

Electricity Infrastructure Investment Act 2020

No 44

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New South Wales

Status Information

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Provisions in force

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

Notes—

- **See also**
[Environment and Water Legislation Amendment Bill 2025](#)

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](#).

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No 44



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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) The infrastructure planner must take the guidelines into account when exercising the following functions—
 - (a) a function under Part 5,
 - (b) a function prescribed by the regulations for the purposes of this section as a function in relation to which the infrastructure planner must, when exercising, take the guidelines into account.
- (5A) To give effect to the guidelines, the infrastructure planner must—
 - (a) make the appointment of a network operator under section 31A(1) subject to conditions the infrastructure planner considers necessary to give effect to the guidelines, and
 - (b) include, in a recommendation to the Minister under section 31B(1), details of conditions to which the infrastructure planner considers the direction should be made subject to give effect to the guidelines.
- (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 network 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, and,
 - (c) promotes social and economic benefits for the NSW community and economy.
- (5) A plan approved by the Minister must be published on the Department's website and takes effect on the day it is published.

8A Amendments to plan

- (1) The board may propose an amendment to the plan by giving written notice of the proposed amendment to the Minister.
- (2) The Minister may ask the board to make changes to the proposed amendment the Minister considers appropriate.
- (3) The board must make any changes to the proposed amendment requested by the Minister.
- (4) The Minister may only approve an amendment to the plan on the recommendation of the regulator.
- (5) The regulator may only recommend an amendment to the Minister if the regulator is satisfied the proposed amendment—

- (a) protects the financial interests of NSW electricity customers, and
- (b) is consistent with Australia's international trade obligations, and
- (c) promotes social and economic benefits for the NSW community and economy.

9 Effect of plan

- (1) The Minister must take the plan into account when exercising the Minister's functions under this Act.
- (2) The consumer trustee must take the plan into account when exercising the consumer trustee's functions under Part 6, Divisions 3 and 4.
- (3) The infrastructure planner must take the plan into account when exercising the following functions—
 - (a) a function under Part 5,
 - (b) a function prescribed by the regulations for the purposes of this section as a function in relation to which the consumer trustee must, when exercising, take the plan into account.
- (4) To give effect to the plan, the infrastructure planner must—
 - (a) make the appointment of a network operator under section 31A(1) subject to conditions the infrastructure planner considers necessary to give effect to the plan, and
 - (b) include, in a recommendation to the Minister under section 31B(1), details of conditions to which the infrastructure planner considers the direction should be made subject to give effect to the plan.

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, access areas and access schemes

Division 1 Renewable energy zones and access areas

19 Minister may declare renewable energy zones

- (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.

19A Minister may declare access areas

- (1) The Minister may, by order published in the Gazette, declare an access area comprising—

- (a) a specified geographical area of the State, and
 - (b) specified generation, storage or network infrastructure, including planned or existing infrastructure.
- (2) The geographical area that forms part of the access area must not include any part of the geographical area that forms part of—
 - (a) a renewable energy zone, or
 - (b) another access area.
- (3) The network infrastructure that forms part of an access area may extend outside the geographical area specified in the declaration.
- (4) A declaration must include the following—
 - (a) a map showing the geographical area,
 - (b) the infrastructure planner appointed by the Minister for the access area or part of the access area,
 - (c) other matters prescribed by the regulations.
- (5) The Minister may declare an access area only if the Minister is satisfied—
 - (a) making the declaration is—
 - (i) consistent with the objects of this Act, and
 - (ii) in the public interest, and
 - (b) of any other matters prescribed by the regulations.
- (6) A declaration must be published on the Department's website.
- (7) The regulations may make further provision about the exercise of the Minister's functions under this section.

20 Procedure for declaring renewable energy zones and access areas

Before making a declaration of a renewable energy zone or an access area, 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 Applications for declarations of renewable energy zones and access areas

- (1) The Minister may make a declaration of a renewable energy zone or an access area—
 - (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 or an access area, 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.

22A Amendment of access area declarations

- (1) The Minister may amend a declaration of an access zone for the following purposes only—
 - (a) to expand the geographical area that forms the access area,
 - (b) to specify additional generation, storage and network infrastructure as forming part of the access area,
 - (c) to provide further details and specifications about information contained in the declaration,
 - (d) to correct a minor error or misdescription.
- (2) The Minister cannot repeal a declaration of an access area under section 19A.

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 and access areas

24 Minister may declare access scheme for renewable energy zone or access area

- (1) The Minister may, by order published in the Gazette, declare the access scheme that applies—
 - (a) in a renewable energy zone or part of a renewable energy zone, or
 - (b) in an access area or part of an access area.
- (2) An access scheme is a scheme that—
 - (a) for an access scheme under subsection (1)(a)—authorises or prohibits access to, and use of, specified network infrastructure by network operators and operators of generation and storage infrastructure in the renewable energy zone, or the part of the renewable energy zone, to which the scheme applies, or
 - (b) for an access scheme under subsection (1)(b)—authorises or prohibits access to, and use of, specified network infrastructure by network operators and operators of generation and storage infrastructure in the access area, or the part of the access area, to which the scheme applies.
- (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 or an access area.
- (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 or access area,

(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 community in a council area that, at any time after the declaration of the access scheme, is or has been wholly or partly within—

- (a) the geographical area that forms the renewable energy zone to which the access scheme applies, or
- (b) the geographical area that forms the access area in relation to which the access scheme applies.

council area means—

- (a) an area within the meaning of the [Local Government Act 1993](#), or
- (b) a Local Aboriginal Land Council area within the meaning of the [Aboriginal Land Rights Act 1983](#).

employment purpose means a purpose that promotes employment, skills and training for persons who live or work in a council area that, at any time after the declaration of the access scheme, is or has been wholly or partly within—

- (a) the geographical area that forms the renewable energy zone to which the access scheme applies, or
- (b) the geographical area that forms the access area to which the access scheme applies.

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 or access area, 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 1A Preliminary

30A Definitions

In this part—

authorised REZ network infrastructure project means a REZ network infrastructure project the consumer trustee has authorised under section 30AA(1)(a).

carry out an infrastructure project includes carrying out one or more of the following activities or organising, arranging for or causing the activity to be carried out—

- (a) the planning, design, financing, commissioning, development or construction of the project and other preparatory activities in connection with the infrastructure project,
- (b) an activity in connection with the ownership or control of infrastructure under the infrastructure project,
- (c) the operation or maintenance of infrastructure under the infrastructure project,
- (d) other activities in connection with the infrastructure project as prescribed by the regulations.

infrastructure investment objectives report means a report about the infrastructure investment objectives prepared and published by the consumer trustee under section 45.

infrastructure project means—

- (a) a REZ network infrastructure project, or
- (b) a priority network infrastructure project.

maximum capital costs amount, for an authorised REZ network infrastructure project, means the maximum capital costs amount for the project set by the consumer trustee

under section 31(1) and as amended from time to time under section 31(2).

30B Application of part

In this part, a reference to an infrastructure project includes a part or stage of an infrastructure project.

Division 1 Assessment and authorisation 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 must—
 - (a) assess REZ network infrastructure projects required for the renewable energy zone, and
 - (b) based on those assessments, recommend REZ network infrastructure projects to the consumer trustee for authorisation.
- (1A) The infrastructure planner must publish a summary of each recommendation made by the infrastructure planner under subsection (1)(b) on a publicly available website maintained by the infrastructure planner.
- (2) The infrastructure planner must assess 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.
- (2A) A recommendation by the infrastructure planner under subsection (1)(b)—
 - (a) may relate to one or more REZ network infrastructure projects that the infrastructure planner recommends be authorised, and
 - (b) must include recommendations about the following—
 - (i) the staging and sequencing of the REZ network infrastructure project or projects,
 - (ii) the funding and cost recovery for the REZ network infrastructure project or projects,

(iii) other matters prescribed by the regulations.

(2B) If the infrastructure planner considers it appropriate, the infrastructure planner may do either or both of the following—

- (a) recommend the consumer trustee amend the terms of the authorisation of a REZ network infrastructure project,
- (b) ask the consumer trustee to amend the maximum capital costs amount for an authorised REZ network infrastructure project.

(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,
- (d) the information that must be included in a summary required to be published by the infrastructure planner under subsection (1A).

30AA Consumer trustee may authorise REZ network infrastructure projects or amend authorisations

(1) If the infrastructure planner recommends, under section 30(1)(b), a REZ network infrastructure project for authorisation, the consumer trustee must decide to—

- (a) authorise the project in accordance with the recommendation, or
- (b) refuse to authorise the project.

(2) If the infrastructure planner recommends, under section 30(2B)(a), an amendment to the terms of an authorisation, the consumer trustee must decide to—

- (a) authorise the amendment in accordance with the recommendation, or

(b) refuse to authorise the amendment.

(3) The consumer trustee—

(a) must consider the development pathway contained in the most recently published infrastructure investment objectives report (the **current development pathway**) when deciding whether to authorise a REZ network infrastructure project under subsection (1), and

(b) may consider the current development pathway when deciding whether to authorise an amendment under subsection (2).

(4) 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.

31 Maximum capital costs amount for authorised REZ network infrastructure projects

(1) For each authorised REZ network infrastructure project, 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 project.

(2) If the infrastructure planner asks, under section 30(2B)(b), the consumer trustee to amend the maximum capital costs amount, the consumer trustee must decide to—

(a) amend, by written notice to the regulator, the maximum capital costs amount, or

(b) refuse to amend the maximum capital costs amount.

(3) In deciding whether to amend the maximum capital costs amount under subsection (2), the consumer trustee must have regard to any relevant amendments authorised by the consumer trustee under section 30AA(2)(a).

(4) The consumer trustee must—

(a) give the Minister written notice of the maximum capital costs amount as soon as practicable after giving written notice of the amount to the regulator under subsection (1), and

(b) give the Minister written notice of an amended maximum capital costs amount as soon as practicable after giving written notice of the amended amount to the regulator under subsection (2).

(5) The consumer trustee must not disclose the maximum capital costs amount to any person other than—

(a) the regulator under subsection (1) or (2), or

- (b) the Minister under subsection (4).
- (6) The regulator must not disclose the maximum capital costs amount to any person.
- (7) The Minister may, by written notice (a **Ministerial disclosure notice**), disclose the maximum capital costs amount to a person (a **recipient**) at any time.
- (8) The Minister may disclose the maximum capital costs amount under subsection (7) subject to conditions relating to the further disclosure and confidentiality of the maximum capital costs amount, including conditions—
 - (a) authorising a recipient to disclose the maximum capital costs amount to a specified person or class of persons, or
 - (b) providing for the way in which, and conditions on which, a recipient may disclose the maximum capital costs amount, or
 - (c) requiring persons to whom a recipient discloses the maximum capital costs amount to keep the maximum capital costs amount confidential.
- (9) A recipient must not disclose the maximum capital costs amount to a person unless the disclosure—
 - (a) is authorised by the Ministerial disclosure notice, and
 - (b) otherwise complies with the conditions of the Ministerial disclosure notice.
- (10) A person to whom a recipient discloses the maximum capital costs amount—
 - (a) must not disclose the maximum capital costs amount to a person, and
 - (b) must comply with the conditions of the Ministerial disclosure notice.
- (11) 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 1AA Appointment of network operators to carry out REZ network infrastructure projects

31A Infrastructure planner may appoint network operators to carry out REZ network infrastructure projects

- (1) The infrastructure planner may appoint a network operator to carry out a REZ network infrastructure project.
- (2) The infrastructure planner may, at any time, make one or more appointments for one or more network operators under subsection (1) in relation to the REZ network

infrastructure project.

- (3) The regulations may make further provision about the exercise of the infrastructure planner's functions under this section, including about—
 - (a) eligibility criteria for network operators who may be appointed, and
 - (b) the selection and appointment of network operators.

31B Infrastructure planner may recommend Minister direct authorised REZ network infrastructure projects be carried out

- (1) The infrastructure planner may recommend to the Minister that the Minister direct a network operator to carry out an authorised REZ network infrastructure project.
- (2) The infrastructure planner may, at any time, recommend one or more directions be given to one or more network operators under subsection (1) in relation to the authorised REZ network infrastructure project.
- (3) The regulations may make further provision about the exercise of the infrastructure planner's functions under this section, including the circumstances in which the infrastructure planner must not make a recommendation to the Minister under subsection (1).

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 network infrastructure project.
- (2) A direction must specify the following—
 - (a) the network operator to whom the direction applies,
 - (b) the location and description of the infrastructure project,
 - (c) the date by which the network operator, taking all reasonable steps, must comply with the direction,
 - (d) other matters prescribed by the regulations.
- (2A) A direction may specify the following—
 - (a) the requirements for the development or construction of the infrastructure project,

- (b) the staging or sequencing of the planning, design, financing, construction or commissioning of the infrastructure project,
 - (c) the requirements for the operation or maintenance of infrastructure relating to the infrastructure project,
 - (d) whether another direction may be made about the infrastructure project in accordance with section 35C,
 - (e) that the network operator must facilitate or permit another network operator carrying out work on infrastructure owned or leased by the network operator in accordance with a direction to the other network operator under subsection (4B),
 - (f) other matters the Minister considers relevant.
- (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.
- (4A) One or more directions to one or more network operators may be given at any time under this section in relation to an infrastructure project.
- (4B) A direction under this section may direct a network operator to commission, operate or maintain infrastructure not owned or leased by the network operator.
- (4C) A direction under subsection (4B) does not have effect until a direction under subsection (2A)(e) directs the other network operator that owns or leases the infrastructure to facilitate or permit the network operator to commission, operate or maintain the infrastructure.
- (5) The regulations may make further provision about the following—
- (a) the exercise of the Minister's functions under this section,
 - (b) the classes of renewable energy zones in relation to which a direction may be given,
 - (c) the classes of authorised REZ network infrastructure projects and priority network infrastructure projects in relation to which a direction may be given.

33 Directions for authorised REZ network infrastructure projects

- (1) The Minister may give a network operator a direction under section 32(1)(a) only if the infrastructure planner has recommended the giving of the direction under section

31B.

- (2) Before giving the network operator the direction, the Minister must consult with the Minister for Planning and Public Spaces.
- (3) The regulations may make further provision about the following—
 - (a) the exercise of the Minister's functions under this section,
 - (b) the eligibility criteria and selection process for network operators who may be directed to carry out authorised REZ network infrastructure projects,
 - (c) the matters the Minister may or must consider when deciding whether to direct a network operator to carry out an authorised REZ network infrastructure project.

34 Directions for priority network infrastructure projects

- (1) Before directing a network operator to carry out a priority network 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 network infrastructure project unless the Minister has considered the following—
 - (a) existing network infrastructure in the area in which the priority network 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 network 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 network infrastructure project unless the Minister is satisfied that—
 - (a) it is an appropriate response to—
 - (i) a target breach identified in an energy security target monitor report, or
 - (ii) a forecast shortfall in reliability or system security services identified in a report prepared under or published in accordance with the *National Electricity Rules*, Chapter 5, 6 or 6A, and

- (b) it is in the public interest, and
- (c) any conditions prescribed by the regulations are complied with.

35A Commencement of directions

- (1) The obligation of a network operator to comply with a direction under section 32 does not commence until the first of the following occurs—
 - (a) the Minister gives written notice to the network operator that the Minister is satisfied that reasonable interim financial arrangements are in place for the network operator to commence carrying out the direction before a determination is made under section 38,
 - (b) the regulator makes a determination under section 38 in relation to the direction.
- (2) Before giving a written notice under subsection (1)(a), the Minister must—
 - (a) consult with the network operator, and
 - (b) have regard to the interests of the network operator and NSW electricity customers.

35B Amendment of directions

- (1) Section 34(1) and (2) does not apply to the amendment of a direction under section 32 if the amendment does not include a material change to the location or description of the infrastructure project as specified in the direction.
- (2) A direction under section 32 in relation to a priority network infrastructure project must not be amended in a way that would materially change the location or description of the infrastructure project as specified in the direction.
- (3) Subsection (2) does not affect the power to revoke the direction or make another direction under section 32 in relation to the infrastructure project.

35C Staged directions for infrastructure projects

- (1) This section applies to an infrastructure project for which—
 - (a) a direction has been made, and
 - (b) there has been no material change to the location or description of the infrastructure project as specified in the initial direction for the project.
- (2) Section 34(1) and (2) does not apply to the making of a further direction about an infrastructure project to which this section applies if—
 - (a) the direction does not make a material change to the location or description of the infrastructure project as specified in the initial direction, and

- (b) the initial direction specified that a further direction about the infrastructure project may be made in accordance with this section.

(3) In this section—

direction means a direction made under section 32.

initial direction, in relation to an infrastructure project, means the first direction made in connection with the infrastructure project.

35 Failure to comply with direction

- (1) A network operator to whom a direction is given under section 32 must not fail to comply with the direction.

Maximum penalty—

- (a) for a corporation—18,000 penalty units, or
 - (b) for an individual—3,500 penalty units.
- (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, in relation to the same act or omission, be both—
 - (a) prosecuted for an offence against subsection (1), and
 - (b) dealt with by the Minister or the Tribunal for a contravention of a licence condition under the [Electricity Supply Act 1995](#), Schedule 2, clause 8 or 8A.
 - (4) A person must not bring proceedings for the prosecution of an offence against subsection (1) in relation to an act or omission unless the person—
 - (a) has considered whether the act or omission has been or is likely to be the subject of another penalty or action under the [National Electricity \(NSW\) Law](#), and
 - (b) is satisfied that it is nevertheless appropriate to bring the proceedings.

35AA Directors and managers liable for failures to comply with directions

- (1) If a corporation contravenes section 35(1), each of the following persons is to be treated as having contravened the section if the person knowingly authorised or permitted the contravention—
 - (a) a person who is a director of the corporation, or
 - (b) a person who is concerned in the management of the corporation.
- (2) A person may, under this section, be proceeded against and convicted for a

contravention of section 35(1) whether or not the corporation has been proceeded against or convicted for a contravention of the section.

- (3) Nothing in this section affects any liability imposed on a corporation for an offence against section 35(1) committed by the corporation.

Division 3 Functions of regulator

36A Definitions

In this division—

adjustment, of amounts, includes an adjustment of amounts under a provision included in a determination, whether under section 38(3) or otherwise.

authorisation means—

- (a) an appointment by the infrastructure planner under section 31A(1) in relation to an authorised REZ network infrastructure project, or
- (b) an authorisation by the Minister under section 36(2), or
- (c) a direction given by the Minister under section 32 to carry out an infrastructure project.

network operator includes persons referred to in section 36(1A), but only for the purpose specified in the subsection.

36 Application of Division

- (1) This Division applies to a network operator who is subject to an authorisation.
- (1A) This division also applies to the following persons, but only for the purpose of an adjustment of amounts—
 - (a) a network operator who was subject to an authorisation,
 - (b) a person who was a network operator subject to an authorisation.
- (2) The Minister may authorise a network operator to carry out a priority network infrastructure project for the purposes of this Division.
- (2A) One or more authorisations for one or more network operators may be made at any time under subsection (2) for a priority network infrastructure project.
- (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) (Repealed)

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

38 Regulator to determine amount payable to or by 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 applicable to the relevant authorisation, 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.
- (3A) An adjustment provision included in a determination may provide that amounts may be payable by a network operator to the scheme financial vehicle in specified circumstances.
- (3B) To avoid doubt—

- (a) a provision of a determination about the adjustment of amounts may have effect after the expiry of the relevant authorisation, and
 - (b) if a provision in a determination about the adjustment of amounts requires a determination to be reviewed and remade, the following may occur after the expiry of the relevant authorisation—
 - (i) a determination may be remade,
 - (ii) a provision in a determination about the adjustment of amounts may have effect and provide for amounts to be payable by a network operator to the scheme financial vehicle.
- (4) Before making a determination, the regulator is to calculate the prudent, efficient and reasonable capital costs of the network operator 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) If a determination relates to the amount payable to a network operator appointed under section 31A to carry out a REZ network infrastructure project, the amount calculated under subsection (4) must not exceed the difference between the maximum capital costs amount for the project and the sum of the following—
 - (a) any amounts paid or payable, under another determination for the project, to a network operator for the capital costs of development and construction of the project,
 - (b) any amounts that have been paid, or are likely to be paid, out of the Fund to the infrastructure planner for the project.
- (6A) To avoid doubt, it is declared that subsection (6) does not apply to the amount determined by the regulator under subsection (4) as adjusted from time to time in accordance with—
 - (a) the adjustment of amounts provided for in the determination under subsection (3),
or
 - (b) the regulations made under subsection (10).
- (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

(9A) If a network operator to whom a notice under subsection (7) applies holds a licence under the [Electricity Supply Act 1995](#), it is a condition of the licence that the licensee complies with the notice.

(9B) A person cannot be both prosecuted for an offence against subsection (9) and dealt with by the Minister for a contravention of a licence condition under the [Electricity Supply Act 1995](#), Schedule 2, clause 8 in relation to the same act or omission.

(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.

(1A) A network operator must pay the scheme financial vehicle the amount the scheme financial vehicle 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) (Repealed)

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.
- (3) Section 38(6) does not apply in relation to the review or remaking of the determination.

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.

Division 4 Miscellaneous

42A Application of *National Electricity (NSW) Law* and National Electricity Rules in relation to system security services

- (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 to enable the planning, provision and management of system security services in connection with network infrastructure, including infrastructure not owned by the system strength service provider.
- (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.

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 relevant 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.

maximum capacity, for infrastructure, means the amount, in megawatts, shown as the maximum capacity for generation for the infrastructure in the NEM registration and exemption list.

NEM registration and exemption list means the document titled *NEM registration and exemption list* published by AEMO or a document that replaces the document.

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

relevant capacity, for long-duration storage infrastructure for storage of electricity, means the lower of the following—

- (a) the registered capacity for the infrastructure,
- (b) the maximum capacity for the infrastructure.

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 (the **2030 objective investment period**) for the construction of generation infrastructure and long-duration storage infrastructure to which this Part applies, and
- (c) the minimum objective for the period ending on 31 December 2033 (the **2034 objective investment period**) for the construction of 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 for the 2030 objective investment period 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.
- (3A) The minimum objective for the 2034 objective investment period is the construction of long-duration storage infrastructure, including long-duration storage infrastructure constructed during the 2030 objective investment period, with a total storage of at least 28 gigawatt hours.
- (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,
- (d1) all money paid to the scheme financial vehicle by a network operator under a determination under Part 5, Division 3,
- (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, infrastructure planner 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.
- (2AA) An infrastructure planner may be appointed to exercise functions in relation to an access area or part of an access area.
- (2A) An infrastructure planner may be appointed to exercise functions in relation to a priority network infrastructure project.
- (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.
- (3A) The functions of an infrastructure planner in relation to an access area or part of an access area must be exercised by the Energy Corporation at any time during which a person is not appointed as the infrastructure planner for the access area or part of the access area.
- (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.
- (4A) An infrastructure planner also has the function of identifying, assessing and, if appropriate, recommending to the Minister a network infrastructure project the

infrastructure planner considers to be an appropriate response to—

- (a) a target breach identified in an energy security target monitor report, or
- (b) a forecast shortfall in reliability or system security services identified in a report prepared under or published in accordance with the *National Electricity Rules*, Chapter 5, 6, or 6A.

(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.
- (5) The Secretary may subdelegate a function delegated to the Secretary by the Minister under subsection (1) to an authorised person, unless the Minister otherwise provides in the instrument of delegation to the Secretary.
- (6) The Secretary may delegate the Secretary's functions under this Act, other than this power of delegation, to an authorised person.
- (7) In this section—
authorised person means—
 - (a) an employee of the Department, or
 - (b) a person, or a person of a class, prescribed by the regulations.

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,
- (e1) exercising a function in relation to, or giving effect to a requirement in relation to, the grant, increase or administration of access rights in an access scheme by a person or body other than—
 - (i) a person or body who holds access rights in the access scheme, or
 - (ii) a person or body applying or competing to hold access rights in the access scheme,
- (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 following—
 - (i) the administration of an access scheme in a renewable energy zone or access area,
 - (ii) 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.

80 Modification of [National Electricity \(NSW\) Law](#)

The [National Electricity \(NSW\) Law](#) is modified as set out in Schedule 2.

Schedule 1 Savings, transitional and other provisions

Part 1 Regulations

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.

Part 2 Provisions consequent on enactment of **Energy Amendment (Long Duration Storage and Investment) Act 2024**

2 Consumer trustee to notify Minister of existing maximum amounts

- (1) This clause applies in relation to a maximum amount for the prudent, efficient and reasonable capital costs for development and construction of a REZ network infrastructure project set by the consumer trustee under section 31(2) before the commencement of this clause (an **existing maximum amount**).
- (2) The consumer trustee must give the Minister written notice of each existing maximum

amount within 1 week of the commencement of this clause.

- (3) To avoid doubt, section 31(3A)–(3D) extend to an existing maximum amount of which the Minister is given written notice under this clause.

Note—

Section 31(3A) allows the Minister to disclose the maximum amount to other persons. Section 31(3B) allows the Minister to disclose the maximum amount subject to conditions relating to the further disclosure and confidentiality of the maximum amount. Section 31(3C) and (3D) provide for the confidentiality obligations of persons to whom the maximum amount is disclosed.

3 Validation of particular conduct in relation to access schemes

- (1) This clause applies in relation to the exercise of a function, or the giving of effect to a requirement, by a person or body in relation to an access scheme before the commencement of this clause that would have been relevant conduct under section 72(3), definition of **relevant conduct**, paragraph (e1) had that paragraph been in force at the time of the exercise of the function or the giving of effect to the requirement by the person or body.
- (2) The exercise of the function, or the giving of effect to the requirement, by the person or body is taken to be, and to have always been, relevant conduct for section 72.

Part 3 Provision consequent on enactment of Electricity Infrastructure Investment Amendment (Priority Network Projects) Act 2025

4 References to “priority transmission infrastructure project”

A reference in another Act, an instrument made under another Act or a document to a priority transmission infrastructure project within the meaning of, or in connection with, this Act is taken to be a reference to a priority network infrastructure project.

Part 4 Provisions consequent on enactment of Energy Legislation Amendment Act 2025

5 Deemed authorisation of certain REZ network infrastructure projects

- (1) This clause applies in relation to a REZ network infrastructure project if, immediately before the commencement of this clause, an authorisation by the consumer trustee under previous section 31(1)(b) authorising a network operator to carry out the project (an **existing authorisation**) is in effect.
- (2) On the commencement of this clause—
- (a) the consumer trustee is taken to have authorised the REZ network infrastructure project under section 30AA(1)(a), and
 - (b) the existing authorisation is taken to be an appointment of the network operator

by the infrastructure planner under section 31A(1) to carry out the REZ network infrastructure project.

(3) In this clause—

previous, in relation to a provision, means the provision as in force before the commencement of this clause.

6 References to registered capacity for long-duration storage infrastructure in existing LTES agreements and related project development agreements—section 43

(1) On and from the commencement of this clause—

- (a) a reference in an existing LTES agreement or a related project development agreement to the registered capacity, as defined by or within the meaning of this Act, for or in relation to LDS infrastructure specified in the agreement is taken to be a reference to the relevant capacity for or in relation to the LDS infrastructure, and
- (b) for the purposes of the existing LTES agreement or related project development agreement, the relevant capacity for or in relation to the LDS infrastructure is taken to mean the relevant capacity for the LDS infrastructure under amended section 43(3).

(2) In this clause—

amended, in relation to a provision, means the provision as in force on and from the commencement of this clause.

existing LTES agreement means an LTES agreement in force at the commencement of this clause.

LDS infrastructure means long-duration storage infrastructure for storage of electricity.

related project development agreement, in relation to an existing LTES agreement, means a project development agreement—

- (a) entered into between the scheme financial vehicle and the LTES operator under the existing LTES agreement in support of the existing LTES agreement, and
- (b) in force at the commencement of this clause.

Schedule 2 Modification of National Electricity (NSW) Law

section 80

2.1 Modification of National Electricity (NSW) Law about civil penalty

provisions in modified National Electricity Rules

[1] Section 2 Definitions

Insert in alphabetical order in section 2(1)—

infrastructure planner has the same meaning as in the *Electricity Infrastructure Investment Act 2020*.

section 27/41 rule means a provision included in the Rules by operation of a regulation under the *Electricity Infrastructure Investment Act 2020*, section 27 or 41, or both.

[2] Section 2(1), definition of “National Electricity Rules or Rules”, paragraph (ac)

Insert after paragraph (ab)—

(ac) section 27/41 rules, except in Parts 4 and 7; and

[3] Section 2AA Meaning of civil penalty provision and conduct provision

Insert after section 2AA(1)(ba)—

(bb) a section 27/41 rule that is declared by the provision or another provision to be a civil penalty provision; or

[4] Section 2AB Civil penalty amounts for breaches of civil penalty provisions

Insert after section 2AB(2)—

(3) Despite subsection (1), the civil penalty for a breach of a civil penalty provision that is a section 27/41 rule is—

- (a) if the provision is declared to be a tier 3 civil penalty provision—the amounts specified in subsection (1)(a)(i) and (ii); or
- (b) if the provision is declared to be a tier 2 civil penalty provision—the amounts specified in subsection (1)(b)(i) and (ii); or
- (c) if the provision is declared to be a tier 1 civil penalty provision—the amounts specified in subsection (1)(c)(i) and (ii).

[5] Section 28YB

Insert after section 28YA—

28YB Disclosure of information to Minister

The AER is authorised to disclose to the Minister information given to the AER in confidence about or in connection with the performance of its functions or the exercise of its powers under this Law or the Rules.

[6] Section 28ZI Use of information

Insert before section 28ZI(1)(a)—

- (a1) the *Electricity Infrastructure Investment Act 2020* and the regulations under the Act;

[7] Section 28ZJ

Insert after section 28ZI—

28ZJ Functions where AER is regulator

- (1) This section applies if the AER is appointed as regulator under the *Electricity Infrastructure Investment Act 2020*, section 64.
- (2) If this section applies—
- (a) the AER has the functions conferred under section 15(1)(a), (b), (c) and (d) and Part 6 as if the relevant provisions are part of the Rules; and
 - (b) the Court has jurisdiction under Part 6 to deal with proceedings commenced by the AER under paragraph (a).
- (3) In this section—
- relevant provisions** means provisions in a regulation made under the *Electricity Infrastructure Investment Act 2020* that confer or impose functions on an infrastructure planner relating to a section 27/41 rule.

[8] Section 34 Rule making powers

Insert after section 34(3)—

- (4) To avoid doubt, a reference to Rules in subsection (1) does not include a reference to a section 27/41 rule.

[9] Section 70 Applications for judicial review

Insert “infrastructure planner,” before “AEMC” wherever occurring in section 70(1).

2.2 Modification of **National Electricity (NSW) Law** about system security services

[1] Section 2 Definitions

Insert after section 2(1), definition of “National Electricity Rules or Rules”, paragraph (ac), as inserted by Schedule 2.1[2]—

(ad) section 42A rules, except in Parts 4 and 7; and

[2] Section 2(1), definition of “section 42A rule”

Insert in alphabetical order in section 2(1)—

section 42A rule means a provision included in the Rules by operation of a regulation under section 42A of the *Electricity Infrastructure Investment Act 2020*.

[3] Section 2AA Meaning of civil penalty provision and conduct provision

Insert after section 2AA(1)(bb), as inserted by Schedule 2.1[3]—

(bc) a section 42A rule that is declared by the provision or another provision to be a civil penalty provision; or

[4] Section 2AB Civil penalty amounts for breaches of civil penalty provisions

Insert “or section 42A rule” after “section 27/41 rule” in section 2AB(3), as inserted by Schedule 2.1[4].

[5] Section 28ZJ Functions where AER is regulator

Insert “or section 42A rule” after “section 27/41 rule” in section 28ZJ(3), definition of **relevant provision**, as inserted by Schedule 2.1[7].

[6] Section 34 Rule making powers

Insert “or section 42A rule” after “section 27/41 rule” in section 34(4), as inserted by Schedule 2.1[8].

Dictionary

section 5

access area means the geographical area of the State and the infrastructure specified in a declaration by the Minister under section 19A.

access scheme means an access scheme declared by the Minister under section 24(1) that applies in—

(a) a renewable energy zone or part of a renewable energy zone, or

(b) an access area or part of an access area.

adjustment, for Part 5, Division 3—see section 36A.

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.

authorisation, for Part 5, Division 3—see section 36A.

authorised REZ network infrastructure project, for Part 5—see section 30A.

carry out, in relation to an infrastructure project, for Part 5—see section 30A.

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 investment objectives report, for Part 5—see section 30A.

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

infrastructure project, for Part 5—see section 30A.

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

LTES operator—see section 46.

maximum capacity, for Part 6—see section 43(3).

maximum capital costs amount, for an authorised REZ network infrastructure project, for Part 5—see section 30A.

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](#).

NEM registration and exemption list, for Part 6—see section 43(3).

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—

- (a) means transmission infrastructure and distribution infrastructure, and
- (b) includes generation or storage infrastructure that provides network services.

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

network operator, for Part 5, Division 3—see section 36A.

priority network infrastructure project means a network infrastructure project—

- (a) located in the State, and

- (b) identified in or forming part of a network infrastructure project identified in—
 - (i) a report prepared under or published in accordance with the *National Electricity Rules*, Chapter 5, 6, or 6A, or
 - (ii) an assessment and recommendation by an infrastructure planner under section 63(4A).

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

relevant capacity, for Part 6—see section 43(3).

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.

system security services means the following as referred to in the *National Electricity Rules*—

- (a) system strength services,
- (b) inertia network services,
- (c) network support and control ancillary services.

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*.