



New South Wales

Energy Legislation Amendment Bill 2025

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Electricity Infrastructure Investment Act 2020* (the **EII Act**) to—
 - (i) provide for the community purposes and employment purposes for which access scheme fees may be used, and
 - (ii) enable the planning, provision and management of system security services in connection with infrastructure that is not owned by the system strength service provider, and
 - (iii) broaden the infrastructure in relation to which long-term energy service agreements (**LTES agreements**) may be entered into for the purposes of the electricity infrastructure investment safeguard, and
 - (iv) enable the Minister to terminate the appointment of the consumer trustee if the Minister is reasonably satisfied the consumer trustee is unable to act independently, and
 - (v) amend and clarify the functions of the infrastructure planner and the consumer trustee in the recommendation and authorisation of network infrastructure projects, and
 - (vi) to facilitate payments to the infrastructure planner out of the electricity infrastructure fund for costs incurred by the infrastructure planner in the exercise of the infrastructure planner's functions, and
 - (vii) make other administrative, minor and consequential amendments,

- (b) to amend the *Electricity Supply Act 1995* (the **ES Act**) to—
- (i) facilitate and support the efficient and timely investment in electricity infrastructure under the EII Act, and
 - (ii) enhance the regulation of network-to-network connections, including through increased penalties and new licence conditions, and
 - (iii) enable the Independent Pricing and Regulatory Tribunal (the **Tribunal**) to pursue certain proceedings, including for civil penalties, under the *National Electricity (NSW) Law* (the **NEL (NSW)**), and
 - (iv) create offences for a retailer or an exempt seller to—
 - (A) charge small customers, or credit small customers at a rate less than \$0 per kilowatt hour, for solar-generated electricity supplied by the customer to the retailer or exempt seller, or
 - (B) charge other customers more for solar-generated electricity supplied by the customer to the supplier or exempt seller than the amount credited to the customer for the electricity during a billing period, and
 - (v) provide for the Tribunal to make price determinations for energy, hot water and air-conditioning services provided to customers through embedded networks and require operators of embedded networks or persons who sell energy, hot water or air-conditioning services delivered through an embedded network to comply with approved energy ombudsman schemes, and
 - (vi) provide increased flexibility for the strategic benefit payment guidelines, including by providing for the eligibility of an expanded category of impacted land owners and other holders of interests in land to receive strategic benefit payments, and
 - (vii) provide for the renewable fuel scheme (**RFS**) to commence 1 January 2027, and
 - (viii) improve the administration of licence applications and licences, and
 - (ix) make other administrative, minor and consequential amendments,
- (c) to amend the *National Electricity (New South Wales) Act 1997* to—
- (i) provide a regulation-making power to modify the *National Electricity Rules* to allow network service providers to recover costs associated with making payments to landholders for hosting certain types of energy infrastructure, and
 - (ii) make other administrative, minor and consequential matters,
- (d) to make related and consequential amendments to the *Electricity Supply (General) Regulation 2014*, the *Independent Pricing and Regulatory Tribunal Act 1992* and the *Residential (Land Lease) Communities Act 2013*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Electricity Infrastructure Investment Act 2020 No 44

Schedule 1[1] requires the infrastructure planner to consider the guidelines about consultation and negotiation with the local Aboriginal community when exercising functions under Part 5 and certain functions prescribed by the regulations. The infrastructure planner is required to make the appointment of a network operator subject to any conditions necessary to give effect to the guidelines and, if recommending the Minister direct a network operator to carry out a REZ network project, must recommend the direction be given subject to any conditions necessary to give effect to the guidelines.

Schedule 1[2] requires the Minister, the consumer trustee and the infrastructure planner to consider the plan for the NSW renewable energy sector when exercising certain functions under the EII Act. The infrastructure planner is required to make the appointment of a network operator subject to any conditions necessary to give effect to the plan and, if recommending the Minister direct a network operator to carry out a REZ network project, must recommend the direction be given subject to any conditions necessary to give effect to the plan.

Schedule 1[3] replaces the existing definitions of *community purpose* and *employment purpose* in section 26, which prescribe the purposes for which access scheme fees may be used, to enable the fees to be used for—

- (a) a purpose that benefits the local community of a local government area or Local Aboriginal Land Council area that is or has been wholly or partly within the geographic area that forms the renewable energy zone to which the access scheme applies at any time after the declaration of the scheme, rather than only a purpose that benefits the local community in that geographic area at the time the fees are to be applied, and
- (b) a purpose that promotes employment, skills and training for persons who live or work in a local government area or Local Aboriginal Land Council area that is or has been wholly or partly within the geographic area that forms the renewable energy zone to which the access scheme applies at any time after the declaration of the scheme, rather than only current employees who are affected by changes in electricity generation in the State and are in that geographic area at the time the fees are to be applied.

Schedule 1[4] inserts definitions for use in Part 5.

Schedule 1[5] amends the heading of Part 5, Division 1.

Schedule 1[6] amends section 30 to require the infrastructure planner for a renewable energy zone to assess REZ network infrastructure projects required for the renewable energy zone and, based on those assessments, recommend REZ network infrastructure projects to the consumer trustee for authorisation.

Schedule 1[7] removes the requirement for the infrastructure planner to make recommendations to the consumer trustee about the matters set out in section 30(2) in relation to REZ network infrastructure projects.

Schedule 1[8] provides for the infrastructure planner to recommend the authorisation of REZ network infrastructure projects and requires the infrastructure planner to include recommendations about certain matters related to the projects. The infrastructure planner may recommend amendments to the terms of an authorisation and may also ask the consumer trustee to amend the maximum capital costs amount for authorised REZ network infrastructure projects.

Schedule 1[9] inserts proposed section 30AA, which requires the consumer trustee to authorise or refuse to authorise projects and amendments as recommended by the infrastructure planner. The proposed section sets out matters the consumer trustee must consider when deciding whether to authorise projects. The amendment includes regulation-making powers to make further provision about the consumer trustee's and the infrastructure planner's functions under the proposed section.

Schedule 1[10] replaces section 31 to require the consumer trustee to set a maximum capital costs amount for the development and construction of an authorised REZ network infrastructure project. The amendment sets out requirements the consumer trustee must follow in relation to amending the maximum capital costs amount. The amendment sets out requirements and obligations on the Minister and other particular persons in relation to the disclosure of the maximum capital costs amount. The amendment inserts a regulation-making power to make further provision about the consumer trustee's functions and the infrastructure planner sharing information with the consumer trustee.

Schedule 1[11] inserts proposed Part 5, Division 1AA. The proposed division—

- (a) enables the infrastructure planner to appoint a network operator to carry out a REZ network infrastructure project, and
- (b) inserts regulation-making powers to make further provisions about the exercise of the infrastructure planner's functions under the proposed division, and
- (c) allows the infrastructure planner to recommend to the Minister that the Minister direct a network operator to carry out an authorised REZ network infrastructure project.

Schedule 1[17] is a consequential amendment.

Schedule 1[12] inserts a regulation-making power to make further provision about the exercise of the Minister's functions in directing network operators to carry out authorised REZ network infrastructure projects.

Schedule 1[13] enables the Minister to direct a network operator to carry out an authorised REZ network infrastructure project only on the recommendation of the infrastructure planner and after consulting the Minister for Planning and Public Spaces. The amendment inserts a regulation-making power to make provision about the exercise of the Minister's functions including matters for the Minister to consider, and the eligibility criteria and selection process for network operators.

Schedule 1[14] increases the maximum penalty for failure to comply with a direction given to a network operator under section 32.

Schedule 1[15] expands the scope of the double jeopardy provision in section 35 to include contraventions of licence conditions dealt with under the ES Act, Schedule 2, clause 8 or 8A and requires consideration of whether the contravention will also be subject to action under the NEL (NSW).

Schedule 1[16] provides that the directors and managers of a corporation that contravenes section 35(1) are to be treated as having contravened that section if they knowingly authorised or permitted the contravention.

Schedule 1[18] provides that, before determining the amount payable to a network operator carrying out a network infrastructure project, the regulator must calculate the prudent, efficient and reasonable capital costs of the network operator for development and construction of the project, rather than capital costs for overall development and construction of the project.

Schedule 1[19] provides that, for a network operator appointed to carry out a REZ network infrastructure project, the amount of the costs calculated by the regulator must not exceed the difference between—

- (a) the maximum capital costs amount for the project, and
- (b) certain amounts paid, or to be paid, to a network operator or the infrastructure planner for the project.

Schedule 1[20] enables the regulations to modify the application of, or disapply, a provision of the NEL (NSW) or the *National Electricity Rules*, to the extent reasonably necessary to enable the planning, provision and management of system security services in connection with infrastructure that is not owned by the system strength service provider. **Schedule 1[26], [28] and [29]** make consequential amendments.

Schedule 1[21] and [22] broaden the infrastructure in relation to which LTES agreements may be entered into for the purposes of the electricity infrastructure investment safeguard. Currently, LTES agreements can only be entered into with operators who construct and operate infrastructure consisting of storage units with a registered capacity, as specified in the NEM registration and exemption list published by AEMO, that can be dispatched for at least 8 hours. The amendments will enable LTES agreements to be entered into with operators that construct and operate infrastructure consisting of storage units with a relevant capacity that can be dispatched for at least 8 hours, being the lower of—

- (a) the registered capacity for the units specified in the NEM registration and exemption list published by AEMO, or
- (b) the maximum capacity for the units specified in the NEM registration and exemption list published by AEMO.

Schedule 1[23] enables money to be paid from the electricity infrastructure fund to the infrastructure planner to enable the infrastructure planner to exercise the infrastructure planner's functions under the EII Act.

Schedule 1[24] extends the Minister's existing power to terminate the appointment of the consumer trustee for incompetence, misconduct or incapacity to enable the Minister to also terminate the appointment if the Minister is reasonably satisfied the consumer trustee is unable to act independently. The amendment maintains the requirement for the appointor to give a person or body notice of the reasons for any proposed termination and to consider any submissions made by the person or body.

Schedule 1[25] enables the Secretary to—

- (a) delegate the Secretary's functions under the EII Act, and
- (b) subdelegate a function delegated to the Secretary by the Minister under the EII Act unless the Minister provides otherwise in the instrument of delegation.

Schedule 1[27] inserts—

- (a) a savings and transitional provision to provide that, for the purposes of amended Part 5, if, at the commencement, a network operator has been authorised to carry out a REZ network infrastructure project by the consumer trustee under current section 31(1)(b)—
 - (i) the project is deemed to be an authorised REZ infrastructure project, and
 - (ii) the network operator is taken to have been appointed to carry out the project, and
- (b) a transitional provision consequent on the amendments in Schedule 1[21] and [22] to ensure relevant references to the registered capacity for long-duration storage infrastructure in existing LTES agreements and related project development agreements are taken to be references to the relevant capacity of the infrastructure.

Schedule 1[30] inserts definitions into the Dictionary consequential on other amendments in Schedule 1.

Schedule 2 Amendment of Electricity Supply Act 1995 No 94

Schedule 2[1] updates the objects of the ES Act to include the object of facilitating and supporting the efficient and timely investment in electricity infrastructure under the EII Act.

Schedule 2[2] clarifies the regulation-making powers relating to the making of the scheme rules by the Minister.

Schedule 2[4] makes it an offence for a retailer or an exempt seller to do the following in relation to solar-generated electricity supplied by a customer to the retailer or exempt seller—

- (a) for a small customer—charge the customer, or credit the customer at a rate less than \$0 per kilowatt hour, for the electricity,
- (b) for a customer other than a small customer—charge the customer more for the electricity than the amount credited to the customer for the electricity during a billing period for the customer.

Schedule 2[3] makes a consequential amendment.

Schedule 2[9] and [18] insert proposed section 78 and Schedule 1 to modify the NEL (NSW) as it applies in New South Wales. The modifications deal with the following—

- (a) enabling the Tribunal to apply to the Supreme Court for an order under the NEL (NSW), proposed section 61(1A) declaring that a person has breached the *National Electricity*

Rules, clause 5.2.3(f), to the extent that the breach concerns non-compliance with a licence issued under the ES Act,

- (b) ensuring that other provisions of the NEL (NSW) that are necessary to facilitate such applications are taken to refer to the Tribunal and the State of New South Wales where required,
- (c) providing that the Tribunal cannot apply for orders under the NEL (NSW), section 62,
- (d) extending the protection against double jeopardy.

Schedule 2[33] provides a reciprocal protection against double jeopardy in the ES Act. **Schedule 2[7] and [8]** make consequential amendments to the regulatory functions of the Tribunal in the ES Act. **Schedule 2[31]** makes a further consequential amendment.

Schedule 2[10] provides for the Tribunal to make price determinations for energy, hot water and air-conditioning services provided to customers through embedded networks. **Schedule 2[6], [17] and [48]** make consequential amendments.

Schedule 2[12] expands the prohibition on operating a transmission system without a transmission operator's licence to cover transmission systems that are the subject of a network operator's appointment under the EII Act, section 31A(1), a network operator's direction under that Act, section 32(1) or a network operator's authorisation under that Act, section 36(2). **Schedule 2[12]** is also consequential on the amendment made by **Schedule 1[11]**. **Schedule 2[11]** makes a further consequential amendment.

Schedule 2[13] requires a person who operates an embedded network or sells energy, hot water or air-conditioning services delivered through an embedded network to be a member of, and comply with, an approved energy ombudsman scheme.

Schedule 2[14] repeals the limitation on the scope of the power to make regulations for a scheme established under section 98D. **Schedule 2[35]** makes a consequential amendment.

Schedule 2[15] provides that any monetary penalty imposed by the Tribunal on the holder of a licence or a director or person concerned in the management of the holder of a licence may be recovered in any court of competent jurisdiction as a debt due to the Crown.

Schedule 2[16] inserts—

- (a) proposed section 192B, which enables regulations to be made about matters relating to network-to-network connections and provides that those regulations may modify the application of, or disapply, a provision of the NEL (NSW) or the *National Electricity Rules*, and
- (b) proposed section 192C, which enables the Minister to issue guidelines (the ***network-to-network connection guidelines***) about matters relating to network-to-network connections and sets out the matters that may be included in the guidelines.

Schedule 2[19] reduces the period within which submissions relating to an application for a licence or the transfer of a licence may be lodged from 40 days to 28 days to align with consultation periods in other legislative schemes.

Schedule 2[20] removes the requirement to indicate the Minister's decision about an application for a licence or the transfer of a licence in the report on the application. **Schedule 2[21]** requires the Minister to instead publish notices on a publicly accessible website about the granting of, and refusal to grant, applications for licences.

Schedule 2[22] enables the Minister to impose a condition on a licence requiring the holder to exercise its functions under any other Act in accordance with specified guidelines or subject to specified restrictions.

Schedule 2[23] enables the Minister to impose the following conditions on a licence—

- (a) a condition requiring the holder of the licence to comply with the network-to-network connection guidelines,

(b) a condition requiring the holder of the licence to negotiate in good faith.

Schedule 2[24] allows the strategic benefit payment guidelines to provide for the eligibility of an expanded category of impacted land owners and other holders of interests in land to receive strategic benefit payments.

Schedule 2[25] provides flexibility in the regulation-making power to prescribe matters for which the strategic benefit payment guidelines may provide. **Schedule 2[26]** makes a consequential amendment.

Schedule 2[27], [28], [30] and [32] increase certain maximum monetary penalties for contraventions of the ES Act and regulations and licence conditions imposed under that Act. Schedule 2[27] and [30] also provide for continuing penalties.

Schedule 2[29] provides that the Minister must not take action under Schedule 2, clause 8 for a contravention to which that clause applies unless the Minister has considered whether the contravention has been or is likely to be the subject of another penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under the clause.

Schedule 2[34] replaces the definitions for *carried forward shortfall* and *compliance period* for the RFS to improve clarity.

Schedule 2[36] sets the commencement date for the RFS as 1 January 2027.

Schedule 2[37] provides that an election to carry forward a shortfall must be made to, and accepted by, the Scheme Regulator.

Schedule 2[38] replaces references to the 2025 compliance period for the RFS with references to the 2028 compliance period.

Schedule 2[39] replaces references to the 2024 compliance period for the RFS with references to the 2027 compliance period.

Schedule 2[40] clarifies that a carried forward shortfall is for a compliance period.

Schedule 2[41] provides that an election to surrender a certificate to remedy a carried forward shortfall must be made to, and accepted by, the Scheme Regulator.

Schedule 2[43] relocates an existing regulation-making power to provide for the revocation of the cancellation of certificates in connection with an amendment to a scheme participant's individual liable use or annual statement and for the revival of certificates. **Schedule 2[42]** makes a consequential amendment.

Schedule 2[44] inserts a definition to improve the readability of the required information for the Scheme Regulator's annual report on the RFS. **Schedule 2[45]** makes a consequential amendment to the list of required information.

Schedule 2[46] inserts a savings provision to declare that no proceedings may be brought in relation to lack of compliance with RFS requirements by scheme participants before 1 January 2027.

Schedule 2[47]–[49] insert definitions for certain words and expressions used in the proposed amendments, including inserting the definition of *strategic benefit payment* in the Dictionary so the term applies to the whole Act. **Schedule 2[5]** makes a consequential amendment.

Schedule 3 Amendment of Electricity Supply (General) Regulation 2014

Schedule 3 amends the *Electricity Supply (General) Regulation 2014* to—

- (a) reduce the RFS target for green hydrogen for the 2027 compliance period from 1,780,000 gigajoules to 180,000 gigajoules, and

- (b) omit references to the 2024, 2025 and 2026 compliance periods, and update references to the 2027 compliance period, consequent on the amendments in Schedule 2[36].

Schedule 4 Amendment of Independent Pricing and Regulatory Tribunal Act 1992 No 39

Schedule 4 makes an amendment consequential to Schedule 2[6].

Schedule 5 Amendment of National Electricity (New South Wales) Act 1997 No 20

Schedule 5 provides a regulation-making power to modify the *National Electricity Rules*, to the extent they apply in New South Wales, to allow network service providers to recover costs associated with making payments to landholders for hosting certain types of energy infrastructure.

Schedule 6 Amendment of Residential (Land Lease) Communities Act 2013 No 97

Schedule 6 makes amendments that are consequential to amendments to be made to the *National Energy Retail Law (NSW)* by regulations under the *National Energy Retail Law (Adoption) Act 2012*.