



New South Wales

# Energy Legislation Amendment Bill 2021

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the following Acts—

- (a) *Electricity Supply Act 1995*,
- (b) *Energy and Utilities Administration Act 1987*,
- (c) *Forestry Act 2012*,
- (d) *Gas Supply Act 1996*,
- (e) *Pipelines Act 1967*.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1 Amendment of Electricity Supply Act 1995 No 94

### Cyber security

**Schedule 1[16]** extends the power of the Premier to declare an electricity supply emergency if there is a cyber security incident that affects electricity supply. A *cyber security incident* means acts, events or circumstances involving, or likely to involve, 1 or more of the following—

- (a) unauthorised access to computer data or a computer program,

- (b) unauthorised modification of computer data or a computer program,
- (c) unauthorised impairment of electronic communication to or from a computer,
- (d) unauthorised impairment of the availability, reliability, security or operation of a computer, computer data or a computer program.

**Schedule 1[20]** enables the Minister for Energy and Environment (the *Minister*) to direct a network operator, electricity generator or other prescribed person to take certain action to respond to or prevent a cyber security incident.

**Schedule 1[25]** enables the regulations to provide for the adoption and implementation, by a network operator, electricity generator or other prescribed person, of cyber security policies and procedures. **Schedule 1[17]–[19] and [21]–[24]** make consequential amendments.

### **Energy security safeguard**

**Schedule 1[34]–[71]** amend the provisions setting out the energy savings scheme. **Schedule 1[72]–[93]** amend the provisions setting out the peak demand reduction scheme. The amendments relate to the following matters—

- (a) extending the energy savings scheme to other forms of energy, other than electricity and gas,
- (b) amending the accreditation of certificate providers under both schemes,
- (c) recovery by the Secretary of the Department of Planning, Industry and Environment of the costs of audits carried out in relation to scheme participants and accredited certificate providers under both schemes,
- (d) civil penalties for offences under both schemes,
- (e) information sharing arrangements between the Scheme Administrator and government agencies under both schemes,
- (f) the appointment of compliance officers, the powers of compliance officers and the issuing of penalty notices for offences under both schemes.

**Schedule 1[26]** makes further provision for proceedings for offences under both schemes.

### **Miscellaneous amendments**

**Schedule 1[1]** updates the definition of *distribution system* to include a regulated stand-alone power system.

**Schedule 1[3]** enables a distributor to operate a distribution system for the purpose of conveying electricity to a person prescribed by the regulations. **Schedule 1[2]** makes a consequential amendment.

**Schedule 1[5] and [6]** allow a council to agree to a shorter consultation period in relation to a network operator proposing to carry out work to erect or modify electricity works.

**Schedule 1[7]–[10]** make further provision about the obstruction of electricity works, including in relation to a network operator modifying or removing structures that are damaging electricity works and the recovery of associated costs.

**Schedule 1[11]** extends the existing power of the Secretary of the Department of Planning, Industry and Environment to direct a distributor to remove an electricity transmission or distribution structure or a structure used for public lighting to include a structure for the storage or generation of electricity.

**Schedule 1[12] and [13]** provide that certain provisions relating to serious electricity works accidents do not apply to an accident involving a motor vehicle accident on land not owned or controlled by a network operator if—

- (a) a fault or failure in electricity works did not contribute to the motor vehicle accident, and
- (b) electricity did not contribute to an injury or death.

**Schedule 1[14]** updates the prohibition on diverting or using electricity unless authorised by a wholesale supply agreement or a customer retail contract to also allow the regulations to prescribe other contracts, agreements or arrangements that may authorise the use of electricity. **Schedule 1[15]** makes a consequential amendment.

**Schedule 1[28]** provides that regulations may be made to prevent a network service provider recovering charges under a distribution determination or a transmission determination under the *National Electricity (NSW) Law* from a person who buys electricity to produce green hydrogen.

**Schedule 1[30]–[33]** extend the existing power of a metering coordinator to enter customer premises to also apply to metering providers.

**Schedule 1[4], [27] and [29]** omit redundant provisions.

**Schedule 1[94]** inserts a savings provision.

**Schedule 1[95]** inserts and amends relevant definitions.

## **Schedule 2      Amendment of Energy and Utilities Administration Act 1987 No 103**

### **Energy supply emergencies**

**Schedule 2[2]** enables the Premier to declare, by written order, an energy supply emergency, instead of the Governor declaring an emergency by proclamation. The grounds on which the Premier may declare an energy supply emergency will include a cyber security incident. The Minister will be able to give directions during an energy supply emergency, including in relation to cyber security incidents. The Minister will be able to direct a network operator to take certain action to respond to or prevent a cyber security incident. A *cyber security incident* means acts, events or circumstances involving, or likely to involve, 1 or more of the following—

- (a) unauthorised access to computer data or a computer program,
- (b) unauthorised modification of computer data or a computer program,
- (c) unauthorised impairment of electronic communication to or from a computer,
- (d) unauthorised impairment of the availability, reliability, security or operation of a computer, computer data or a computer program.

Schedule 2[2] also enables the Minister to require a person to provide information in relation to energy supply and cyber security incidents. The Minister must keep the information confidential, except in certain circumstances.

**Schedule 2[6]** enables the Minister to direct a person to discontinue the supply of energy, if the person is convicted of failing to comply with a direction given during an energy supply emergency.

**Schedule 2[3]–[5] and [7]** make consequential amendments.

**Schedule 2[1]** inserts relevant definitions.

### **Miscellaneous**

**Schedule 2[8]** increases the maximum penalties payable for the offence of obstructing an inspector.

**Schedule 2[10]** provides for the Minister to make an order exempting a person who buys electricity for the production of green hydrogen from a requirement made by a licensed distributor that the person make a payment towards the licensed distributor's annual contribution to the Climate Change Fund. **Schedule 2[9]** makes a consequential amendment.

## **Schedule 3      Amendment of Forestry Act 2012 No 96**

**Schedule 3** enables the construction and operation of renewable energy infrastructure in certain forestry areas.

## **Schedule 4      Amendment of Gas Supply Act 1996 No 38**

### **Cyber security**

**Schedule 4[15]** enables the Minister to direct a network operator to take certain action to respond to or prevent a cyber security incident. A *cyber security incident* means acts, events or circumstances involving, or likely to involve, 1 or more of the following—

- (a) unauthorised access to computer data or a computer program,
- (b) unauthorised modification of computer data or a computer program,
- (c) unauthorised impairment of electronic communication to or from a computer,
- (d) unauthorised impairment of the availability, reliability, security or operation of a computer, computer data or a computer program.

**Schedule 4[14]** enables the regulations to provide for the adoption and implementation by a network operator of cyber security policies and procedures.

### **Reticulator authorisations and distributor licences**

**Schedule 4[2] and [7]** make clear the Minister may determine an application for a reticulator's authorisation or distributor's licence by granting the authorisation or licence with modifications.

**Schedule 4[5] and [10]** enable the Minister to determine the annual fees for the holder of a reticulator's authorisation and a distributor's licence. Currently the fees must be equivalent to the amount estimated by the Treasurer as the cost to the State of administering the *Gas Supply Act 1996* in relation to the holder of the authorisation or licence.

**Schedule 4[3] and [8]** extend the actions the Minister may take if the holder of a reticulator's authorisation or a distributor's licence has knowingly contravened a requirement of the *Gas Supply Act 1996*, the regulations under that Act or the conditions of the authorisation or licence. If the holder is a corporation, the Minister will, in certain circumstances, be able to impose a monetary penalty not exceeding \$50,000 on a person who is a director of, or concerned in the management of, the corporation.

### **Increased penalties**

**Schedule 4[1], [4], [6], [9], [12], [13] and [16]** increase the maximum penalties payable for certain offences under the *Gas Supply Act 1996*.

### **Other**

**Schedule 4[11]** makes further provision about the obstruction of gas works, including in relation to modifying or removing structures that are damaging gas works and the recovery of associated costs.

**Schedule 4[17]** inserts transitional provisions.

**Schedule 4[18]** inserts and amends relevant definitions.

## **Schedule 5      Amendment of Pipelines Act 1967 No 90**

### **Pipeline licences**

**Schedule 5[2]** provides that an order by the Minister requiring a specified pipeline to be licensed under the *Pipelines Act 1967* takes effect on the date specified in the order or the date on which the order is published in the Gazette. Currently an order takes effect no earlier than 12 months after the order is published.

**Schedule 5[13]** enables the Minister to determine the annual fees for a pipeline licence. Currently the fees are tied to a prescribed amount related to the length of the pipeline.

### **Cyber security**

**Schedule 5[6]** enables the Minister to direct a pipeline licensee to take certain action to respond to or prevent a cyber security incident. A *cyber security incident* means acts, events or circumstances involving, or likely to involve, 1 or more of the following—

- (a) unauthorised access to computer data or a computer program,
- (b) unauthorised modification of computer data or a computer program,
- (c) unauthorised impairment of electronic communication to or from a computer,
- (d) unauthorised impairment of the availability, reliability, security or operation of a computer, computer data or a computer program.

The regulations will be able to provide for the adoption and implementation by a pipeline licensee of cyber security policies and procedures. It will be a condition of the pipeline licence that the licensee comply with the requirements of the regulations and with a direction given by the Minister. **Schedule 5[1] and [5]** make consequential amendments.

### **Increased penalties**

**Schedule 5[3], [4], [8]–[12] and [14]–[18]** increase the maximum penalties payable for certain offences under the *Pipelines Act 1967*.

### **Other**

**Schedule 5[7]** removes the requirement for the Registrar-General to notify the Minister of the charges incurred by the Registrar-General in relation to the registration and recording of certain planning documents relating to the area of a pipeline licence.