



New South Wales

Energy Security Corporation Bill 2024

Explanatory note

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

Overview of Bill

The object of this Bill is to establish the Energy Security Corporation (the *Corporation*) for the following purposes—

- (a) to accelerate private sector investments in clean energy projects in NSW that improve the reliability, security and sustainability of the electricity supply in NSW,
- (b) to support the NSW Government in meeting its emissions reduction targets under the *Climate Change (Net Zero Future) Act 2023*,
- (c) to complement other Government initiatives and partner with the private sector for clean energy projects in NSW,
- (d) to achieve a Government-mandated rate of return through a portfolio approach.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Establishment and functions of Energy Security Corporation

Clause 4 establishes the Energy Security Corporation.

Clause 5 constitutes the Corporation as a corporation and a statutory body.

Clause 6 sets out the objects of the Corporation.

Clause 7 provides that the functions of the Corporation are the investment function and any other function under the proposed Act or another Act.

Clause 8 provides that the Corporation is subject to the control of the Minister and sets out the limits of a direction given by the Minister to the Corporation.

Clause 9 provides that the Corporation may employ staff, engage contractors and enter into certain other arrangements to assist the Corporation to exercise its functions.

Clause 10 provides that the Corporation may delegate any of its functions to a Board member of the Corporation, the chief executive officer of the Corporation (the *CEO*) or a person or body prescribed by the regulations.

Part 3 Board

Clause 11 establishes the Board for the Corporation (the *Board*).

Clause 12 sets out the functions of the Board and provides that actions performed by the Board, including actions performed on behalf of the Corporation, are taken to have been done by the Corporation.

Clause 13 provides that the Board must consist of between 5 and 7 members appointed by the Treasurer and the Finance Minister (*Board members*), and provides for certain limitations of who the Treasurer may appoint to the Board.

Clause 14 sets out the criteria for a person to be eligible to be appointed as a member of the Board.

Clause 15 provides that the Treasurer and Finance Minister must appoint a Board member as the Chairperson and the Chairperson must not be a government sector employee.

Clause 16 requires the Board to submit a statement of business intent to the Treasurer and Finance Minister each financial year and sets out the mandatory particulars of the statement, including a business plan for the financial year.

Clause 17 requires the Board to establish committees to advise the Board or assist the Board or Corporation in the exercise of their functions, provides who may be a member of a committee and requires the Board to set terms of reference and establish procedures for each committee.

Clause 18 provides that the Treasurer and the Finance Minister determine the pay and allowances of a member of a committee and that the Board are to decide all other terms and conditions of the appointment of a committee member.

Clause 19 provides that the Board may delegate any of its functions, other than the power of delegation, to a Board member or the CEO.

Part 4 Chief Executive Officer

Clause 20 provides that the Board, in consultation with the Treasurer and the Finance Minister, may appoint a CEO on a full-time basis for the Corporation and that the CEO must not be a Board member.

Clause 21 sets out the functions of the CEO and provides that the CEO must act in accordance with the policies and directions determined by the Board.

Clause 22 provides that the CEO holds office on terms and conditions determined by the Board and that the CEO must make certain personal interest disclosures.

Clause 23 provides for particulars where the CEO resigns from office and for the Board to terminate the CEO's appointment.

Clause 24 provides that the CEO may delegate any of the CEO's functions and subdelegate any function delegated to the CEO by the Board to certain members of the Corporation's staff.

Part 5 Investment

Division 1 Investment mandate

Clause 25 requires the Minister for Energy (the *Minister*) and the Treasurer to issue one or more directions (the *Investment Mandate*) for the Corporation's investment functions and publish any such direction in the Gazette.

Clause 26 requires the Minister, in giving an Investment Mandate direction, to have regard to the objects of the Corporation and provides that the Minister may have regard to other matters. The Investment Mandate may also set out mandatory policies for the Corporation.

Clause 27 sets out certain requirements of the Minister before giving an Investment Mandate direction and requires the Board to publish a submission about a draft direction on the Corporation's website.

Clause 28 requires the Board to take reasonable steps to ensure the Corporation complies with the Investment Mandate and sets out the requirements of the Board and the powers of the Minister in circumstances where the Board becomes aware, or the Minister is satisfied, that the Corporation has failed to comply with the Investment Mandate

Division 2 Investment and risk policies

Clause 29 requires the Board to prepare written investment and risk policies (*investment and risk policies*) about certain matters that are consistent with the Investment Mandate.

Clause 30 requires the investment and risk policies to be published on the Corporation's website.

Clause 31 requires the Corporation to comply with the investment and risk policies.

Clause 32 requires the Board must review the investment and risk policies at regular intervals and when there is a change to the Investment Mandate.

Division 3 Investment function and related matters

Clause 33 sets out how the Corporation may invest in clean energy technologies and how the corporation may exercise its investment function.

Clause 34 provides that the Board must ensure that investments made by the Corporation are investments that are in certain clean energy technologies that are based in New South Wales (a *complying investment*). The Minister has certain powers in circumstances where an investment ceases to be, or never was, a complying investment.

Clause 35 defines *clean energy technologies* and requires the Board to issue and publish clean energy technology guidelines that are consistent with the Investment Mandate.

Clause 36 requires an investment made by the Corporation to be solely or mainly based in New South Wales. The Board must issue and publish guidelines that set out how the Board is to be satisfied an investment is based solely or mainly in NSW.

Clause 37 prohibits the Corporation from investing in certain technologies (*prohibited technologies*). The regulations may provide for how to determine an investment is a prohibited technology.

Part 6 Financial matters

Division 1 Energy Security Corporation Fund

Clause 38 provides that an Energy Security Corporation Fund (the *ESC Fund*) must be established in the Special Deposits Account, as defined by the *Government Sector Finance Act 2018*, and is to be managed by the Treasurer and the Minister.

Clause 39 sets out what monies may be paid into the ESC Fund, including up to \$1,000,000,000 from the Restart NSW Fund under the *Restart NSW Fund Act 2011*, which may be paid in instalments determined by the Treasurer, and the particulars of those payments.

Clause 40 provides for monies that may be paid out of the ESC Fund into the Consolidated Fund in certain circumstances, or into the Operational Fund, as defined by clause 46.

Clause 41 provides that the Corporation may, in writing, request the Minister and the Treasurer pay a specified amount from the ESC Fund into the Operational Fund for certain purposes.

Clause 42 requires the Minister and the Treasurer to make a decision about a request under clause 41 as soon as practicable and if the request is approved, pay the requested amount.

Clause 43 provides that the Minister, the Treasurer and the Corporation must agree to certain matters for payments from the ESC Fund into the Operational Fund.

Clause 44 provides that the Treasurer or the Minister may invest money in the ESC Fund, however, the Minister may only do so in a way approved by the Treasurer.

Division 2 Energy Security Corporation Operational Fund

Clause 45 establishes the Energy Security Corporation Operational Fund (the *Operational Fund*) in the Special Deposits Account and provides it is to be managed by the Board.

Clause 46 sets out what monies may be paid into the Operational Fund.

Clause 47 provides for monies that may be paid out of the Operational Fund. If the Minister transfers an amount from the Operational Fund into the ESC Fund, the transfer 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

Clause 48 provides that the Corporation may borrow money in certain circumstances, including circumstances prescribed by the regulations, and for certain purposes and the Corporation must comply with any conditions prescribed by the regulations.

Clause 49 provides that the Corporation may guarantee repayment of a loan in certain circumstances if the loan is a loan that could have been made by the Corporation in exercising its investment function and provides for circumstances where a guarantee given by the Corporation is void.

Clause 50 provides that the Corporation may acquire a derivative only for certain purposes and prohibits the Corporation from acquiring a derivative for the purpose of speculation.

Clause 51 provides that the Corporation may accept of an asset with the approval of the Minister and the gift must be credited to the Operational Fund.

Part 7 Reports

Clause 52 requires the Corporation to publish investment reports annually on the Corporation's website and sets out the particulars of what the report must include. The Corporation may publish additional reports and the Minister, with the concurrence of the Treasurer, may request additional reports.

Clause 53 provides that the Minister may publish reports, documents and other information about the Corporation on a NSW Government website provided the Minister omits any information the Board advises the Minister is commercial-in-confidence.

Clause 54 sets out the mandatory annual reporting information for the Corporation under the *Government Sector Finance Act 2018*, Division 7.3.

Part 8 Miscellaneous

Clause 55 makes it an offence for particular persons, including a Board member and the CEO, to disclose information obtained in connection with the administration or execution of the proposed Act, except in certain circumstances, with a maximum penalty of 100 penalty units.

Clause 56 provides that the following may delegate their functions, other than the power of delegation, to certain department secretaries under the proposed Act—

- (a) for the Treasurer—the Secretary of the NSW Treasury,
- (b) for the Minister—the Secretary of the Department of Climate Change, Energy, the Environment and Water
- (c) for the Finance Minister—the Secretary of the NSW Treasury.

Clause 57 requires the Minister to review the proposed Act and sets out the particulars of a report on the outcome of the review that the Minister must table in each House of Parliament every 5 years.

Clause 58 provides that the Governor may make certain regulations under the proposed Act.

Schedule 1 Members and procedure of board

Schedule 1 sets out provisions relating to the appointed members of the Board, including the terms of office, remuneration and vacancy and removal. The proposed schedule also sets out the procedure for meetings of the Board.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Dictionary

Schedule 3 contains the dictionary that defines certain words and expressions used in the proposed Act.