



New South Wales

Energy and Utilities Administration Amendment Bill 2022

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 *Energy and Utilities Administration Act 1987* to—

- (a) provide that the Premier may declare a coal market price emergency, and
- (b) provide that the Minister may impose price caps and other measures while a coal market price emergency declaration is in force to reduce the risk of increased electricity prices.

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 on the date of assent to the proposed Act.

Schedule 1 **Amendment of Energy and Utilities Administration Act 1987 No 103**

Schedule 1[4] inserts Schedule 3 into the *Energy and Utilities Administration Act 1987* to provide for coal market price emergencies.

Part 1 provides the object of the proposed Schedule and defines *AER*, *declaration*, *direction*, *inspector*, *IPART*, *regulator* and *supply* for the proposed Schedule.

Part 2 provides that the Premier may declare a coal market price emergency where it is necessary to reduce the risk of increases in coal prices or insufficient domestic supply of coal that will adversely affect members of the community. The Premier is not required to consult with any

person or comply with any requirement of procedural fairness before making or revoking a declaration. The proposed Part sets out the particulars of the duration of a declaration and the requirements to publish the making and revocation of a declaration.

Part 3 provides that when a coal price emergency declaration is in force, the Minister for Energy may, by written notice, give directions the Minister considers reasonably necessary to respond to the coal price emergency and is not required to consult with any person or comply with any requirement of procedural fairness before giving the direction. The Minister may amend or revoke a direction by written notice. The proposed Part sets out the requirement to publish a notice giving, amending or revoking a direction and makes it an offence to fail to comply with a direction with a maximum penalty of 1,000 penalty units for an individual or for a corporation the greater of the following—

- (a) \$10 million,
- (b) 3 times the value of the benefit of the offence,
- (c) if the court cannot determine the value of the benefit to the corporation—10% of the corporation's adjusted turnover during the breach turnover period for the offence.

Part 4 requires the Minister for Energy to appoint a regulator and provides that the regulator is not subject to the control or direction of the Premier or the Minister for Energy. The proposed Part sets out the functions of the regulator including the primary function, which is to ensure compliance with the proposed Schedule and regulations made for the purpose of the proposed Schedule.

Part 5 provides that the regulator appointed under proposed Part 4 may appoint certain persons to be inspectors for purposes set out in the proposed Schedule, including to determine whether the Schedule has been complied with or contravened and to obtain certain documents or information for a purpose in connection with the administration of the proposed Schedule. The proposed Part sets out the powers of an inspector, including the power to enter certain premises and the power to require a person to give the inspector a document or information specified in a written notice. The proposed Part makes it an offence to fail to comply with a requirement made by an inspector or to provide false or misleading information to an inspector with a maximum penalty of 100 penalty units. The proposed Part makes it an offence to delay or obstruct an inspector in the exercise of the inspector's functions under the proposed Part with a maximum penalty of 100 penalty units.

Part 6 provides that an inspector must not disclose information in connection with the exercise of the inspector's functions under the proposed Schedule, except in certain circumstances, with a maximum penalty of 20 penalty units. The proposed Part provides that an inspector may issue a penalty notice to a person if it appears the person has committed a penalty notice offence and the regulations may create an offence for the proposed Schedule with a maximum penalty of 2,000 penalty units for an corporation or 500 penalty units for an individual. The proposed Schedule prevails to the extent it is inconsistent with any other Act and provides that the State, Premier, Minister for Energy or person acting in the execution of the proposed Schedule incurs no liability for any damage, loss or injury suffered as a result of the operation of the proposed Schedule. The proposed Schedule is repealed on 30 June 2024.

Schedule 1[2] provides that an offence under proposed Schedule 3 may be dealt with summarily before the Supreme Court. **Schedule 1[1]** makes a consequential amendment.

Schedule 1[3] provides that the Minister for Energy may appoint a Public Service employee as an inspector during a certain period.