means a Member of the Industrial Relations Commission of New South Wales or other person having qualifications which the Minister considers appropriate to carry out the functions under this section of a person appointed under this section.

- (2) If a declaration is in force under section 24, the Minister may, by order published in the Gazette, appoint a qualified person to investigate any industrial matter specified or described in the order, being an industrial matter with respect to any one or more of the following—
- (a) the supply of a declared form of energy,
  - (b) persons engaged in the supply of a declared form of energy,
  - (c) the use of a declared form of energy.
- (3) A qualified person appointed under this section may carry out the functions given to the person under subsection (4) even though the declaration under section 24 that was in force when the person was so appointed has ceased to be in force.
- (4) A qualified person appointed under this section shall, as soon as practicable after being appointed, investigate the industrial matter specified or described in the order and make a report and recommendation to the Minister with respect to that industrial

matter.

- (5) For the purposes of any investigation under this section—
- (a) a qualified person appointed under this section has the powers, authorities, protections and immunities conferred on the chairperson of a Royal Commission by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and
  - (b) section 24 of the *Local Court Act 2007* applies to or in respect of a witness or person summoned by or appearing before a qualified person in the same way as it applies to or in respect of a person appearing before the Local Court.
- (6) The provisions of the *Royal Commissions Act 1923* (section 13 and Division 2 of Part 2 excepted) apply to and in respect of any witness or person summoned by or appearing before a qualified person appointed under subsection (2) in the same way as they apply to and in respect of a witness or person summoned by or appearing before the chairperson of a Royal Commission under that Act.

## **29 Disruption of supply**

- (1) If a person is convicted of failing to comply with a direction given by the Minister under section 25, the Minister may direct the person to discontinue the supply of the declared form of energy.
- (2) A direction under subsection (1) ceases to have effect—
- (a) on the date determined by the Minister, or
  - (b) when the relevant direction made by the Minister under section 25 ceases to have effect.

## **30 Failure to comply with Minister's direction**

A person must not fail to comply with a direction given by the Minister under section 25, 26 or 29.

Maximum penalty—

- (a) for a corporation—2,000 penalty units, or
- (b) for an individual—100 penalty units.

## **31 Appointment of inspectors**

- (1) The Minister may authorise a person to carry out inspections and tests for the purposes of this Part.
- (2) The Minister shall provide an inspector with a certificate of the inspector's authority in the prescribed form.



- (3) An inspector, in exercising in any place any function conferred or imposed under this Part, shall, if so required by a person apparently in charge of that place, produce the certificate of authority to that person.

### **32 Functions of inspectors**

- (1) The functions of an inspector under this section may be exercised only—
- (a) if a declaration of an energy supply emergency is in force under section 24, and
  - (b) for the form of energy specified in the declaration.
- (2) An inspector may—
- (a) enter and inspect any land or place on, in or from which a form of energy or energy resource is or may reasonably be believed by the inspector to be extracted, developed, produced, provided, supplied, stored, transported, distributed or utilised,
  - (b) inspect and test any plant or equipment on or in any such land or place, being plant or equipment which is or may reasonably be believed by the inspector to be used for or in connection with the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,
  - (c) conduct such tests as the inspector considers appropriate to determine any matter relating to the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,
  - (d) take samples of a form of energy or energy resource or any substance used in connection with the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,
  - (e) require any person on any such land or place to produce any accounts, records, books or other documents relating to the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,
  - (f) take copies of, or extracts or notes from, any such accounts, records, books or other documents,
  - (g) require any person on any such land or place to answer questions or otherwise furnish information relating to the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource on, in or from the land or place, and
  - (h) require the owner or occupier of any such land or place to provide the inspector

with such assistance and facilities as are reasonably necessary to enable the inspector to exercise the inspector's functions under this section.

- (3) The functions conferred under this section are in aid of and not in derogation from any other functions exercisable apart from this section.

### **33 Obstruction etc of inspectors**

- (1) A person shall not—

- (a) prevent an inspector from exercising or performing any function conferred on the inspector under section 32,
- (b) hinder or obstruct an inspector in the exercise of any such functions,
- (c) refuse or fail to comply with any requirement or answer any question of an inspector,
- (d) furnish an inspector with information knowing that it is false or misleading in a material particular, or
- (e) impersonate an inspector.

Maximum penalty—

- (a) for a corporation—200 penalty units, or
  - (b) for an individual—50 penalty units.
- (2) It is a sufficient defence to a prosecution for an offence under subsection (1) (c) by reason of the failure of the defendant to answer a question of an inspector under section 32 if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (3) A person is not excused from answering any question of an inspector under section 32 on the ground that the answer might tend to incriminate the person or make the person liable to a penalty, but the information furnished by the person is not admissible against the person in any proceedings, civil or criminal, except for an offence under subsection (1).
- (4) If—
- (a) an answer to a question of an inspector under section 32, or
  - (b) any information whatever,

is given to an inspector by an officer of a corporation within the meaning of the [Corporations Act 2001](#) of the Commonwealth, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and

admissible in evidence against the corporation.

- (5) Subsection (4) does not apply if it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

### **34 Miscellaneous matters**

- (1) This Part has effect notwithstanding anything whether expressed or implied in any other Part of this Act or in any other Act or in any judgment or order or in any contract or agreement, whether oral or in writing, or in any deed, document, security or writing.
- (2) All powers given by or under this Part or in any proclamation or regulation made or any notice or direction given under this Part shall be in aid of and not in derogation from any other powers exercisable apart from this Part.
- (3) No action, claim or demand shall lie or be made or allowed by or in favour of any person against the Crown or any responsible Minister or any person acting in the execution of this Part or any proclamation, regulation, notice, order or direction made or given thereunder for or in respect of any damage, loss or injury sustained or alleged to be sustained by reason of the enactment of this Part or of its operation or of anything done or purporting to be done under this Part or under any such proclamation, regulation, notice, order or direction.

## **Part 6A Water and energy savings**

### **Division 1 General**

#### **34A Designated water users**

The following persons and bodies are **designated water users** for the purposes of this Part—

- (a) any local council that has all or part of its local government area located within a water savings area,
- (b) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that uses water in a water savings area.

#### **34B Designated energy users**

The following persons and bodies are **designated energy users** for the purposes of this Part—

- (a) any State agency,
- (b) any other person or body (or person or body belonging to a class of persons or bodies)

prescribed by a savings order that uses energy.

### **34C Exemptions**

A savings order may exempt specified persons and bodies (or specified classes of persons and bodies) from any or all of the provisions of this Part or the regulations relating to designated water users or designated energy users (or both).

### **34D Savings orders**

- (1) The Minister may, by order published on the NSW legislation website, make provision for any matter that is required or permitted to be prescribed or otherwise dealt with by a savings order under a provision of this Act.

**Note—**

The Minister may amend or repeal an order made under this section. See section 43 of the [Interpretation Act 1987](#).

- (2) Sections 40, 41 and 42 of the [Interpretation Act 1987](#) apply to a savings order in the same way as they apply to a statutory rule.

## **Division 2 Climate Change Fund**

### **34E Establishment of Climate Change Fund**

There is to be established in the Special Deposits Account a fund called the “Climate Change Fund” (referred to in this Part as **the Fund**).

### **34F Purposes of Climate Change Fund**

The purposes of the Fund are as follows—

- (a) to provide funding to reduce greenhouse gas emissions and the impacts of climate change associated with water and energy activities,
- (b) to provide funding to encourage water and energy savings and the recycling of water,
- (c) to provide funding to reduce the demand for water and energy, including addressing peak demand for energy,
- (d) to provide funding to stimulate investment in innovative water and energy savings measures,
- (e) to provide funding to increase public awareness and acceptance of the importance of climate change and water and energy savings measures,
- (f) to provide funding for contributions made by the State for the purposes of national energy regulation.

### **34G Payments into Climate Change Fund**

- (1) There is payable into the Fund—
  - (a) all money received from contributions required to be made to the Fund under Division 3, and
  - (b) all money advanced by the Treasurer for the Fund, and
  - (c) all money appropriated by Parliament for the purposes of the Fund, and
  - (d) the proceeds of the investment of money in the Fund, and
  - (e) all money directed or authorised to be paid into the Fund by or under this or any other Act or law, and
  - (f) all money received from voluntary contributions to the Fund made by any other person or body, and
  - (g) all money received from the repayment of a grant that was paid out of the Fund under section 34H(1)(a).
- (2) Without limiting subsection (1) (f), State agencies are authorised by this section to make voluntary contributions to the Fund.
- (3) Subsection (2) does not authorise a State water agency or a licensed distributor to refuse to pay a contribution to the Fund that is payable under Division 3.

### **34H Payments out of Climate Change Fund**

- (1) There is payable from the Fund—
  - (a) any money, including a repayable grant, approved by the Minister to fund all or any part of the cost of any measure that the Minister is satisfied promotes a purpose referred to in section 34F, and
  - (b) any money approved by the Minister to fund all or any part of the contributions that the State is required to make for the purposes of national energy regulation, and
  - (c) any money required to meet administrative expenses related to the Fund, and
  - (d) any money required to meet administrative expenses of the Minister in connection with the Minister's functions under this Act in relation to savings action plans, and
  - (d1) \$50 million between 2021 and 2030 to develop the green hydrogen sector, including—
    - (i) the production of hydrogen using renewable energy, and

- (ii) the supply, use and export of hydrogen produced using renewable energy, and
  - (e) any money directed or authorised to be paid from the Fund by or under this or any other Act or law.
- (2) In exercising the Minister's functions under subsection (1) (a) (but without limiting the generality of that paragraph), the Minister may—
- (a) approve selection criteria from time to time to be applied to determine the kinds of water or energy savings measures that will be eligible for funding, and
  - (b) approve the funding of community grants from the Fund, being grants awarded on the basis of their merit in advancing one or more of the purposes referred to in section 34F, established through a competitive selection process, and
  - (c) require a person or body seeking funding for a water or energy savings measure to do either or both of the following as a precondition to applying for or obtaining funding—
    - (i) to submit a water savings action plan or energy savings action plan (as the case requires) that includes details about the measure,
    - (ii) to provide any other information requested by the Minister about the measure, and
  - (d) obtain and have regard to any advice, recommendations or other information provided to the Minister by a committee established by the Minister under Division 5, or by any other person or body, that the Minister considers relevant.
- (3) The Minister is to produce an annual report detailing fund allocations and programs and anticipated benefits, by reference to key performance indicators, to be achieved in advancing any one or more of the purposes referred to in section 34F.
- (4) The annual report is to include an evaluation of the effectiveness of each program as it is completed under the Fund.
- (5) The annual report is to be tabled in each House of Parliament within 6 months after the end of the financial year to which it relates.
- (6) The Minister is to publish each annual report so as to promote, to the NSW public, schemes, technologies and processes that address climate change and to inform the NSW public about consumer choices and procurement decisions.

### **34I Investment of money in Climate Change Fund**

The Minister may invest money in the Fund—

- (a) if the Minister is a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way that the Minister is permitted to invest money under

that Part, or

- (b) if the Minister is not a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way approved by the Treasurer.

### **Division 3 Required contributions to Climate Change Fund**

#### **34J Minister may require State water agencies or licensed distributors to make contributions to Climate Change Fund**

- (1) The Minister may, by order published in the Gazette, require any one or more State water agencies or licensed distributors to make an annual contribution for a specified financial year to the Fund.

**Note—**

The Minister may amend or repeal an order made under this section. See section 43 of the [Interpretation Act 1987](#).

- (2) A contributions order—

- (a) must specify the annual contributions payable by each State water agency or licensed distributor to which the order applies (being an amount that does not exceed the maximum amount, if any, prescribed by the regulations), and
- (b) may specify that an annual contribution may be paid by instalments during the financial year to which the order applies, and
- (c) must specify the time or, in the case of an annual contribution that is payable by instalments, the times at which any contribution required under the order is to be made, and
- (d) may be made before or during the financial year to which the order relates.

**Editorial note—**

For orders under this section (and orders under section 34P made before its repeal and taken to be made under this section) see Gazettes No 62 of 30.5.2005, pp 1893, 1894; No 23 of 17.2.2006, p 881; No 68 of 26.5.2006, p 3214; No 72 of 2.6.2006, p 3911; No 95 of 28.7.2006, p 5982; No 139 of 5.10.2007, p 7684; No 43 of 18.4.2008, p 2754; No 66 of 1.5.2009, p 1954; No 90 of 19.6.2009, p 3137; No 125 of 11.9.2009, p 5069; No 184 of 27.11.2009, p 5854; No 91 of 9.7.2010, p 3422; No 130 of 26.11.2010, p 5633; No 52 of 27.5.2011, p 3388; No 22 of 27.2.2012, p 555; No 100 of 28.9.2012, p 4136; No 65 of 31.5.2013, p 2307; No 87 of 5.7.2013, p 3391; No 61 of 4.7.2014, p 2532; No 53 of 26.6.2015, p 1947; No 55 of 30.6.2016, p 1849; No 78 of 7.7.2017, p 3873; No 68 of 6.7.2018, pp 4193, 4194 and No 182 of 20.8.2020, n2020-3799. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

#### **34K General provisions relating to contributions orders**

- (1) The Minister is to cause a copy of a contributions order to be served on the State water agencies or licensed distributors to which the order applies as soon as is reasonably practicable after the order is published in the Gazette.

- (2) A failure to comply with subsection (1) does not affect the validity of a contributions order.
- (3) Despite any other Act or law, a State water agency or licensed distributor to which a contributions order applies must pay into the Fund such amounts at such times as may be required by the order.
- (4) An amount that is payable by a State water agency or licensed distributor under a contributions order may be recovered by the Minister as a debt in any court of competent jurisdiction for payment into the Fund.

#### **34L Special provisions relating to contributions orders applying to State water agencies**

- (1) If a State water agency to which a proposed contributions order is to apply is constituted by or under an Act that is administered by a Minister other than the Minister administering section 34J of this Act, the order may be made only with the concurrence of the Minister administering the Act by or under which the agency is constituted.
- (2) If a State water agency to which a proposed contributions order is to apply is a local water utility within the meaning of the [Water Management Act 2000](#) but not a State owned corporation, the Minister must consult with each of the following before making the order—
  - (a) the State water agency,
  - (b) the Local Government and Shires Association of New South Wales.
- (3) If the Independent Pricing and Regulatory Tribunal is required by or under the [Independent Pricing and Regulatory Tribunal Act 1992](#) to determine a maximum price for a water service provided by a State water agency, any requirement imposed on the agency by a contributions order to pay an amount into the Fund is to be treated for the purposes of section 16A of that Act as a requirement with which the agency must comply in providing the service.

**Note—**

Section 16A of the [Independent Pricing and Regulatory Tribunal Act 1992](#) enables the Minister responsible for a government agency to direct the Tribunal, when it makes a determination of the maximum price for a government monopoly service provided by the agency, to include in the maximum price an amount representing the efficient cost of complying with a specified requirement imposed on the agency. It also enables the Minister to direct the Tribunal, when it makes a determination of the methodology for fixing the maximum price for the service, to include in the methodology a factor representing such a cost.

#### **34M Special provisions relating to contributions orders applying to licensed distributors**

A proposed contributions order that is to apply to a licensed distributor may be made only with—

- (a) the concurrence of the Treasurer, and



- (b) if section 14 (Licences) of the *Electricity Supply Act 1995* is administered by a Minister other than the Minister administering section 34J of this Act—the concurrence of the Minister administering section 14 of that Act.

### **34N Exemptions for electricity used by green hydrogen producers**

- (1) A licensed distributor to which a contributions order applies must not recover charges from a person who buys electricity exempted under this section for the purpose of paying the annual contributions under a contributions order.
- (2) The Minister may, by order published in the Gazette, grant an exemption for electricity—
  - (a) used by a specified person or class of persons, or
  - (b) used in connection with a specified activity or class of activities.
- (3) The Minister may grant an exemption for electricity only if satisfied that the electricity is used to produce green hydrogen.
- (4) An exemption must specify whether it is a full or partial exemption.
- (5) If an exemption is a partial exemption, the order granting the exemption must specify, as a percentage or otherwise, the proportion of the electricity used by the person or class of persons, or in connection with the activity or class of activities, that is exempt.
- (6) The regulations may provide for—
  - (a) the making of an application for an exemption, including the matters required to be addressed or included in an application, and
  - (b) the matters the Minister must consider in determining whether to grant an exemption.
- (7) The regulations may make further provision in relation to whether electricity is taken to be used to produce green hydrogen.
- (8) Subject to the regulations, the Minister may determine the basis on which electricity is taken to be used to produce green hydrogen for the purposes of this section.
- (9) In this section—

**green hydrogen** means hydrogen produced using renewable energy.

### **34O, 34P (Repealed)**

## **Division 4 Savings action plans**

### **34Q Preparation of draft savings action plans**

- (1) **Draft water savings action plans** Each designated water user is to prepare a draft water savings action plan and submit it to the Minister for approval—
  - (a) if the user is a designated water user on the commencement of this section—within the period prescribed by a savings order after the commencement of this section, or
  - (b) if the user becomes a designated water user after the commencement of this section—within the period prescribed by a savings order after the user becomes a designated water user, or
  - (c) if an approved water savings action plan previously prepared by the user expires or is wholly revoked—within the period prescribed by a savings order after the approved action plan expires or is revoked.
- (2) **Draft energy savings action plans** Each designated energy user is to prepare a draft energy savings action plan and submit it to the Minister for approval—
  - (a) if the user is a designated energy user on the commencement of this section—within the period prescribed by a savings order after the commencement of this section, or
  - (b) if the user becomes a designated energy user after the commencement of this section—within the period prescribed by a savings order after the user becomes a designated energy user, or
  - (c) if an approved energy savings action plan previously prepared by the user expires or is wholly revoked—within the period prescribed by a savings order after the approved action plan expires or is revoked.
- (3) **Joint water and energy draft savings action plans** If a person or body is both a designated water user and designated energy user, a draft savings action plan dealing with both water and energy use by the person or body may be prepared and submitted to the Minister for approval.
- (4) **Amendment or replacement of savings action plans** A designated water user or designated energy user may prepare and submit for approval by the Minister a draft savings action plan that amends or replaces a savings action plan at any time while that savings action plan is in effect.

### **34R Contents of draft savings action plans**

- (1) A draft water savings action plan must include the following—
  - (a) a description of the designated water user's current water usage,

- (b) a list of individual water savings measures prioritised in terms of water saved, cost effectiveness and potential benefits,
  - (c) a statement concerning the water savings measures included on that list that the designated water user proposes to implement in the 4-year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation),
  - (d) any other matter prescribed by a savings order.
- (2) A draft energy savings action plan must include the following—
- (a) a description of the designated energy user's current energy usage,
  - (b) a list of individual energy savings measures prioritised in terms of energy saved, cost effectiveness and potential benefits,
  - (c) a statement concerning the energy savings measures included on that list that the designated energy user proposes to implement in the 4-year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation),
  - (d) any other matter prescribed by a savings order.
- (3) A draft savings action plan must be prepared in accordance with such guidelines concerning the preparation of savings action plans as may be issued by the Minister from time to time and published in the Gazette.

### **34S Approval of savings action plans**

- (1) The Minister may—
- (a) approve a draft savings action plan submitted by a designated water user or designated energy user, without alteration or with such alteration as the Minister thinks fit, or
  - (b) refer the draft savings action plan back to the user for further consideration.
- (2) Before making any alterations to the draft savings action plan, the Minister must consult the designated water user or designated energy user that submits the plan.
- (3) If the Minister approves a savings action plan, the Minister must give the designated water user or designated energy user that submits the plan written notice of the following within 14 days after approving the plan—
- (a) that the Minister has approved the plan,
  - (b) the day on which the plan was approved.

**34T Duration of a savings action plan**

A savings action plan that has been approved by the Minister—

- (a) has effect on and from the day on which the Minister serves a written notice on the designated water user or designated energy user that submitted the plan indicating the day on which the Minister approved the action plan, and
- (b) expires on the fourth anniversary of the day on which the Minister approved the action plan, unless sooner revoked by the Minister.

**34U Amendment, replacement or revocation of savings action plans**

- (1) A savings action plan may be amended or replaced by a subsequent savings action plan prepared and approved in accordance with this Division.
- (2) A savings action plan may also be amended by the Minister, but only in the circumstances, in relation to the matters and to the extent the action plan provides.
- (3) The Minister may revoke a savings action plan, wholly or in part.
- (4) The amendment or revocation of a savings action plan by the Minister under this section takes effect on the day on which written notice of the amendment or revocation is served on the designated water user or designated energy user concerned or on a later date specified in the notice.

**34V Compliance with this Division and savings action plans**

- (1) A designated water user or designated energy user must prepare and submit a savings action plan in accordance with the provisions of this Division.

Maximum penalty—50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant had a reasonable excuse for not preparing or submitting a savings action plan in accordance with the provisions of this Division.
- (3) Nothing in this Division requires a designated water user or designated energy user to implement any savings measures specified in a savings action plan submitted by the user and approved under this Division unless the regulations so provide.
- (4) Without limiting subsection (3), the regulations may make provision for or with respect to the following—
  - (a) the implementation of savings measures that are set out in savings action plans approved under this Division,
  - (b) the issuing of directions by the Minister to designated water users and designated energy users to implement savings measures set out in savings action plans

approved under this Division (whether issued at the time of approval or subsequently).

- (5) Proceedings for an offence against subsection (1) or an offence against a provision of the regulations relating to the implementation of a savings measure set out in a savings action plan may only be instituted with the written consent of the Minister.
- (6) However, nothing in subsection (5) requires the consent of the Minister before a penalty notice can be issued for an offence.

## **Division 5 Advisory committees**

### **34W Committees**

- (1) The Minister may establish standing or special committees to advise the Minister about the following—
  - (a) the exercise of the Minister's functions under this Act, the *Electricity Infrastructure Investment Act 2020* or the *Electricity Supply Act 1995*,
  - (b) long-term plans for diversifying the economy and supporting the employees and local communities affected by changes in electricity generation in the State,
  - (c) strategies to reduce emissions,
  - (d) economic, export and employment opportunities in the renewable energy sector, including global trends in the renewable energy sector,
  - (e) other matters requested by the Minister.
- (2) A committee established under this section also has the functions conferred or imposed on it by or under this or another Act.
- (3) The regulations may make provision for or with respect to the membership, procedures and functions of committees established under this section, including the terms of appointment of members and voting procedures.

## **Part 7 Finance**

### **35 Energy Administration Account**

- (1) There shall be established in the Special Deposits Account in the Treasury an Energy Administration Account.
- (2) There shall be paid into the Account—
  - (a) all money received by the Corporation,
  - (b) such amounts from the Consolidated Fund as the Treasurer determines, subject to

any necessary appropriation by Parliament, and

(c) (Repealed)

- (3) There shall be paid out of the Account all amounts required to meet expenditure incurred in connection with the functions of the Corporation under this or any other Act.

### **35A State Energy Research and Development Fund**

- (1) There is to be established in the Special Deposits Account in the Treasury a State Energy Research and Development Fund.
- (2) There is to be paid into the Fund—
- (a) (Repealed)
- (b) any money payable into the Fund by or under this or any other Act.
- (3) There is to be paid out of the Fund such amounts as the Minister may direct for or with respect to—
- (a) research concerning, and the development of, energy resources for the State,
- (b) such other purposes as may be prescribed in connection with the supply and use of energy resources for the State, and related technological development.
- (4) The regulations may make provision for and with respect to the application of the Fund.
- (5) The Fund is, subject to this Act and the regulations, under the direction, control and management of the Corporation.

### **35B (Repealed)**

## **Part 8 Miscellaneous**

### **36 Provisions relating to the Corporation**

- (1) The Corporation—
- (a) has perpetual succession,
- (b) shall have a corporate seal,
- (c) may take proceedings, and be proceeded against, in its corporate name,
- (d) may do and suffer all other things that a corporation may, by law, do and suffer and that are necessary for or incidental to the purposes for which it is constituted, and

- (e) is, for the purposes of any Act, a statutory body representing the Crown.
- (2) All courts and persons acting judicially—
  - (a) shall take judicial notice of the seal of the Corporation that has been affixed to any instrument or document, and
  - (b) shall, unless the contrary is proved, presume that the seal was properly affixed.
- (3) No matter or thing done by the Corporation or any person acting under the direction of the Corporation shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a person so acting personally to any action, liability, claim or demand.

### **37 Operation of certain other Acts**

- (1) Nothing in this Act limits or otherwise affects the *State Emergency and Rescue Management Act 1989*.
- (2) Nothing in this Act affects the operation of the *Mining Act 1992* or the *Offshore Minerals Act 1999*, and the Corporation is bound by both of those Acts.

### **38 Testing and labelling of appliances**

- (1) The regulations may make provision for or with respect to—
  - (a) the prescribing of standards for, or the tests to be carried out in relation to, appliances that consume energy, or both,
  - (b) the marking, labelling or tagging of appliances that consume energy,
  - (c) without limiting paragraph (b)—
    - (i) the information to appear on any such mark, label or tag (including information as to any tests carried out in relation to the appliance), and
    - (ii) the manner of making or affixing any such mark, label or tag,
  - (d) the registration of appliances that consume energy,
  - (e) prohibiting the fraudulent or improper use of marks, labels or tags similar to those required by the regulations or of marks, labels or tags so nearly resembling those required by the regulations as to be likely to deceive, and
  - (f) the fees payable in relation to the registration or the labelling of appliances that consume energy.
- (2) The power to make regulations under this section does not limit the power to make regulations under any other Act.

- (3) A regulation made for the purposes of this section prevails over a regulation made under the *Local Government Act 1993*, to the extent of any inconsistency.
- (4) A regulation made for the purposes of this section binds the Crown if expressed so to do.
- (5) In this section, **appliance** includes electrical equipment.

### 39 Power of entry

- (1) In this section, **place** includes building, structure and mine.
- (2) For the purpose of enabling the Corporation to exercise its functions under this or any other Act, the Corporation may—
  - (a) by a person authorised in writing by the Corporation for the purpose enter—
    - (i) any land or any place (not being a dwelling-place) on any land used in connection with the locating or the development, extraction, production, provision, supply, transportation, distribution or utilisation of energy or energy resources, at any time when that land or place is being used for any of those purposes, and
    - (ii) any other land or any other place (not being a dwelling-place) on any land at any reasonable time,and may there carry out such inspections, tests, investigations, surveys, experiments, boring, drilling and exploration, and take such samples and such photographs, as the person considers necessary in connection with the exercise, by the Corporation, of its functions, and
  - (b) by its employees or agents or by officers or employees of the Department, enter any land and do all such things as are required—
    - (i) for the purpose of maintaining and operating any undertaking acquired by it under this or any other Act,
    - (ii) for the purpose of investigating any matter in respect of which it intends to make a proposal referred to in section 12, or
    - (iii) for any other purpose connected with or related or incidental to the exercise of its functions under this or any other Act,even though an easement to enter the land or a right to enter the place may not have been granted or acquired.
- (3) The Corporation shall not exercise any of its powers under this section unless it gives at least 7 days' notice to the owner or occupier of the land or place concerned.



- (4) In exercising a power under this section, the Corporation shall ensure that no more damage than is necessary in the circumstances is inflicted and shall fully compensate any person who sustains damage in the course of the exercise of the power.
- (5) A power under this section is in addition to any other power of entry conferred by or under this or any other Act.

#### **40 Persons may be required to furnish information**

- (1) The Corporation may, by notice in writing, require any person to furnish to it such information in connection with any matter relating to its functions as may be specified in the notice.
- (1A) The Minister may, by notice in writing, require a water or energy service provider to furnish to the Minister such information concerning such of the following matters as may be specified in the notice—
  - (a) the identity of the persons or bodies to which the provider provides a water service within a water savings area,
  - (b) the identity of the persons or bodies to which the provider provides an energy service,
  - (c) the amount of water or energy that is provided to any such persons or bodies by the provider.
- (2) A person shall not neglect or fail to comply with a requirement under this section.  
Maximum penalty—10 penalty units.
- (3) Information furnished pursuant to such a requirement is not, if the person furnishing it objected, at the time, to doing so on the ground that it might tend to incriminate the person, admissible in evidence in any prosecution against the person for an offence (not being an offence under this section).
- (4) Compliance with a requirement under this section to furnish information is not to be regarded as—
  - (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument, or
  - (c) an event of default under any contract or other instrument, or
  - (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.
- (5) In this section—

**water or energy service provider** means any of the following—

- (a) an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*,
- (a1) an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015*,
- (b) Sydney Water Corporation,
- (c) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that provides a water service or energy service.

#### **41 Disclosure of information**

- (1) A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—
  - (a) with the consent of the person from whom the information was obtained,
  - (b) in connection with the administration or execution of this Act,
  - (c) for the purposes of any legal proceedings arising out of this Act,
  - (d) in accordance with a requirement of the *Ombudsman Act 1974*, or
  - (e) with other lawful excuse.

Maximum penalty—10 penalty units.

- (2) Without limiting subsection (1) (c), nothing in this section or any other Act or law prevents the Minister from disclosing information about any matter referred to in section 40 (1A) that is furnished to the Minister under that section where that information is disclosed to indicate why persons or bodies have been, or are to be, prescribed as designated water users or designated energy users by a savings order.

#### **42 Authentication of process**

Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by—

- (a) the Secretary, or
- (b) any member of staff of the Corporation authorised to do so by the Secretary.

#### **43 Service of process**

Any notice, summons, writ or other proceeding to be served on the Corporation may be

served—

- (a) by being left, or
- (b) in the case of a notice, by posting it addressed to the Corporation,  
at the office of the Corporation or the Secretary.

#### **43A Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by—
  - (a) in the case of a natural person—
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate—
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

#### **44 Co-operation by other authorities**

- (1) Subject to any direction given by the Premier, if a function is conferred or imposed on a person by or under an Act, the person shall co-operate with the Corporation by exercising the function in a manner that, in the opinion of the Corporation, promotes the objects of this Act and the purposes for which the Corporation is constituted.
- (2) The Minister may establish a standing committee to advise the Minister and the Premier on matters arising under this section.
- (3) A standing committee established under this section—
  - (a) shall consist of such persons,

(b) shall follow such procedures,

as are from time to time directed by the Minister with the concurrence of the Premier.

#### **45 Delegation**

- (1) The Minister may, by instrument in writing, delegate the exercise of any of the Minister's functions under this Act or the regulations (other than this power of delegation).
- (2) The Corporation may, by instrument in writing, delegate the exercise of any of its functions (other than this power of delegation).
- (3) The Secretary may, by instrument in writing, delegate the exercise of any of the Secretary's functions under this Act or any other Act administered by the Minister (other than this power of delegation).
- (4) The Secretary may delegate the exercise of any of the functions delegated to the Secretary by the Minister or the Corporation, unless the Minister or the Corporation (as the case may be) otherwise provides in the instrument of delegation to the Secretary.
- (5) A delegation may be made only to—
  - (a) the Secretary, or
  - (b) a Public Service employee, or
  - (c) the holder of a particular statutory or public office, or
  - (d) a committee established under section 10 or Division 5 of Part 6A.

#### **46 Recovery of money**

Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

#### **46A Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means a person authorised in writing by the Corporation or the Secretary as an authorised officer for the purposes of this section.

#### **47 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations, other than Schedule 3 or regulations made for the purposes of that Schedule, shall be dealt with summarily before the Local Court.
- (1A) Proceedings for an offence against Schedule 3 or regulations made for the purposes of that Schedule may be dealt with summarily before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence against this Act or the regulations may be instituted at any time within 2 years after the commission of the offence.

#### **47A Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

#### **48 Annual reporting information**

The annual reporting information prepared for the Department under the [Government Sector Finance Act 2018](#) may include any annual reporting information required under that Act for the Corporation.

#### **49-52 (Repealed)**

#### **53 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any 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) Without limiting subsection (1), the regulations may make provision for or with respect to—
  - (a) the travelling expenses and the compensation to be paid to persons attending or giving evidence at an inquiry or examination referred to in section 21,
  - (b) the fees or travelling or other allowances to be paid to members of a committee established under section 10, and
  - (c) the custody and use of the seal of the Corporation.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
- (3A) The regulations may apply, adopt or incorporate (with or without modification) any publication as in force at a particular time or from time to time.
- (4) A provision of a regulation may—
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

## **54 Savings, transitional and other provisions**

Schedule 2 has effect.

### **Schedule 1 (Repealed)**

### **Schedule 2 Savings, transitional and other provisions**

(Section 54)

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—
  - Electricity (Consumer Safety) Act 2004*, but only in relation to the amendments made to this Act

*Sustainable Energy Development Repeal Act 2004*

*Energy Administration Amendment (Water and Energy Savings) Act 2005*

*Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of Sustainable Energy Development Repeal Act 2004**

### **2 Definitions**

In this Part—

**repealing Act** means the *Sustainable Energy Development Repeal Act 2004*.

**SEDA** means the Sustainable Energy Development Authority constituted by the *Sustainable Energy Development Act 1995*, as in force before its repeal by the repealing Act.

### **3 Abolition of SEDA**

- (1) On the commencement of the repealing Act—
  - (a) SEDA is abolished, and
  - (b) any assets, rights and liabilities of SEDA become the assets, rights and liabilities of the Crown.
- (2) In this clause—
  - assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.
  - liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

#### **4 Executive Director of SEDA**

- (1) On the commencement of the repealing Act, the person who, immediately before that commencement, held office as the Executive Director of SEDA ceases to hold that office.
- (2) A person who, under this clause, ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

#### **5 Staff of SEDA**

- (1) On the commencement of the repealing Act, the staff of SEDA are transferred to the Department.
- (2) The transfer of such staff is taken to have been done under section 87 of the [Public Sector Employment and Management Act 2002](#).

#### **6 Annual report of SEDA for year ending 30 June 2004**

The annual report of SEDA for the year ending 30 June 2004 may be included in the annual report of the Department for that year.

#### **7 References to SEDA**

A reference in any other Act or in an instrument made under an Act or in any document to SEDA or to the Executive Director of SEDA is to be read as a reference to the Director-General.

### **Part 3 Provisions consequent on enactment of [Electricity \(Consumer Safety\) Act 2004](#)**

#### **8 Definitions**

In this Part—

**repeal date** means the date on which the repealed Act is repealed by the [Electricity \(Consumer Safety\) Act 2004](#).

**repealed Act** means the [Electricity Safety Act 1945](#) as in force immediately before its repeal by the [Electricity \(Consumer Safety\) Act 2004](#).

#### **9 Continuation of certain Regulations made under repealed Act**

- (1) The [Electricity Safety \(Equipment Efficiency\) Regulation 1999](#), as in force immediately before the repeal date, continues in force and is taken to be a regulation made under this Act.



- (2) The Regulation continued in force by subclause (1) may be amended and repealed in the same way as any other regulation made under this Act.

## **Part 4 Provisions consequent on enactment of [Energy Administration Amendment \(Water and Energy Savings\) Act 2005](#)**

### **10 Existing delegations**

The substitution of section 45 by the [Energy Administration Amendment \(Water and Energy Savings\) Act 2005](#) does not affect the continued validity of any delegation in force under that section immediately before the substitution.

### **11 Department of Energy, Utilities and Sustainability**

The Department of Energy, Utilities and Sustainability (which was previously called the Department of Energy) established under section 6 of this Act before the repeal of that section is taken to have been established under the [Public Sector Employment and Management Act 2002](#).

## **Part 5 Provisions consequent on enactment of [Energy and Utilities Administration Amendment \(Climate Change Fund\) Act 2007](#)**

### **12 Continuity of Fund**

The Climate Change Fund is a continuation of the Water Savings Fund and the Energy Savings Fund operating under this Act immediately before the commencement of the [Energy and Utilities Administration Amendment \(Climate Change Fund\) Act 2007](#).

### **13 Existing contributions orders**

Any order in force under section 34J or 34P of this Act as in force immediately before the commencement of the [Energy and Utilities Administration Amendment \(Climate Change Fund\) Act 2007](#) is taken to be a contributions order in force under section 34J (as substituted by that Act).

## **Part 6 Provision consequent on enactment of [Central Coast Water Corporation Amendment Act 2010](#)**

### **14 Prescription of Central Coast Water Corporation as State water agency**

- (1) A regulation that prescribes the Central Coast Water Corporation to be a State water agency for the purposes of the definition of **State water agency** in section 3 (1) may not be made unless a day or days have been appointed under section 2 of the [Central Coast Water Corporation Act 2006](#) for the commencement of both Schedule 7.2 [2] and [4] to that Act.
- (2) Both Gosford City Council and Wyong Shire Council cease to be liable to make future

contributions to the Climate Change Fund on and from the day on which the Central Coast Water Corporation is prescribed by the regulations to be a State water agency for the purposes of the definition of **State water agency** in section 3 (1).

## **Part 7 Provision consequent on enactment of [Energy and Utilities Administration Amendment Act 2022](#)**

### **15 Appointment of inspectors**

- (1) Despite Schedule 3, clause 13, the Minister may, during the relevant period, appoint a Public Service employee as an inspector for the purposes of the Schedule.
- (2) To avoid doubt, if the Minister appoints an inspector under subclause (1) during the relevant period—
  - (a) the inspector is taken to have all the functions of an inspector appointed under Schedule 3, clause 13, and
  - (b) a reference in Schedule 3 to an inspector is taken to include an inspector appointed under this clause.
- (3) In this clause—

**Public Service employee** has the same meaning as in the [Government Sector Employment Act 2013](#).

**relevant period** means the period—

- (a) starting on the commencement of this clause, and
- (b) ending on the later of the following—
  - (i) 30 June 2023,
  - (ii) a day, not later than 30 September 2023, prescribed by the regulations.

## **Schedule 3 Coal Market Price Emergency**

### **Part 1 Preliminary**

#### **1 Object**

The object of this Schedule is to put downward pressure on electricity prices during coal market price emergencies by allowing for the giving of directions in relation to the price and domestic supply of coal used to generate energy.

#### **2 Definitions**

In this Schedule—

**AER** means the Australian Energy Regulator established by the *Competition and Consumer Act 2010* of the Commonwealth.

**declaration** means a declaration by the Premier under clause 3.

**direction** means a direction by the Minister under clause 6.

**inspector** means a person appointed under clause 13.

**IPART** means the Independent Pricing and Regulatory Tribunal established by the *Independent Pricing and Regulatory Tribunal Act 1992*, section 5.

**regulator** means the regulator appointed under clause 10.

**supply**, of coal, includes—

- (a) the distribution, provision, sale, treatment, storage and transport of coal, and
- (b) the production or extraction of coal.

## **Part 2 Coal market price emergency declarations**

### **3 Declaration of coal market price emergency by Premier**

- (1) The Premier may, by written order, declare a coal market price emergency if the Premier is satisfied the declaration is necessary to reduce the risk that either of the following will adversely affect members of the community—
  - (a) increases in coal prices, whether past or projected increases,
  - (b) insufficient domestic supply of coal.
- (2) The Premier is not required to consult with any person or otherwise comply with any requirement of procedural fairness before making or revoking a declaration.
- (3) Without limiting subclause (1), an increase in coal prices may adversely affect members of the community if the increase contributes or may contribute to an increase in electricity prices.

### **4 Duration of declaration**

A declaration—

- (a) takes effect—
  - (i) when the order making the declaration is made, or
  - (ii) if a later date is specified in the order making the declaration—on the date specified, and
- (b) continues in force until—

- (i) the date specified in the order making the declaration, or
- (ii) if the order making the declaration does not specify a date—the end of the day that is 6 months after the date of the declaration taking effect, or
- (iii) the earlier day on which the Premier revokes the declaration by written order.

## **5 Publication of declaration**

An order making or revoking a declaration must be published in the Gazette or on the NSW legislation website as soon as practicable after the order is made.

# **Part 3 Directions to impose price caps and other measures**

## **6 Giving of directions by Minister**

- (1) While a declaration is in force, the Minister may, by written notice, give the directions the Minister considers reasonably necessary to respond to the coal market price emergency for which the declaration was made.
- (2) The Minister is not required to consult with any person or otherwise comply with any requirement of procedural fairness before giving, amending or revoking a direction.
- (3) Without limiting subclause (1), a direction may—
  - (a) impose a cap or different caps on the price at which coal may be sold, offered for sale or supplied, or
  - (b) require a person to supply, or offer to supply, coal to a particular person specified in the direction, or
  - (c) require a person to comply with terms and conditions determined by the Minister for the supply of, or offer to supply, coal or in relation to a cap imposed under subclause (a), or
  - (d) impose terms and conditions on a person who purchases or acquires coal, including terms restricting or prohibiting on-selling the coal at a higher price, or
  - (e) provide for another matter prescribed by a regulation.
- (4) A direction may—
  - (a) operate throughout the whole of the State or in a specified part of the State, or
  - (b) operate for a specified period, time or occasion, or
  - (c) otherwise apply generally, or be limited in its application by reference to specified exceptions or factors, including by reference to—
    - (i) a person or class of persons, and

(ii) a time, place, circumstance, condition or restriction, or

**Example—**

by reference to a proportion of the coal produced or supplied by a person

(d) apply differently according to different factors of a specified kind.

## **7 Offence for failure to comply with directions**

(1) A person must not, without reasonable excuse, fail to comply with a direction.

Maximum penalty—

(a) for an individual—1,000 penalty units, or

(b) for a corporation—the greater of the following—

(i) \$10 million,

(ii) if the court can determine the value of the benefit the corporation, and any corporation related to the corporation, have obtained directly or indirectly that is reasonably attributable to the commission of the offence—3 times the value of the benefit,

(iii) if the court cannot determine the value of the benefit the corporation, and any corporation related to the corporation, have obtained directly or indirectly that is reasonably attributable to the commission of the offence—10% of the corporation's adjusted turnover during the breach turnover period for the offence.

(2) For subclause (1), it is not a reasonable excuse that complying with the direction would cause the person to be in breach of contractual obligations entered into on or after 9 December 2022.

(3) In this clause—

**adjusted turnover** has the same meaning as in the [Competition and Consumer Act 2010](#) of the Commonwealth.

**breach turnover period**, for a corporation for an offence, means the longer of the following periods—

(a) the period of 12 months ending at the earlier of the following—

(i) the date of the month in which the corporation ceased committing the offence,

(ii) the date of the month on which the corporation was charged with the offence,

(b) the period ending at the same time as the period determined under paragraph (a) and starting at the beginning of the month in which the corporation committed, or

began committing, the offence.

## **8 Amendment and revocation of directions**

The Minister may, by written notice, amend or revoke a direction.

## **9 Publication of directions and revocation of directions**

- (1) A notice giving, or amending or revoking, a direction must be published in the Gazette or on the NSW legislation website as soon as practicable after the notice is made.
- (2) On its publication, a notice under subclause (1) is taken to have been served on, or brought to the attention of, all persons to whom the notice relates or affected by a direction to which the notice relates.

# **Part 4 Regulator**

## **10 Regulator to be appointed**

The Minister must appoint one of the following as the regulator—

- (a) the AER,
- (b) IPART,
- (c) a person prescribed by the regulations.

## **11 Functions of regulator**

- (1) The primary function of the regulator is to ensure compliance with—
  - (a) this Schedule, including directions, and
  - (b) regulations made for the purposes of this Schedule.
- (2) Without limiting subclause (1), the functions of the regulator also include the following—
  - (a) to provide advice and recommendations to the Premier or Minister on energy markets and the exercise of the Premier's or Minister's functions under this Schedule,
  - (b) to do any of the following for the purpose of ensuring compliance with this Schedule—
    - (i) enter into agreements,
    - (ii) publish information,
    - (iii) make applications for injunctions, declarations or other orders to courts with relevant jurisdiction,

- (c) to institute proceedings for offences under this Schedule,
- (d) other functions conferred or imposed on the regulator under this Act or another Act or by the regulations.

## **12 Independence of regulator**

The regulator is not subject to the control or direction of the Premier or Minister in the exercise of the regulator's functions.

## **Part 5 Inspectors**

### **13 Appointment of inspectors**

- (1) The regulator may appoint the following persons to be inspectors for the purposes of this Schedule—
  - (a) a person who is a member of staff of the regulator,
  - (b) a member of the AER appointed under the [Competition and Consumer Act 2010](#) of the Commonwealth, section 44AM or 44AP,
  - (c) a member of IPART appointed under the [Independent Pricing and Regulatory Tribunal Act 1992](#), section 6,
  - (d) a person who is a member of a class of persons prescribed by the regulations for this paragraph.
- (2) The regulator must provide an inspector with a certificate of the inspector's appointment.
- (3) An inspector, in exercising in a place a function conferred or imposed under this Part, must, if asked by a person apparently in charge of the place, produce the certificate of appointment to the person.

### **14 Functions of inspectors**

- (1) An inspector has the functions conferred or imposed by this Schedule or the regulations.
- (2) The functions of an inspector under this clause may be exercised for the following purposes—
  - (a) to determine whether there has been compliance with, or a contravention of, this Schedule, regulations made for the purposes of this Schedule or a direction,
  - (b) to obtain documents or information for a purpose connected with the administration of this Schedule, including—
    - (i) in connection with the making of a declaration or direction, or

- (ii) to determine whether a declaration or direction should be given,
  - (c) generally for administering this Schedule,
  - (d) another purpose prescribed by the regulations.
- (3) Nothing in this Part affects a function under another provision of this Act or under another Act.

## **15 Powers of inspectors**

- (1) An inspector may enter premises, other than residential premises, for a purpose mentioned in clause 14.
- (2) An inspector may, on premises lawfully entered under subclause (1), do anything that, in the inspector's opinion, is necessary to be done for the purposes of this Schedule, including the following—
- (a) examine and inspect a part of the premises or a thing on the premises,
  - (b) make the other examinations and inquiries the inspector considers necessary,
  - (c) take photographs, films, audio, video or other record the inspector considers necessary,
  - (d) require a person to produce accounts, records, books or other documents, or
  - (e) take copies of, or extracts or notes from, the accounts, records, books or other documents,
  - (f) require a person to answer questions or otherwise provide information,
  - (g) require the owner or occupier of the land or place to give the inspector the assistance and facilities reasonably necessary to enable the inspector to exercise the inspector's functions under this Part.

## **16 Power to require documents or information**

- (1) An inspector may, by written notice given to a person, require the person to give the inspector a document or information, specified in the notice, in connection with a matter arising under or in connection with this Schedule.
- (2) To avoid doubt, a requirement to give an inspector information under subclause (1) may include a requirement to attend at a specified place and time to answer questions if attendance at that place is reasonably required for the questions to be properly put and answered.
- (3) A notice under subclause (1) must specify—
- (a) the way in which the document or information must be provided, and



- (b) a reasonable time by which the document or information must be provided.
- (4) Unless the notice specifies otherwise, a requirement in a notice to provide a document that is in an electronic, mechanical or similar form is a requirement to provide the document in a written form.
- (5) A person is not excused from a requirement under this clause to provide documents or information, including answering a question, on the ground the document, information or answer might incriminate the person or make the person liable to a penalty.
- (6) However, a document or information, including the answer to a question, given by an individual in compliance with a requirement under this clause is not admissible in evidence against the person in criminal proceedings, other than proceedings for an offence against this clause if—
  - (a) the individual objected at the time to giving the document or information on the ground that it might incriminate the individual, or
  - (b) the individual was not warned the individual may object to giving the document or information on the ground the document or information may incriminate the person.
- (7) Subsection (6) extends to a further document or information obtained as a consequence, directly or indirectly, of the giving of the document or information in compliance with a requirement under this clause.
- (8) An inspector to whom a document is provided under this clause may take a copy of the document.

**Note—**

See the [Interpretation Act 1987](#), section 21, definition of **document**, which provides that a document means any record of information.

## **17 Inspector may take assistants on premises**

A person may accompany an inspector, and take all reasonable steps to assist the inspector in the exercise of the inspector's functions under this Part, if in the inspector's opinion the person is capable of providing assistance to the inspector in the exercise of the functions.

## **18 Offences**

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this Part.

Maximum penalty—100 penalty units.

- (2) A person is not guilty of an offence of failing to comply with a requirement to provide

records or other documents or to answer a question or provide other information unless the person was warned on that occasion that a failure to comply with the requirement is an offence.

- (3) A person must not give information, or do another thing, in purported compliance with a requirement made under this Part knowing the information or other thing is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (4) A person must not intentionally delay or obstruct, or attempt to induce another person to delay or obstruct, an inspector in the exercise of the inspector's powers under this Part.

Maximum penalty—100 penalty units.

## **Part 6 Miscellaneous**

### **19 Duty of confidentiality**

A person who is or was an inspector must not disclose information obtained in connection with the exercise of the person's functions under this Schedule unless the disclosure is made—

- (a) with the agreement of the person from whom the information was obtained, or
- (b) for the purposes of and in accordance with this Act, or
- (c) for the purpose of legal proceedings under this Act or a report about the legal proceedings, or
- (d) to the Premier or another Minister, or
- (e) the regulator, or
- (f) to a member of staff of the regulator, or
- (g) to a person—
  - (i) employed under the [Members of Parliament Staff Act 2013](#), or
  - (ii) engaged to provide services to a political office holder or State agency, or
- (h) to a person employed in a State agency, or
- (i) to a public authority or government agency of the Commonwealth, or
- (j) to a person prescribed by the regulations or who is a member of a class of persons prescribed by the regulations, or

- (k) in accordance with a requirement under the *Ombudsman Act 1974*, or
- (l) with another lawful excuse.

Maximum penalty—20 penalty units.

## **20 Special provisions for regulations made for purposes of this Schedule**

Despite section 53(3), a regulation made under that section for the purposes of this Schedule may create an offence punishable by a penalty of not more than—

- (a) 2,000 penalty units for a corporation, and
- (b) 500 penalty units for an individual.

## **21 Penalty notices**

- (1) An inspector may issue a penalty notice to a person if it appears to the inspector that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Schedule or regulations made under this Schedule that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this clause.

### **Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this clause is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This clause does not limit the operation of any other provision of, or made under, this Act or any other Act relating to proceedings that may be taken in relation to offences.

## **22 Miscellaneous matters**

- (1) This Schedule has effect despite anything, whether expressed or implied, in—
  - (a) another provision of this Act or another Act, or
  - (b) a judgment or order, or
  - (c) a contract or agreement, whether oral or in writing, or
  - (d) a deed, document, security or other instrument.
- (2) Powers given by or under this Schedule, or in a regulation, order, declaration, notice or direction made or given under this Schedule, do not affect powers given by another

provision of this Act or another Act.

### **23 No liability in relation to enactment or operation of Schedule etc**

No action, claim or demand lies, or may be made or allowed by or in favour of a person, against the Crown or the Premier or Minister, or a person acting in the execution of this Schedule, or a regulation, order, declaration or notice made or direction given under this Schedule, for or in relation to any damage, loss or injury sustained or alleged to be sustained because of—

- (a) the enactment of this Schedule or its operation, or
- (b) anything done or purporting to be done under this Schedule or under a regulation, order, declaration, notice or direction made or given under this Schedule.

### **24 Repeal and saving of operation of Schedule**

- (1) This Schedule is repealed on 30 June 2024.
- (2) The [Interpretation Act 1987](#), section 30 applies to the repeal of this Schedule in the same way as it applies in relation to the repeal of an Act.