



New South Wales

# Energy Security Corporation Bill 2024

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2024*



New South Wales

## **Energy Security Corporation Bill 2024**

Act No \_\_\_\_\_, 2024

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An Act to establish the Energy Security Corporation; to provide for the Corporation's functions, including the Corporation's investment function in relation to clean energy technologies; to provide for the functions of the Minister, the Treasurer and the Finance Minister in relation to the Corporation, including providing an Investment Mandate; and for related matters.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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The Legislature of New South Wales enacts—

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Energy Security Corporation Act 2024*.

### 2 Commencement

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

### 3 Definitions

The dictionary in Schedule 3 defines words used in this Act.

**Note—** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

## Part 2 Establishment and functions of Energy Security Corporation

### 4 Establishment

The Energy Security Corporation is established.

### 5 Status

The Corporation is—

- (a) a corporation, and
- (b) a statutory body that represents the Crown.

**Note—** The *Interpretation Act 1987*, section 50 provides for additional matters that apply to statutory corporations.

### 6 Objects

The objects of the Corporation are as follows—

- (a) to accelerate private sector investments in clean energy projects in New South Wales that improve the reliability, security and sustainability of electricity supply,
- (b) to support New South Wales to achieve the targets for reducing net greenhouse gas emissions under the *Climate Change (Net Zero Future) Act 2023*,
- (c) to complement other Government initiatives relating to clean energy technologies and partner with the private sector to finance clean energy technologies,
- (d) to achieve a government-mandated rate of return through a portfolio approach.

### 7 Functions of Corporation

The functions of the Corporation are—

- (a) the investment function, and
- (b) any other functions conferred or imposed on the Corporation by this Act or another Act.

### 8 Control and direction of Minister

- (1) The Corporation is subject to the control and direction of the Minister.
- (2) However, a direction must not—
  - (a) require the Corporation to make, or not to make, a particular investment, or
  - (b) be likely to have the effect of requiring the Corporation to make, or not to make, a particular investment.
- (3) A direction may be given to the Corporation by the Minister only with the concurrence of the Treasurer.
- (4) If the Board considers compliance with a direction of the Minister, other than the Investment Mandate, is likely to have a significant adverse effect on the exercise of the Corporation's or Board's functions, the Board may ask the Minister to review the Minister's decision to give the direction.
- (5) The Minister must, if asked to review a decision to grant a direction, in concurrence with the Treasurer, decide to—
  - (a) confirm the decision to give the direction and make no change to the content of the direction, or

- (b) confirm the decision to give the direction and make changes to the content of the direction, or
  - (c) revoke the direction.
- (6) If a review under subsection (4) does not result in a change to the direction, the Board must include the following in its annual report—
  - (a) particulars of the direction,
  - (b) the Board’s opinion of the effect of compliance with the direction.
- (7) A direction of the Minister is not stayed and does not otherwise cease to have effect merely because a request has been made by the Corporation for a review of the direction.
- (8) If there is an inconsistency between a direction given to the Corporation by the Minister and a direction given by the Board, the Minister’s direction prevails to the extent of the inconsistency.

## **9 Staff, contractors and consultants**

- (1) The Corporation may do any of the following to assist the Corporation to exercise its functions—
  - (a) employ staff,
  - (b) engage contractors or consultants or appoint agents,
  - (c) enter into arrangements with any of the following agencies or authorities to engage persons employed by the agency or authority as staff of the Corporation—
    - (i) a government sector agency within the meaning of the Government Sector Employment Act 2013,
    - (ii) a public authority or government agency of the Commonwealth or of another State or Territory.
- (2) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to persons employed or engaged by the Corporation.

## **10 Delegation by Corporation**

The Corporation may delegate the exercise of any function of the Corporation under this Act, other than this power of delegation, to—

- (a) a Board member, or
- (b) the CEO, or
- (c) a person or body, or a class of persons or bodies, prescribed by the regulations.

## Part 3 Board

### 11 Establishment of Board

There is a Board for the Corporation (the *Board*).

### 12 Functions of Board

- (1) The Board's functions are as follows—
  - (a) to determine strategies and policies for the Corporation,
  - (b) to ensure the proper, efficient and effective exercise of the Corporation's functions,
  - (c) to approve investment decisions made by the Corporation,
  - (d) any other functions conferred or imposed on the Board by this Act.

**Note—** See also the *Interpretation Act 1987*, section 50 which provides for additional matters in relation to statutory corporations including that the statutory corporation may do all other things that bodies corporate may, by law, do that are necessary for, or incidental to, the exercise of its functions.

- (2) Anything done in the name of, or on behalf of, the Corporation by the Board or with the Board's authority, is taken to have been done by the Corporation.

**Note—** The *Interpretation Act 1987*, section 50 provides for additional matters that apply to statutory corporations.

### 13 Membership of Board

- (1) The Board must consist of at least 5, but no more than 7, members.
- (2) The Board members are to be appointed by the Treasurer by written instrument.
- (3) The Treasurer may appoint a Board member only with the concurrence of the Finance Minister.
- (4) An office holder cannot be appointed as a member of the Board.
- (5) No more than 1 Board member may be a government sector employee.
- (6) Of the Board members appointed under this section—
  - (a) 1 must be a worker representative nominated by Unions NSW, and
  - (b) 1 must be nominated by a body that represents employers in New South Wales.
- (7) Schedule 1 contains provisions about the membership and procedures of the Board.
- (8) In this section—

*office holder* has the same meaning as in the *Statutory and Other Offices Remuneration Act 1975*, section 10A.

### 14 Eligibility for appointment to Board

A person is eligible for appointment as a member of the Board only if the Treasurer and Finance Minister are satisfied the person has substantial experience or expertise, professional credibility and significant standing in at least one of the following—

- (a) banking and finance,
- (b) economics,
- (c) financial accounting,
- (d) venture capital, private equity or infrastructure investment,
- (e) clean energy technologies,
- (f) the energy market,



- (g) government funding programs or bodies,
- (h) the environmental sector,
- (i) law and governance,
- (j) engineering,
- (k) community and employment matters,
- (l) planning, development and financing.

#### **15 Chairperson of Board**

- (1) The Treasurer must appoint one of the Board members as the Chairperson of the Board.
- (2) The Treasurer may appoint a Board member as the Chairperson only with the concurrence of the Finance Minister.
- (3) If a Board member is a government sector employee, the Board member cannot be appointed as the Chairperson.

#### **16 Statement of business intent**

- (1) The Board must prepare and submit to the Treasurer and the Finance Minister a statement of business intent for each financial year.
- (2) The statement of business intent for a financial year must be submitted to the Treasurer and Finance Minister by 31 July in the financial year.
- (3) The statement of business intent for a financial year must—
  - (a) include an overview of how the Corporation intends to carry out the Investment Mandate,
  - (b) set out the Corporation's business plan for the financial year, and
  - (c) include the following for the financial year—
    - (i) the Corporation's objectives and main undertakings,
    - (ii) an overview of the Corporation's business and a summary of the nature and scope of the activities to be undertaken by the Corporation,
    - (iii) a statement about the accounting standards, policies and other requirements that will be applied in preparing the Corporation's financial reports,
    - (iv) performance targets and other measures by which the Corporation's performance may be judged in relation to its objects,
    - (v) the Corporation's risk appetite,
    - (vi) any other matters required by the Treasurer or Finance Minister.
- (4) The statement of business intent must be consistent with the Investment Mandate.
- (5) If the Treasurer and Finance Minister are not satisfied with the statement of business intent for a financial year, the Treasurer or Finance Minister may direct the Board to amend and resubmit the statement in the way and time specified in the direction.

#### **17 Committees**

- (1) The Board may establish committees to—
  - (a) advise the Board, or
  - (b) assist the Board or Corporation in the exercise of the Board's or Corporation's functions.
- (2) A committee may be constituted by the following—

- (a) Board members,
  - (b) other persons decided by the Board.
- (3) The Board must decide the following for each committee—
- (a) the committee's terms of reference,
  - (b) the procedures to be followed by the committee.

**18 Terms and conditions of appointment of committee members**

- (1) Committee members, including Board members who are committee members, are entitled to be paid the remuneration and allowances determined by the Treasurer with the concurrence of the Finance Minister.
- (2) The other terms and conditions of the appointment of committee members are to be decided by the Board.

**19 Delegation**

The Board may delegate the exercise of any function of the Board under this Act, other than this power of delegation, to—

- (a) a Board member, or
- (b) the CEO.

## **Part 4 Chief Executive Officer**

### **20 Appointment of CEO**

- (1) The Board may, in consultation with the Treasurer and Finance Minister, appoint a chief executive officer (**CEO**) for the Corporation.
- (2) The CEO must be appointed—
  - (a) by written instrument, and
  - (b) on a full-time basis.
- (3) The CEO must not be a Board member.

### **21 Functions of CEO**

- (1) The CEO is responsible for the day-to-day administration of the Corporation.
- (2) The CEO has the power to do all things necessary or convenient to be done for or in connection with the exercise of the CEO's functions.
- (3) In exercising the CEO's functions, the CEO—
  - (a) must act in accordance with policies determined by the Board, and
  - (b) is subject to written directions from the Board about the exercise of the functions.

### **22 Terms and conditions of CEO's appointment**

- (1) Subject to this Act and the regulations, the CEO holds office on the terms and conditions, including the terms and conditions relating to remuneration and allowances, determined by the Board.
- (2) The CEO must, as soon as practicable after becoming aware the CEO has a material personal interest that relates to the affairs of the Corporation, disclose details of the interest to the Board by written notice given to the Chairperson.

### **23 Vacancy in office of CEO**

- (1) The CEO vacates office if—
  - (a) the CEO's appointment is terminated by the Board under subsection (2), or
  - (b) the CEO resigns the office by written instrument addressed to the Chairperson.
- (2) The Board may terminate the CEO's appointment only after consulting the Treasurer and Finance Minister.
- (3) The resignation of the CEO under subsection (1)(b) takes effect on—
  - (a) the day the instrument of resignation is received by the Chairperson, or
  - (b) if a later date is specified in the instrument of resignation—the later day.
- (4) If the CEO vacates office, the Chairperson must give the Treasurer and Finance Minister written notice that—
  - (a) the CEO's appointment has been terminated, or
  - (b) the CEO has resigned.

### **24 Delegation**

- (1) The CEO may delegate the exercise of any function of the CEO under this Act, other than this power of delegation, to a member of the Corporation's staff.
- (2) The CEO may subdelegate the exercise of any function delegated to the CEO by the Board to a senior member of the Corporation's staff.

## Part 5 Investment

### Division 1 Investment Mandate

#### 25 Investment Mandate to be issued

- (1) The Minister must, with the concurrence of the Treasurer, give the Board 1 or more directions (the *Investment Mandate*) about the exercise of the Corporation's investment function.
- (2) A direction given under subsection (1) must, as soon as practicable after being given, be published in the Gazette.

#### 26 Content of Investment Mandate

- (1) In giving a direction under section 25, the Minister—
  - (a) must have regard to the objects of the Corporation, and
  - (b) must have regard to environmental, social, and governance principles, best practice labour principles, skills and training, local content procurement, and First Nations participation.
  - (c) may have regard to other matters the Minister considers relevant.
- (2) Without limiting subsection (1), the Investment Mandate may set out the policies with which the Corporation must comply, including policies about the following—
  - (a) matters of risk and return,
  - (b) clarification of types of technologies, projects and businesses that are eligible for investment,
  - (c) making capital investments,
  - (d) the types of financial instruments in which the Corporation may invest,
  - (e) the types of derivatives that the Corporation may acquire,
  - (f) the nature of the guarantees the Corporation may give and the circumstances in which the guarantees may be given,
  - (g) operational matters,
  - (h) the public policy goals and societal benefits being considered in investment decisions,
  - (i) the role of the Corporation in relation to other entities operating in clean energy.

#### 27 Consultation with Board about Investment Mandate

- (1) Before giving the Board a direction under section 25, the Minister must—
  - (a) give the Board written notice about the proposal to make the direction accompanied by a copy of the draft direction to the Board, and
  - (b) invite the Board to make a submission to the Minister about the draft direction within a reasonable time specified in the notice,
  - (c) consider any submission made by the Board in accordance with the notice.
- (2) If the Board makes a submission about a proposed direction under subsection (1), the submission and proposed direction must be published on the Corporation's website.

#### 28 Compliance with Investment Mandate

- (1) The Board must take all reasonable steps to ensure the Corporation complies with the Investment Mandate.

- (2) If the Board becomes aware the Corporation has failed to comply with the Investment Mandate, the Board must, as soon as practicable after becoming aware of the failure, give the Minister a written notice—
  - (a) informing the Minister of the failure to comply with the Investment Mandate, and
  - (b) setting out the action the Board proposes to take to ensure the Corporation complies with the Investment Mandate.
- (3) If the Minister is satisfied the Corporation has failed to comply with the Investment Mandate, the Minister may give the Board a written direction (a *direction for failure to comply*) to—
  - (a) give the Minister a written explanation for the failure, within the period specified in the direction, and
  - (b) take action specified in the direction, within a specified period, to ensure the Corporation complies with the Investment Mandate.
- (4) Subsection (3) applies whether or not the Minister is given notice under subsection (2) of a failure to comply with the Investment Mandate.
- (5) The Board must comply with a direction for failure to comply.
- (6) A failure by the Board to comply with either of the following does not affect the validity of any transaction—
  - (a) the Investment Mandate,
  - (b) a direction for failure to comply.

## **Division 2 Investment and risk policies**

### **29 Board to prepare investment and risk policies**

- (1) The Board must prepare written policies (*investment and risk policies*) about the following—
  - (a) the Corporation’s investment strategy,
  - (b) benchmarks and standards for assessing—
    - (i) the Corporation’s performance, and
    - (ii) the performance of the Corporation’s investments,
  - (c) risk management for—
    - (i) the Corporation in exercising its functions, and
    - (ii) the Corporation’s investments,
  - (d) other matters prescribed by the regulations.
- (2) The investment and risk policies must be consistent with the Investment Mandate.

### **30 Publication of investment and risk policies**

The investment and risk policies must be published on the Corporation’s website.

### **31 Compliance with investment and risk policies**

- (1) The Corporation must comply with the investment and risk policies in exercising the Corporation’s functions.
- (2) A failure to comply with the investment and risk policies does not affect the validity of any transaction.

### **32 Review of investment and risk policies**

The Board must review the investment and risk policies—

- (a) if there is a change to the Investment Mandate, and
- (b) at other regular intervals.

## **Division 3 Investment function and related matters**

### **33 Investment function**

- (1) The Corporation may invest in clean energy technologies by—
  - (a) investing in businesses or projects for the development or commercialisation of, or in relation to the use of, clean energy technologies, or
  - (b) investing in businesses that supply goods or services needed to develop or commercialise, or for use in, clean energy technologies, or
  - (c) guaranteeing the repayment of loans.
- (2) Without limiting subsection (1), the Corporation may exercise its investment function by—
  - (a) making investments directly, including as a participant in partnerships, trusts, joint ventures or similar arrangements, or
  - (b) making investments indirectly through investment vehicles.
- (3) To avoid doubt, the Corporation may invest in any combination of investment options referred to in subsection (2).

### **34 Complying investments**

- (1) The Board must take all reasonable steps to ensure investments for the purposes of, or purportedly for the purposes of, the Corporation's investment function are, at all times, complying investments.
- (2) If the Board becomes aware an investment of the Corporation has ceased to be, or never was, a complying investment, the Board must give the Minister written notice that—
  - (a) states the investment has ceased to be, or never was, a complying investment, and
  - (b) sets out the action the Board proposes to take to ensure current and future investments made for the investment function are complying investments.
- (3) If the Minister is satisfied an investment has ceased to be, or never was, a complying investment, the Minister may, by written notice to the Board, direct the Board to—
  - (a) give the Minister a written explanation, within the period specified in the notice, about the investment and why it has ceased to be, or never was, a complying investment, and
  - (b) take the action specified in the notice, within the period specified in the notice, to ensure current and future investments made for the investment function are complying investments.
- (4) The Minister may give a direction under subsection (3) whether or not the Board has given the Minister a notice under subsection (2).
- (5) The Board must comply with a direction under subsection (3).
- (6) The fact an investment has ceased to be, or never was, a complying investment does not affect the validity of a transaction.

- (7) An investment does not cease to be an investment in clean energy technology only because the technology has, since the investment was made, ceased to qualify as clean energy technology because—
  - (a) the investment’s performance has not met reasonable expectations that existed at the time the investment was made, or
  - (b) different standards for measuring clean energy technologies are being applied than were being applied at the time the investment was made.
- (8) In this section—

***complying investments*** are investments that are—

  - (a) in clean energy technologies, and
  - (b) based solely or mainly in New South Wales, and
  - (c) not in prohibited technologies.

### **35 Clean energy technologies**

- (1) ***Clean energy technologies*** are technologies, including energy storage and enabling technologies, that contribute to the reliability, security or sustainability of electricity supply.
- (2) The Board must issue guidelines (***clean energy technologies guidelines***) that set out the matters to which the Board will have regard in satisfying itself a technology is a clean energy technology.
- (3) The clean energy technologies guidelines must be consistent with the Investment Mandate.
- (4) The Corporation must publish the clean energy technologies guidelines on the Corporation’s website.

### **36 NSW-based investment guidelines**

- (1) An investment made as part of the Corporation’s investment function must be solely or mainly based in New South Wales.
- (2) The Board must make guidelines (***NSW-based investment guidelines***) that set out the circumstances, conditions and other matters to which the Board will have regard in satisfying itself that an investment is solely or mainly based in New South Wales.
- (3) The NSW-based investment guidelines must be consistent with the Investment Mandate.
- (4) The Corporation must publish the NSW-based investment guidelines on the Corporation’s website.

### **37 Prohibited technologies**

- (1) The Corporation must not invest in prohibited technologies.
- (2) For subsection (1), the following are prohibited technologies—
  - (a) technology for carbon capture and storage within the meaning of the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth,
  - (b) nuclear technology,
  - (c) nuclear power,
  - (d) technologies prescribed by the regulations.
- (3) The regulations may provide for how an investment is determined to be a prohibited technology mentioned in subsection (2)(a)–(d).

## Part 6 Financial matters

### Division 1 Energy Security Corporation Fund

#### 38 Establishment of Fund

- (1) A fund called the Energy Security Corporation Fund (the *ESC Fund*) must be established in the Special Deposits Account.
- (2) The ESC Fund is to be jointly managed by the Treasurer and the Minister.

#### 39 Payments into the ESC Fund

- (1) The following may be paid into the ESC Fund—
  - (a) \$1,000,000,000 from the Restart NSW Fund under the *Restart NSW Fund Act 2011*,  
**Note—** The *Restart NSW Fund Act 2011*, section 8(c) provides that money is payable from the Restart NSW Fund if the money is directed or authorised to be paid from the Fund by another Act.
  - (b) money appropriated by Parliament for the purposes of the ESC Fund,
  - (c) money appropriated by Parliament to the Treasurer for the general purposes of the Government, not for the purposes of an individual agency, and directed by the Treasurer to be paid into the Fund,
  - (d) the proceeds of investment money in the ESC Fund,
  - (e) money received from voluntary contributions to the ESC Fund made by a government agency or another person or body,
  - (f) money the Corporation pays into the account,
  - (g) other money required by this Act or another Act or law to be paid into the ESC Fund.
- (2) The amount under subsection (1)(a) may be paid in instalments determined by the Treasurer by order published in the Gazette.
- (3) The Treasurer may give a direction that money appropriated or paid under subsection (1)(b) or (c) is appropriated or paid on condition of repayment into the Consolidated Fund in accordance with the Treasurer's direction.

#### 40 Payments out of the ESC Fund

- (1) Money may be paid out of the ESC Fund into the Operational Fund.
- (2) Money may be paid out of the ESC Fund into the Consolidated Fund for the purposes of repaying money paid into the ESC Fund under section 39(1)(b) or (c) if the payment was on condition of repayment under a direction given under section 39(3).
- (3) The Minister and the Treasurer may pay the proceeds of investment money in the ESC Fund into the Consolidated Fund.

#### 41 Requests for payments from ESC Fund into Operational Fund

- (1) The Corporation may ask the Minister and Treasurer to pay a specified amount of money out of the ESC Fund into the Operational Fund for the following—
  - (a) to make investments during the period specified in the request,
  - (b) to meet the Corporation's liabilities or expenses that are due, or will be or are expected to be due, during the period specified in the request,
  - (c) to ensure the total balance of the Operational Fund is at least the operating balance.



- (2) The Corporation's request must—
  - (a) be in writing, and
  - (b) specify—
    - (i) that the money is required for making investments, or
    - (ii) the liabilities or expenses for which the money is required, or
    - (iii) the amount by which the balance of the Operational Fund falls short of the operating balance.
- (3) The Corporation may make a request under this section only if the payment of the money would be in accordance with an agreement under section 43.
- (4) The Corporation must not request an amount that would be more than the uncommitted balance of the ESC Fund at the time the request is made.

#### **42 Decision about request for payment**

As soon as practicable after a request is made by the Corporation under section 41, the Minister and the Treasurer must—

- (a) jointly determine whether the request is in accordance with an agreement under section 43, and
- (b) if satisfied the request is in accordance with the agreement—pay the requested amount.

#### **43 Agreement about payments from ESC Fund to Operational Fund**

The following matters must be agreed by the Treasurer, Minister and Corporation in relation to requests by the Corporation for payments of money from the ESC Fund into the Operational Fund—

- (a) how requests are to be made, including—
  - (i) the way in which requests are to be made, and
  - (ii) the person to whom requests are to be made,
- (b) the period that may be specified in a request,
- (c) the amount of the operating balance for the Operational Fund.

#### **44 Investment of money in the ESC Fund**

- (1) The Treasurer may invest money in the ESC Fund.
- (2) The Minister may invest money in the ESC Fund in a way approved by the Treasurer.

## **Division 2 Energy Security Corporation Operational Fund**

#### **45 Establishment of Operational Fund**

- (1) A fund called the Energy Security Corporation Operational Fund (the *Operational Fund*) must be established in the Special Deposits Account.
- (2) The Operational Fund is to be managed by the Board.

#### **46 Payments into Operational Fund**

The following amounts may be paid into the Operational Fund—

- (a) money paid to the Corporation out of the ESC Fund,
- (b) all proceeds of investment money in the Operational Fund,
- (c) any other amount required by this Act or another Act or law to be paid into the Operational Fund,

- (d) any other money received by the Corporation.

#### **47 Payments out of Operational Fund**

- (1) The following amounts may be paid out of the Operational Fund—
  - (a) amounts required to meet the expenditure incurred by the Corporation in the exercise of the Corporation's functions, including investments, administration expenses and remuneration and allowances of Board members and the Corporation's staff,
  - (b) an amount authorised by the Minister, with the concurrence of the Treasurer, to be paid out of the Operational Fund and into the ESC Fund,
  - (c) amounts authorised by the regulations to be paid out of the Operational Fund,
  - (d) other amounts authorised by this Act or another Act or law to be paid out of the Operational Fund.
- (2) An amount transferred under subsection (1)(b) must not result in the balance of the Operational Fund being less than the total of the Corporation's operating balance and contracted investment commitments.

### **Division 3 Other financial matters**

#### **48 Corporation's borrowing power**

- (1) The Corporation is authorised to borrow money in connection with exercising its functions if—
  - (a) borrowing the money will enable the Corporation to cover settlement of a transaction for the investment, and
  - (b) at the time the decision was made to make the investment it was likely borrowing money to meet the liability was not required, and
  - (c) the period for which the money will be borrowed will not be more than 7 days.
- (2) The regulations may provide for other circumstances in which the Corporation may borrow money.
- (3) In borrowing money under subsection (1) or (2) the Corporation must comply with any conditions prescribed by the regulations.

#### **49 Guarantees**

- (1) The Corporation may guarantee repayment of a loan, including interest on a loan, made to a person only if the loan is a loan that could have been made by the Corporation in exercising its investment function.
- (2) The Corporation may guarantee obligations made to a person only if the commitment to meet the obligations is a commitment that could have been made by the Corporation in exercising its investment function.
- (3) The giving of a guarantee under subsection (1) or (2) must be consistent with the Corporation's investment and risk policies.
- (4) A guarantee given by the Corporation is void if, at the time the Corporation purports to give the guarantee, the guarantee would secure an amount that is more than the uncommitted balance of the Operational Fund at that time, less any liabilities of the Corporation not already covered by the uncommitted balance.
- (5) To avoid doubt, for subsection (4), the guarantee is wholly void regardless of whether a part of the amount the guarantee would secure could be covered by the uncommitted balance of the Operational Fund.

**50 Acquisition of derivatives**

- (1) The Corporation may acquire a derivative only for the following purposes—
  - (a) protecting the value of an investment of the Corporation, other than a derivative,
  - (b) protecting the return on an investment of the Corporation, other than a derivative,
  - (c) achieving indirect exposure to assets, other than derivatives, for a purpose in connection with the Corporation's investment function,
  - (d) achieving transactional efficiency for a purpose in connection with the Corporation's investment function,
  - (e) managing the Corporation's financial risks.
- (2) The Corporation must not acquire a derivative for the purpose of speculation.

**51 Receipt of gifts**

- (1) The Corporation may accept a gift of an asset with the approval of the Minister.
- (2) A gift accepted by the Corporation must be credited to the Operational Fund.

## Part 7 Reports

### 52 Publication of investment reports by Corporation

- (1) The Corporation must, on an annual basis, publish a report on the Corporation's website for the previous year that contains a summary of each investment made in the year for the Corporation's investment function.
- (2) Without limiting subsection (1), the report must include the following for each investment—
  - (a) the form of the investment,
  - (b) the value of the investment or the amount invested,
  - (c) the length of the investment and expected rate of return on the investment,
  - (d) when the investment was made,
  - (e) if the investment is a guarantee—the fee for the guarantee,
  - (f) the place at which the main activities to which the investment relates are carried out, and
  - (g) any other matters agreed between the Corporation and the Minister, with the concurrence of the Treasurer.
- (3) The Corporation may publish additional reports about the Corporation's investments—
  - (a) on the Corporation's own initiative, or
  - (b) at the request of the Minister with the concurrence of the Treasurer.

### 53 Publication by Minister of certain reports

- (1) The Minister may publish, on a NSW Government website, the following given to the Minister—
  - (a) a report or other document about the Corporation,
  - (b) information about the Corporation.
- (2) The Minister must, before publishing the report or other document or information, omit any information the Board has advised the Minister is commercial-in-confidence.
- (3) The Board may advise the Minister information is commercial-in-confidence if the Board is satisfied—
  - (a) publication of the information would cause competitive detriment to a person, and
  - (b) the information is not in the public domain and is not readily discoverable, and
  - (c) the information is not required to be disclosed under another law.

### 54 Annual reporting information for Corporation

- (1) The annual reporting information under the *Government Sector Finance Act 2018*, Division 7.3 for the Corporation for an annual reporting period must—
  - (a) state the total value of the Corporation's investments as at the end of the annual reporting period by reference to the classes of clean energy technologies to which the investments relate, and
  - (b) set out details of the realisation of any of the Corporation's investments in the annual reporting period, and

- (c) set out the remuneration and allowances of Board members, the CEO and senior members of the Corporation's staff for the annual reporting period, and
  - (d) benchmark the Corporation's operating costs and expenses for the annual reporting period against other comparable entities for the period, and
  - (e) include a statement about whether the total amount of the Corporation's investments in rural and regional areas at the end of the annual reporting period represent at least 30% of the Corporation's total investments, and
  - (f) set out the total value of concessions given by the Corporation in the annual reporting period,
  - (g) include any other matters agreed between the Minister and the Corporation.
- (2) In this section—
- annual reporting period*** has the same meaning as in the *Government Sector Finance Act 2018*.
- regional and rural areas*** means any areas not within the Greater Sydney Region.

## Part 8 Miscellaneous

### 55 Disclosure of information

- (1) A prescribed person must not disclose information obtained in connection with the administration or execution of this Act unless the disclosure is made—
- (a) to a relevant agency, body or person for the following purposes—
    - (i) to facilitate the exercise of the Corporation’s investment function,
    - (ii) to enable the relevant agency, body or person to exercise any of the functions of the agency, body or person, or
  - (b) otherwise in connection with the administration or execution of this Act, or
  - (c) with the consent of the person from whom the information was obtained, or
  - (d) for the purposes of legal proceedings arising out of this Act or of a report of the proceedings, or
  - (e) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
  - (f) with other lawful excuse.

Maximum penalty—100 penalty units.

- (2) Subsection (1)(a)–(f) does not authorise the Corporation to disclose information if the disclosure would contravene the *Privacy and Personal Information Protection Act 1998*.

- (3) In this section—

**prescribed person** means the following—

- (a) a Board member,
- (b) the CEO,
- (c) a member of the Corporation’s staff,
- (d) a member of a committee,
- (e) another person exercising functions under this Act or otherwise involved in the administration or execution of this Act.

**relevant agency, body or person** means the following—

- (a) the Australian Renewable Energy Agency established by the *Australian Renewable Energy Agency Act 2011* of the Commonwealth,
- (b) AEMO Services Limited (ABN 59 651 198 364),
- (c) the Clean Energy Finance Corporation established by the *Clean Energy Finance Corporation Act 2012* of the Commonwealth,
- (d) a Minister,
- (e) a government sector employee,
- (f) an agency, body or person prescribed by the regulations.

### 56 Delegation by Treasurer, Minister and Finance Minister

- (1) The Treasurer may delegate the exercise of any function of the Treasurer under this Act, other than this power of delegation, to the Secretary of the NSW Treasury, including making payments to the Operational Fund.
- (2) The Minister may delegate the exercise of any function of the Minister under this Act, other than this power of delegation, to the Secretary of the Department of Climate Change, Energy, the Environment and Water, including making payments to the Operational Fund.

- (3) The Finance Minister may delegate the exercise of any function of the Finance Minister under this Act, other than this power of delegation, to the Secretary of the NSW Treasury.

**57 Review of Act and effectiveness of Corporation**

- (1) The Minister must review this Act to determine—
  - (a) whether the policy objectives of the Act remain valid, and
  - (b) whether the terms of the Act remain appropriate for achieving the objectives, including the effectiveness of the Corporation in achieving the Corporation's objects under this Act.
- (2) The review must—
  - (a) include public consultation about the matters mentioned in subsection (1)(a) and (b), and
  - (b) be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (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.

**58 Regulation-making power**

The Governor may make regulations about the following—

- (a) a matter that is required or permitted to be prescribed by this Act,
- (b) a matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Schedule 1 Members and procedure of Board

section 13(7)

### 1 Terms of office of Board members

- (1) Subject to this schedule and the regulations, a Board member holds office for the term, not more than 3 years, specified in the instrument of appointment.
- (2) A Board member may, if otherwise eligible, be re-appointed for—
  - (a) 1 additional term of not more than 3 years, and
  - (b) a second additional term, of not more than 3 years, only in the circumstances in subsection (3).
- (3) For subsection (2)(b), a Board member may be appointed for a second additional term only if—
  - (a) the Board, by written notice given to the Treasurer and Finance Minister, provides reasons for the Board member to be appointed for a third term, and
  - (b) the Treasurer and Finance Minister are satisfied the appointment is appropriate.

### 2 Remuneration

A Board member is entitled to be paid the remuneration, including travelling and accommodation allowances, determined by the Treasurer with the concurrence of the Finance Minister.

### 3 Acting Chairperson

- (1) The Treasurer may, by written instrument, appoint a person to act in the office of the Chairperson during—
  - (a) any or all periods when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of Chairperson, or
  - (b) a vacancy in office.
- (2) A person is not eligible to act as the Chairperson unless the person is eligible for appointment as a Board member
- (3) The Treasurer may remove a person from the office of Chairperson to which the person was appointed to act under this section.

### 4 Acting Board members other than Chairperson

- (1) The Treasurer may, by written instrument, appoint a person to act in the office of a Board member, other than the Chairperson, during—
  - (a) the illness or absence of the Board member, or
  - (b) a vacancy in office.
- (2) A person is not eligible to act as a Board member unless the person is eligible for appointment as a Board member.
- (3) The Treasurer may remove a person from the office to which the person was appointed to act under this section.

### 5 Vacancy in office of Board member

- (1) The office of a Board member becomes vacant if the Board member—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or



- (c) resigns the office by written instrument addressed to the Treasurer, or
  - (d) is removed from office by the Treasurer under subsection (3), or
  - (e) is absent from 3 consecutive Board meetings of which reasonable notice has been given to the Board member, unless the Board member is—
    - (i) on leave granted by the Treasurer, or
    - (ii) excused by the Treasurer for having been absent from the meetings, or
  - (f) becomes personally insolvent, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The resignation of a Board member takes effect on—
- (a) the day the instrument of resignation is received by the Treasurer, or
  - (b) if a later date is specified in the instrument of resignation—the later day.
- (3) The Treasurer may, with the concurrence of the Finance Minister, remove a Board member from office.

#### **6 Filling of vacancy in office of Board member**

If the office of a Board member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

#### **7 Vacancy in office of Chairperson**

- (1) The Chairperson of the Board vacates the office of Chairperson if the Chairperson—
- (a) is removed from office by the Treasurer under subsection (2), or
  - (b) resigns the office by written instrument addressed to the Treasurer, or
  - (c) ceases to be a Board member.
- (2) The Treasurer may, with the concurrence of the Finance Minister, remove the Chairperson from office.

#### **8 Leave of absence**

- (1) The Treasurer may grant a leave of absence to the Chairperson on the terms and conditions the Treasurer determines.
- (2) The Chairperson may grant a leave of absence to another Board member on the terms and conditions the Chairperson determines.
- (3) The Chairperson must notify the Treasurer if the Chairperson grants a Board member a leave of absence for a period of more than 3 months.

#### **9 Disclosure of pecuniary and other interests**

- (1) This section applies if—
- (a) a Board member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a Board meeting, and
  - (b) the interest appears to raise a conflict with the proper performance of the Board member's duties in relation to the consideration of the matter.
- (2) The member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Board meeting.

- (3) Particulars of a disclosure made under this section must be recorded by the Board and made available to any person on request.
- (4) It is sufficient disclosure of the nature of an interest relating to a specified company, body or person if the Board member has previously disclosed that the Board member—
  - (a) is a member of, or employed by, the company or body, or
  - (b) is a partner of, or employed by, the person, or
  - (c) has some other specified interest relating to the company, body or person.
- (5) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Board otherwise determines—
  - (a) be present during a deliberation of the Board about the matter, or
  - (b) take part in a decision of the Board about the matter.
- (6) A member who has a direct or indirect pecuniary or other interest in a matter to which a disclosure relates must not—
  - (a) be present at the time the Board is making a determination under subsection (5), or
  - (b) take part in the making of the determination.
- (7) A contravention of this section does not invalidate a decision of the Board.
- (8) This section applies to a member of a committee established by the Board under section 17 and the committee in the same way as it applies to a Board member and the Board.

#### **10 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a Board member.
- (2) If, by or under an Act, provision is made for either of the following, the provision does not operate to disqualify the person from holding the office and also the office of a Board member, or from accepting and retaining any remuneration payable to the person under this Act as a Board member—
  - (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office,
  - (b) prohibiting the person from engaging in employment outside the duties of that office.

#### **11 Board meetings**

- (1) The Board must hold the meetings necessary for the efficient exercise of its functions.
- (2) The Chairperson must convene—
  - (a) at least 6 meetings in each calendar year, and
  - (b) a meeting within 30 days after receiving a request from a Board member for a meeting to be convened.
- (3) Subject to this Act and the regulations, the procedure for calling Board meetings and conducting business at Board meetings must otherwise be determined by the Board.

#### **12 Quorum**

The quorum for a Board meeting is a majority of Board members for the time being.

**13 Presiding Board member**

- (1) The Chairperson of the Board must preside at a Board meeting.
- (2) If the Chairperson is absent from a Board meeting, a Board member elected by the Board members present at the meeting must preside at the meeting.
- (3) The presiding Board member has a deliberative vote and, if there is an equality of votes, a second or casting vote.

**14 Voting**

A decision supported by a majority of the votes cast at a Board meeting at which a quorum is present is the decision of the Board.

**15 Transaction of business outside meetings or by electronic means**

- (1) The Board may, if it thinks fit, transact its business—
  - (a) by the circulation of papers, by email or other electronic means, among all members, or
  - (b) at a meeting at which all or some Board members participate by telephone or other electronic means, but only if a Board member who speaks on a matter at the meeting can be heard by the other Board members.
- (2) If the Board transacts its business by the circulation of papers under subsection (1)(a), a written resolution approved in writing by a majority of the Board members is taken to be a decision of the Board made at a Board meeting.
- (3) The Chairperson and other Board members have the same voting rights as at an ordinary Board meeting for the purposes of—
  - (a) a meeting held in accordance with subsection (1)(b), or
  - (b) the approval of a resolution under subsection (2).
- (4) A resolution approved under subsection (2) must be recorded in the minutes of the Board meeting.

## Schedule 2 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
  - (a) for a provision of this Act, the date of assent to this Act, or
  - (b) for a provision amending this Act, the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
  - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section—

*person* does not include the State or an authority of the State.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Investment Mandate

The Minister—

- (a) may issue the first direction under section 25 before the first members of the Board are appointed, and
- (b) is not required, in issuing the direction, to comply with section 27.

#### 3 Statement of business intent

Despite section 16, the first statement of business intent required to be prepared and submitted under that section must be prepared and submitted before—

- (a) 31 July 2025, or
- (b) a later date specified by the Treasurer or Minister.

#### 4 Investment and risk policies

Despite section 29, the first investment and risk policies required to be prepared under that section must be prepared and published on the Corporation's website before—

- (a) 1 July 2025, or
- (b) a later date specified by the Treasurer or Minister.

**5 Payments out of ESC Fund for establishment of Corporation**

- (1) A payment may be made out of the ESC Fund to the Consolidated Fund for the purposes of repaying a repayable appropriation for the establishment of the Corporation.
- (2) To avoid doubt, subsection (1) applies even if the repayable appropriation was not directly paid into the ESC Fund.

## Schedule 3 Dictionary

section 3

*asset*—

- (a) means a legal or equitable estate or interest, whether present or future and whether vested or contingent, in real or personal property of any description, including money, and
- (b) includes securities, choses in action and documents.

*Board*—see section 11.

*Board member* means a member of the Board appointed under section 13(2).

*CEO*—see section 20(1).

*Chairperson* means a Board member appointed as the Chairperson of the Board under section 15(1).

*clean energy technologies*—see section 35(1).

*clean energy technologies guidelines*—see section 35(2).

*complying investment*—see section 34(2).

*Corporation* means the Energy Security Corporation established by section 4.

*ESC Fund*—see section 38(1).

*exercise* a function includes perform a duty.

*function* includes a power, authority or duty.

*Finance Minister* means the Minister for Finance.

*government sector employee* means a person employed in a government sector agency within the meaning of the *Government Sector Employment Act 2013*.

*investment and risk policies*—see section 29(1).

*investment function* means investing, directly or indirectly, in clean energy technologies under section 33.

*Investment Mandate*—see section 25.

*operating balance*, of the Operational Fund, means the amount agreed under section 43(c).

*Operational Fund*—see section 45(1).

*senior member*, of the Corporation's staff, means a member of the staff who reports directly to the CEO.

*uncommitted balance*, of the Operational Fund, means the amount standing to the credit of the Operational Fund less the total of the Corporation's liabilities, whether actual or contingent, in relation to guarantees given by the Corporation and still in effect.