



New South Wales

Energy Amendment (Long Duration Storage and Investment) Bill 2024

Explanatory note

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

Overview of Bill

The objects of this Bill are to—

- (a) amend the *Electricity Infrastructure Investment Act 2020* (the *EII Act*) to—
 - (i) provide that the regulator may only recommend the NSW renewable energy sector plan to the Minister if the regulator is satisfied the plan promotes social and economic benefits for the NSW community and economy, in addition to the current requirement that the regulator be satisfied the plan protects the financial interests of NSW electricity customers and is consistent with Australia’s international trade obligations, and
 - (ii) provide a process for amending the plan for the NSW renewable energy sector, and
 - (iii) require the consumer trustee to notify the Minister of the maximum amounts set by the consumer trustee for the capital costs for the development and construction of renewable energy zone (*REZ*) network infrastructure projects, and
 - (iv) enable the Minister to disclose the maximum amount for the capital costs of a REZ network infrastructure project to other persons, and
 - (v) require persons to whom the maximum amount for the capital costs of a REZ network infrastructure project is disclosed to keep the information confidential, and
 - (vi) clarify that the limit imposed by the maximum amount set by the consumer trustee on the determination by the regulator of an amount that may be paid to a network operator applies only to the regulator’s initial determination and not to—
 - (A) the adjustment of amounts under the determination or the regulations, or

- (B) the statutory periodic review and remaking of determinations by the regulator, and
 - (vii) set a new minimum objective for the construction of long-duration storage infrastructure with a total storage of at least 28 gigawatt hours by 31 December 2033, and
 - (viii) authorise particular conduct in relation to an access scheme for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth (the ***Commonwealth Act***), section 51(1)(b)(i) to the extent the conduct would otherwise contravene the Commonwealth Act, Part IV or the Competition Code of New South Wales, and
 - (ix) deal with adjustments of amounts payable to and from network operators in relation to network infrastructure projects under the regulator's determinations, and
 - (x) facilitate NSW modifications to the *National Electricity Rules* relating to access schemes for renewable energy zones and REZ network infrastructure projects, and
- (b) amend the *Energy and Utilities Administration Act 1987* to allow amounts to be paid out of the Energy Administration Account and into the Consolidated Fund to repay amounts that were paid into the Energy Administration Account from the Consolidated Fund.

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 Infrastructure Investment Act 2020 No 44**

Schedule 1[1] amends section 8 to provide that the regulator may only recommend the NSW renewable energy sector plan to the Minister if satisfied the plan will promote social and economic benefits for the NSW community and economy.

Schedule 1[2] inserts proposed section 8A, which enables the board to propose amendments to the NSW renewable energy sector plan. The Minister may approve an amendment proposed by the board on the recommendation of the regulator.

Schedule 1[3]–[5] amend section 31 to—

- (a) require the consumer trustee to notify the Minister of the maximum amount set by the consumer trustee for the capital costs for the development and construction of a REZ network infrastructure project as soon as practicable after the consumer trustee gives written notice of the maximum amount to the regulator, and
- (b) enable the Minister to disclose the maximum amount to other persons, subject to conditions relating to the further disclosure and confidentiality of the maximum amount, and
- (c) require persons to whom the maximum amount is disclosed to keep the information confidential and only disclose the information if authorised by, and in accordance with, the conditions of the Minister's disclosure.

Schedule 1[6] makes it clear that the EII Act, Part 5, Division 3 applies to network operators who were subject to an authorisation and persons who were network operators subject to authorisations. **Schedule 1[7]** makes a consequential amendment.

Schedule 1[9]—

- (a) provides that an adjustment provision included in a determination may provide that amounts may be payable by a network operator to the scheme financial vehicle in specified circumstances, and
- (b) makes it clear that—

- (i) a provision of a determination about the adjustment of amounts may have effect after the expiry of the relevant authorisation, and
- (ii) if a provision in a determination about the adjustment of amounts requires a determination to be reviewed and remade, a determination may be remade and a provision in a determination about the adjustment of amounts may have effect and provide for amounts to be payable by a network operator to the scheme financial vehicle.

Schedule 1[10] amends section 38 to clarify that the limit imposed by the maximum amount set by the consumer trustee on the determination by the regulator of an amount that may be paid to a network operator does not apply to the payment of amounts adjusted under a determination of the regulator or the regulations.

Schedule 1[11] amends section 39 to provide that a network operator must pay the scheme financial vehicle the amount the scheme financial vehicle is entitled to in accordance with the regulator's determination. **Schedule 1[8] and [17]** make consequential amendments.

Schedule 1[12] amends section 40 to clarify that the limit imposed by the maximum amount set by the consumer trustee on the determination by the regulator of an amount that may be paid to a network operator only applies to the regulator's initial determination and not to the statutory periodic review and remaking of determinations by the regulator.

Schedule 1[14] and [16] amend section 44 to set a new minimum objective for the construction of long-duration storage infrastructure with a total storage of at least 28 gigawatt hours by 31 December 2033. **Schedule 1[13] and [15]** make consequential amendments.

Schedule 1[18] amends section 72 to prescribe the exercising of a function in relation to, or giving effect to a requirement in relation to, the grant, increase or administration of access rights in an access scheme by a person or body as *relevant conduct* that is specifically authorised to the extent the conduct would otherwise contravene the Commonwealth Act, Part IV or the Competition Code of New South Wales unless the person or body—

- (a) holds access rights in the access scheme, or
- (b) is applying or competing to hold access rights in the access scheme.

Schedule 1[19] and [22] insert proposed section 80 and Schedule 2 into the EII Act to modify the *National Electricity (NSW) Law* as it applies in NSW. The modifications deal with the following—

- (a) the operation of civil penalty provisions included in the *National Electricity Rules* by operation of a regulation under the EII Act, section 27 or 41, or both,
- (b) matters relating to other provisions included in the *National Electricity Rules* by operation of a regulation under the EII Act, section 27 or 41, or both,
- (c) information sharing and the use of information by the AER,
- (d) other consequential matters relating to the modification of the *National Electricity Rules*.

Schedule 1[21] inserts—

- (a) a transitional provision that requires the consumer trustee to give the Minister written notice of the maximum amounts for the capital costs for the development and construction of REZ network infrastructure projects set by the consumer trustee before the commencement of the transitional provision and extends the amendments made in Schedule 1[5] to that information, and
- (b) a savings provision to validate conduct that occurred before the commencement of the amendment in Schedule 1[18] that would, if done after the commencement of that provision, have been relevant conduct authorised under section 72 as amended by Schedule 1[18].

Schedule 1[20] makes a consequential amendment.

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

Schedule 2[4] amends section 35 to provide that amounts may, at the direction of the Treasurer with the concurrence of the Minister for Energy, be paid out of the Energy Administration Account and into the Consolidated Fund for the purposes of repaying amounts that were paid into the Account from the Consolidated Fund (*CF originated amounts*) in accordance with any terms on which the CF originated amounts were paid into the Energy Administration Account. **Schedule 2[1]–[3]** make minor law revision and consequential amendments.



New South Wales

Energy Amendment (Long Duration Storage and Investment) Bill 2024

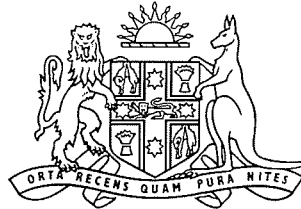
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This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments



New South Wales

Energy Amendment (Long Duration Storage and Investment) Bill 2024

No. _____, 2024

A Bill for

An Act to amend the *Electricity Infrastructure Investment Act 2020* and the *Energy and Utilities Administration Act 1987* to set a long-duration storage infrastructure objective for 2034 and provide for particular matters relating to the Australian Energy Regulator's functions, the NSW renewable energy sector plan, the administration of access schemes and infrastructure project financial matters; and for related purposes.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.

Legislative Assembly

Clerk of the Legislative Assembly

Tabling copy

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Energy Amendment (Long Duration Storage and Investment) Act 2024*.

3

4

2 Commencement

5

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

6

Schedule 1	Amendment of Electricity Infrastructure Investment Act 2020 No 44	1
		2
[1] Section 8 Plan for NSW renewable energy sector		3
	Omit “obligations.” from section 8(4)(b). Insert instead—	4
	obligations, and,	5
	(c) promotes social and economic benefits for the NSW community and economy.	6
		7
[2] Section 8A		8
	Insert after section 8—	9
	8A Amendments to plan	10
	(1) The board may propose an amendment to the plan by giving written notice of the proposed amendment to the Minister.	11
		12
	(2) The Minister may ask the board to make changes to the proposed amendment the Minister considers appropriate.	13
		14
	(3) The board must make any changes to the proposed amendment requested by the Minister.	15
		16
	(4) The Minister may only approve an amendment to the plan on the recommendation of the regulator.	17
		18
	(5) The regulator may only recommend an amendment to the Minister if the regulator is satisfied the proposed amendment—	19
		20
	(a) protects the financial interests of NSW electricity customers, and	21
		22
	(b) is consistent with Australia’s international trade obligations, and	23
		24
	(c) promotes social and economic benefits for the NSW community and economy.	24
[3] Section 31 Consideration of recommendations by infrastructure planner		25
	Insert after section 31(2)—	26
	(2A) The consumer trustee—	27
	(a) must give the Minister written notice of the maximum amount as soon as practicable after giving written notice to the regulator under subsection (2), and	28
		29
		30
	(b) must not disclose the maximum amount to another person.	31
[4] Section 31(3)		32
	Omit “consumer trustee or the”.	33
[5] Section 31(3A)–(3D)		34
	Insert after section 31(3)—	35
	(3A) The Minister may, by written notice (a <i>Ministerial disclosure notice</i>), disclose the maximum amount to a person (a <i>recipient</i>) at any time.	36
		37
	(3B) The Minister may disclose the maximum amount under subsection (3A) subject to conditions relating to the further disclosure and confidentiality of the maximum amount, including conditions—	38
		39
		40

(a)	authorising a recipient to disclose the maximum amount to a specified person or specified class of persons, or	1 2
(b)	providing for the way in which, and conditions on which, a recipient may disclose the maximum amount, or	3 4
(c)	requiring persons to whom a recipient discloses the maximum amount to keep the maximum amount confidential.	5 6
(3C)	A recipient must not disclose the maximum amount to a person unless the disclosure—	7 8
(a)	is authorised by the Ministerial disclosure notice, and	9
(b)	otherwise complies with the conditions of the Ministerial disclosure notice.	10 11
(3D)	A person to whom a recipient discloses the maximum amount—	12
(a)	must not disclose the maximum amount to a person, and	13
(b)	must comply with the conditions of the Ministerial disclosure notice.	14
[6]	Section 36 Application of Division	15
	Insert after section 36(1)—	16
(1A)	This division also applies to the following persons, but only for the purpose of an adjustment of amounts—	17 18
(a)	a network operator who was subject to an authorisation,	19
(b)	a person who was a network operator subject to an authorisation.	20
[7]	Section 36(4)	21
	Insert in alphabetical order—	22
	<i>adjustment</i> , of amounts, includes an adjustment of amounts under a provision included in a determination, whether under section 38(3) or otherwise.	23 24
	<i>network operator</i> includes the persons referred to in subsection (1A), but only for the purpose specified in the subsection.	25 26
[8]	Section 38, heading	27
	Insert “or by” after “payable to”.	28
[9]	Section 38(3A) and (3B)	29
	Insert after section 38(3)—	30
(3A)	An adjustment provision included in a determination may provide that amounts may be payable by a network operator to the scheme financial vehicle in specified circumstances.	31 32 33
(3B)	To avoid doubt—	34
(a)	a provision of a determination about the adjustment of amounts may have effect after the expiry of the relevant authorisation, and	35 36
(b)	if a provision in a determination about the adjustment of amounts requires a determination to be reviewed and remade, the following may occur after the expiry of the relevant authorisation—	37 38 39
(i)	a determination may be remade,	40
(ii)	a provision in a determination about the adjustment of amounts may have effect and provide for amounts to be payable by a network operator to the scheme financial vehicle.	41 42 43

[10] Section 38(6A)	1
Insert after section 38(6)—	2
(6A) To avoid doubt, it is declared that subsection (6) does not apply to the amount determined by the regulator under subsection (4) as adjusted from time to time in accordance with—	3 4 5
(a) the adjustment of amounts provided for in the determination under subsection (3), or	6 7
(b) the regulations made under subsection (10).	8
[11] Section 39 Effect of regulator’s determination	9
Insert after section 39(1)—	10
(1A) A network operator must pay the scheme financial vehicle the amount the scheme financial vehicle is entitled to in accordance with the regulator’s determination.	11 12 13
[12] Section 40 Regulator to review determinations	14
Insert after section 40(2)—	15
(3) Section 38(6) does not apply in relation to the review or remaking of the determination.	16 17
[13] Section 44 Infrastructure investment objectives	18
Insert “(the <i>2030 objective investment period</i>)” after “31 December 2029” in section 44(1)(b).	19 20
[14] Section 44(1)(c)	21
Omit “applies.” from section 44(1)(b). Insert instead—	22
applies, and	23
(c) the minimum objective for the period ending on 31 December 2033 (the <i>2034 objective investment period</i>) for the construction of long-duration storage infrastructure to which this part applies.	24 25 26
[15] Section 44(3)	27
Insert “for the 2030 objective investment period” after “minimum objectives”.	28
[16] Section 44(3A)	29
Insert after section 44(3)—	30
(3A) The minimum objective for the 2034 objective investment period is the construction of long-duration storage infrastructure, including long-duration storage infrastructure constructed during the 2030 objective investment period, with a total storage of at least 28 gigawatt hours.	31 32 33 34
[17] Section 54 Payments into Fund	35
Insert after section 54(d)—	36
(d1) all money paid to the scheme financial vehicle by a network operator under a determination under Part 5, Division 3,	37 38
[18] Section 72 Competition authorisation	39
Insert after section 72(3), definition of <i>relevant conduct</i> , paragraph (e)—	40

(e1)	exercising a function in relation to, or giving effect to a requirement in relation to, the grant, increase or administration of access rights in an access scheme by a person or body other than—	1 2 3
(i)	a person or body who holds access rights in the access scheme, or	4
(ii)	a person or body applying or competing to hold access rights in the access scheme,	5 6
[19]	Section 80	7
	Insert after section 79—	8
80	Modification of National Electricity (NSW) Law about civil penalty provisions in modified National Electricity Rules	9 10
	The <i>National Electricity (NSW) Law</i> is modified as set out in Schedule 2.	11
[20]	Schedule 1 Savings, transitional and other provisions	12
	Insert before clause 1—	13
	Part 1 Regulations	14
[21]	Schedule 1, Part 2	15
	Insert after clause 1—	16
	Part 2 Provisions consequent on enactment of Energy Amendment (Long Duration Storage and Investment) Act 2024	17 18 19
2	Consumer trustee to notify Minister of existing maximum amounts	20
(1)	This clause applies in relation to a maximum amount for the prudent, efficient and reasonable capital costs for development and construction of a REZ network infrastructure project set by the consumer trustee under section 31(2) before the commencement of this clause (an <i>existing maximum amount</i>).	21 22 23 24
(2)	The consumer trustee must give the Minister written notice of each existing maximum amount within 1 week of the commencement of this clause.	25 26
(3)	To avoid doubt, section 31(3A)–(3D) extend to an existing maximum amount of which the Minister is given written notice under this clause.	27 28
	Note— Section 31(3A) allows the Minister to disclose the maximum amount to other persons. Section 31(3B) allows the Minister to disclose the maximum amount subject to conditions relating to the further disclosure and confidentiality of the maximum amount. Section 31(3C) and (3D) provide for the confidentiality obligations of persons to whom the maximum amount is disclosed.	29 30 31 32 33
3	Validation of particular conduct in relation to access schemes	34
(1)	This clause applies in relation to the exercise of a function, or the giving of effect to a requirement, by a person or body in relation to an access scheme before the commencement of this clause that would have been relevant conduct under section 72(3), definition of <i>relevant conduct</i> , paragraph (e1) had that paragraph been in force at the time of the exercise of the function or the giving of effect to the requirement by the person or body.	35 36 37 38 39 40
(2)	The exercise of the function, or the giving of effect to the requirement, by the person or body is taken to be, and to have always been, relevant conduct for section 72.	41 42 43

[22] Schedule 2	1
Insert after Schedule 1—	2
Schedule 2 Modification of National Electricity (NSW) Law	3 4
	section 80 5
[1] Section 2 Definitions	6
Insert in alphabetical order in section 2(1)—	7
<i>infrastructure planner</i> has the same meaning as in the <i>Electricity Infrastructure Investment Act 2020</i> .	8 9
<i>section 27/41 rule</i> means a provision included in the Rules by operation of a regulation under the <i>Electricity Infrastructure Investment Act 2020</i> , section 27 or 41, or both.	10 11 12
[2] Section 2(1), definition of “National Electricity Rules or Rules”, paragraph (ac)	13
Insert after paragraph (ab)—	14
(ac) section 27/41 rules, except in Parts 4 and 7; and	15
[3] Section 2AA Meaning of civil penalty provision and conduct provision	16
Insert after section 2AA(1)(ba)—	17
(bb) a section 27/41 rule that is declared by the provision or another provision to be a civil penalty provision; or	18 19
[4] Section 2AB Civil penalty amounts for breaches of civil penalty provisions	20
Insert after section 2AB(2)—	21
(3) Despite subsection (1), the civil penalty for a breach of a civil penalty provision that is a section 27/41 rule is—	22 23
(a) if the provision is declared to be a tier 3 civil penalty provision—the amounts specified in subsection (1)(a)(i) and (ii); or	24 25
(b) if the provision is declared to be a tier 2 civil penalty provision—the amounts specified in subsection (1)(b)(i) and (ii); or	26 27
(c) if the provision is declared to be a tier 1 civil penalty provision—the amounts specified in subsection (1)(c)(i) and (ii).	28 29
[5] Section 28YB	30
Insert after section 28YA—	31
28YB Disclosure of information to Minister	32
The AER is authorised to disclose to the Minister information given to the AER in confidence about or in connection with the performance of its functions or the exercise of its powers under this Law or the Rules.	33 34 35
[6] Section 28ZI Use of information	36
Insert before section 28ZI(1)(a)—	37
(a1) the <i>Electricity Infrastructure Investment Act 2020</i> and the regulations under the Act;	38 39

[7] Section 28ZJ	1
Insert after section 28ZI—	2
28ZJ Functions where AER is regulator	3
(1) This section applies if the AER is appointed as regulator under the <i>Electricity Infrastructure Investment Act 2020</i> , section 64.	4 5
(2) If this section applies—	6
(a) the AER has the functions conferred under section 15(1)(a), (b), (c) and (d) and Part 6 as if the relevant provisions are part of the Rules; and	7 8 9
(b) the Court has jurisdiction under Part 6 to deal with proceedings commenced by the AER under paragraph (a).	10 11
(3) In this section—	12
<i>relevant provisions</i> means provisions in a regulation made under the <i>Electricity Infrastructure Investment Act 2020</i> that confer or impose functions on an infrastructure planner relating to a section 27/41 rule.	13 14 15
[8] Section 34 Rule making powers	16
Insert after section 34(3)—	17
(4) To avoid doubt, a reference to Rules in subsection (1) does not include a reference to a section 27/41 rule.	18 19
[9] Section 70 Applications for judicial review	20
Insert “infrastructure planner,” before “AEMC” wherever occurring in section 70(1).	21

Schedule 2	Amendment of Energy and Utilities Administration Act 1987 No 103	1
		2
[1] Section 35 Energy Administration Account		3
	Insert “(<i>the Account</i>)” after “Energy Administration Account” in section 35(1).	4
[2] Section 35(2)(b)		5
	Insert “(a <i>CF originated amount</i>)” after “determines”.	6
[3] Section 35(2)(b)		7
	Omit “Parliament, and”. Insert instead “Parliament.”	8
[4] Section 35(3)–(5)		9
	Omit section 35(3). Insert instead—	10
	(3) The following amounts may be paid out of the Account—	11
	(a) amounts required to meet expenditure incurred in connection with the functions of the Corporation under this or another Act,	12
		13
	(b) amounts as directed by the Treasurer to be paid from the Account into the Consolidated Fund towards the repayment of a CF originated amount in accordance with any terms on which the CF originated amount was paid into the Account.	14
		15
		16
		17
	(4) The Treasurer must not give a direction under subsection (3)(b) without the concurrence of—	18
		19
	(a) the Minister, and	20
	(b) the Minister administering the <i>Electricity Infrastructure Investment Act 2020</i> .	21
		22
	(5) The Treasurer must not give a direction under subsection (3)(b) if the amount directed to be paid is more than the total of—	23
		24
	(a) the CF originated amounts held in the Account at the time of the direction, and	25
		26
	(b) any amounts held in the Account at the time of the direction that were paid into the Account in repayment of a CF originated amount that was paid out of the Account under subsection (3)(a).	27
		28
		29