



New South Wales

Electricity Infrastructure Investment Bill 2020

Explanatory note

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

Overview of Bill

The objects of this Bill 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.

To achieve the objects, the Bill sets up a framework for investment in generation, storage and network infrastructure that includes the following main components—

- (a) the assessment and monitoring of an energy security target for electricity supply for each year,
- (b) renewable energy zones in particular geographical areas of the State that are made up of particular generation, storage and network infrastructure,
- (c) the construction and operation of network infrastructure in renewable energy zones and other areas of the State,
- (d) a framework for cost recovery by network operators who construct and operate network infrastructure,

- (e) derivative arrangements for persons who construct and operate generation, storage and firming infrastructure,
- (f) contributions from distribution network service providers.

Outline of provisions

Part 1 Preliminary

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.

Clause 3 sets out the objects of the proposed Act as set out in the Overview above.

Clause 4 provides that words used in the proposed Act are defined in the Dictionary.

Part 2 Energy security targets

Part 2 requires the person appointed as the energy security target monitor to calculate annual energy security targets and to assess and monitor whether or not the energy security target will be met over the following 10 years.

Part 3 Renewable energy zones and access schemes

Part 3 sets up the renewable energy zone framework as follows—

- (a) the Minister for Energy and Environment (the *Minister*) will be able to declare a renewable energy zone comprising a specified geographical area of the State and specified generation, storage or network infrastructure,
- (b) the 3 planned renewable energy zones known as Central-West Orana, New England and South West will be declared by the Minister,
- (c) the Minister will be able to declare the access schemes that operate in a renewable energy zone to authorise or prohibit access to, and use of, network infrastructure by operators of generation and storage infrastructure.

Part 4 Network infrastructure projects

Part 4 deals with the planning and implementation of network infrastructure by—

- (a) requiring a person appointed by the Minister as the infrastructure planner to assess and recommend network infrastructure options for a renewable energy zone, and
- (b) enabling network operators to be authorised or directed to carry out a particular network infrastructure project, which may include planning, construction and operation, and
- (c) requiring the scheme financial vehicle established under the proposed Act to pay a network operator who carries out a network infrastructure project an amount that equals the prudent, efficient and reasonable costs incurred by the network operator in carrying out the project.

Part 5 Electricity infrastructure investment safeguard

Part 5 sets up the electricity infrastructure investment safeguard that includes—

- (a) objectives for generation, long-duration storage and firming infrastructure, and
- (b) planning by the consumer trustee for development pathways for generation, long-duration storage and firming infrastructure, and
- (c) derivative arrangements referred to as long-term energy service agreements that are entered into between the scheme financial vehicle and a person who operates and constructs generation, long-duration storage or firming infrastructure, and

(d) a risk management framework set up by the consumer trustee.

Part 6 Electricity infrastructure fund

Part 6 requires the scheme financial vehicle to establish an electricity infrastructure fund and provides for the money that may be paid into and from the fund. Distribution network service providers will be required to pay contributions into the fund.

Part 7 Administration

Part 7 sets up the roles of energy security target monitor, consumer trustee, financial trustee, infrastructure planner and regulator and provides for the scheme financial vehicle to be established.

Part 8 Miscellaneous

Part 8 contains miscellaneous provisions.

Schedule 1 Savings, transitional and other provisions

Schedule 1 enables savings and transitional regulations to be made.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Electricity Supply Act 1995* in relation to the energy savings scheme.

Schedule 2.2 amends the *Energy and Utilities Administration Act 1987* in relation to the Climate Change Fund.

Dictionary

The Dictionary defines words used in the proposed Act.



New South Wales

Electricity Infrastructure Investment Bill 2020

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New South Wales

Electricity Infrastructure Investment Bill 2020

No. , 2020

A Bill for

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

The Legislature of New South Wales enacts—	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Electricity Infrastructure Investment Act 2020</i> .	4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Objects of Act	7
(1) The objects of this Act are—	8
(a) to improve the affordability, reliability, security and sustainability of electricity supply, and	9 10
(b) to co-ordinate investment in new generation, storage, network and related infrastructure, and	11 12
(c) to encourage investment in new generation, storage, network and related infrastructure by reducing risk for investors, and	13 14
(d) to foster local community support for investment in new generation, storage, network and related infrastructure, and	15 16
(e) to support economic development and manufacturing.	17
(2) 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.	18 19
4 Definitions	20
The Dictionary defines words used in this Act.	21
Note. The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	22 23

Part 2 Energy security targets 1

Division 1 Setting and monitoring of energy security targets 2

5 Energy security target monitor to set and monitor targets 3

- (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— 4
5

energy security target = maximum demand + reserve margin
where— 6

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. 7
8
9

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

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. 11
12
13
14

- (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. 15
16

- (3) The regulations may prescribe— 17

(a) the factors to be considered in calculating the maximum demand, and 18

(b) the method for calculating the maximum demand. 19

- (4) In this section— 20

generating unit has the same meaning as in the *National Electricity Rules*. 21

6 Energy security target monitor reports 22

- (1) The energy security target monitor is to report to the Minister about the energy security targets. 23
24

- (2) A report is to be provided to the Minister— 25

(a) once a year, no later than 60 days after AEMO publishes a statement of opportunities under the *National Electricity Rules*, and 26
27

(b) at any time the Minister requests a report. 28

- (3) A report must include the following— 29

(a) the energy security target for each of the following 10 financial years and how they were calculated, 30
31

(b) the firm capacity for each of the following 10 financial years and how they were calculated, 32
33

(c) an assessment of whether or not the firm capacity will meet the energy security target over the following 10 financial years, 34
35

(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*)— 36
37

(i) the expected size of the target breach in megawatts, and 38

(ii) the expected duration of the target breach, 39

(e) information that may assist the Minister in considering what action, if any, the Minister intends to take in relation to a target breach, 40
41

(f) other information the energy security target monitor considers relevant, 42

(g)	other matters prescribed by the regulations.	1
(4)	In preparing the report, the energy security target monitor must—	2
(a)	consult with the Secretary and AEMO, and	3
(b)	take into account any matters prescribed by the regulations.	4
(5)	The energy security target monitor must, if requested by the Minister, provide additional information or a clarification of a report.	5 6
(6)	Before providing the information or clarification, the energy security target monitor must consult with the Secretary and AEMO.	7 8
(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.	9 10 11
(8)	Subsections (3) and (4) do not apply to a further report under subsection (7).	12
7	Publication of energy security target monitor reports	13
(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.	14 15
(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—	16 17 18
(a)	diminish the competitive commercial value of the information to the person who provided the information to the monitor, or	19 20
(b)	prejudice the legitimate business, commercial, professional or financial interests of the person who provided the information to the monitor.	21 22
8	Minister to consider energy security target monitor reports	23
(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.	24 25 26
(2)	The Minister may prepare a statement about what action the Minister intends to take and must make the statement publicly available.	27 28
Division 2	Energy security target monitor’s information gathering powers	29 30
9	Requirements to provide information to energy security target monitor	31
(1)	The energy security target monitor may, by written notice to a person, require the person to provide relevant information to the monitor.	32 33
(2)	A notice under subsection (1) must specify the following—	34
(a)	the information required to be provided,	35
(b)	the form in which the information is to be provided,	36
(c)	the time within which the information is to be provided.	37
(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.	38 39 40
(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.	41 42 43

(5)	The place and time at which a person may be required to attend is to be—	1
(a)	a place or time nominated by the person, or	2
(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.	3 4 5
(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—	6 7
(a)	a person who owns, controls or operates generation infrastructure,	8
(b)	a person who owns, controls or operates network infrastructure,	9
(c)	a small generation aggregator or a market small generation aggregator,	10
(d)	a person who provides wholesale demand response services,	11
(e)	an operator of a virtual power plant,	12
(f)	an aggregator of distributed energy resources,	13
(g)	a person who supplies fuel to generation infrastructure,	14
(h)	a person involved in planning and designing generation infrastructure,	15
(i)	other registered participants.	16
(7)	In this section—	17
	market small generation aggregator, registered participant and small generation aggregator have the same meanings as in the <i>National Electricity Rules</i> .	18 19
	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—	20 21 22
(a)	current and planned construction, operation and maintenance of generation infrastructure,	23 24
(b)	current and planned network infrastructure that may affect the operation of generation infrastructure,	25 26
(c)	aggregated distributed energy resources,	27
(d)	wholesale demand response activities.	28
	relevant matter means a matter in relation to which information is reasonably required to assist the energy security target monitor in exercising its functions.	29 30
10	Offences	31
(1)	A person must not, without lawful excuse, fail to comply with a requirement made of the person under section 9.	32 33
(2)	A person must not give information in purported compliance with a requirement under section 9 knowing that the information is false or misleading in a material respect.	34 35 36
	Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.	37 38
11	Disclosure of protected information	39
(1)	The energy security target monitor must not disclose protected information, except—	40
(a)	to the Minister under section 6, or	41
(b)	as required by another law.	42
(2)	The Minister must not disclose protected information, except—	43
(a)	with the consent of the person who provided the protected information, or	44

- (b) to AEMO with the consent of the energy security target monitor, or 1
- (c) for the purposes of, or in connection with, legal proceedings arising out of this Act, or 2
3
- (d) to a person belonging to a class prescribed by the regulations, or 4
- (e) if the disclosure is, in the opinion of the Minister, appropriate. 5
- (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. 6
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- (4) A person to whom protected information is disclosed by the Minister must not disclose protected information, except— 9
10
- (a) with the authorisation of the Minister, and 11
- (b) in accordance with a direction, if any, given by the Minister to the person that imposes a condition on or restricts the disclosure. 12
13
- Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual. 14
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- (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. 16
17
- (6) In this section— 18
- appropriate**, in relation to the disclosure of protected information, means— 19
- (a) reasonably necessary— 20
- (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 21
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23
- (ii) to ensure the reliability and security of electricity supply, or 24
- (iii) to enable the energy security target to be met, and 25
- (b) in the public interest. 26
- 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— 27
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29
- (a) diminish the competitive commercial value of the information to the person who provided the information to the monitor, or 30
31
- (b) prejudice the legitimate business, commercial, professional or financial interests of the person who provided the information to the monitor. 32
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Part 3	Renewable energy zones and access schemes	1
Division 1	Renewable energy zones	2
12	Minister may declare renewable energy zone	3
(1)	The Minister may, by order published in the Gazette, declare a renewable energy zone comprising—	4
	(a) a specified geographical area of the State, and	5
	(b) specified generation, storage or network infrastructure, including planned or existing infrastructure.	6
(2)	The network infrastructure that forms part of a renewable energy zone may extend outside the geographical area specified in the declaration.	7
(3)	A declaration must also include the following—	8
	(a) a map showing the geographical area,	9
	(b) the intended network capacity for network infrastructure in the renewable energy zone,	10
	(c) the infrastructure planner appointed by the Minister for the renewable energy zone or part of the renewable energy zone,	11
	(d) other matters prescribed by the regulations.	12
(4)	The Minister may make a declaration only if the Minister—	13
	(a) is satisfied that it is consistent with the objects of this Act, and	14
	(b) has considered the following—	15
	(i) existing network infrastructure in the renewable energy zone and the rest of the State,	16
	(ii) land use planning, environmental and heritage matters,	17
	(iii) the views of the local community in the renewable energy zone,	18
	(iv) other matters prescribed by the regulations.	19
(5)	A declaration is to be published on the Department’s website.	20
13	Procedure for declaring renewable energy zone	21
	Before making a declaration of a renewable energy zone, the Minister must—	22
	(a) consider a report from the Secretary about the potential effects of the declaration on electricity costs for NSW electricity customers, and	23
	(b) consider the infrastructure investment objectives and the most recent report prepared by the consumer trustee under section 38, and	24
	(c) consult with the Minister for Planning and Public Spaces, and	25
	(d) consult with AEMO, and	26
	(e) make a draft declaration publicly available on the Department’s website for at least 28 days.	27
14	Application for declaration of renewable energy zone	28
(1)	The Minister may make a declaration of a renewable energy zone—	29
	(a) on the Minister’s own initiative, or	30
	(b) on the application of the consumer trustee or another person.	31

(2)	The regulations may make provision for or with respect to an application to the Minister for a declaration of a renewable energy zone, including the following—	1
	(a) the form of the application,	2
	(b) who may make an application,	3
	(c) the requirements for making a valid application,	4
	(d) the fee payable for an application by a person other than the consumer trustee,	5
	(e) the information to be included in the application,	6
	(f) requirements for public consultation before an application is made,	7
	(g) the procedures for the determination of an application by the Minister.	8
15	Amendment of renewable energy zone declaration	9
(1)	The Minister may amend a declaration of a renewable energy zone only—	10
	(a) to expand the geographical area that forms the renewable energy zone,	11
	(b) to specify additional generation, storage and network infrastructure for the renewable energy zone,	12
	(c) to increase the intended network capacity for the renewable energy zone,	13
	(d) to provide further details and specifications about information contained in the declaration,	14
	(e) to correct a minor error or misdescription.	15
(2)	The Minister cannot repeal a declaration of a renewable energy zone under section 12.	16
16	Renewable energy zones in Central-West Orana, New England and South West areas	17
(1)	The Minister is to declare the following as renewable energy zones—	18
	(a) Central-West Orana,	19
	(b) New England,	20
	(c) South West.	21
(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.	22
(3)	The Central-West Orana renewable energy zone has an intended network capacity of 3 gigawatts.	23
(4)	The New England renewable energy zone has an intended network capacity of 8 gigawatts.	24
(5)	The Minister is to appoint the Energy Corporation as the infrastructure planner for the Central-West Orana, New England and South West renewable energy zones.	25
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Division 2	Access schemes for renewable energy zones	34
17	Minister may declare access scheme for renewable energy zone	35
(1)	The Minister may, by order published in the Gazette, declare the access scheme that is to apply in a renewable energy zone or part of a renewable energy zone.	36
(2)	An access scheme is a scheme that authorises or prohibits access to, and use of, specified network infrastructure in a renewable energy zone by network operators and operators of generation and storage infrastructure.	37
(3)	An access scheme must be consistent with the objects of this Act.	38
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		41

(4)	There may be more than one access scheme for a renewable energy zone.	1
(5)	A declaration may also specify the following matters in relation to the access scheme—	2
	(a) the person or body who is to administer the access scheme,	3
	(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,	4
	(c) the terms and conditions of access rights,	5
	(d) the functions of the regulator in relation to the access scheme,	6
	(e) the rights and liabilities of the scheme financial vehicle in relation to the access scheme,	7
	(f) other matters prescribed by the regulations.	8
(6)	Before making a declaration, the Minister must—	9
	(a) consult with the infrastructure planner and relevant operators who may be affected by the declaration, and	10
	(b) make a draft declaration publicly available on the Department’s website for at least 28 days, and	11
	(c) seek and consider submissions from the public on the draft declaration.	12
(7)	A declaration is to be published on the Department’s website.	13
18	Guidelines for access scheme declarations	14
(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.	15
(2)	Before publishing guidelines, the Minister must—	16
	(a) make draft guidelines publicly available on the Department’s website for at least 28 days, and	17
	(b) seek and consider submissions from the public on the draft guidelines.	18
19	Fees for access schemes	19
(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—	20
	(a) maximising financial value for NSW electricity customers,	21
	(b) recovering the cost of the operation of the access scheme,	22
	(c) optimal use of the existing and planned network infrastructure in the renewable energy zone,	23
	(d) other principles prescribed by the regulations.	24
(2)	The fees determined by the consumer trustee may include a component, not exceeding the amount prescribed by the regulations, that is to be used for a community purpose prescribed by the regulations.	25
(3)	In this section—	26
	<i>community purpose</i> means a purpose that benefits the local community in the geographic area that forms the renewable energy zone to which the access scheme applies.	27

20	Application of National Electricity (NSW) Law and National Electricity Rules	1
(1)	The regulations may modify the application of, or disapply, a provision of the <i>National Electricity (NSW) Law</i> or the <i>National Electricity Rules</i> to the extent reasonably necessary to—	2 3 4
(a)	enable the operation of an access scheme in a renewable energy zone, and	5
(b)	achieve the objects of this Act.	6
(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.	7 8 9
(3)	A regulation under this section that affects AEMO in the exercise of its functions may not be made without the concurrence of AEMO.	10 11
21	Amendment and repeal of access scheme declaration	12
(1)	The Minister may amend a declaration of an access scheme only—	13
(a)	to correct a minor error or misdescription, or	14
(b)	to provide further details and specifications about information contained in the declaration, or	15 16
(c)	if there are no participants in the access scheme immediately before the declaration is amended, or	17 18
(d)	if the amendment is made in accordance with the terms of the access scheme.	19
(2)	The Minister may repeal a declaration of an access scheme only if—	20
(a)	there are no participants in the access scheme immediately before the repeal, or	21 22
(b)	the repeal is made in accordance with the terms of the access scheme.	23
22	Orders prohibiting connection to network infrastructure	24
(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.	25 26 27
(2)	An order is to apply to network infrastructure in a specified area within a renewable energy zone.	28 29
(3)	Before making an order, the infrastructure planner must seek and consider submissions from—	30 31
(a)	the relevant operator and other relevant operators in the local area, and	32
(b)	the proponent, and	33
(c)	the local council in the local area.	34
(4)	The infrastructure planner must not make an order unless satisfied that—	35
(a)	there is significant opposition from the community in the local area to the proposed infrastructure, and	36 37
(b)	making the order is reasonably necessary to maintain community support in the local area for other infrastructure in the renewable energy zone, and	38 39
(c)	making the order is in the public interest.	40
(5)	An order may not be made if the proponent has development consent under the <i>Environmental Planning and Assessment Act 1979</i> to construct and operate the proposed infrastructure.	41 42 43

- | | | |
|-----|--|-------------|
| (6) | The infrastructure planner is to publish guidelines on its website about the exercise of its functions under this section. | 1
2 |
| (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. | 3
4
5 |
| (8) | In this section— | 6 |
| | <i>local area</i> means the area in which the proposed infrastructure will be located. | 7 |
| | <i>proponent</i> means a person or body who proposes to construct or operate proposed infrastructure. | 8
9 |
| | <i>proposed infrastructure</i> means proposed generation or storage infrastructure with a capacity of at least 30 megawatts. | 10
11 |

Part 4	Network infrastructure projects	1
Division 1	Assessment of REZ network infrastructure projects	2
23	Infrastructure planner to recommend REZ network infrastructure projects for renewable energy zone	3
		4
(1)	The infrastructure planner for a renewable energy zone is to assess and make recommendations to the consumer trustee about REZ network infrastructure projects required for the renewable energy zone.	5
		6
		7
(2)	The infrastructure planner must assess and make recommendations about the following—	8
		9
(a)	the different options for REZ network infrastructure projects to provide the intended network capacity for the renewable energy zone,	10
		11
(b)	staging and sequencing of REZ network infrastructure projects,	12
(c)	funding, procurement and cost recovery for the recommended REZ network infrastructure projects,	13
		14
(d)	other matters prescribed by the regulations.	15
(3)	In assessing and making recommendations about REZ network infrastructure projects, the infrastructure planner must consult with the following—	16
		17
(a)	AEMO,	18
(b)	relevant operators in the renewable energy zone,	19
(c)	each local council in the renewable energy zone.	20
(4)	The infrastructure planner must make recommendations about REZ network infrastructure projects to the consumer trustee within the period specified by the consumer trustee.	21
		22
		23
(5)	The regulations may make further provision for or with respect to the following—	24
		25
(a)	the exercise of the infrastructure planner’s functions under this section,	25
(b)	requiring the consumer trustee to provide information to the infrastructure planner,	26
		27
(c)	public consultation requirements.	28
24	Consideration of recommendations by infrastructure planner	29
(1)	After considering the infrastructure planner’s recommendations in relation to REZ network infrastructure projects, the consumer trustee may—	30
		31
(a)	recommend the Minister give a direction under section 25 to a network operator for a REZ network infrastructure project, or	32
		33
(b)	authorise a network operator to carry out a REZ network infrastructure project.	34
(2)	If the consumer trustee authorises a network operator under subsection (1)(b), the consumer trustee must, by written notice to the regulator, set a maximum amount for the prudent, efficient and reasonable capital costs for development and construction of the REZ network infrastructure project that may be determined by the regulator under section 31(4).	35
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(3)	The consumer trustee or the regulator must not disclose the maximum amount to any person.	40
		41
(4)	The regulations may make provision for or with respect to the eligibility criteria and selection process for network operators who may be authorised or directed to carry out a network infrastructure project under this Part.	42
		43
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- (5) In exercising its functions under this section, the consumer trustee is to consider the development pathway contained in the latest report by the consumer trustee under section 38. 1
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3

Division 2 Directions to carry out network infrastructure projects 4

25 Minister may direct network infrastructure projects be carried out 5

- (1) The Minister may, by order published in the Gazette, direct a network operator to carry out— 6
7
- (a) a REZ network infrastructure project, or 8
 - (b) a priority transmission infrastructure project. 9
- (2) A direction must specify the following— 10
- (a) the network operator required to carry out the infrastructure project, 11
 - (b) the location and description of the infrastructure project, 12
 - (c) the requirements for the development and construction of the infrastructure project, 13
14
 - (d) the staging and sequencing of the planning, design and construction of the infrastructure project, 15
16
 - (e) the date by which the network operator, taking all reasonable steps, is to complete the planning, design and construction stages of the infrastructure project, 17
18
19
 - (f) other matters prescribed by the regulations. 20
- (3) The Minister must consult with a network operator before giving the network operator a direction. 21
22
- (4) The Minister must give a direction only if satisfied that— 23
- (a) it is in the public interest, and 24
 - (b) it is consistent with the objects of this Act. 25
- (5) The regulations may make further provision for or with respect to the classes of renewable energy zones and the classes of REZ network infrastructure project and priority transmission infrastructure project in relation to which a direction can be given. 26
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28
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26 Directions for REZ network infrastructure projects 30

The Minister may direct a network operator to carry out a REZ network infrastructure project only on the recommendation of the consumer trustee. 31
32

27 Directions for priority transmission infrastructure projects 33

- (1) Before directing a network operator to carry out a priority transmission infrastructure project, the Minister must consult with the following— 34
35
- (a) the Minister for Planning and Public Spaces, 36
 - (b) AEMO, 37
 - (c) the regulator, 38
 - (d) distribution network service providers and transmission network service providers. 39
40
- (2) The Minister must not direct a network operator to carry out a priority transmission infrastructure project unless the Minister is satisfied that— 41
42

(a)	it is an appropriate response to a target breach identified in an energy security target monitor report, and	1
(b)	it is in the public interest, and	2
(c)	any conditions prescribed by the regulations are complied with.	3
28	Failure to comply with direction	4
(1)	A network operator to whom a direction is given under section 25 must not, without reasonable excuse, fail to comply with the direction.	5
	Maximum penalty—5,000 penalty units for a corporation or 2,500 penalty units for an individual.	6
(2)	If a network operator to whom a direction is given under section 25 holds a licence under the <i>Electricity Supply Act 1995</i> it is a condition of the licence that the licensee complies with the direction.	7
(3)	A person cannot be both prosecuted for an offence against subsection (1) and dealt with by the Minister for a contravention of a licence condition under clause 8 in Schedule 2 to the <i>Electricity Supply Act 1995</i> in relation to the same act or omission.	8
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Division 3	Functions of regulator	16
29	Application of Division	17
(1)	This Division applies to a network operator who is subject to an authorisation.	18
(2)	The Minister may authorise a network operator to carry out a priority transmission infrastructure project for the purposes of this Division.	19
(3)	Before authorising a network operator under subsection (2), the Minister must consult with the persons and bodies specified in section 27(1) and be satisfied of the matters specified in section 27(2).	20
(4)	In this Division—	21
	authorisation means—	22
(a)	an authorisation by the consumer trustee under section 24 to carry out a REZ network infrastructure project, or	23
(b)	an authorisation by the Minister under subsection (2), or	24
(c)	a direction given by the Minister under section 25 to carry out a REZ network infrastructure project or priority transmission infrastructure project.	25
30	Regulator to take into account principles	26
(1)	In exercising functions under this Division, the regulator is to take into account the following principles—	27
(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,	28
(b)	incentives should be given to network operators to promote economic efficiency,	29
(c)	a network operator is entitled to revenue for the ongoing ownership, control and operation of an infrastructure project that is commensurate with the regulatory and commercial risks to the network operator,	30
(d)	a network operator is entitled to be informed of material issues being considered by the regulator under this Division,	31
(e)	other principles prescribed by the regulations.	32

(2)	The carrying out of an infrastructure project by a network operator to whom this Division applies includes—	1 2
(a)	the development and construction of network infrastructure as specified in the network operator’s authorisation, and	3 4
(b)	the ownership, control and operation of network infrastructure as specified in the network operator’s authorisation, and	5 6
(c)	other matters prescribed by the regulations.	7
(3)	The regulations may make further provision for or with respect to the principles in subsection (1).	8 9
31	Regulator to determine amount payable to network operators for network infrastructure projects	10 11
(1)	The regulator is to determine the amount payable to a network operator to whom this Division applies.	12 13
(2)	A determination is to include amounts for different components, including—	14
(a)	repayment of capital costs as determined under the transmission efficiency test,	15 16
(b)	the return on capital costs that have not been repaid,	17
(c)	an allowance for operating costs,	18
(d)	other components prescribed by the regulations.	19
(3)	A determination may include provision for the adjustment of amounts on the basis of differences between the estimated and actual capital costs.	20 21
(4)	Before making a determination, the regulator is to calculate the prudent, efficient and reasonable capital costs for development and construction of the network infrastructure project, which is referred to as the <i>transmission efficiency test</i> .	22 23 24
(5)	The regulator is to publish guidelines on its website about the transmission efficiency test.	25 26
(6)	The amount determined by the regulator under subsection (4) for a network operator authorised by the consumer trustee to carry out a REZ network infrastructure project must not exceed the maximum amount, if any, notified to the regulator by the consumer trustee under section 24(2) for the network operator.	27 28 29 30
(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.	31 32 33
(8)	A notice under subsection (7) must specify the following—	34
(a)	the information required to be provided,	35
(b)	the form in which the information is to be provided,	36
(c)	the time within which the information is to be provided.	37
(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	38 39 40 41
(10)	The regulations may make provision for or with respect to the following—	42
(a)	the making of a determination by the regulator,	43

(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,	1 2 3
(c)	the information required to be provided to the regulator by a network operator,	4
(d)	the information to be included in a determination,	5
(e)	other matters relating to the transmission efficiency test,	6
(f)	other matters relating to a determination by the regulator.	7
32	Effect of regulator's determination	8
(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.	9 10
(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 <i>National Electricity (NSW) Law</i> .	11 12 13 14
(3)	The obligation of a network operator to carry out an infrastructure project under a direction under section 25 does not arise until the regulator makes a determination under section 31.	15 16 17
33	Regulator to review determinations	18
(1)	The regulator is, in accordance with the regulations, to remake a determination under section 31—	19 20
(a)	once every 5 years, and	21
(b)	at any time the consumer trustee directs.	22
(2)	The regulator may review and remake a determination at any time, subject to the regulations.	23 24
34	Application of National Electricity (NSW) Law and National Electricity Rules	25
(1)	The regulations may modify the application of, or disapply, a provision of the <i>National Electricity (NSW) Law</i> or the <i>National Electricity Rules</i> to the extent reasonably necessary to achieve the objects of this Act and—	26 27 28
(a)	to enable a network operator to whom this Division applies to carry out an infrastructure project, or	29 30
(b)	to enable a network operator to whom this Division applies to—	31
(i)	receive payment from the scheme financial vehicle to which the operator is entitled under this Division, or	32 33
(ii)	recover costs for carrying out an infrastructure project under the <i>National Electricity Rules</i> , or	34 35
(c)	to enable a network operator to transition between the arrangements specified in paragraph (b)(i) and (ii), or	36 37
(d)	to ensure a network operator does not receive payment under both arrangements specified in paragraph (b)(i) and (ii).	38 39
(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.	40 41 42
(3)	A regulation under this section that affects AEMO in the exercise of its function may not be made without the concurrence of AEMO.	43 44

35 Transfer of network infrastructure

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|---|-------------|
| | 1 |
| (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 <i>transferor</i>) to another person (the <i>transferee</i>). | 2
3
4 |
| (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. | 5
6
7 |

Part 5 Electricity infrastructure investment safeguard 1

Division 1 Preliminary 2

36 Application of Part 3

- (1) This Part applies to the following infrastructure— 4
- (a) generation infrastructure that involves generation from a renewable energy source and that has a generation capacity of not less than 30 megawatts, 5
6
 - (b) long-duration storage infrastructure for storage of electricity that— 7
 - (i) consists of storage units with a registered capacity that can be dispatched for at least 8 hours, and 8
9
 - (ii) is scheduled by AEMO in the central dispatch process under the *National Electricity Rules*, 10
11
 - (c) firming infrastructure that is scheduled by AEMO in the central dispatch process under the *National Electricity Rules*. 12
13
- (2) This Part does not apply to infrastructure that is part of a committed infrastructure project. 14
15
- (3) In this Part— 16
- 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. 17
18
19
- registered capacity** has the same meaning as in Chapter 4A of the *National Electricity Rules*. 20
21
- reliability standard** means the reliability standard implemented by AEMO under the *National Electricity Rules* that is prescribed by the regulations. 22
23
- 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. 24
25
26

Division 2 Objectives and planning 27

37 Infrastructure investment objectives 28

- (1) The **infrastructure investment objectives** are— 29
- (a) the overall objectives for the construction of infrastructure to which this Part applies, and 30
31
 - (b) the minimum objectives for the period ending on 31 December 2029 for the construction of generation infrastructure and long-duration storage infrastructure to which this Part applies. 32
33
34
- (2) The overall objectives are— 35
- (a) construction of generation infrastructure that is necessary to minimise electricity costs for NSW electricity customers, and 36
37
 - (b) construction of long-duration storage infrastructure that is necessary to meet the reliability standard, and 38
39
 - (c) construction of firming infrastructure that is necessary to meet the energy security target and the reliability standard. 40
41
- (3) The minimum objectives are— 42
- (a) construction of generation infrastructure that generates at least the same amount of electricity in a year as— 43
44

- (i) 8 gigawatts of generation capacity from the New England renewable energy zone, and 1
2
 - (ii) 3 gigawatts of generation capacity from the Central-West Orana renewable energy zone, and 3
4
 - (iii) 1 additional gigawatt of generation capacity, and 5
- (b) construction of long-duration storage infrastructure with 2 gigawatts capacity. 6
- (4) Committed infrastructure projects are not to be counted towards the infrastructure investment objectives. 7
8

38 Planning by consumer trustee 9

- (1) The consumer trustee is to prepare a report about the infrastructure investment objectives that contains— 10
11
 - (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 12
13
14
 - (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 15
16
17
18
 - (c) other matters prescribed by the regulations. 19
- (2) The consumer trustee is to prepare a report— 20
 - (a) as soon as practicable after the commencement of this section, and 21
 - (b) every 2 years after the first report. 22
- (3) The consumer trustee is also to prepare a report as soon as practicable after being directed by the Minister under section 40(2) to conduct a competitive tender for LTES agreements for firming infrastructure. 23
24
25
- (4) The regulations may prescribe the matters that the consumer trustee is to take into account in preparing the report. 26
27
- (5) The report is to be published on the consumer trustee’s website. 28
- (6) The consumer trustee is to exercise its functions under this Part on the basis of the reports prepared under this section. 29
30

Division 3 Long-term energy service agreements 31

39 Meaning of “long-term energy service agreement” or “LTES agreement” 32

- (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— 33
34
35
 - (a) the LTES operator constructs and operates infrastructure to which this Part applies as specified in the agreement, and 36
37
 - (b) if the LTES operator does this, the LTES operator may periodically opt to exercise a derivative arrangement. 38
39
- (2) An LTES agreement must— 40
 - (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 41
42
43

(b)	divide the term of the agreement into periods of no less than 1 financial year, and	1 2
(c)	give the LTES operator an option to exercise a derivative arrangement, and	3
(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	4 5 6
(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	7 8 9
(f)	contain or deal with other matters prescribed by the regulations.	10
40	Tendering for LTES agreements	11
(1)	The consumer trustee may, but is not required to, conduct a competitive tender for LTES agreements.	12 13
(2)	The consumer trustee must not conduct a competitive tender for LTES agreements for firming infrastructure unless directed by the Minister.	14 15
(3)	A competitive tender must be carried out in accordance with—	16
(a)	any requirements prescribed by the regulations, and	17
(b)	the rules made by the consumer trustee under this section.	18
(4)	Before conducting a competitive tender, the consumer trustee must make rules that are consistent with the regulations to deal with the following matters—	19 20
(a)	the eligibility criteria for making a tender bid,	21
(b)	the notification of the opening of the competitive tender,	22
(c)	the procedure for making a tender bid, including the information required to be included in a bid,	23 24
(d)	the fee payable for making a bid and requirements for bonds or other security,	25
(e)	the assessment of a tender bid by the consumer trustee,	26
(f)	other matters the consumer trustee considers necessary,	27
(g)	other matters prescribed by the regulations.	28
(5)	Before making rules, the consumer trustee is to consult with the regulator.	29
(6)	The rules are to be published in the Gazette.	30
(7)	The consumer trustee may, for the purposes of making recommendations to the scheme financial vehicle under section 41, conduct a process, other than a competitive tender, that is prescribed by the regulations.	31 32 33
41	Recommendations about LTES agreements	34
(1)	The consumer trustee must make recommendations to the scheme financial vehicle about the LTES agreements that the scheme financial vehicle may enter into.	35 36
(2)	In making a recommendation, the financial value of LTES agreements is to be the primary consideration for the consumer trustee.	37 38
(3)	The consumer trustee must not recommend the making of an LTES agreement that relates to generation infrastructure specified in section 36(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.	39 40 41 42
(4)	The regulations may make provision for or with respect to—	43

- (a) the circumstances in which an LTES agreement shows outstanding merit for the purposes of subsection (3), and 1
2
- (b) the matters to be taken into account by the consumer trustee in making recommendations. 3
4

Division 4 Operation of long-term energy service agreements 5

42 Making of LTES agreements 6

- (1) An LTES agreement may not be made, unless the consumer trustee recommends the making of the LTES agreement. 7
8
- (2) The regulations may prescribe further circumstances in which an LTES agreement may not be made. 9
10
- (3) An LTES agreement remains in force for the term of the agreement unless the agreement is sooner suspended or terminated. 11
12

43 Terms and conditions of LTES agreements 13

- (1) The consumer trustee is to determine the terms and conditions of an LTES agreement, subject to any requirements prescribed by the regulations. 14
15
- (2) In determining the terms and conditions of an LTES agreement, the consumer trustee is to take into account the following principles— 16
17
 - (a) to align the financial incentives offered under LTES agreements with the changing needs of the electricity system, 18
19
 - (b) to adopt, to the maximum extent possible, the conventions and standards in relation to similar agreements in the national electricity market, 20
21
 - (c) to ensure that LTES agreements allow for future changes in the national electricity market, 22
23
 - (d) to ensure that LTES agreements are consistent with the risk management framework under Division 5, 24
25
 - (e) other principles prescribed by the regulations. 26
- (3) 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. 27
28
29
- (4) This section does not prevent the parties to an LTES agreement from agreeing to additional terms and conditions. 30
31
- (5) In this section— 32
national electricity market has the same meaning as in the *National Electricity (NSW) Law*. 33
34

Division 5 Risk management 35

44 Risk management framework 36

- (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. 37
38
39
- (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. 40
41
42
- (3) The risk management framework must be approved by the regulator. 43

(4)	The approved risk management framework is to be published on the consumer trustee's website.	1 2
(5)	Despite subsection (4), the consumer trustee is not required to publish a part of the risk management framework if—	3 4
	(a) the consumer trustee considers it is in the public interest not to publish the part, and	5 6
	(b) the consumer trustee has the approval of the regulator to not publish the part.	7
(6)	The Minister may require the regulator to review an approved risk management framework.	8 9
(7)	Following a review by the regulator, the Minister may direct the consumer trustee to amend the risk management framework.	10 11
(8)	The regulations may prescribe requirements for the risk management framework.	12
45	Risk management contracts	13
(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.	14 15 16
(2)	A risk management contract may be a derivative arrangement.	17
(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.	18 19

Part 6	Electricity infrastructure fund	1
46	Electricity infrastructure fund	2
(1)	The scheme financial vehicle is to establish and maintain an electricity infrastructure fund for the purposes of this Act (the <i>Fund</i>).	3 4
(2)	Money held in the Fund is to be paid into an account kept with an authorised deposit-taking institution.	5 6
(3)	The regulations may make provision for or with respect to the administration of the Fund.	7 8
47	Payments into Fund	9
	The following are payable into the Fund, subject to any requirements prescribed by the regulations—	10 11
(a)	all money received by the scheme financial vehicle from a distribution network service provider under a contribution order,	12 13
(b)	all money advanced by the scheme financial vehicle for the Fund,	14
(c)	all money paid to the scheme financial vehicle under an LTES agreement or a risk management contract,	15 16
(d)	all money paid to the scheme financial vehicle as fees by participants in an access scheme,	17 18
(e)	the proceeds of investment of money in the Fund,	19
(f)	all money received from voluntary contributions to the Fund made by a person or body,	20 21
(g)	other money required to be paid into the Fund by or under this or another Act or law.	22 23
48	Payments out of Fund	24
	The following are payable from the Fund, subject to any requirements prescribed by the regulations—	25 26
(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 32, an LTES competitive tender, an LTES agreement or a risk management contract,	27 28 29 30
(b)	money as payment to the consumer trustee, financial trustee and regulator, as required in the instrument of appointment or otherwise authorised by the Minister, to enable the exercise of their functions under this Act,	31 32 33
(c)	money directed or authorised to be paid from the Fund by or under this or another Act or law.	34 35
49	Regulator to make annual contribution determinations	36
(1)	The regulator is to determine an amount for a financial year (a <i>contribution determination</i>) 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.	37 38 39 40
(2)	The purpose of the contribution determination is to determine the amount required to be recovered from distribution network service providers.	41 42
(3)	The amount determined by the regulator is to include—	43
(a)	a minimum prudent cash balance for the Fund, and	44

(b)	the amount required to be paid by each distribution network service provider.	1
(4)	A contribution determination must contain—	2
(a)	details of how the contribution determination was made, and	3
(b)	other information prescribed by the regulations.	4
(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.	5 6 7
(6)	In making a contribution determination, the regulator must—	8
(a)	consult with the financial trustee, and	9
(b)	take into account the matters prescribed by the regulations.	10
(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.	11 12 13
50	Variation of contribution determinations	14
(1)	The regulator may, by further order published in the Gazette, vary a contribution determination if it appears to the regulator that—	15 16
(a)	the scheme financial vehicle will not be able to meet its liabilities as they fall due, or	17 18
(b)	the cash balance of the Fund has fallen, or is likely to fall, below the minimum prudent cash balance specified in the determination.	19 20
(2)	The regulator is to publish guidelines on its website about the exercise of the regulator’s functions under this section.	21 22
(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.	23 24 25
51	Contributions by distribution network service providers	26
(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.	27 28 29
(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.	30 31 32
(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 49(5).	33 34 35
(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.	36 37 38
(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.	39 40 41
(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	42 43 44

the energy savings scheme under clause 22 of Schedule 4A to the *Electricity Supply Act 1995*.

1
2

Part 7 Administration	1
Division 1 Roles and functions	2
52 Energy security target monitor	3
(1) The Minister may appoint a person or body as the energy security target monitor.	4
(2) The functions of the energy security target monitor are to be exercised by the person or body appointed by the Minister as energy security target monitor or, in the absence of an appointment, the Tribunal.	5 6 7
(3) The energy security target monitor has the following functions—	8
(a) the functions prescribed by the regulations,	9
(b) other functions conferred or imposed on the monitor by or under this or another Act or law.	10 11
(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.	12 13
53 Consumer trustee	14
(1) The Minister is to appoint a person or body as the consumer trustee.	15
(2) The functions of the consumer trustee are to be exercised by the Secretary at any time during which a person or body is not appointed as the consumer trustee.	16 17
(3) The consumer trustee is to act independently and in the long-term financial interests of NSW electricity customers.	18 19
(4) The consumer trustee has the following functions—	20
(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,	21 22 23
(b) to negotiate, in accordance with any requirements prescribed by the regulations, with a person in relation to LTES agreements,	24 25
(c) other functions prescribed by the regulations,	26
(d) other functions conferred or imposed on the consumer trustee by or under this or another Act or law.	27 28
(5) In the exercise of functions under this Act, the consumer trustee is not subject to the control or direction of the Minister.	29 30
54 Financial trustee	31
(1) The consumer trustee is to appoint a person or body as the financial trustee.	32
(2) The financial trustee has the following functions—	33
(a) to administer the scheme financial vehicle,	34
(b) to advise the regulator in relation to contribution determinations,	35
(c) other functions prescribed by the regulations,	36
(d) other functions conferred or imposed on the financial trustee by or under this or another Act or law.	37 38
(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.	39 40

55	Scheme financial vehicle	1
(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 <i>Corporations Act 2001</i> of the Commonwealth.	2 3 4
(2)	Despite subsection (1), the regulations may authorise the financial trustee to instead be the scheme financial vehicle.	5 6
(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.	7 8
(4)	The scheme financial vehicle is to act in a commercially reasonable and prudent way under any contract or agreement made under this Act.	9 10
(5)	If the appointment of a person or body as financial trustee under section 54 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.	11 12 13 14
(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.	15 16 17
(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.	18 19 20 21
56	Infrastructure planner	22
(1)	The Minister is to appoint a person as the infrastructure planner.	23
(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.	24 25 26
(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.	27 28 29 30
(4)	Subject to limitations in the instrument of appointment, an infrastructure planner has the following functions—	31 32
(a)	to make and enter into contracts or other agreements in connection with the exercise of its functions under this Act,	33 34
(b)	to investigate, plan, co-ordinate and carry out planning and design of generation infrastructure,	35 36
(c)	to investigate, plan, co-ordinate and carry out planning, design, construction and operation of storage and network infrastructure,	37 38
(d)	other functions prescribed by the regulations,	39
(e)	other functions conferred or imposed on the infrastructure planner by or under this or another Act or law.	40 41
(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 <i>Energy and Utilities Administration Act 1987</i> and may exercise those functions as the infrastructure planner under this Act, to the extent reasonably necessary to—	42 43 44 45 46
(a)	enable the infrastructure planner to exercise its functions under this Act, and	47

(b)	achieve the objects of this Act.	1
(6)	Sections 11(3) and 12(4) of the <i>Energy and Utilities Administration Act 1987</i> do not apply to the Energy Corporation when exercising functions under subsection (5).	2 3
(7)	If the Energy Corporation is appointed as an infrastructure planner, it may—	4
(a)	form, or participate in the formation of, a private subsidiary corporation, and	5
(b)	acquire interests in private subsidiary corporations, and	6
(c)	sell or otherwise dispose of interests in private subsidiary corporations.	7
(8)	In the exercise of functions under this Act, an infrastructure planner is subject to the control or direction of the Minister.	8 9
(9)	In this section—	10
	<i>private subsidiary corporation</i> means a corporation within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth in which the Energy Corporation has a controlling interest.	11 12 13
57	Regulator	14
(1)	The Minister is to appoint one of the following as the regulator—	15
(a)	the AER,	16
(b)	the Tribunal,	17
(c)	a person prescribed by the regulations.	18
(2)	More than 1 regulator may be appointed.	19
(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.	20 21
(4)	Subject to limitations in the instrument of appointment, a regulator has the following functions—	22 23
(a)	to issue guidelines in relation to the exercise of functions by the persons and bodies appointed under this Act,	24 25
(b)	other functions prescribed by the regulations,	26
(c)	other functions conferred or imposed on the regulator by or under this or another Act or law.	27 28
(5)	In the exercise of functions under this Act, a regulator is not subject to the control or direction of the Minister.	29 30
Division 2	Appointment and performance	31
58	Definition	32
	In this Division—	33
	<i>appointor</i> means—	34
(a)	in relation to the appointment of the financial trustee—the consumer trustee, and	35 36
(b)	in relation to the appointment of another person or body—the Minister.	37
59	General provisions for appointments	38
(1)	A person or body may be appointed under this Part only if the appointor is satisfied that the person or body—	39 40
(a)	is fit and proper, and	41

(b)	has the necessary qualifications and experience.	1
(2)	Subsection (1) does not apply to the appointment of the following—	2
(a)	the AER,	3
(b)	AEMO,	4
(c)	the Tribunal,	5
(d)	the Energy Corporation.	6
(3)	A person or body is appointed under this Part—	7
(a)	for the term specified in the instrument of appointment, if any, and	8
(b)	subject to the terms and conditions specified in the instrument of appointment and prescribed by the regulations.	9 10
(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.	11 12 13
(5)	The regulations may make further provision for or with respect to the following—	14
(a)	the appointment of persons or bodies under this Part,	15
(b)	the circumstances in which a person or body is not considered fit and proper,	16
(c)	the necessary qualifications and experience for appointment,	17
(d)	limitations on the functions of a person or body appointed under this Part,	18
(e)	the amounts determined as payment for the exercise of functions by a person or body appointed under this Part.	19 20
60	Performance audits	21
(1)	The regulator is to audit the performance of the following—	22
(a)	the consumer trustee,	23
(b)	the financial trustee,	24
(c)	the scheme financial vehicle,	25
(d)	the infrastructure planner.	26
(2)	The Minister may require the regulator to conduct an audit under this section.	27
(3)	The Minister may appoint a person to audit the performance of the energy security target monitor or the regulator.	28 29
(4)	The regulations may make provision for or with respect to an audit under this section, including the following—	30 31
(a)	the matters that may be the subject of an audit,	32
(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,	33 34
(c)	the functions that may be exercised by the person conducting an audit,	35
(d)	the conduct of an audit,	36
(e)	reporting on an audit, including the publication of an audit report.	37
61	Suspension or termination of appointment	38
(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.	39 40

(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 60 finds incompetence, misconduct or incapacity.	1 2 3
(3)	Before terminating the appointment of a person or body under this Part, the appointor must—	4 5
(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	6 7
(b)	provide the person or body with an opportunity to make submissions and consider the submissions received.	8 9
(4)	The Governor may terminate the appointment of a person or body under this Part on the address of both Houses of Parliament.	10 11
(5)	To avoid doubt, a person or body appointed under this Part cannot be removed from office under Part 6 of the <i>Government Sector Employment Act 2013</i> .	12 13
62	Resignation from appointment	14
	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.	15 16

Part 8	Miscellaneous	1
63	Annual reports	2
(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.	3 4 5 6
(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.	7 8 9
(3)	The annual report must contain the information required by the Minister.	10
(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.	11 12
(5)	The regulator must publish the annual report on its website as soon as reasonably practicable after providing it to the Minister.	13 14
64	Delegation	15
(1)	The Minister may delegate a function of the Minister under this Act, other than this power of delegation, to any person.	16 17
(2)	The infrastructure planner may delegate its functions, other than this power of delegation, to any person.	18 19
(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.	20 21 22
65	Competition authorisation	23
(1)	Relevant conduct is conduct that is specifically authorised by this Act for the purposes of the <i>Competition and Consumer Act 2010</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> .	24 25 26
(2)	Conduct authorised by this section is authorised only to the extent, if any, that it would otherwise contravene Part IV of the <i>Competition and Consumer Act 2010</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> .	27 28 29
(3)	In this section—	30
	giving effect to a requirement includes—	31
(a)	complying with an obligation arising in connection with the requirement, and	32
(b)	exercising or enforcing a right or power arising in connection with the requirement.	33 34
	relevant conduct means the following conduct—	35
(a)	making an order under section 22,	36
(b)	giving effect to a requirement under an order under section 22,	37
(c)	conducting a competitive tender for LTES agreements,	38
(d)	offering to enter into and entering into an LTES agreement or risk management contract,	39 40
(e)	giving effect to a requirement under an LTES agreement or risk management contract,	41 42
(f)	other conduct prescribed by the regulations.	43

66 Personal liability	1
(1) A protected person is not personally subject to any liability for anything done—	2
(a) in good faith, and	3
(b) for the purpose of exercising functions under this Act.	4
(2) The liability instead attaches to the Crown.	5
(3) In this section—	6
<i>done</i> includes omitted to be done.	7
<i>liability</i> means civil liability and includes action, claim or demand.	8
<i>protected person</i> means the following—	9
(a) the energy security target monitor,	10
(b) the consumer trustee,	11
(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 55(2),	12 13 14
(d) the regulator,	15
(e) the infrastructure planner, except in relation to the administration of an access scheme in a renewable energy zone or the carrying out of construction or development of storage and network infrastructure,	16 17 18
(f) a person acting under the direction of a person or body specified in paragraphs (a)–(e), other than the scheme financial vehicle.	19 20
67 False or misleading information	21
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—	22 23 24 25
(a) the consumer trustee,	26
(b) the financial trustee,	27
(c) the scheme financial vehicle,	28
(d) the regulator,	29
(e) the infrastructure planner.	30
Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.	31 32
Note. See section 10 for offences relating to giving information or documents to the energy security target monitor.	33 34
68 Disclosure of information	35
(1) A person must not disclose information obtained in connection with the administration or execution of this Act unless that disclosure is made—	36 37
(a) with the consent of the person from whom the information was obtained, or	38
(b) in connection with the administration or execution of this Act, or	39
(c) for the purposes of legal proceedings arising out of this Act, or	40
(d) in accordance with a requirement of the <i>Ombudsman Act 1974</i> , or	41
(e) with other lawful excuse.	42
Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.	43 44

(2)	This section does not apply to information that is protected information under section 11.	1 2
69	Penalty notices	3
(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.	4 5
(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.	6 7
(3)	The <i>Fines Act 1996</i> applies to a penalty notice issued under this section. Note. The <i>Fines Act 1996</i> 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.	8 9 10 11
(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.	12 13 14
(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.	15 16
(6)	In this section— <i>authorised officer</i> means a person of a class prescribed by the regulations.	17 18
70	Proceedings for offences	19
(1)	Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.	20 21
(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.	22 23
(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.	24 25
(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.	26 27 28
(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.	29 30 31
(6)	Without limiting section 14 of the <i>Criminal Procedure Act 1986</i> , proceedings for an offence against this Act or the regulations may be commenced by the regulator.	32 33
71	Review of Act	34
(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.	35 36 37
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this section.	38 39
(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.	40 41
72	Regulations	42
(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	43 44

- is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 1
2
- (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
4
- (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. 5
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Schedule 1	Savings, transitional and other provisions	1
1	Regulations	2
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—	3
	(a) a provision of this Act, or	4
	(b) a provision amending this Act.	5
(2)	A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.	6
(3)	A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.	7
(4)	A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—	8
	(a) for a provision of this Act, the date of assent to this Act, or	9
	(b) for a provision amending this Act, the date of assent to the amending Act.	10
(5)	A savings or transitional provision taking effect before its publication on the NSW legislation website does not—	11
	(a) affect the rights of a person existing before that publication in a way prejudicial to the person, or	12
	(b) impose liabilities on a person for anything done or omitted to be done before that publication.	13
(6)	In this clause—	14
	<i>person</i> does not include the State or an authority of the State.	15
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Schedule 2	Amendment of other legislation	1
2.1	Electricity Supply Act 1995 No 94	2
[1]	Section 98EA	3
	Insert after section 98E—	4
98EA	Regulations for schemes established by regulations amending Schedule 4A	5
(1)	The regulations may make provision for or with respect to a scheme established under section 98D.	6 7
(2)	Subsection (1) is limited to matters for which regulations may be made under Schedule 4A, Part 1 for the energy savings scheme, with necessary modifications for the scheme concerned.	8 9 10
[2]	Section 98G No further provision for schemes after 2021	11
	Insert at the end of section 98G—	12
(2)	Despite subsection (1), regulations may be made under section 98EA after 31 December 2021.	13 14
[3]	Section 183 Delegation of Minister’s functions	15
	Insert after section 183(2)(a1)—	16
(a2)	a committee established under section 34W of the <i>Energy and Utilities Administration Act 1987</i> , or	17 18
[4]	Schedule 4A Energy security safeguard schemes	19
	Insert after clause 6(2)—	20
	Note. Clause 8A enables energy savings scheme targets to be inserted into Schedule 5 for the year 2026 and following years.	21 22
[5]	Schedule 4A, clause 8(c)	23
	Insert after clause 8(b)—	24
(c)	the change to the energy savings scheme target is appropriate because of a target breach identified in an energy security target monitor report under the <i>Electricity Infrastructure Investment Act 2020</i> , or	25 26 27
[6]	Schedule 4A, clause 8A	28
	Insert after clause 8—	29
8A	Energy savings scheme targets and energy conversion factors for 2026 onwards	30 31
(1)	The regulations may amend Schedule 5 to insert an energy savings scheme target and energy conversion factor for the year 2026 or a following year.	32 33
(2)	To avoid doubt—	34
(a)	an energy savings scheme target or energy conversion factor inserted by a regulation under subclause (1) may be changed under clause 7 or 11 respectively, and	35 36 37
(b)	clause 8 does not apply to the making of a regulation made under subclause (1).	38 39

[7] Schedule 4A, clause 11	1
Insert after clause 11(1)—	2
Note. Clause 8A enables energy conversion factors to be inserted into Schedule 5 for the year 2026 and following years.	3 4
[8] Schedule 4A, clause 78, heading	5
Omit “or suspension”. Insert instead “, suspension or reduction”.	6
[9] Schedule 4A, clause 78(2A)–(2C)	7
Insert after clause 78(2)—	8
(2A) The Minister may, by order published in the Gazette, reduce the individual energy savings target of a small retailer by a specified percentage for a specified year if it appears to the Minister that small retailers generally are, or will be, unable to meet the individual energy savings target because of an emergency affecting the State or part of the State.	9 10 11 12 13
(2B) If the reduction under subclause (2A) results in a fraction of a notional megawatt hour, the fractional amount is to be rounded up or down to the nearest whole notional megawatt hour (and, if the amount to be rounded is half a notional megawatt hour, is to be rounded up).	14 15 16 17
(2C) An order made under subclause (2A) may—	18
(a) be made subject to conditions, and	19
(b) apply to all small retailers or to a specified class of small retailers.	20
[10] Schedule 4A, clause 78(4)	21
Insert after clause 78(3)—	22
(4) In this clause—	23
<i>small retailer</i> means a scheme participant who, in the year specified in an order made under subclause (2A)—	24 25
(a) supplies electricity to no more than 5,000 end users in this State, and	26
(b) makes liable acquisitions not exceeding 30,000 megawatt hours of electricity.	27 28
[11] Schedule 5 Energy savings scheme—targets and energy conversion factors	29
Omit “(Sections 103, 104 and 108)”.	30
Insert instead “Schedule 4A, clauses 6, 7, 8A and 11”.	31
2.2 Energy and Utilities Administration Act 1987 No 103	32
[1] Section 34G Payments into Climate Change Fund	33
Insert at the end of section 34G(1)(f)—	34
, and	35
(g) all money received from the repayment of a grant that was paid out of the Fund under section 34H(1)(a).	36 37
[2] Section 34H Payments out of Climate Change Fund	38
Insert “, including a repayable grant,” after “any money” in section 34H(1)(a).	39

[3] Section 34W	1
Omit section 34W. Insert instead—	2
34W Committees	3
(1) The Minister may establish standing or special committees to advise the Minister—	4
(a) in the exercise of the Minister’s functions under this Act, the <i>Electricity Infrastructure Investment Act 2020</i> or the <i>Electricity Supply Act 1995</i> ,	6
or	7
(b) on any matter requested by the Minister.	8
(2) A committee established under this section also has the functions conferred or imposed on it by or under this or another Act.	9
(3) The regulations may make provision for or with respect to the membership, procedures and functions of committees established under this section, including the terms of appointment of members and voting procedures.	10
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network operator means a person who owns, controls or operates, or proposes to own, control or operate, network infrastructure. 1
2

priority transmission infrastructure project is a transmission infrastructure project that— 3

(a) is located in the State, and 4

(b) is identified in, or forms part of an infrastructure project identified in, the most recent integrated system plan published by AEMO under the *National Electricity Rules*. 5
6

regulator means a person or body authorised under section 57 to exercise the functions of a regulator. 7
8

relevant operator means a transmission operator, within the meaning of the *Electricity Supply Act 1995*, distribution network service provider or network operator. 9
10

renewable energy zone or **REZ** means the geographical area of the State and the infrastructure specified in a declaration by the Minister under section 12. 11
12

REZ network infrastructure project means a network infrastructure project that— 13

(a) forms part of a renewable energy zone, and 14

(b) consists of network infrastructure of a class prescribed by the regulations. 15

risk management contract means a contract under the risk management framework in Part 5, Division 5. 16
17

scheme financial vehicle means the scheme financial vehicle under section 55. 18

Secretary means the Secretary of the Department. 19

target breach—see section 6(3)(d). 20

transmission network service provider has the same meaning as in the *National Electricity Rules*. 21

Tribunal means the Independent Pricing and Regulatory Tribunal established under the *Independent Pricing and Regulatory Tribunal Act 1992*. 22
23