

Passed by both Houses



New South Wales

# Energy Amendment (Long Duration Storage and Investment) Bill 2024

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2024

*Clerk of the Parliaments*



New South Wales

## **Energy Amendment (Long Duration Storage and Investment) Bill 2024**

Act No           , 2024

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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.

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

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

**2 Commencement**

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

## Schedule 1      **Amendment of Electricity Infrastructure Investment Act 2020 No 44**

**[1] Section 8 Plan for NSW renewable energy sector**

Omit “obligations.” from section 8(4)(b). Insert instead—

obligations, and,

- (c) promotes social and economic benefits for the NSW community and economy.

**[2] Section 8A**

Insert after section 8—

**8A Amendments to plan**

- (1) The board may propose an amendment to the plan by giving written notice of the proposed amendment to the Minister.
- (2) The Minister may ask the board to make changes to the proposed amendment the Minister considers appropriate.
- (3) The board must make any changes to the proposed amendment requested by the Minister.
- (4) The Minister may only approve an amendment to the plan on the recommendation of the regulator.
- (5) The regulator may only recommend an amendment to the Minister if the regulator is satisfied the proposed amendment—
  - (a) protects the financial interests of NSW electricity customers, and
  - (b) is consistent with Australia’s international trade obligations, and
  - (c) promotes social and economic benefits for the NSW community and economy.

**[3] Section 31 Consideration of recommendations by infrastructure planner**

Insert after section 31(2)—

- (2A) The consumer trustee—
  - (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
  - (b) must not disclose the maximum amount to another person.

**[4] Section 31(3)**

Omit “consumer trustee or the”.

**[5] Section 31(3A)–(3D)**

Insert after section 31(3)—

- (3A) The Minister may, by written notice (a *Ministerial disclosure notice*), disclose the maximum amount to a person (a *recipient*) at any time.
- (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—

- (a) authorising a recipient to disclose the maximum amount to a specified person or specified class of persons, or
  - (b) providing for the way in which, and conditions on which, a recipient may disclose the maximum amount, or
  - (c) requiring persons to whom a recipient discloses the maximum amount to keep the maximum amount confidential.
- (3C) A recipient must not disclose the maximum amount to a person unless the disclosure—
- (a) is authorised by the Ministerial disclosure notice, and
  - (b) otherwise complies with the conditions of the Ministerial disclosure notice.
- (3D) A person to whom a recipient discloses the maximum amount—
- (a) must not disclose the maximum amount to a person, and
  - (b) must comply with the conditions of the Ministerial disclosure notice.

**[6] Section 36 Application of Division**

Insert after section 36(1)—

- (1A) This division also applies to the following persons, but only for the purpose of an adjustment of amounts—
- (a) a network operator who was subject to an authorisation,
  - (b) a person who was a network operator subject to an authorisation.

**[7] Section 36(4)**

Insert in alphabetical order—

*adjustment*, of amounts, includes an adjustment of amounts under a provision included in a determination, whether under section 38(3) or otherwise.

*network operator* includes the persons referred to in subsection (1A), but only for the purpose specified in the subsection.

**[8] Section 38, heading**

Insert “or by” after “payable to”.

**[9] Section 38(3A) and (3B)**

Insert after section 38(3)—

- (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.
- (3B) To avoid doubt—
- (a) a provision of a determination about the adjustment of amounts may have effect after the expiry of the relevant authorisation, and
  - (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—
    - (i) a determination may be remade,
    - (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.

**[10] Section 38(6A)**

Insert after section 38(6)—

- (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—
- (a) the adjustment of amounts provided for in the determination under subsection (3), or
  - (b) the regulations made under subsection (10).

**[11] Section 39 Effect of regulator’s determination**

Insert after section 39(1)—

- (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.

**[12] Section 40 Regulator to review determinations**

Insert after section 40(2)—

- (3) Section 38(6) does not apply in relation to the review or remaking of the determination.

**[13] Section 44 Infrastructure investment objectives**

Insert “(the *2030 objective investment period*)” after “31 December 2029” in section 44(1)(b).

**[14] Section 44(1)(c)**

Omit “applies.” from section 44(1)(b). Insert instead—

- applies, and
- (c) the minimum objective for the period ending on 31 December 2033 (the *2034 objective investment period*) for the construction of long-duration storage infrastructure to which this part applies.

**[15] Section 44(3)**

Insert “for the 2030 objective investment period” after “minimum objectives”.

**[16] Section 44(3A)**

Insert after section 44(3)—

- (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.

**[17] Section 54 Payments into Fund**

Insert after section 54(d)—

- (d1) all money paid to the scheme financial vehicle by a network operator under a determination under Part 5, Division 3,

**[18] Section 72 Competition authorisation**

Insert after section 72(3), definition of *relevant conduct*, paragraph (e)—

- (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—
  - (i) a person or body who holds access rights in the access scheme, or
  - (ii) a person or body applying or competing to hold access rights in the access scheme,

**[19] Section 80**

Insert after section 79—

**80 Modification of National Electricity (NSW) Law about civil penalty provisions in modified National Electricity Rules**

The *National Electricity (NSW) Law* is modified as set out in Schedule 2.

**[20] Schedule 1 Savings, transitional and other provisions**

Insert before clause 1—

## **Part 1 Regulations**

**[21] Schedule 1, Part 2**

Insert after clause 1—

## **Part 2 Provisions consequent on enactment of Energy Amendment (Long Duration Storage and Investment) Act 2024**

### **2 Consumer trustee to notify Minister of existing maximum amounts**

- (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 *existing maximum amount*).
- (2) The consumer trustee must give the Minister written notice of each existing maximum amount within 1 week of the commencement of this clause.
- (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.

**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.

### **3 Validation of particular conduct in relation to access schemes**

- (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 *relevant conduct*, 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.
- (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.

**[22] Schedule 2**

Insert after Schedule 1—

**Schedule 2 Modification of National Electricity (NSW) Law**

section 80

**[1] Section 2 Definitions**

Insert in alphabetical order in section 2(1)—

*infrastructure planner* has the same meaning as in the *Electricity Infrastructure Investment Act 2020*.

*section 27/41 rule* means a provision included in the Rules by operation of a regulation under the *Electricity Infrastructure Investment Act 2020*, section 27 or 41, or both.

**[2] Section 2(1), definition of “National Electricity Rules or Rules”, paragraph (ac)**

Insert after paragraph (ab)—

(ac) section 27/41 rules, except in Parts 4 and 7; and

**[3] Section 2AA Meaning of civil penalty provision and conduct provision**

Insert after section 2AA(1)(ba)—

(bb) a section 27/41 rule that is declared by the provision or another provision to be a civil penalty provision; or

**[4] Section 2AB Civil penalty amounts for breaches of civil penalty provisions**

Insert after section 2AB(2)—

(3) Despite subsection (1), the civil penalty for a breach of a civil penalty provision that is a section 27/41 rule is—

- (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
- (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
- (c) if the provision is declared to be a tier 1 civil penalty provision—the amounts specified in subsection (1)(c)(i) and (ii).

**[5] Section 28YB**

Insert after section 28YA—

**28YB Disclosure of information to Minister**

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.

**[6] Section 28ZI Use of information**

Insert before section 28ZI(1)(a)—

(a1) the *Electricity Infrastructure Investment Act 2020* and the regulations under the Act;



**[7] Section 28ZJ**

Insert after section 28ZI—

**28ZJ Functions where AER is regulator**

- (1) This section applies if the AER is appointed as regulator under the *Electricity Infrastructure Investment Act 2020*, section 64.
- (2) If this section applies—
  - (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
  - (b) the Court has jurisdiction under Part 6 to deal with proceedings commenced by the AER under paragraph (a).
- (3) In this section—

*relevant provisions* means provisions in a regulation made under the *Electricity Infrastructure Investment Act 2020* that confer or impose functions on an infrastructure planner relating to a section 27/41 rule.

**[8] Section 34 Rule making powers**

Insert after section 34(3)—

- (4) To avoid doubt, a reference to Rules in subsection (1) does not include a reference to a section 27/41 rule.

**[9] Section 70 Applications for judicial review**

Insert “infrastructure planner,” before “AEMC” wherever occurring in section 70(1).

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

**[1] Section 35 Energy Administration Account**

Insert “(*the Account*)” after “Energy Administration Account” in section 35(1).

**[2] Section 35(2)(b)**

Insert “(a *CF originated amount*)” after “determines”.

**[3] Section 35(2)(b)**

Omit “Parliament, and”. Insert instead “Parliament.”

**[4] Section 35(3)–(5)**

Omit section 35(3). Insert instead—

- (3) The following amounts may be paid out of the Account—
  - (a) amounts required to meet expenditure incurred in connection with the functions of the Corporation under this or another Act,
  - (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.
- (4) The Treasurer must not give a direction under subsection (3)(b) without the concurrence of—
  - (a) the Minister, and
  - (b) the Minister administering the *Electricity Infrastructure Investment Act 2020*.
- (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—
  - (a) the CF originated amounts held in the Account at the time of the direction, and
  - (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).