

Legislative Council

**Electricity Infrastructure Investment Bill 2020
Second Print**

Proposed amendment

Part 1 Preliminary

1. Page 2, Clause 1, line 4. Omit "Electricity Infrastructure Investment Act 2020", insert "Electricity Infrastructure Investment, Reliable Supply and Technological Neutrality Act 2020".
2. Page 2, Clause 2, line 6. Omit "on a day or days to be appointed by proclamation", insert "1 January 2022".
3. Page 2, Clause 3(1)(b), line 11. Omit "co-ordinate" and insert "create the competitive market conditions for", plus omit "storage".
4. Page 2, Clause 3(1)(c) line 13. Omit 'storage'.
5. Page 2, Clause 3(1)(d) line 15. Omit 'storage'.
6. Page 2, Clause 3(1)(e). Omit ",and" and insert 'through reliable 24/7 baseload dispatchable power'.
7. Page 2, Clause 3(1), line 24. Insert
 - (j) to support strong and equitable regional development in NSW, recognising the particular importance of coal mining and coal-fired power stations to jobs, manufacturing and the economic and social viability of the Hunter Valley.'
8. Page 2, line 26. Insert Clause 3A:

Principles of Technological and Competitive Neutrality

This Act recognises that:

- a) it is not the role of government to pick winners in the electricity sector and give preference to certain technologies and financial interests over others;
- b) the long history of government preferment leading to corrupt practices in NSW;
- c) the importance of technological neutrality in the energy supply and distribution sector, whereby all energy sources should be given equal opportunities to compete; and
- d) the superiority of competitive market forces over government preferment strategies of picking winners.

9. Page 2, line 26. Insert Clause 3B:

Principles of Decision Making Transparency

This Act recognises that:

- a) quality decision making in government relies on high-quality and transparent information and economic data;
- b) secrecy in government helps to enable corruption and other forms of administrative malpractices; and
- c) with large and growing financial interests in the NSW energy sector, the Minister must uphold the highest standards of decision making transparency, integrity and ethics.

Part 3 Energy security targets

Division 1 setting and monitoring of energy security targets

10. Page 6, Clause 11, line 22. Insert 11(5)
The energy security target monitor is to be selected from a committee comprising the NSW Productivity Commissioner, Secretary to the Treasury and the Secretary of the Department of Regions NSW.
11. Page 6, Clause 11, line 22. Insert 11(6)
The Energy Security Target is to be based on developing a NSW electricity generation system that complies with the principles of technological and competitive neutrality – *for the avoidance of doubt*: no electricity supply source is to be banned or disadvantaged on the basis of its technological features.
12. Page 6, Clause 11, line 21. Insert 11(7)
The Energy Security Target and the calculation of Maximum Demand is to be based on weather assumptions of the worst case scenario of extreme heatwave conditions occurring simultaneously (the same day) along the three East Coast states of Victoria, New South Wales and Queensland.
13. Page 6, Clause 12(3)(a), lines 30-35. Omit (a), (b) and (c).
14. Page 7, Clause 12(4)(a), line 3. Omit "Secretary" and insert "NSW Productivity Commissioner, Secretary of the NSW Treasury".
15. Page 7, Clause 12(6), line 8. Omit "Secretary" and insert "NSW Productivity Commissioner, Secretary of the NSW Treasury".
16. Page 7, Clause 12, line 13. Insert 12(9)
All Ministerial reports in this clause are to be subject to independent verification by the NSW Productivity Commissioner and Secretary to the NSW Treasury, with a verification certificate to be issued by such, including (if appropriate) a list of concerns regarding incomplete and/or

inaccurate information. These reports and certificates are to be tabled by the Minister in both Houses of Parliament.

17. Page 7, Clause 12, line 13. Insert 12(10)

The reports in this clause shall include:

- a) the most recent available CSIRO GenCost data and findings on the Levelised Cost of Electricity;
- b) calculations on the cost of necessary transmission improvements to make the energy source viable; and
- c) combined cost relativities in adding (a) and (b) above together, to produce a calculation of the Complete Levelised Cost of Electricity (combined generation, storage and transmission costs).

18. Page 7, Clause 12, line 13. Insert 12(11)

In the reports and calculations in this clause, the energy security target monitor must have fundamental regard to the availability of dispatchable electricity and the data in 12(10) above to avoid the prospect of supply shortfalls and price increases damaging consumers and the NSW economy.

19. Page 7, Clause 12, line 13. Insert 12(12)

The energy security target monitor shall make reports and recommendations to the Minister and the Parliament about restrictions on electricity supply sectors that breach the principles of technological and competitive neutrality and threaten energy security targets in NSW, particularly with regard to:

- a) nuclear power, especially Small Modular Reactors;
- b) gas, especially gas peaking plants;
- c) extending the life of existing coal-fired power stations;
- d) building new coal-fired power stations, especially High Efficiency Low Emission (HELE);
- e) renewable energy and associated firming capacity;
- f) other existing electricity generation technologies; and
- g) future development of technologies as they arise.

20. Page 7, Clause 12, line 13. Insert 12(13)

Economic modeling and forecasts used by the energy security target monitor, the Minister and the Department shall be independently checked by the NSW Productivity Commissioner and the Secretary of Treasury, with any measureable discrepancy and flaw in modeling assumptions to be reported immediately to both Houses of Parliament.

21. Page 7, Clause 12, line 13. Insert 12(14)

Immediately after the Act's date of commencement, an Investigating Committee comprising the energy security target monitor, the NSW Productivity Commissioner and the Secretary of Treasury is to review the probity, adequacy and accuracy of:

- a) The Department of Planning, Industry and Environment report, 'Renewable Energy Zone impact analysis' (15 September 2020) ordered by the Minister and authored by Liam Ryan and James Hay;
- b) Any earlier internal departmental advice, rewritten as part of final advice to the Minister supporting his renewable energy policies;
- c) Any economic modeling and consultants' notes inside the Department of Planning, Industry and Environment that provide clear alternative advice to the Government's Auroa modeling, but was withheld from other senior Ministers, the NSW Cabinet and the NSW Parliament in the development of the Act; and
- d) Potential conflicts of interest among senior Departmental officers and within the Minister's office, as identified by Members of the NSW Parliament.

The Investigating Committee is tasked with referring any suspected impropriety to the Independent Commission Against Corruption.

22. Page 7, Clause 13, line 23. Insert (3) "The information in 13(2) above shall be made available to both Houses of the NSW Parliament on a privileged basis".

23. Page 7, Clause 13, line 23. Insert (4)

Energy security target monitor reports are to be subject to independent verification by the NSW Productivity Commissioner and Secretary to the NSW Treasury, with a verification certificate to be issued by such, including (if appropriate) a list of concerns regarding incomplete and/or inaccurate information. These reports and certificates are to be tabled by the Minister in both Houses of Parliament.

24. Page 7, Clause 14, line 29. Insert 14(3)

Ministerial action and statements in 14(1) and (2) above must be consistent with the principles of technological and competitive neutrality, seeking to expand energy supply in NSW without the practice of the Minister picking sector or technological winners (giving preference) with regard to:

- a) nuclear power, especially Small Modular Reactors;
- b) gas, especially gas peaking plants;
- c) extending the life of existing coal-fired power stations;
- d) building new coal-fired power stations, especially High Efficiency Low Emission (HELE);
- e) renewable energy and associated firming capacity;
- f) other existing electricity generation technologies; and
- g) future development of technologies as they arise".

25. Page 7, Clause 14, line 29. Insert 14(4)

Ministerial action and statements in 14(1) and (2) above must have fundamental regard to the following data and information base:

- a) the most recent available CSIRO GenCost data and findings on the Levelised Cost of Electricity;

- b) calculations on the cost of necessary transmission improvements to make the energy source viable; and
- c) combined cost relativities in adding (a) and (b) above together, to produce a calculation of the Complete Levelised Cost of Electricity (combined generation, storage and transmission costs).

26. Page 7, Clause 14, line 29. Insert 14(5)

On 1 July each year after the commencement of the Act, the NSW Chief Scientist must report to both Houses of the NSW Parliament on the impact/projected impact of the Act in reducing carbon emissions in NSW, measured as:

- a) results since the commencement of the Act;
- b) projected impact over the following 5 years;
- c) projected impact over the following 10 years;
- d) projected impact over the following 20 years;
- e) projected impact over the following 50 years;
- f) NSW carbon emission reductions as a proportion of the global total; and
- g) impact of the Act on global average annual surface temperatures in combatting global warming.

27. Page 7, Division 2, line 29. Omit "Division 2 Energy security target monitor's information gathering powers"

Part 4 Renewable energy zones and access schemes

Division 1 renewable energy zones

28. Page 10, Clause 18(1), line 4. After "The Minister may" insert "following and in response to a Community-Led Democratic Process".

29. Page 10, Clause 18(1), line 7. Omit 1(b) and insert "1(b) other features of the zone, such as electricity generation and network infrastructure, as specified in the Community-Led Democratic Process".

30. Page 10, Clause 18, line 9. Insert (1)(c)

Terms and conditions as determined by a Community-Led Democratic Process, whereby local and regional communities can initiate zones by:

- (a) conducting at least a 12-month process of community consultation with affected stakeholders in the defined geographical area, with regard to land use planning, environmental impacts, wildlife protection, heritage and other associated community impacts;
- (b) determining a business plan that fully funds the renewable energy zone, in cooperation with corporate partners, at no net cost to NSW taxpayers in parts of the State outside the zone;

- (c) committing corporate partners to specified investment levels and job creation over at least a five year period; and
- (d) demonstrating majority community support for the zone through the conduct of plebiscites by the relevant local government authorities”.

31. Page 10, Clause 18, lines 9-10. Omit 18(2).

32. Page 10, Clause 18, lines 15-16. Omit 3(c).

33. Page 10, Clause 18, lines 18-25. Omit 18(4).

34. Page 10, Clause 19(a), line 29. After “from the Secretary” insert “supported by independent economic modeling published on the Department’s website,”.

35. Page 10, Clause 19(c), line 33. Omit 19(c) and insert “19(c) follow the results of a Community-Led Democratic Process, and”.

36. Page 10, Clause 20, lines 37-40.
Page 11, Clause 20, lines 1-9.
Omit Clause 20.

37. Page 11, Clause 21(1), line 11. After “renewable energy zone only” insert “if, following a new Community-Led Democratic Process, it is agreed by the local/regional community that the Minister can act—”.

38. Page 11, Clause 22, lines 21-37. Omit Clause 22 and Insert 22
Determination of Infrastructure Planners

Each renewable energy zone will determine its own infrastructure planner as part of a Community-Led Democratic Process.

Division 2 Access schemes for renewable energy zones

39. Page 12, Clause 23(3), line 4. After ‘this Act’, insert “and the outcome of a Community-Led Democratic Process for each renewable energy zone”.

40. Page 12, Clause 23(6), line 23. Insert “(d) ensure the declaration is consistent with the results of a Community-Led Democratic Process establishing the renewable energy zone.”

41. Page 12, Clause 24(2)(b), line 30. After “the draft guidelines” insert “as part of a new Community-Led Democratic Process”.

42. Page 13, Clause 26(2), line 25. After “network service providers” insert “and the proponents of the Community-Led Democratic Process”.

43. Page 13, Clause 27(1), line 29. After “access scheme only” insert “after consultation with the proponents of the Community-Led democratic Process”.

44. Page 14, Clause 28(3), line 6. Insert:
(d) the local State MP or MPs, and
(e) the proponents of the Community-Led Democratic Process.

45. Page 14, Clause 28(7), lines 17-19. Omit (7).

Part 5 Network infrastructure projects

Division 1 Assessment of REZ network infrastructure projects

46. Page 15, Clause 29(2), line 16. Insert "(e) impacts on existing electricity generation in NSW, so that the State does not, as a consequence of the recommendations of the infrastructure planners, experience a net loss of electricity generation".

47. Page 15, Clause 30(1)(a), line 32. Omit "Minister" and insert "AEMO".

48. Page 15, Clause 30, lines 35-44.
Page 16, Clause 30, lines 1-3.
Omit (2), (3), (4) and (5).

Division 2 Directions to carry out network infrastructure projects

49. Page 16, Division 2, lines 4-42, lines 1-23
Page 17, Division 2, lines 1-23.
Omit "Division 2 Directions to carry out network infrastructure projects".

Division 3 Functions of regulator

50. Page 17, Division 3, lines 24-41.
Page 18, Division 3, lines 1-46.
Page 19, Division 3, lines 1-43.
Page 20, Division 3, lines 1-16.
Omit "Division 3 Functions of the regulator".

Part 6 Electricity infrastructure investment safeguard

Division 1 Preliminary

51. Page 21, Clause 42(1), lines 4-13. Omit 42(1) and insert
(1) This part applies to the following infrastructure and provision principles
—
(a) infrastructure shall be treated and supported under the principles of technological and competitive neutrality, applying to nuclear power, gas, coal-fired power stations, renewable energy and other electricity generation technologies, current and future;

- (b) the fundamental purpose of infrastructure provision is to increase electricity generation supply, thereby improving supply reliability and reducing prices to consumers and businesses;
- (c) supply reliability is maximised through the availability of dispatchable power;
- (d) each energy source is expected to develop dispatchable power capacity as part of its own commercial arrangements;
- (e) any intermittent energy source needs to develop its own storage and firming capacity at no cost to NSW taxpayers and consumers, thereby avoiding commercial rent seeking in corrupted market structures; and
- (f) public infrastructure priorities are aimed at transmission efficiency and reliability.'

52. Page 21, Clause 43(1)(b), lines 33-34. Omit "and long-duration storage infrastructure".

53. Page 21, Clause 43(2)(b), line 38. Omit "long-duration storage".

54. Page 21, Clause 43(2)(c), line 40. Omit "firming".

55. Page 21, Clause 43(3), lines 42-43.
Page 22, Clause 43(3)-(4), lines 1-8.
Omit (3) and (4).

56. Page 22, Clause 44, lines 23-27. Omit (3) and (4) and insert

(3) The consumer trustee is to conduct competitive tenders for infrastructure provision,

(4) The tenders in (3) above are to be conducted under the direct supervision and probity and auditing authority of the NSW Treasury, NSW Productivity Commission, NSW Auditor General and the Tribunal.'

Division 3 Long-term energy service agreements

57. Page 22, Division 3, lines 31-43.
Page 23, Division 3, lines 1-43.
Page 24, Division 3, lines 1-4.
Omit "Division 3 Long-term energy service agreements".

58. Page 24, Clause 49(1), line 15. Omit ",subject to any requirements prescribed by the regulations".

59. Page 24, Clause 49(5), line 32. Omit (e) and insert: "(e) The consumer trustee shall have fundamental regard for the stability and certainty of the national electricity market and the consistency of New South Wales role in it".

Division 4 Risk management

60. Page 25, Clause 50, lines 12-21. Omit (5), (6), (7), and (8).

61. Page 25, Clause 51, lines 22-28. Omit "51 Risk Management contracts".

Part 7 Electricity infrastructure fund

62. Page 26, Clause 53, lines 10-11. Omit ",subject to any requirement prescribed by the regulations".

63. Page 26, Clause 53(c), lines 15-16. Omit (c).

64. Page 26, Clause 54(a), line 30. Omit "or a risk management contract".

65. Page 26, Clause 54(b), lines 32-33. Omit "or otherwise authorised by the Minister".

66. Page 27, Clause 55(3), line 2. Insert "(c) ensuring contributions are not at a net negative cost to NSW consumers and/or taxpayers, or add to the financial risks and exposure of the NSW Government."

67. Page 27, Clause 55(4)(b), line 4. Omit (b).

68. Page 27, Clause 55(5), lines 5-6. Omit "28 February" insert "1 July".

69. Page 27, Clause 55(5), line 7. Omit ", unless the Minister approves a later date".

70. Page 27, Clause 55(6)(b), line 10. Omit (b).

71. Page 27, Clause 57(1), lines 27-29. Omit (1).

72. Page 28, insert

Adding to Electricity Supply, Reliability and Affordability, by the Principles of Technological and Competitive Neutrality: Lifting the NSW Bans on Nuclear Power and Uranium Mining

Division 1

Repeal Provisions

(57A) The Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 is repealed.

(57B) Amendment of Mining Act 1992 No 29 Clause 10A (Restriction on grant of authorisations with respect to uranium) - Omit the clause.

Associated Amendments

Amendment of Land and Environment Court Act 1979 No 204:
(57C) Clause 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement - Omit clause 20(1)(ba).
(57D) Clause 20 (3) (a) Omit “Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986”.
(57E) Clause 21 Class 5—environmental planning and protection summary enforcement Omit clause 21 (fa).

Commencement of Part

This Act commences on the date of assent to this Act.

Note: For the avoidance of doubt, this Part is essential to meeting the Objects of the Act (clause 3), in fostering new investment in emission-free electricity generation to improve the affordability, reliability, security and sustainability of electricity supply in NSW.

Part 8 Administration

Division 1 Roles and functions

73. Page 29, Clause 58, lines 4-7. Omit (1) and (2) and insert
(1) the energy security target monitor shall be appointed by a selection committee comprising the NSW Productivity Commissioner, Secretary of Treasury and the Secretary of the Department of Regions NSW.
74. Page 29, Clause 59, line 15. Omit (1) and insert
(1) The consumer trustee is to be appointed by a selection committee comprising the NSW Productivity Commissioner, a representative of NSW Fair Trading and a representative of the Tribunal (IPART).
75. Page 30, Clause 61, lines 1-21. Omit “61 Scheme financial vehicle”.
76. Page 30, Clause 62(1), line 23. Omit and insert “(1) Each renewable energy zone will determine its own infrastructure planner as part of a Community-Led Democratic Process.”
77. Page 31, Clause 63(1). Omit and insert: “(1) The regulator shall be the AER,”

Division 2 Appointment and performance

78. Page 31, Clause 64, lines 32-37. Omit “64 Definition”.
79. Page 32, 65(5), lines 14-20. Omit (5)(a)-(e).
80. Page 32, 66(1), line 22. Omit “regulator” insert “NSW Auditor General”

81. Page 33, line 17. Insert

68A

In the use and administration of the term 'social licence' the Minister and other members of Government are not to use it in an elitist way, a catch-all moral expression for thinking they know best and can control the actions of others without consultation and democratic processes. The use and allocation of social licence must be on the basis of proven, expert".

- a) economic, social and environmental research;
- b) full disclosure and information and transparent decision making processes; and
- c) public consultation with stakeholders and an extensive, deliberative decision making by government.

Part 9 Miscellaneous

82. Page 34, Clause 70, lines 15-22. Omit "70 Delegation".

83. Page 35, Clause 74, lines 35-44.
Page 36, Clause 74, lines 1-2.
Omit "74 Disclosure of information"

84. Page 36, Clause 78, 42-44
Page 37, Clause 78, 1-8.
Omit "78 Regulations"

85. Page 37, line 9. Insert

79 Anti-Corruption

On 1 January and 1 July each year after the Act's commencement date, the Minister shall prepare and table a report to both Houses of Parliament, scrutinised and verified by the Independent Commission Against Corruption beforehand, setting out:

- a) each of the financial interests of Ministers, Ministerial staff and Departmental staff dealing with energy policy and implementation, such that no Ministers or staff or their immediate family members shall have a pecuniary interest in the NSW energy sector; and
- b) actions the Minister has taken to ensure:
 - i) transparency and reliability of government information collected and analysed for the energy supply and distribution sector;

- ii) independent modeling and the use of independent economic data and analysis for all significant government decisions in the energy supply and distribution sector;
- iii) reporting of any breaches of the principles and requirements of this Clause, as identified by the Independent Commission Against Corruption; and
- iv) reporting of any party political (including party factional) influences affecting the ethical and propriety standards of NSW energy policy, as referred to in Part 1 of the Act (Objects and Principles), and as identified by the Independent Commission Against Corruption.