

# Electricity Infrastructure Investment Act 2020

## No 44

[2020-44]



New South Wales

### Status Information

#### Currency of version

Historical version for 2 February 2024 to 23 June 2024 (accessed 2 July 2024 at 1:15)

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—

- **See also**
  - [Electricity Infrastructure Investment Amendment \(Renewable Energy Sector Plan\) Bill 2024](#) [Non-government Bill— Mr R F Butler, MP]
  - [Energy Legislation Amendment \(Clean Energy Future\) Bill 2024](#)
  - [Electricity Infrastructure Investment Amendment \(Tender Moratorium\) Bill 2024](#) [Non-government Bill— Mr R F Butler, MP]

#### Responsible Minister

- Minister for Energy
- Minister for Climate Change

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 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 21 June 2024

# Electricity Infrastructure Investment Act 2020 No 44



New South Wales

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# Electricity Infrastructure Investment Act 2020 No 44



New South Wales

An Act to co-ordinate investment in new generation, storage and network infrastructure in New South Wales; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Electricity Infrastructure Investment Act 2020*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

(1) The objects of this Act are—

- (a) to improve the affordability, reliability, security and sustainability of electricity supply, and
- (b) to co-ordinate investment in new generation, storage, network and related infrastructure, and
- (c) to encourage investment in new generation, storage, network and related infrastructure by reducing risk for investors, and
- (d) to foster local community support for investment in new generation, storage, network and related infrastructure, and
- (e) to support economic development and manufacturing, and
- (f) to create employment, including employment for Aboriginal and Torres Strait Islander people, and
- (g) to invest in education and training, and
- (h) to promote local industry, manufacturing and jobs, and

- (i) to promote export opportunities for generation, storage and network technology.
- (2) The following objects also apply to Parts 4-6—
  - (a) to increase employment and income opportunities for Aboriginal and Torres Strait Islander people in New South Wales, and
  - (b) to promote consultation and negotiation with the traditional Aboriginal owners of land on which generation, storage and network infrastructure is proposed to be constructed or operated under this Act.
- (3) A person or body exercising a function under this Act must do so in a way that is consistent with the objects of this Act.

#### **4 Consultation and negotiation with local Aboriginal communities**

- (1) The Minister is to issue guidelines about consultation and negotiation with the local Aboriginal community in relation to relevant projects for the purposes of increasing employment and income opportunities for the local Aboriginal community.
- (2) The Minister is to take the guidelines into account when exercising the Minister's functions under Part 5, Division 2.
- (3) To give effect to the guidelines, the Minister may impose a condition on a direction under section 32 or an authorisation under section 36(2).
- (4) The consumer trustee is to take the guidelines into account when exercising the consumer trustee's functions under Part 6, Divisions 3 and 4.
- (5) To give effect to the guidelines, the consumer trustee may—
  - (a) include, in a recommendation to the Minister under section 31(1)(a), a recommendation that a condition be imposed on the Minister's direction, and
  - (b) impose a condition on an authorisation under section 31(1)(b).
- (6) The guidelines are to be published on the Department's website.
- (7) In this section—

**local Aboriginal community** includes—

- (a) an Aboriginal person who has native title rights and interests, within the meaning of the *Native Title Act 1993* of the Commonwealth, in relation to the land to which the relevant project relates, and
- (b) the Local Aboriginal Land Council for the area to which the relevant project relates, and
- (c) other Aboriginal persons prescribed by the regulations.



**relevant project** means—

- (a) a REZ network infrastructure project or priority transmission infrastructure project, and
- (b) an infrastructure project to which an LTES agreement applies.

## 5 Definitions

The Dictionary defines words used in this Act.

**Note—**

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

## Part 2 Board and advocate

### 6 Definitions

In this Part—

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

**plan** means a plan prepared by the board and approved by the Minister under section 8.

### 7 NSW renewable energy sector board

- (1) As soon as practicable after the commencement of this section, the Minister is to establish a board for the NSW renewable energy sector, in particular in relation to the operation of the sector and the manufacture and construction of infrastructure in the sector.
- (2) The board is to consist of—
  - (a) persons appointed by the Minister, including at least 1 person representing each of the following groups—
    - (i) manufacturers of steel, aluminium and other similar materials,
    - (ii) the metal fabrication industry,
    - (iii) the Australian Workers' Union,
    - (iv) the Electrical Trades Union,
    - (v) the Australian Manufacturing Workers' Union,
    - (vi) the Mining and Energy Union,
    - (vii) employers in the electricity, manufacturing and construction sectors,

- (viii) persons involved in the planning, design, construction and operation of generation infrastructure,
    - (ix) NSW electricity customers, and
  - (b) the Energy Corporation, and
  - (c) other persons appointed by the Minister.
- (3) The Minister is to appoint as joint chairperson of the board—
- (a) one person appointed under subsection (2)(a)(iii)–(vi), and
  - (b) one person appointed under subsection (2)(a)(ix).
- (4) The board has the following functions—
- (a) to prepare and provide to the Minister a plan for the NSW renewable energy sector, in particular in relation to the operation of the sector and the manufacture and construction of infrastructure in the sector.
  - (b) to monitor and review the plan and make recommendations to the Minister about the implementation of the plan,
  - (c) to report to the Minister on another matter if requested by Parliament by resolution of both Houses of Parliament.
- (5) The board is to meet at least once every 6 months.
- (6) The board is to provide to the Minister a report on the board’s activities—
- (a) by 31 March 2021, and
  - (b) by 30 June 2021, and
  - (c) by 30 June of each following financial year.
- (7) The regulations may make further provision for or with respect to the membership, procedures and functions of the board, including the terms and condition of appointment of members.

## **8 Plan for NSW renewable energy sector**

- (1) The plan required to be prepared by the board under section 7(4)(a) is to set out how to achieve the following objectives in relation to the construction of generation, storage and network infrastructure carried out under this Act in a cost effective way—
- (a) to maximise the use of locally produced and supplied goods and services,
  - (b) to maximise the employment of suitable qualified local workers,

- (c) to foster opportunities for apprentices and trainees,
  - (d) other objectives prescribed by the regulations.
- (2) The board is to provide the plan to the Minister and to make any amendments requested by the Minister.
  - (3) The Minister may approve the plan only on the recommendation of the regulator.
  - (4) The regulator may recommend a board's plan to the Minister only if satisfied that the plan—
    - (a) protects the financial interests of NSW electricity customers, and
    - (b) is consistent with Australia's international trade obligations.
  - (5) A plan approved by the Minister must be published on the Department's website and takes effect on the day it is published.

## **9 Effect of plan**

- (1) In the exercise of functions under this Act, the Minister and the consumer trustee are to take into account the plan.
- (2) The Minister may impose a condition that is consistent with the plan on a direction under section 32 or an authorisation under section 36(2).
- (3) The consumer trustee may, in a recommendation to the Minister under section 31(1)(a), include a recommendation that a condition that is consistent with the plan be imposed on the Minister's direction.
- (4) The consumer trustee may impose a condition that is consistent with the plan on an authorisation under section 31(1)(b).

## **10 Electricity infrastructure jobs advocate**

- (1) As soon as practicable after the commencement of this section, the Minister is to appoint a person or body as the electricity infrastructure jobs advocate.
- (2) The electricity infrastructure jobs advocate is to advise the Minister about—
  - (a) strategies and incentives to encourage investment, development, workforce development, employment, education and training in the energy sector in the Hunter and Central Coast, Illawarra, Far West and Central West regions of New South Wales, and
  - (b) road, rail and port infrastructure required in the regions specified in paragraph (a) to promote export opportunities for generation, storage and network technology, and

(c) other matters requested by the Minister.

(3) The electricity infrastructure jobs advocate is to provide the Minister with a report on the advocate's activities—

(a) as soon as practicable after being appointed, and

(b) once a year after the first report.

### **11 Appointment of electricity infrastructure jobs advocate**

(1) The electricity infrastructure jobs advocate holds office for the term, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.

(2) The office may be a full-time or part-time office, as specified in the instrument of appointment.

(3) The employment of the electricity infrastructure jobs advocate is, subject to this Act, to be governed by a contract of employment between the advocate and the Minister.

(4) In the exercise of functions under this Act, the electricity infrastructure jobs advocate is not subject to the direction or control of the Minister.

(5) The regulations may make further provision for or with respect to the appointment of the electricity infrastructure jobs advocate, including the terms and conditions of appointment.

## **Part 3 Energy security targets**

### **Division 1 Setting and monitoring of energy security targets**

#### **12 Energy security target monitor to set and monitor targets**

(1) The energy security target monitor is to calculate an **energy security target** for each of the following 10 financial years using the following formula—

$$\text{energy security target} = \text{maximum demand} + \text{reserve margin}$$

where—

**maximum demand** is the forecast peak demand for megawatts of electricity used by NSW electricity customers, based on a 10% probability of exceedance (POE) forecast methodology.

**Note—**

A 10% POE forecast is expected to be exceeded, on average, 1 year in 10 years.

**reserve margin** is the sum of the amount of megawatts of electricity capable of being produced by the 2 generating units in the State that are capable of producing the largest amounts of megawatts of electricity according to AEMO for the financial

year or a different amount prescribed by the regulations.

- (2) The energy security target monitor is to assess and monitor whether or not the firm capacity will meet the energy security target for a financial year.
- (3) The regulations may prescribe—
  - (a) the factors to be considered in calculating the maximum demand, and
  - (b) the method for calculating the maximum demand.
- (4) In this section—

**generating unit** has the same meaning as in the *National Electricity Rules*.

### 13 Energy security target monitor reports

- (1) The energy security target monitor is to report to the Minister about the energy security targets.
- (2) A report is to be provided to the Minister—
  - (a) once a year, no later than 60 days after AEMO publishes a statement of opportunities under the *National Electricity Rules*, and
  - (b) at any time the Minister requests a report.
- (3) A report must include the following—
  - (a) the energy security target for each of the following 10 financial years and how they were calculated,
  - (b) the firm capacity for each of the following 10 financial years and how they were calculated,
  - (c) an assessment of whether or not the firm capacity will meet the energy security target over the following 10 financial years,
  - (d) for a financial year in which the energy security target monitor considers the firm capacity will not meet the energy security target (a **target breach**)—
    - (i) the expected size of the target breach in megawatts, and
    - (ii) the expected duration of the target breach,
  - (e) information that may assist the Minister in considering what action, if any, the Minister intends to take in relation to a target breach,
  - (f) other information the energy security target monitor considers relevant,
  - (g) other matters prescribed by the regulations.

- (4) In preparing the report, the energy security target monitor must—
  - (a) consult with the Secretary and AEMO, and
  - (b) take into account any matters prescribed by the regulations.
- (5) The energy security target monitor must, if requested by the Minister, provide additional information or a clarification of a report.
- (6) Before providing the information or clarification, the energy security target monitor must consult with the Secretary and AEMO.
- (7) The energy security target monitor may provide a further report to the Minister that contains additional information or revises information contained in a previous report if the monitor considers it necessary because of a change in relevant circumstances.
- (8) Subsections (3) and (4) do not apply to a further report under subsection (7).

#### **14 Publication of energy security target monitor reports**

- (1) An energy security target monitor report is to be published on the Department's website no later than 60 days after it is given to the Minister.
- (2) Before the report is published, the energy security target monitor must amend the report so that it does not contain information the disclosure of which could, in the opinion of the monitor, reasonably be expected to—
  - (a) diminish the competitive commercial value of the information to the person who provided the information to the monitor, or
  - (b) prejudice the legitimate business, commercial, professional or financial interests of the person who provided the information to the monitor.

#### **15 Minister to consider energy security target monitor reports**

- (1) As soon as practicable after receiving an energy security target monitor report from the monitor, the Minister must consider what action, if any, the Minister intends to take in response to the report.
- (2) The Minister may prepare a statement about what action the Minister intends to take and must make the statement publicly available.

### **Division 2 Energy security target monitor's information gathering powers**

#### **16 Requirements to provide information to energy security target monitor**

- (1) The energy security target monitor may, by written notice to a person, require the person to provide relevant information to the monitor.

- (2) A notice under subsection (1) must specify the following—
  - (a) the information required to be provided,
  - (b) the form in which the information is to be provided,
  - (c) the time within which the information is to be provided.
- (3) The energy security target monitor may require a person to answer questions in relation to a relevant matter if the monitor believes on reasonable grounds that the person has knowledge of the relevant matter.
- (4) The energy security target monitor may, by written notice, require a person to attend at a specified place and time to answer questions if attendance at the place is reasonably required for the questions to be properly put and answered.
- (5) The place and time at which a person may be required to attend is to be—
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person—a place and time nominated by the energy security target monitor that is reasonable in the circumstances.
- (6) Without limiting the persons who may be required to provide information or to answer questions under this section, the persons may include the following—
  - (a) a person who owns, controls or operates generation infrastructure,
  - (b) a person who owns, controls or operates network infrastructure,
  - (c) a small generation aggregator or a market small generation aggregator,
  - (d) a person who provides wholesale demand response services,
  - (e) an operator of a virtual power plant,
  - (f) an aggregator of distributed energy resources,
  - (g) a person who supplies fuel to generation infrastructure,
  - (h) a person involved in planning and designing generation infrastructure,
  - (i) other registered participants.
- (7) In this section—

**market small generation aggregator**, **registered participant** and **small generation aggregator** have the same meanings as in the *National Electricity Rules*.

**relevant information** means information that the energy security target monitor

reasonably requires to assist the monitor in exercising its functions, and may include information about the following—

- (a) current and planned construction, operation and maintenance of generation infrastructure,
- (b) current and planned network infrastructure that may affect the operation of generation infrastructure,
- (c) aggregated distributed energy resources,
- (d) wholesale demand response activities.

**relevant matter** means a matter in relation to which information is reasonably required to assist the energy security target monitor in exercising its functions.

## 17 Offences

- (1) A person must not, without lawful excuse, fail to comply with a requirement made of the person under section 16.
- (2) A person must not give information in purported compliance with a requirement under section 16 knowing that the information is false or misleading in a material respect.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

## 18 Disclosure of protected information

- (1) The energy security target monitor must not disclose protected information, except—
  - (a) to the Minister under section 13, or
  - (a1) to AEMO under subsection (1A), or
  - (b) as required by another law.
- (1A) The energy security target monitor may disclose protected information to AEMO if the monitor considers it necessary when exercising the monitor's functions under section 12 or 13.
- (1B) AEMO must not disclose protected information disclosed to it under subsection (1A).
- (2) The Minister must not disclose protected information, except—
  - (a) with the consent of the person who provided the protected information, or
  - (b) to AEMO with the consent of the energy security target monitor, or
  - (c) for the purposes of, or in connection with, legal proceedings arising out of this Act,



or

(d) to a person belonging to a class prescribed by the regulations, or

(e) if the disclosure is, in the opinion of the Minister, appropriate.

(3) The Minister is not to recommend the making of a regulation for the purposes of subsection (2)(d) unless the disclosure of the protected information to the class of persons prescribed by the regulation is, in the opinion of the Minister, appropriate.

(4) A person to whom protected information is disclosed by the Minister must not disclose protected information, except—

(a) with the authorisation of the Minister, and

(b) in accordance with a direction, if any, given by the Minister to the person that imposes a condition on or restricts the disclosure.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

(5) The Minister may authorise the disclosure of protected information under subsection (4) only if the disclosure is, in the opinion of the Minister, appropriate.

(6) In this section—

**appropriate**, in relation to the disclosure of protected information, means—

(a) reasonably necessary—

(i) to assist the Minister and the Department in considering what action, if any, the Minister intends to take in relation to a target breach identified in an energy security target monitor report, or

(ii) to ensure the reliability and security of electricity supply, or

(iii) to enable the energy security target to be met, and

(b) in the public interest.

**protected information** means information provided to the energy security target monitor the disclosure of which could, in the opinion of the monitor, reasonably be expected to—

(a) diminish the competitive commercial value of the information to the person who provided the information to the monitor, or

(b) prejudice the legitimate business, commercial, professional or financial interests of the person who provided the information to the monitor.

## **Part 4 Renewable energy zones and access schemes**

### **Division 1 Renewable energy zones**

#### **19 Minister may declare renewable energy zone**

- (1) The Minister may, by order published in the Gazette, declare a renewable energy zone comprising—
  - (a) a specified geographical area of the State, and
  - (b) specified generation, storage or network infrastructure, including planned or existing infrastructure.
- (2) The network infrastructure that forms part of a renewable energy zone may extend outside the geographical area specified in the declaration.
- (3) A declaration must also include the following—
  - (a) a map showing the geographical area,
  - (b) the intended network capacity for network infrastructure in the renewable energy zone,
  - (c) the infrastructure planner appointed by the Minister for the renewable energy zone or part of the renewable energy zone,
  - (d) other matters prescribed by the regulations.
- (4) The Minister may make a declaration only if the Minister—
  - (a) is satisfied that it is consistent with the objects of this Act, and
  - (b) has considered the following—
    - (i) existing network infrastructure in the renewable energy zone and the rest of the State,
    - (ii) land use planning, environmental and heritage matters,
    - (iii) the views of the local community in the renewable energy zone,
    - (iv) other matters prescribed by the regulations.
- (5) A declaration is to be published on the Department's website.

#### **20 Procedure for declaring renewable energy zone**

Before making a declaration of a renewable energy zone, the Minister must—

- (a) consider a report from the Secretary about the potential effects of the declaration on

electricity costs for NSW electricity customers, and

- (b) consider the infrastructure investment objectives and the most recent report prepared by the consumer trustee under section 45, and
- (c) consult with the Minister for Planning and Public Spaces, and
- (d) consult with AEMO, and
- (e) make a draft declaration publicly available on the Department's website for at least 28 days.

## **21 Application for declaration of renewable energy zone**

- (1) The Minister may make a declaration of a renewable energy zone—
  - (a) on the Minister's own initiative, or
  - (b) on the application of the consumer trustee or another person.
- (2) The regulations may make provision for or with respect to an application to the Minister for a declaration of a renewable energy zone, including the following—
  - (a) the form of the application,
  - (b) who may make an application,
  - (c) the requirements for making a valid application,
  - (d) the fee payable for an application by a person other than the consumer trustee,
  - (e) the information to be included in the application,
  - (f) requirements for public consultation before an application is made,
  - (g) the procedures for the determination of an application by the Minister.

## **22 Amendment of renewable energy zone declaration**

- (1) The Minister may amend a declaration of a renewable energy zone only—
  - (a) to expand the geographical area that forms the renewable energy zone,
  - (b) to specify additional generation, storage and network infrastructure for the renewable energy zone,
  - (c) to increase the intended network capacity for the renewable energy zone,
  - (d) to provide further details and specifications about information contained in the declaration,

(e) to correct a minor error or misdescription.

(2) The Minister cannot repeal a declaration of a renewable energy zone under section 19.

### **23 Renewable energy zones in Central-West Orana, Illawarra, New England, South West and Hunter-Central Coast areas**

(1) The Minister is to declare the following as renewable energy zones—

(a) Central-West Orana,

(b) Illawarra,

(c) New England,

(d) South West.

(e) Hunter-Central Coast.

(2) The indicative geographical areas of the renewable energy zones are shown on a map published on the Department's website on the commencement of this section.

(3) The Central-West Orana renewable energy zone has an intended network capacity of 3 gigawatts.

(4) The New England renewable energy zone has an intended network capacity of 8 gigawatts.

(5) The Minister is to appoint the Energy Corporation as the infrastructure planner for the Central-West Orana, Illawarra, New England, South West and Hunter-Central Coast renewable energy zones.

## **Division 2 Access schemes for renewable energy zones**

### **24 Minister may declare access scheme for renewable energy zone**

(1) The Minister may, by order published in the Gazette, declare the access scheme that is to apply in a renewable energy zone or part of a renewable energy zone.

(2) An access scheme is a scheme that authorises or prohibits access to, and use of, specified network infrastructure in a renewable energy zone by network operators and operators of generation and storage infrastructure.

(3) An access scheme must be consistent with the objects of this Act.

(4) There may be more than one access scheme for a renewable energy zone.

(5) A declaration may also specify the following matters in relation to the access scheme—

- (a) the person or body who is to administer the access scheme,
  - (b) how access rights are to be conferred on participants, which may include contractual arrangements between participants and the infrastructure planner, the scheme financial vehicle or another person,
  - (c) the terms and conditions of access rights,
  - (d) the functions of the regulator in relation to the access scheme,
  - (e) the rights and liabilities of the scheme financial vehicle in relation to the access scheme,
  - (f) other matters prescribed by the regulations.
- (6) Before making a declaration, the Minister must—
- (a) consult with the infrastructure planner and relevant operators who may be affected by the declaration, and
  - (b) make a draft declaration publicly available on the Department’s website for at least 28 days, and
  - (c) seek and consider submissions from the public on the draft declaration.
- (7) A declaration is to be published on the Department’s website.

## **25 Guidelines for access scheme declarations**

- (1) The Minister is to publish guidelines on the Department’s website about the exercise of the Minister’s functions in relation to the declaration of access schemes.
- (2) Before publishing guidelines, the Minister must—
  - (a) make draft guidelines publicly available on the Department’s website for at least 28 days, and
  - (b) seek and consider submissions from the public on the draft guidelines.

## **26 Fees for access schemes**

- (1) The consumer trustee is to determine the fees payable to the scheme financial vehicle by participants in an access scheme, taking into account the following principles—
  - (a) maximising financial value for NSW electricity customers,
  - (b) recovering the cost of the operation of the access scheme,
  - (c) optimal use of the existing and planned network infrastructure in the renewable

energy zone,

(d) other principles prescribed by the regulations.

- (2) The fees determined by the consumer trustee must include a component that is to be used for a community purpose prescribed by the regulations.
- (3) The component must not be less than the minimum amount or proportion prescribed by the regulations and must not exceed the maximum amount or proportion prescribed by the regulations.
- (4) The fees determined by the consumer trustee must include a component that is to be used for an employment purpose prescribed by the regulations.
- (5) The component must not be less than the minimum amount or proportion prescribed by the regulations and must not exceed the maximum amount or proportion prescribed by the regulations.
- (6) In exercising its function under subsection (4), the consumer trustee is to seek advice from the committee established under section 34W(1)(b) of the *Energy and Utilities Administration Act 1987*.
- (7) In this section—

**community purpose** means a purpose that benefits the local community in the geographic area that forms the renewable energy zone to which the access scheme applies.

**employment purpose** means a purpose that promotes employment, skills and training for employees in the geographic area that forms the renewable energy zone to which the access scheme applies who are affected by changes in electricity generation in the State.

## 27 Application of *National Electricity (NSW) Law* and *National Electricity Rules*

- (1) The regulations may modify the application of, or disapply, a provision of the *National Electricity (NSW) Law* or the *National Electricity Rules* to the extent reasonably necessary to—
  - (a) enable the operation of an access scheme in a renewable energy zone, and
  - (b) achieve the objects of this Act.
- (2) A regulation under this section that affects the operation or safety of network infrastructure may not be made unless the Minister has consulted with distribution network service providers and transmission network service providers.
- (3) A regulation under this section that affects AEMO in the exercise of its functions may not be made without the concurrence of AEMO.

## **28 Amendment and repeal of access scheme declaration**

- (1) The Minister may amend a declaration of an access scheme only—
  - (a) to correct a minor error or misdescription, or
  - (b) to provide further details and specifications about information contained in the declaration, or
  - (c) if there are no participants in the access scheme immediately before the declaration is amended, or
  - (d) if the amendment is made in accordance with the terms of the access scheme.
- (2) The Minister may repeal a declaration of an access scheme only if—
  - (a) there are no participants in the access scheme immediately before the repeal, or
  - (b) the repeal is made in accordance with the terms of the access scheme.

## **29 Orders prohibiting connection to network infrastructure**

- (1) The infrastructure planner may, by order served on a relevant operator, prohibit the relevant operator from allowing a proponent to connect proposed infrastructure to the relevant operator's network infrastructure.
- (2) An order is to apply to network infrastructure in a specified area within a renewable energy zone.
- (3) Before making an order, the infrastructure planner must seek and consider submissions from—
  - (a) the relevant operator and other relevant operators in the local area, and
  - (b) the proponent, and
  - (c) the local council in the local area.
- (4) The infrastructure planner must not make an order unless satisfied that—
  - (a) there is significant opposition from the community in the local area to the proposed infrastructure, and
  - (b) making the order is reasonably necessary to maintain community support in the local area for other infrastructure in the renewable energy zone, and
  - (c) making the order is in the public interest.
- (5) An order may not be made if the proponent has development consent under the [Environmental Planning and Assessment Act 1979](#) to construct and operate the proposed infrastructure.

- (6) The infrastructure planner is to publish guidelines on its website about the exercise of its functions under this section.
- (7) The Energy Corporation is appointed as the infrastructure planner to exercise the functions under this section for a renewable energy zone or part of a renewable energy zone.
- (8) In this section—

**local area** means the area in which the proposed infrastructure will be located.

**proponent** means a person or body who proposes to construct or operate proposed infrastructure.

**proposed infrastructure** means proposed generation or storage infrastructure with a capacity of at least 30 megawatts.

## **Part 5 Network infrastructure projects**

### **Division 1 Assessment of REZ network infrastructure projects**

#### **30 Infrastructure planner to recommend REZ network infrastructure projects for renewable energy zone**

- (1) The infrastructure planner for a renewable energy zone is to assess and make recommendations to the consumer trustee about REZ network infrastructure projects required for the renewable energy zone.
- (2) The infrastructure planner must assess and make recommendations about the following—
  - (a) the different options for REZ network infrastructure projects to provide the intended network capacity for the renewable energy zone,
  - (b) staging and sequencing of REZ network infrastructure projects,
  - (c) funding, procurement and cost recovery for the recommended REZ network infrastructure projects,
  - (d) other matters prescribed by the regulations.
- (3) In assessing and making recommendations about REZ network infrastructure projects, the infrastructure planner must consult with the following—
  - (a) AEMO,
  - (b) relevant operators in the renewable energy zone,
  - (c) each local council in the renewable energy zone.



- (4) The infrastructure planner must make recommendations about REZ network infrastructure projects to the consumer trustee within the period specified by the consumer trustee.
- (5) The regulations may make further provision for or with respect to the following—
  - (a) the exercise of the infrastructure planner’s functions under this section,
  - (b) requiring the consumer trustee to provide information to the infrastructure planner,
  - (c) public consultation requirements.

### **31 Consideration of recommendations by infrastructure planner**

- (1) After considering the infrastructure planner’s recommendations in relation to REZ network infrastructure projects, the consumer trustee may—
  - (a) recommend the Minister give a direction under section 32 to a network operator for a REZ network infrastructure project, or
  - (b) authorise a network operator to carry out a REZ network infrastructure project.
- (2) If the consumer trustee authorises a network operator under subsection (1)(b), the consumer trustee must, by written notice to the regulator, set a maximum amount for the prudent, efficient and reasonable capital costs for development and construction of the REZ network infrastructure project that may be determined by the regulator under section 38(4).
- (3) The consumer trustee or the regulator must not disclose the maximum amount to any person.
- (4) The regulations may make provision for or with respect to the eligibility criteria and selection process for network operators who may be authorised or directed to carry out a network infrastructure project under this Part.
- (5) In exercising its functions under this section, the consumer trustee is to consider the development pathway contained in the latest report by the consumer trustee under section 45.
- (6) The regulations may make further provision about the following—
  - (a) the exercise of the consumer trustee’s functions under this section,
  - (b) requiring the infrastructure planner to give information to the consumer trustee.

## **Division 2 Directions to carry out network infrastructure projects**

### **32 Minister may direct network infrastructure projects be carried out**

- (1) The Minister may, by order published in the Gazette, direct a network operator to carry out—
  - (a) a REZ network infrastructure project, or
  - (b) a priority transmission infrastructure project.
- (2) A direction must specify the following—
  - (a) the network operator required to carry out the infrastructure project,
  - (b) the location and description of the infrastructure project,
  - (c) the requirements for the development and construction of the infrastructure project,
  - (d) the staging and sequencing of the planning, design and construction of the infrastructure project,
  - (e) the date by which the network operator, taking all reasonable steps, is to complete the planning, design and construction stages of the infrastructure project,
  - (f) other matters prescribed by the regulations.
- (3) The Minister must consult with a network operator before giving the network operator a direction.
- (4) The Minister must give a direction only if satisfied that—
  - (a) it is in the public interest, and
  - (b) it is consistent with the objects of this Act.
- (5) The regulations may make further provision for or with respect to the classes of renewable energy zones and the classes of REZ network infrastructure project and priority transmission infrastructure project in relation to which a direction can be given.

### **33 Directions for REZ network infrastructure projects**

The Minister may direct a network operator to carry out a REZ network infrastructure project only on the recommendation of the consumer trustee.

### **34 Directions for priority transmission infrastructure projects**

- (1) Before directing a network operator to carry out a priority transmission infrastructure project, the Minister must consult with the following—
  - (a) the Minister for Planning and Public Spaces,
  - (b) AEMO,
  - (c) the regulator,
  - (d) distribution network service providers and transmission network service providers.
- (2) The Minister must not direct a network operator to carry out a priority transmission infrastructure project unless the Minister has considered the following—
  - (a) existing network infrastructure in the area in which the priority transmission infrastructure project will be located,
  - (b) land use planning, environmental and heritage matters,
  - (c) the views of the local community in the area in which the priority transmission infrastructure project will be located,
  - (d) other matters prescribed by the regulations.
- (3) The Minister must not direct a network operator to carry out a priority transmission infrastructure project unless the Minister is satisfied that—
  - (a) it is an appropriate response to a target breach identified in an energy security target monitor report, and
  - (b) it is in the public interest, and
  - (c) any conditions prescribed by the regulations are complied with.

### **35 Failure to comply with direction**

- (1) A network operator to whom a direction is given under section 32 must not, without reasonable excuse, fail to comply with the direction.  
  
Maximum penalty—5,000 penalty units for a corporation or 2,500 penalty units for an individual.
- (2) If a network operator to whom a direction is given under section 32 holds a licence under the *Electricity Supply Act 1995* it is a condition of the licence that the licensee complies with the direction.
- (3) A person cannot be both prosecuted for an offence against subsection (1) and dealt with by the Minister for a contravention of a licence condition under clause 8 in

Schedule 2 to the *Electricity Supply Act 1995* in relation to the same act or omission.

## **Division 3 Functions of regulator**

### **36 Application of Division**

- (1) This Division applies to a network operator who is subject to an authorisation.
- (2) The Minister may authorise a network operator to carry out a priority transmission infrastructure project for the purposes of this Division.
- (3) Before authorising a network operator under subsection (2), the Minister must consult with the persons and bodies specified in section 34(1) and be satisfied of the matters specified in section 34(3).
- (4) In this Division—

**authorisation** means—

- (a) an authorisation by the consumer trustee under section 31 to carry out a REZ network infrastructure project, or
- (b) an authorisation by the Minister under subsection (2), or
- (c) a direction given by the Minister under section 32 to carry out a REZ network infrastructure project or priority transmission infrastructure project.

### **37 Regulator to take into account principles**

- (1) In exercising functions under this Division, the regulator is to take into account the following principles—
  - (a) a network operator is entitled to recover the prudent, efficient and reasonable costs incurred by the network operator for carrying out the infrastructure project,
  - (b) incentives should be given to network operators to promote economic efficiency,
  - (c) a network operator is entitled to revenue for the ongoing ownership, control and operation of an infrastructure project that is commensurate with the regulatory and commercial risks to the network operator,
  - (d) a network operator is entitled to be informed of material issues being considered by the regulator under this Division,
  - (e) other principles prescribed by the regulations.
- (2) The carrying out of an infrastructure project by a network operator to whom this Division applies includes—
  - (a) the development and construction of network infrastructure as specified in the

network operator's authorisation, and

(b) the ownership, control and operation of network infrastructure as specified in the network operator's authorisation, and

(c) other matters prescribed by the regulations.

(3) The regulations may make further provision for or with respect to the principles in subsection (1).

### **38 Regulator to determine amount payable to network operators for network infrastructure projects**

(1) The regulator is to determine the amount payable to a network operator to whom this Division applies.

(2) A determination is to include amounts for different components, including—

(a) repayment of capital costs as determined under the transmission efficiency test,

(b) the return on capital costs that have not been repaid,

(c) an allowance for operating costs,

(d) other components prescribed by the regulations.

(3) A determination may include provision for the adjustment of amounts on the basis of differences between the estimated and actual capital costs.

(4) Before making a determination, the regulator is to calculate the prudent, efficient and reasonable capital costs for development and construction of the network infrastructure project, which is referred to as the **transmission efficiency test**.

(5) The regulator is to publish guidelines on its website about the transmission efficiency test.

(6) The amount determined by the regulator under subsection (4) for a network operator authorised by the consumer trustee to carry out a REZ network infrastructure project must not exceed the maximum amount, if any, notified to the regulator by the consumer trustee under section 31(2) for the network operator.

(7) The regulator may, by written notice to a network operator, require the network operator to provide information to the regulator that the regulator considers necessary to enable the regulator to make a determination.

(8) A notice under subsection (7) must specify the following—

(a) the information required to be provided,

(b) the form in which the information is to be provided,

(c) the time within which the information is to be provided.

(9) A network operator must not, without lawful excuse, fail to comply with a requirement made of the network operator under subsection (7).

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual

(10) The regulations may make provision for or with respect to the following—

(a) the making of a determination by the regulator,

(b) the matters the regulator is to take into account in making a determination, including any loans or other financial arrangements entered into by the network operator for the purposes of carrying out the infrastructure project,

(c) the information required to be provided to the regulator by a network operator,

(d) the information to be included in a determination,

(e) other matters relating to the transmission efficiency test,

(f) other matters relating to a determination by the regulator.

### **39 Effect of regulator's determination**

(1) The scheme financial vehicle is required to pay the network operator the amount the network operator is entitled to in accordance with the regulator's determination.

(2) The regulations may make provision for or with respect to circumstances in which the scheme financial vehicle is not required to pay the network operator if the network operator is entitled to receive an equivalent amount under the *National Electricity (NSW) Law*.

(3) The obligation of a network operator to carry out an infrastructure project under a direction under section 32 does not arise until the regulator makes a determination under section 38.

### **40 Regulator to review determinations**

(1) The regulator is, in accordance with the regulations, to remake a determination under section 38—

(a) once every 5 years, and

(b) at any time the consumer trustee directs.

(2) The regulator may review and remake a determination at any time, subject to the regulations.

#### **41 Application of *National Electricity (NSW) Law* and *National Electricity Rules***

- (1) The regulations may modify the application of, or disapply, a provision of the *National Electricity (NSW) Law* or the *National Electricity Rules* to the extent reasonably necessary to achieve the objects of this Act and—
  - (a) to enable a network operator to whom this Division applies to carry out an infrastructure project, or
  - (b) to enable a network operator to whom this Division applies to—
    - (i) receive payment from the scheme financial vehicle to which the operator is entitled under this Division, or
    - (ii) recover costs for carrying out an infrastructure project under the *National Electricity Rules*, or
  - (c) to enable a network operator to transition between the arrangements specified in paragraph (b)(i) and (ii), or
  - (d) to ensure a network operator does not receive payment under both arrangements specified in paragraph (b)(i) and (ii).
- (2) A regulation under this section that affects the operation or safety of network infrastructure may not be made unless the Minister has consulted with distribution network service providers and transmission network service providers.
- (3) A regulation under this section that affects AEMO in the exercise of its function may not be made without the concurrence of AEMO.

#### **42 Transfer of network infrastructure**

- (1) The regulations may make provision for or with respect to the effect of the transfer of network infrastructure by a network operator to whom this Division applies (the **transferor**) to another person (the **transferee**).
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the circumstances in which the transferee is taken to be a network operator to whom this Division applies.

## **Part 6 Electricity infrastructure investment safeguard**

### **Division 1 Preliminary**

#### **43 Application of Part**

- (1) This Part applies to the following infrastructure—
  - (a) generation infrastructure that involves generation from a renewable energy

source and that has a generation capacity of not less than 30 megawatts,

(b) long-duration storage infrastructure for storage of electricity that—

(i) consists of storage units with a registered capacity that can be dispatched for at least 8 hours, and

(ii) is scheduled by AEMO in the central dispatch process under the *National Electricity Rules*,

(c) firming infrastructure that is scheduled by AEMO in the central dispatch process under the *National Electricity Rules*.

(2) This Part does not apply to infrastructure that is part of a committed infrastructure project.

(3) In this Part—

**committed infrastructure project** means a project that was identified as committed or existing in a generation information page published by AEMO under the *National Electricity Rules* on or before 14 November 2019.

**registered capacity** has the same meaning as in Chapter 4A of the *National Electricity Rules*.

**reliability standard** means the reliability standard implemented by AEMO under the *National Electricity Rules* that is prescribed by the regulations.

**renewable energy source** means an energy source specified in section 17(1)(a)-(s) of the *Renewable Energy (Electricity) Act 2000* of the Commonwealth as in force on the commencement of this section.

## Division 2 Objectives and planning

### 44 Infrastructure investment objectives

(1) The **infrastructure investment objectives** are—

(a) the overall objectives for the construction of infrastructure to which this Part applies, and

(b) the minimum objectives for the period ending on 31 December 2029 for the construction of generation infrastructure and long-duration storage infrastructure to which this Part applies.

(2) The overall objectives are—

(a) construction of generation infrastructure that is necessary to minimise electricity costs for NSW electricity customers, and



- (b) construction of long-duration storage infrastructure that is necessary to meet the reliability standard, and
  - (c) construction of firming infrastructure that is necessary to meet the energy security target and the reliability standard.
- (3) The minimum objectives are—
- (a) construction of generation infrastructure that generates at least the same amount of electricity in a year as—
    - (i) 8 gigawatts of generation capacity from the New England renewable energy zone, and
    - (ii) 3 gigawatts of generation capacity from the Central-West Orana renewable energy zone, and
    - (iii) 1 additional gigawatt of generation capacity, and
  - (b) construction of long-duration storage infrastructure with at least—
    - (i) storage of 16 gigawatt hours, and
    - (ii) capacity of 2 gigawatts.
- (4) Committed infrastructure projects are not to be counted towards the infrastructure investment objectives.

#### **45 Planning by consumer trustee**

- (1) The consumer trustee is to prepare a report about the infrastructure investment objectives that contains—
- (a) the development pathway for the infrastructure to which this Part applies that is required to be constructed over the following 20 years to achieve the infrastructure investment objectives, and
  - (b) a plan for the competitive tenders that the consumer trustee will conduct during the following 10 years to give effect to the development pathway, including when tenders will be conducted and the classes of LTES agreements for which a tender will be conducted, and
  - (c) other matters prescribed by the regulations.
- (2) The consumer trustee is to prepare a report—
- (a) as soon as practicable after the commencement of this section, and
  - (b) approximately every 2 years after the first report.

- (3) The consumer trustee is also to prepare a report as soon as practicable after being directed by the Minister under section 47(2) to conduct a competitive tender for LTES agreements for firming infrastructure.
- (4) The regulations may prescribe the matters that the consumer trustee is to take into account in preparing the report.
- (5) The report is to be published on the consumer trustee's website.
- (6) The consumer trustee is to exercise its functions under this Part on the basis of the reports prepared under this section.

### **Division 3 Long-term energy service agreements**

#### **46 Meaning of “long-term energy service agreement” or “LTES agreement”**

- (1) A **long-term energy service agreement** or **LTES agreement** is an agreement entered into between the scheme financial vehicle and a person (the **LTES operator**) under which—
  - (a) the LTES operator constructs and operates infrastructure to which this Part applies as specified in the agreement, and
  - (b) if the LTES operator does this, the LTES operator may periodically opt to exercise a derivative arrangement.
- (2) An LTES agreement must—
  - (a) provide for the construction and operation of the infrastructure to which the agreement relates if the LTES operator wishes to exercise an option under the agreement, and
  - (b) divide the term of the agreement into periods of no less than 1 financial year, and
  - (c) give the LTES operator an option to exercise a derivative arrangement, and
  - (d) require notice to be given to the scheme financial vehicle of a proposal to exercise an option that is not less than the minimum notice period prescribed by the regulations, and
  - (e) provide for the repayment to the scheme financial vehicle of amounts paid because of the exercise of an option in certain circumstances set out in the agreement, and
  - (f) contain or deal with other matters prescribed by the regulations.

#### **47 Tendering for LTES agreements**

- (1) The consumer trustee must conduct a competitive tender for LTES agreements unless

the regulator otherwise authorises generally or in a particular case.

- (2) The consumer trustee must not conduct a competitive tender for LTES agreements for firming infrastructure unless directed by the Minister.
- (3) A competitive tender must be carried out in accordance with—
  - (a) any requirements prescribed by the regulations, and
  - (b) the rules made by the consumer trustee under this section.
- (4) A tender bid must, unless exempted by the regulations, include information about how the proposal will create employment and support industry in New South Wales if the person enters into an LTES agreement.
- (5) Before conducting a competitive tender, the consumer trustee must make rules that are consistent with the regulations to deal with the following matters—
  - (a) the eligibility criteria for making a tender bid,
  - (b) the notification of the opening of the competitive tender,
  - (c) the procedure for making a tender bid, including the information required to be included in a bid,
  - (d) the fee payable for making a bid and requirements for bonds or other security,
  - (e) the assessment of a tender bid by the consumer trustee,
  - (f) other matters the consumer trustee considers necessary,
  - (g) other matters prescribed by the regulations.
- (6) Before making rules, the consumer trustee is to consult with the regulator.
- (7) The rules are to be published in the Gazette.

#### **48 Recommendations about LTES agreements**

- (1) The consumer trustee must make recommendations to the scheme financial vehicle about the LTES agreements that the scheme financial vehicle may enter into.
- (2) In making a recommendation, the financial value of LTES agreements is to be the primary consideration for the consumer trustee.
- (3) The consumer trustee must not recommend the making of an LTES agreement that relates to generation infrastructure specified in section 43(1)(a) that is not, or will not be, part of a renewable energy zone, unless the consumer trustee is satisfied that the LTES agreement shows outstanding merit.

- (4) The regulations may make provision for or with respect to—
  - (a) the circumstances in which an LTES agreement shows outstanding merit for the purposes of subsection (3), and
  - (b) the matters to be taken into account by the consumer trustee in making recommendations.

## **Division 4 Operation of long-term energy service agreements**

### **49 Making of LTES agreements**

- (1) An LTES agreement may not be made, unless the consumer trustee recommends the making of the LTES agreement.
- (2) The regulations may prescribe further circumstances in which an LTES agreement may not be made.
- (3) An LTES agreement remains in force for the term of the agreement unless the agreement is sooner suspended or terminated.

### **50 Terms and conditions of LTES agreements**

- (1) The consumer trustee is to determine the terms and conditions of an LTES agreement, subject to any requirements prescribed by the regulations.
- (2) An LTES operator is required to provide information to the Minister every year about the extent to which the LTES operator is creating employment and supporting industry in New South Wales.
- (3) The information is to be provided in a form prescribed by the regulations.
- (4) The Minister is to prepare a yearly report summarising the information received from LTES operators and is to table the report in each House of Parliament.
- (5) In determining the terms and conditions of an LTES agreement, the consumer trustee is to take into account the following principles—
  - (a) to align the financial incentives offered under LTES agreements with the changing needs of the electricity system,
  - (b) to adopt, to the maximum extent possible, the conventions and standards in relation to similar agreements in the national electricity market,
  - (c) to ensure that LTES agreements allow for future changes in the national electricity market,
  - (d) to ensure that LTES agreements are consistent with the risk management framework under Division 5,

- (e) other principles prescribed by the regulations.
- (6) The regulations may make further provision for or with respect to the terms and conditions of an LTES agreement, including in relation to a requirement for a bond or other security to be provided by the LTES operator under the LTES agreement.
- (7) This section does not prevent the parties to an LTES agreement from agreeing to additional terms and conditions.
- (8) In this section—

***national electricity market*** has the same meaning as in the *National Electricity (NSW) Law*.

## **Division 5 Risk management**

### **51 Risk management framework**

- (1) The consumer trustee is to prepare a risk management framework to protect the financial interests of NSW electricity customers in connection with the risks associated with LTES agreements.
- (2) The risk management framework may provide for the functions of the consumer trustee, the financial trustee, the scheme financial vehicle and the regulator under the framework.
- (3) The risk management framework must be approved by the regulator.
- (4) The approved risk management framework is to be published on the consumer trustee's website.
- (5) Despite subsection (4), the consumer trustee is not required to publish a part of the risk management framework if—
  - (a) the consumer trustee considers it is in the public interest not to publish the part, and
  - (b) the consumer trustee has the approval of the regulator to not publish the part.
- (6) The Minister may—
  - (a) require the regulator to review an approved risk management framework, and
  - (b) require the consumer trustee to amend the risk management framework in accordance with a recommendation by the regulator arising from the review.
- (7) (Repealed)
- (8) The regulations may prescribe requirements for the risk management framework.

## **52 Risk management contracts**

- (1) The scheme financial vehicle may enter into a risk management contract for the purposes of this Part if it is consistent with the risk management framework that is in force under this Division.
- (2) A risk management contract may be a derivative arrangement.
- (3) Subject to the regulations, the term of the contract and the circumstances in which it can be renewed, extended, suspended or terminated are to be included in the contract.

## **Part 7 Electricity infrastructure fund**

### **53 Electricity infrastructure fund**

- (1) The scheme financial vehicle is to establish and maintain an electricity infrastructure fund for the purposes of this Act (the **Fund**).
- (2) Money held in the Fund is to be paid into an account kept with an authorised deposit-taking institution.
- (3) The regulations may make provision for or with respect to the administration of the Fund.

### **54 Payments into Fund**

The following are payable into the Fund, subject to any requirements prescribed by the regulations—

- (a) all money received by the scheme financial vehicle from a distribution network service provider under a contribution order,
- (b) all money advanced by the scheme financial vehicle for the Fund,
- (c) all money paid to the scheme financial vehicle under an LTES agreement or a risk management contract,
- (d) all money paid to the scheme financial vehicle as fees by participants in an access scheme,
- (e) the proceeds of investment of money in the Fund,
- (f) all money received from voluntary contributions to the Fund made by a person or body,
- (g) other money required to be paid into the Fund by or under this or another Act or law.

## 55 Payments out of Fund

The following are payable from the Fund, subject to any requirements prescribed by the regulations—

- (a) money required to meet the liabilities of the scheme financial vehicle under this Act, including, but not limited to, liabilities for payments by the scheme financial vehicle under an access scheme, section 39, an LTES competitive tender, an LTES agreement or a risk management contract,
- (a1) money authorised by the Minister to cover the administrative costs of the scheme financial vehicle,
- (b) money as payment to the consumer trustee, financial trustee and regulator, as required in the instrument of appointment or otherwise authorised by the Minister, to enable the exercise of their functions under this Act,
- (c) money directed or authorised to be paid from the Fund by or under this or another Act or law.

## 56 Regulator to make annual contribution determinations

- (1) The regulator is to determine an amount for a financial year (a **contribution determination**) that is required for the scheme financial vehicle to be able to make the payments from the Fund that are required under this Act, including the amount required for the scheme financial vehicle to meet its liabilities as they fall due.
- (2) The purpose of the contribution determination is to determine the amount required to be recovered from distribution network service providers.
- (3) The amount determined by the regulator is to include—
  - (a) a minimum prudent cash balance for the Fund, and
  - (b) the amount required to be paid by each distribution network service provider.
- (4) A contribution determination must contain—
  - (a) details of how the contribution determination was made, and
  - (b) other information prescribed by the regulations.
- (5) A contribution determination must be published in the Gazette no later than 28 February before the beginning of the financial year to which the contribution determination is to apply, unless the Minister approves a later date.
- (6) In making a contribution determination, the regulator must—
  - (a) consult with the financial trustee, and

(b) take into account the matters prescribed by the regulations.

(7) The scheme financial vehicle must, if requested by the regulator, provide the regulator with the information the regulator considers necessary to enable the regulator to make a contribution determination.

#### **57 Variation of contribution determinations**

(1) The regulator may, by further order published in the Gazette, vary a contribution determination if it appears to the regulator that—

(a) the scheme financial vehicle will not be able to meet its liabilities as they fall due, or

(b) the cash balance of the Fund has fallen, or is likely to fall, below the minimum prudent cash balance specified in the determination.

(2) The regulator is to publish guidelines on its website about the exercise of the regulator's functions under this section.

(3) An order varying a contribution determination may be made before or during the financial year to which the determination applies or during the following financial year, but not later.

#### **58 Contributions by distribution network service providers**

(1) The scheme financial vehicle may, by order served on a distribution network service provider (a **contribution order**), require the distribution network service provider to pay a specified amount into the Fund.

(2) The amount specified in a contribution order is to be the amount specified in the regulator's contribution determination for the distribution network service provider, subject to any requirements prescribed by the regulations.

(3) The scheme financial vehicle may determine the amount specified in a contribution order on its own initiative if the regulator does not publish a contribution determination for the financial year within the period required under section 56(5).

(4) The amount determined by the scheme financial vehicle under subsection (3) is not to exceed the amount reasonably required to enable the scheme financial vehicle to meet its liabilities as they fall due.

(5) An amount payable by a distribution network service provider under a contribution order is recoverable by the scheme financial vehicle as a debt in any court of competent jurisdiction for payment into the Fund.

(6) The regulations may make provision for or with respect to the circumstances in which a distribution network service provider is or is not authorised to recover part of the



amount payable under a contribution order from a person who is exempt from the energy savings scheme under clause 22 of Schedule 4A to the *Electricity Supply Act 1995* or from a person who buys electricity to use in the production of hydrogen energy.

## **Part 8 Administration**

### **Division 1 Roles and functions**

#### **59 Energy security target monitor**

- (1) The Minister may appoint a person or body as the energy security target monitor.
- (2) In the absence of an appointment, the Secretary must exercise the functions of the energy security target monitor.
- (3) The energy security target monitor has the following functions—
  - (a) the functions prescribed by the regulations,
  - (b) other functions conferred or imposed on the monitor by or under this or another Act or law.
- (4) In the exercise of functions under this Act, the energy security target monitor is not subject to the direction or control of the Minister.

#### **60 Consumer trustee**

- (1) The Minister is to appoint a person or body as the consumer trustee.
- (2) In the absence of an appointment, the Secretary must exercise the functions of the consumer trustee.
- (3) The consumer trustee is to act independently and in the long-term financial interests of NSW electricity customers.
- (4) The consumer trustee has the following functions—
  - (a) to advise the Minister and the infrastructure planner in relation to proposed and declared renewable energy zones and proposed and required REZ network infrastructure projects,
  - (b) to negotiate, in accordance with any requirements prescribed by the regulations, with a person in relation to LTES agreements,
  - (c) other functions prescribed by the regulations,
  - (d) other functions conferred or imposed on the consumer trustee by or under this or another Act or law.

- (5) In the exercise of functions under this Act, the consumer trustee is not subject to the control or direction of the Minister.

## **61 Financial trustee**

- (1) The consumer trustee is to appoint a person or body as the financial trustee.
- (2) The financial trustee has the following functions—
  - (a) to administer the scheme financial vehicle,
  - (b) to advise the regulator in relation to contribution determinations,
  - (c) other functions prescribed by the regulations,
  - (d) other functions conferred or imposed on the financial trustee by or under this or another Act or law.
- (3) In the exercise of functions under this Act, the financial trustee is not subject to the control or direction of the consumer trustee or the Minister.

## **62 Scheme financial vehicle**

- (1) Within 3 months of the commencement of this section, the financial trustee is to establish the scheme financial vehicle as a company limited by shares under the [Corporations Act 2001](#) of the Commonwealth.
- (2) Despite subsection (1), the regulations may authorise the financial trustee to instead be the scheme financial vehicle.
- (3) The financial trustee is to arrange for all the shares in a company referred to in subsection (1) to be held on trust by the financial trustee for the purposes of this Act.
- (4) The scheme financial vehicle is to act in a commercially reasonable and prudent way under any contract or agreement made under this Act.
- (5) If the appointment of a person or body as financial trustee under section 61 is terminated or the person or body resigns the appointment, the person or body is to arrange for its shares in the scheme financial vehicle to be transferred to the new financial trustee.
- (6) The regulations may make provision for or with respect to the transfer of shares following the termination or resignation of the appointment of the financial trustee in circumstances where the financial trustee is the scheme financial vehicle.
- (7) A court assessing liquidated damages in relation to a breach of a contract to which the scheme financial vehicle is a party is to take into account damages suffered by NSW electricity customers as if they were damages suffered by the scheme financial vehicle.

### 63 Infrastructure planner

- (1) The Minister is to appoint a person as the infrastructure planner.
- (2) Different infrastructure planners may be appointed to exercise different functions or functions in relation to different renewable energy zones or different parts of renewable energy zones.
- (3) The functions of an infrastructure planner in relation to a renewable energy zone or part of a renewable energy zone are to be exercised by the Energy Corporation at any time during which a person is not appointed as the infrastructure planner for the renewable energy zone or part of the renewable energy zone.
- (4) Subject to limitations in the instrument of appointment, an infrastructure planner has the following functions—
  - (a) to make and enter into contracts or other agreements in connection with the exercise of its functions under this Act,
  - (b) to investigate, plan, co-ordinate and carry out planning and design of generation infrastructure,
  - (c) to investigate, plan, co-ordinate and carry out planning, design, construction and operation of storage and network infrastructure,
  - (d) other functions prescribed by the regulations,
  - (e) other functions conferred or imposed on the infrastructure planner by or under this or another Act or law.
- (5) If the Energy Corporation is appointed as an infrastructure planner, the Energy Corporation has the functions, as modified by the regulations, that the Corporation has under the *Energy and Utilities Administration Act 1987* and may exercise those functions as the infrastructure planner under this Act, to the extent reasonably necessary to—
  - (a) enable the infrastructure planner to exercise its functions under this Act, and
  - (b) achieve the objects of this Act.
- (6) Sections 11(3) and 12(4) of the *Energy and Utilities Administration Act 1987* do not apply to the Energy Corporation when exercising functions under subsection (5).
- (7) If the Energy Corporation is appointed as an infrastructure planner, it may—
  - (a) form, or participate in the formation of, a private subsidiary corporation, and
  - (b) acquire interests in private subsidiary corporations, and

(c) sell or otherwise dispose of interests in private subsidiary corporations.

(8) In the exercise of functions under this Act, an infrastructure planner is subject to the control or direction of the Minister.

(9) In this section—

**private subsidiary corporation** means a corporation within the meaning of the [Corporations Act 2001](#) of the Commonwealth in which the Energy Corporation has a controlling interest.

## 64 Regulator

(1) The Minister is to appoint one of the following as the regulator—

(a) the AER,

(b) the Tribunal,

(c) a person prescribed by the regulations.

(2) More than 1 regulator may be appointed.

(3) The functions of the regulator are to be exercised by the Tribunal at any time during which a person or body is not appointed as the regulator.

(4) Subject to limitations in the instrument of appointment, a regulator has the following functions—

(a) to issue guidelines in relation to the exercise of functions by the persons and bodies appointed under this Act,

(b) other functions prescribed by the regulations,

(c) other functions conferred or imposed on the regulator by or under this or another Act or law.

(5) In the exercise of functions under this Act, a regulator is not subject to the control or direction of the Minister.

## Division 2 Appointment and performance

### 65 Definition

In this Division—

**appointor** means—

(a) in relation to the appointment of the financial trustee—the consumer trustee, and

(b) in relation to the appointment of another person or body—the Minister.

## **66 General provisions for appointments**

- (1) A person or body may be appointed under this Part only if the appointor is satisfied that the person or body—
  - (a) is fit and proper, and
  - (b) has the necessary qualifications and experience.
- (2) Subsection (1) does not apply to the appointment of the following—
  - (a) the AER,
  - (b) AEMO,
  - (c) the Tribunal,
  - (d) the Energy Corporation.
- (3) A person or body is appointed under this Part—
  - (a) for the term specified in the instrument of appointment, if any, and
  - (b) subject to the terms and conditions specified in the instrument of appointment and prescribed by the regulations.
- (4) A person or body appointed under this Part is entitled to be paid by the scheme financial vehicle the amount determined from time to time by the appointor in accordance with the regulations for the exercise of functions under this Act.
- (5) The regulations may make further provision for or with respect to the following—
  - (a) the appointment of persons or bodies under this Part,
  - (b) the circumstances in which a person or body is not considered fit and proper,
  - (c) the necessary qualifications and experience for appointment,
  - (d) limitations on the functions of a person or body appointed under this Part,
  - (e) the amounts determined as payment for the exercise of functions by a person or body appointed under this Part.

## **67 Performance audits**

- (1) The regulator is to audit the performance of the following—
  - (a) the consumer trustee,
  - (b) the financial trustee,
  - (c) the scheme financial vehicle,

(d) the infrastructure planner.

- (2) The Minister may require the regulator to conduct an audit under this section.
- (3) The Minister may appoint a person to audit the performance of the energy security target monitor or the regulator.
- (4) The regulations may make provision for or with respect to an audit under this section, including the following—
  - (a) the matters that may be the subject of an audit,
  - (b) for an audit of the performance of the energy security target monitor and the regulator—the persons who may be appointed to conduct the audit,
  - (c) the functions that may be exercised by the person conducting an audit,
  - (d) the conduct of an audit,
  - (e) reporting on an audit, including the publication of an audit report.

#### **68 Suspension or termination of appointment**

- (1) The appointor may suspend or terminate the appointment of a person or body under this Part by giving written notice to the person or body.
- (2) The appointor may suspend or terminate the appointment of a person or body only if an audit of the performance of the person or body carried out under section 67 finds incompetence, misconduct or incapacity.
- (3) Before terminating the appointment of a person or body under this Part, the appointor must—
  - (a) advise the person or body in writing that the person or body's performance is unsatisfactory and the basis on which it is unsatisfactory, and
  - (b) provide the person or body with an opportunity to make submissions and consider the submissions received.
- (4) The Governor may terminate the appointment of a person or body under this Part on the address of both Houses of Parliament.
- (5) To avoid doubt, a person or body appointed under this Part cannot be removed from office under Part 6 of the [Government Sector Employment Act 2013](#).

#### **69 Resignation from appointment**

A person or body appointed under this Part may resign the appointment by providing 6 months written notice to the appointor or as agreed to by the appointor.

## **Part 9 Miscellaneous**

### **70 Annual reports**

- (1) The consumer trustee, the financial trustee and the infrastructure planner must, as soon as reasonably practicable after the end of each financial year, each provide the regulator with a report on the exercise of the person or body's functions under this Act during the financial year.
- (2) The regulator must prepare an annual report on the exercise of functions under this Act by the consumer trustee, the financial trustee, the infrastructure planner and the regulator itself.
- (3) The annual report must contain the information required by the Minister.
- (4) The regulator must provide the annual report to the Minister no later than 4 months after the end of the financial year to which the report relates.
- (5) The regulator must publish the annual report on its website as soon as reasonably practicable after providing it to the Minister.

### **71 Delegation**

- (1) The Minister may delegate a function of the Minister under this Act, other than this power of delegation, to any person.
- (2) The infrastructure planner may delegate its functions, other than this power of delegation, to any person.
- (3) The consumer trustee, the financial trustee and the regulator may delegate any of their functions, other than this power of delegation, to a person of a class prescribed by the regulations.
- (4) The Secretary may, when exercising a function of the energy security target monitor under section 59(2) or the consumer trustee under section 60(2), delegate the function to an employee of the Department.

### **72 Competition authorisation**

- (1) Relevant conduct is conduct that is specifically authorised by this Act for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*.
- (2) Conduct authorised by this section is authorised only to the extent, if any, that it would otherwise contravene Part IV of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*.
- (3) In this section—

**giving effect to** a requirement includes—

- (a) complying with an obligation arising in connection with the requirement, and
- (b) exercising or enforcing a right or power arising in connection with the requirement.

**relevant conduct** means the following conduct—

- (a) making an order under section 29,
- (b) giving effect to a requirement under an order under section 29,
- (c) conducting a competitive tender for LTES agreements,
- (d) offering to enter into and entering into an LTES agreement or risk management contract,
- (e) giving effect to a requirement under an LTES agreement or risk management contract,
- (f) other conduct prescribed by the regulations.

### **73 Personal liability**

- (1) A protected person is not personally subject to any liability for anything done—
  - (a) in good faith, and
  - (b) for the purpose of exercising functions under this Act.
- (2) The liability instead attaches to the Crown.
- (3) In this section—

**done** includes omitted to be done.

**liability** means civil liability and includes action, claim or demand.

**protected person** means the following—

- (a) the energy security target monitor,
- (b) the consumer trustee,
- (c) the financial trustee, except in its capacity as the scheme financial vehicle if the financial trustee is prescribed as the scheme financial vehicle by the regulations under section 62(2),
- (d) the regulator,
- (e) the infrastructure planner, except in relation to the administration of an access



scheme in a renewable energy zone or the carrying out of construction or development of storage and network infrastructure,

- (e1) the Secretary when exercising the functions of—
  - (i) the energy security target monitor under section 59(2), or
  - (ii) the consumer trustee under section 60(2),
- (f) a person acting under the direction of a person or body specified in paragraphs (a)–(e1), other than the scheme financial vehicle.

#### **74 False or misleading information**

A person must not, for the purposes of this Act, give to any of the following persons or bodies, whether orally or in writing, information or a document that the person knows to be false or misleading in a material particular, unless the person informs the person or body of that fact—

- (a) the consumer trustee,
- (b) the financial trustee,
- (c) the scheme financial vehicle,
- (d) the regulator,
- (e) the infrastructure planner.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

**Note—**

See section 17 for offences relating to giving information or documents to the energy security target monitor.

#### **75 Disclosure of information**

- (1) A person must not disclose 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, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of legal proceedings arising out of this Act, or
  - (d) in accordance with a requirement of the *Ombudsman Act 1974*, or
  - (e) with other lawful excuse.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

- (2) This section does not apply to information that is protected information under section 18.

## 76 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 the following—

- (a) the energy security target monitor,
- (b) a person of a class prescribed by the regulations.

## 77 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence against this Act or the regulations may instead be dealt with summarily before the Supreme Court in its summary jurisdiction.
- (3) 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.
- (4) The maximum penalty that may be imposed by the Local Court in proceedings for an offence against this Act or the regulations is 100 penalty units for a corporation and 50 penalty units for an individual.

- (5) The maximum penalty that may be imposed by the Supreme Court in proceedings for an offence against this Act or the regulations is the maximum penalty specified by the relevant section of this Act, or relevant clause of the regulations, for the offence.
- (6) Without limiting section 14 of the *Criminal Procedure Act 1986*, proceedings for an offence against this Act or the regulations may be commenced by the regulator.

## **78 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this section.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **79 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) A regulation may create an offence punishable by a penalty not exceeding 2,000 penalty units for a corporation or 500 penalty units for an individual.
- (3) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body, whether or not it is a New South Wales authority or body.

## **Schedule 1 Savings, transitional and other provisions**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.

- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
- (a) for a provision of this Act, the date of assent to this Act, or
  - (b) for a provision amending this Act, the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
- (a) affect the rights of a person existing before that publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before that publication.
- (6) In this clause—

**person** does not include the State or an authority of the State.

## Schedule 2 (Repealed)

### Dictionary

section 5

**access scheme** means an access scheme declared by the Minister under section 24 to apply in a renewable energy zone or part of a renewable energy zone.

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

**AER** means the Australian Energy Regulator established by section 44AE of the [Competition and Consumer Act 2010](#) of the Commonwealth.

**committed infrastructure project**, in Part 6—see section 43.

**consumer trustee** means the person or body authorised under section 60 to exercise the functions of the consumer trustee.

**contribution determination**—see section 56(1).

**contribution order**—see section 58(1).

**customer** includes a wholesale customer.

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

**derivative arrangement** has the same meaning as in the [Government Sector Finance Act 2018](#).

**distribution network service provider** has the same meaning as in the [National Electricity Rules](#).

**electricity infrastructure jobs advocate** means the person or body appointed as the electricity

infrastructure jobs advocate under section 10.

**Energy Corporation** means the Energy Corporation of New South Wales constituted by section 7 of the [Energy and Utilities Administration Act 1987](#).

**energy security target**—see section 12.

**energy security target monitor** or **monitor** means the person or body authorised under section 59 to exercise the functions of the energy security target monitor.

**energy security target monitor report** means a report prepared by the energy security target monitor under section 13.

**financial trustee** means the person or body authorised under section 61 to exercise the functions of the financial trustee.

**financial year** means a period of 12 months commencing on 1 July.

**firm capacity** for a financial year means the total number of megawatts of electricity expected to be available to NSW electricity customers at times of peak demand during the financial year, calculated by the energy security target monitor in consultation with the Secretary and in accordance with the regulations.

**function** includes a power, authority or duty and **exercise** a function includes perform a duty.

**Fund** means the electricity infrastructure fund established under section 53.

**infrastructure investment objective**—see section 44.

**infrastructure planner** means a person authorised to exercise the functions of an infrastructure planner under section 63.

**long-term energy service agreement** or **LTES agreement**—see section 46.

**LTES operator**—see section 46.

**National Electricity (NSW) Law** means the provisions applying because of section 6 of the [National Electricity \(New South Wales\) Act 1997](#), and includes the *National Electricity Rules*.

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

**network capacity** of a renewable energy zone means the maximum instantaneous amount of electricity that can be transmitted—

- (a) to or from the network infrastructure in a renewable energy zone, or
- (b) to other network infrastructure.

**network infrastructure** means transmission infrastructure and distribution infrastructure.

**network operator** means a person who owns, controls or operates, or proposes to own, control or operate, network infrastructure.

**priority transmission infrastructure project** is a transmission infrastructure project that—

- (a) is located in the State, and
- (b) is identified in, or forms part of an infrastructure project identified in, the most recent integrated system plan published by AEMO under the *National Electricity Rules*.

**regulator** means a person or body authorised under section 64 to exercise the functions of a regulator.

**relevant operator** means a transmission operator, within the meaning of the *Electricity Supply Act 1995*, distribution network service provider or network operator.

**renewable energy zone** or **REZ** means the geographical area of the State and the infrastructure specified in a declaration by the Minister under section 19.

**REZ network infrastructure project** means a network infrastructure project that—

- (a) forms part of a renewable energy zone, and
- (b) consists of network infrastructure of a class prescribed by the regulations.

**risk management contract** means a contract under the risk management framework in Part 6, Division 5.

**scheme financial vehicle** means the scheme financial vehicle under section 62.

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

**target breach**—see section 13(3)(d).

**transmission network service provider** has the same meaning as in the *National Electricity Rules*.

**Tribunal** means the Independent Pricing and Regulatory Tribunal established under the *Independent Pricing and Regulatory Tribunal Act 1992*.