

ENERGY LEGISLATION AMENDMENT (CLEAN ENERGY FUTURE) BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Energy Legislation Amendment (Clean Energy Future) Bill 2024 (**Bill**) proposes to amend the *Electricity Infrastructure Investment Act 2020 (EII Act)*, the *Electricity Supply Act 1995 (ES Act)*, the *Pipelines Act 1967 (Pipelines Act)*, the *Energy and Utilities Administration Act 1987 (EUA Act)*, the *Land Acquisition (Just Terms Compensation) Act 1991 (JTC Act)*, including to:

- Support faster regulatory approvals for electricity system security infrastructure projects as coal-fired power stations retire.
- Introduce licensing requirements for Renewable Energy Zone (REZ) network infrastructure projects.
- Enable the effective operation of the electricity concessions for green hydrogen.
- Update the definition “market customer” in the Energy Savings Scheme to reflect a rule change by the Australian Energy Market Operator.
- Remove duplicative charging of Energy Security Safeguard scheme liabilities for electricity storage facilities.
- Strengthen and modernise the regulation framework for pipelines in NSW so it remains fit for purpose for the future energy transition.
- Strengthen the governance arrangements for the Energy Corporation of NSW (EnergyCo).
- Implement the Strategic Benefit Payments Scheme, which will deliver financial benefits to landowners and holders of other interests in land hosting new major transmission projects in NSW.

Objectives: What is the policy’s objective couched in terms of the public interest?

The amendments support the reliability, affordability and sustainability of the NSW energy system, which is in the public interest.

Schedule 1 – EII Act: The EII Act amendments provide a faster regulatory approval process for investments in new electricity system strength infrastructure projects to replace the grid stability services currently provided by coal fired power stations.

Schedule 2 – ES Act:

REZ network infrastructure projects are vital to the future of NSW electricity reliability. The amendments will ensure that transmission operator licences can be issued, and licence conditions adhered to for future REZ projects, including for the Central West Orana REZ.

Administrative amendments to the network charge concessions for green hydrogen producers aim to ensure the concessions can be delivered effectively.

The amendment to update the definition of market customer for the Energy Savings Scheme ensures intended persons participate in the scheme, ensuring the scheme delivers its intended benefits, which include reduced electricity costs.

The amendment to provide a regulation-making power to remove Energy Security Safeguard scheme liability for electricity storage, preventing duplicate scheme liability that increases costs for NSW electricity customers.

Schedule 3 – Pipelines Act: The Pipelines Act’s regulatory framework needs to be strengthened, including for the decommissioning of pipelines to ensure these are carried out in a safe manner in the future.

Schedule 4 – EUA Act: The EUA Act amendments will strengthen the governance arrangements for EnergyCo to refine roles and responsibilities between EnergyCo, the Minister for Energy, and the Department Secretary. These amendments balance EnergyCo’s role as a fully accountable delivery agency with strong Ministerial and Departmental oversight.

Schedule 5 – ES Act, EUA Act and JTC Act: The Strategic Benefit Payments Scheme will provide financial benefits to landowners and holders of other interests in land who will host eligible transmission infrastructure. Amendments are needed to implement the Scheme, ensure the Strategic Benefit Payments Scheme payments do not reduce compensation under the JTC Act, and establish a trust account for holding unpaid strategic benefit payments.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Schedule 1 – EII Act: The Department considered continuing to rely on the current regulatory approval process under the National Electricity Rules, which can take up to 3 years to complete. Amending the EII Act to expand the PTIP provision is the preferred approach because the PTIP regime delivers time efficiencies relative to the alternative considered.

Schedule 2 – ES Act

The alternative of REZ network infrastructure projects to operate without a licence was considered. Introducing licencing requirements for REZ network infrastructure projects was considered a preferred approach to manage performance and reliability standards and business continuity requirements.

Legislative amendments are required to enable effective operation of the network charge concessions. These amendments are minor and were requested by the Parliamentary Counsel’s Office, so the Department did not consider non-legislative mechanisms.

The Department also considered removing Energy Security Safeguard scheme liability for battery facilities through legislative amendments. A regulation-making power was preferred as it enables specific types of storage facilities to be targeted and mitigates the risk of unintended outcomes. The Department did not consider a non-legislative change because the Independent Pricing and Regulatory Tribunal (IPART) must administer the scheme as legislated. Therefore, a legislative change was required.

Schedule 3 – Pipelines Act: Consideration was given to not making any changes to the current regulation-making power, however, this would significantly erode the ability to appropriately regulate the safe operation of pipelines in NSW. The legislative amendment is needed to strengthen regulation making powers to facilitate more adaptive regulation changes in the future.

Schedule 4 – EUA Act: As the governance framework for EnergyCo is set out in the EUA Act, legislative amendment is needed to amend that framework and so no other non-

legislative mechanisms were considered. The Department considered alternative provisions which were ultimately not adopted, in order to achieve an appropriate balance between EnergyCo as an independent and fully accountable delivery agency and Government oversight.

Schedule 5 – ES Act, EUA Act and JTC Act: With respect to the Strategic Benefit Payments Scheme, the Department considered not making any legislative amendments as an alternative and decided that this is not a preferred option. If the amendments were not made, there will be:

- insufficient legal certainty that the Strategic Benefit Payments Scheme will be enforceable; and
- an unintentional risk that payments made under the Strategic Benefit Payments Scheme may reduce compensation payable under the JTC Act.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Schedule 1 – EII Act: If no change was made, this would maintain the current timeframes of up to three years for regulatory approval and up to another three years for delivery and commissioning of critical projects. This could come at the cost of higher costs for NSW consumers and higher emissions. The costs of expanding the PTIP regime are considered minor, noting Transgrid would still be required to seek approval from the Australian Energy Regulator to include costs of the project in charges recovered from NSW consumers.

Schedule 2 – ES Act:

Transmission licensing for REZ network infrastructure operators will support specified performance and reliability standards and business continuity requirements.

Using a regulation to remove Energy Security Safeguard scheme liability for battery facilities enables updates to be made as technology develops.

Schedule 3 – Pipelines Act: The benefit of strengthening the regulatory-making power under the Pipelines Act extends to supporting the energy transition by enabling a more fit-for-purpose safety and technical pipelines regulatory framework. Furthermore, certain penalty units are too low to act as sufficient deterrent. The proposed amendments will enable the update of outdated penalties to ensure these remain appropriately dissuasive.

Schedule 4 – EUA Act: The amendments to EnergyCo's governance arrangements will balance an appropriate level of independence for EnergyCo with Ministerial and Departmental oversight, ensuring that EnergyCo can execute its important role delivering REZs.

Schedule 5 – ES Act, EUA Act and JTC Act: The Strategic Benefit Payments Scheme will facilitate the timely delivery of a modern electricity grid for NSW that benefits both consumers and communities, ensuring benefits are fairly shared with affected landowners.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Schedules 1, 2 and 3 (items 1, 3-9, 11-12, 19, 23 and 28-31, 33-35 for the latter) will commence on Bill assent.

The removal of offences from the Pipelines Act (remaining items in Schedule 3) will take effect by proclamation at a future point in time when the Regulation changes are finalised. This is intended to take place by the end of 2024, following consultation.

Schedule 4 will commence at the same time as the commencement of Schedule 2 of the *Energy Legislation Amendment Act 2023* (ELA Act), which will commence upon proclamation in July 2024.

Schedule 5 of the Bill, which implements the Strategic Benefit Payments Scheme, will commence on the date of assent to the proposed Act. It is intended that the Scheme Guidelines will be issued by the end of 2024.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Schedule 1 – EII Act: Transgrid and EnergyCo were consulted on the need to accelerate electricity system security infrastructure projects and the expansion of the PTIP regime.

Schedule 2 – ES Act:

Amendments to the REZ licencing was discussed with targeted effected stakeholders (IPART, EnergyCo, ACERZ, and Communities and Justice). The proposed amendments were introduced to industry at the NSW Energy, Climate Change and Sustainability joint working groups meeting in March.

Amendments to the green hydrogen network charge concessions are administrative and do not change the current legislative framework, so stakeholder views were not sought.

The Department consulted the IPART on changes to remove liability for storage facilities for the Energy Security Safeguard, and on the change to definition of Market Customer. IPART supported the changes proposed in the Bill. Industry stakeholders have raised the issue with battery liability under Safeguard schemes with the Department. The Department advised these stakeholders it would address the issue.

Schedule 3 – Pipelines Act: The proposed Pipelines Act amendments do not change the current regulatory framework. Stakeholder consultation will be undertaken as part of the development of the new Regulation.

Schedule 4 – EUA Act: The Department consulted with the stakeholders affected by, or with expert knowledge of, the policy during policy development, and through the drafting of the Bill. This included EnergyCo, Treasury, the Public Service Commission, and the Cabinet Office’s Legal Branch.

Schedule 5 – ES Act, EUA Act and JTC Act: The Department, in conjunction with EnergyCo, has consulted with stakeholders including Transgrid, ACERZ, IPART, the Valuer General of NSW, and the NSW Department of Planning, Housing and Infrastructure. Further consultation will be undertaken to inform the development of the Guidelines to implement the scheme, including with Australian Energy Regulator, the Australian Energy Market Operator, the NSW distribution network service providers, consumer representatives from the Essential Energy Collaboration Collective, and NSW Farmers Association.