



Annual Report on functions under the  
*Electricity Infrastructure Investment Act*  
2020 (NSW)

## Report to the Minister

October 2022

Energy >>

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## **Tribunal Members**

The Tribunal members for this review are:

Carmel Donnelly PSM, Chair  
Deborah Cope  
Sandra Gamble

Enquiries regarding this document should be directed to a staff member:

Jean-Marc Kutschukian (02) 9290 8453  
Sian Gibbons (02) 9113 7762

## **The Independent Pricing and Regulatory Tribunal**

IPART's independence is underpinned by an Act of Parliament. Further information on IPART can be obtained from [IPART's website](#).

## **Acknowledgment of Country**

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders, past, present and emerging.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

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## Executive Summary

The *Electricity Infrastructure Investment Act 2020* (EII Act) enables the NSW Electricity Infrastructure Roadmap (Roadmap) – the NSW Government's plan to transform the NSW electricity system into one that is affordable, clean and reliable. The intent of the Roadmap is to coordinate investment in transmission, generation, storage and firming infrastructure as ageing coal-fired power plants retire. To support this development, the EII Act establishes at least five Renewable Energy Zones (REZs).

In December 2021, the Minister for Energy (Minister) appointed IPART as a regulator under the EII Act. A key function of IPART's role is to prepare an annual report on the exercise of functions under the EII Act by the Consumer Trustee, the Financial Trustee, the Infrastructure Planner and the Regulator. The Australian Energy Regulator (AER) was also appointed by the Minister as a Regulator under the EII Act in November 2021. This report covers the exercise of functions by both Regulators.<sup>a</sup>

This is IPART's first annual report to the Minister as required under section 70(2) of the EII Act to meet our statutory reporting requirement for the 2021-22 financial year (FY 2021-22).

Throughout FY 2021-22, the Roadmap was in the early stages of set up with Roadmap entities – the Consumer Trustee, the Infrastructure Planner and the Regulator – appointed by the Minister in the later part of 2021.<sup>b</sup> At the end of FY 2021-22, two key Roadmap entities – the Financial Trustee and the Scheme Financial Vehicle – had still not been established.

Given the Roadmap's infancy, the functions exercised by the appointed entities in the first reporting period were primarily undertaken to prepare for the Roadmap's delivery and to establish the foundations of the Roadmap. The key functions exercised in FY 2021-22 were:

- The Consumer Trustee published the [2021 Infrastructure Investment Objectives Report](#) (IIO Report) setting out a 20-year development pathway for the construction of Roadmap infrastructure and a 10-year plan for conducting competitive tenders for long-term energy service (LTES) agreements to support the development pathway.
- The Consumer Trustee prepared the [LTES Agreement and Access Right Tender Rules](#) in consultation with the Regulator outlining the process for the Consumer Trustee to recommend the award of LTES agreements and the granting or increasing of access rights.
- The Regulator prepared the [Revenue Determination Guideline for NSW Contestable Network Projects](#) setting out how the Regulator will assess capital costs and make revenue determinations for network operators selected through a contestable procurement process undertaken by the Infrastructure Planner.
- The Regulator prepared the [Contribution Determination Guideline](#) setting out the processes and methods the Regulator will use to make a contribution determination.

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<sup>a</sup> For the purposes of this report a reference to the Regulator is a reference to the AER unless IPART is specified.

<sup>b</sup> AEMO Services Ltd was appointed as the Consumer Trustee in July 2021, but the appointment did not become effective until 22 November 2021. EnergyCo was formally appointed as Infrastructure Planner for the Central-West Orana REZ on 28 October 2021 and the New England REZ on 10 December 2021. The AER was appointed as Regulator on 12 November 2021 and IPART as Regulator on 17 December 2021.

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- IPART recommended the [NSW Renewable Energy Sector Board's Plan](#) to the Minister. The plan sets out how to, in a cost-effective way, maximise locally produced and supplied goods and services, and employment of local workers and foster opportunities for apprentices and trainees, into the construction of Roadmap infrastructure, IPART's role was to check whether the plan protects the financial interests of electricity customers and is consistent with Australia's international trade obligations.

These outputs, together with the [Risk Management Framework](#) published by the Consumer Trustee in July 2022 and the [First Nations Guidelines](#)<sup>c</sup> published by the Minister in August 2022, establish a guiding framework for the Roadmap. This framework will be used to inform how entities exercise their various functions under the EII Act as delivery of the Roadmap is progressed.

While there was no physical delivery of Roadmap infrastructure in FY 2021-22, the Infrastructure Planner exercised its planning functions and commenced investigation and planning works across all five REZs. Further coordination works and a competitive assessment process to shortlist potential network operators were also carried out for the Central-West Orana REZ which at the time of writing is the most progressed REZ.

The Infrastructure Planner also prepared a draft [Network Infrastructure Strategy](#), a key planning document which, together with the Consumer Trustee's IIO Report, is intended to coordinate the development and build out of the Roadmap infrastructure.

At the time of writing, a number of key functions have already been exercised by the entities in the first part of FY 2022-23:

- The Regulator approved, and the Consumer Trustee published, the [Risk Management Framework](#) to protect the long-term financial interests of NSW electricity customers in connection with the risks associated with LTES agreements
- The Consumer Trustee appointed the Financial Trustee effective 15 September 2022
- The Financial Trustee established the Scheme Financial Vehicle
- The Consumer Trustee opened the first tender round for LTES agreements
- The Regulator commenced the first contribution determination process

It is expected that FY 2022-23 will also see recommendations made by the Infrastructure Planner to the Consumer Trustee or Minister regarding REZ network infrastructure projects and priority transmission infrastructure projects (PTIPs), as well as the first contribution determination due to be made by the Regulator by 28 February 2023.

As the Roadmap matures, the entities progress to delivery and our role expands into performance auditing, it is likely our annual reporting function will also evolve. We therefore expect our approach, and the scope of our annual report, may change in future years. The next annual report will cover the exercise of functions in the FY 2022-23 reporting period. It will include the exercise of functions by the Financial Trustee which was not considered in this annual report as the entity had not been appointed.

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<sup>c</sup> The First Nations Guidelines are required under section 4(1) of the EII Act and set out expectations about best practice engagement and negotiation with local Aboriginal communities in relation to projects delivered under the EII Act for the purposes of increasing employment and income opportunities for local Aboriginal communities.



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# 1 Introduction

In November 2020, the NSW Parliament passed the *Electricity Infrastructure Investment Act 2020* (EII Act) to deliver the NSW Government's Electricity Infrastructure Roadmap (Roadmap).<sup>d</sup> The EII Act requires IPART to prepare an annual report on the exercise of functions under the EII Act by key Roadmap entities – the Consumer Trustee, the Financial Trustee, the Infrastructure Planner and the Regulator itself. The report for the 2021-22 financial year (FY 2021-22) must be provided to the Minister for Energy (Minister) by 31 October 2022 and published on IPART's website as soon as reasonably practical thereafter.

## 1.1 About IPART

IPART is an independent authority established under the *Independent Pricing and Regulatory Tribunal Act 1992*. Although we are a NSW government agency, we operate independently of the NSW Government.

IPART helps NSW residents get safe and reliable services at a fair price. We are:

- the **independent pricing regulator** for water, energy, public transport and local government
- the **licence administrator** for water, electricity and gas
- the **scheme administrator and regulator** of the Energy Savings Scheme and Peak Demand Reduction Scheme

We also undertake reviews and investigations into a wide range of economic and policy issues and perform a number of other roles at the NSW Government's request.

IPART's purpose is to make the people of NSW better off through independent decisions and advice.

## 1.2 IPART's role as Regulator under the EII Act

On 17 December 2021, the Minister appointed IPART as Regulator under the EII Act to carry out the functions set out in section 8 of the EII Act and any other regulatory functions not conferred on another person or entity.<sup>1</sup> For FY 2021-22 IPART's functions included:

- Recommendation of the NSW Renewable Energy Sector Board's Plan under section 8(4) of the EII Act
- Performance audits as required under section 67 of the EII Act, and
- Annual reports as required under section 70 of the EII Act.

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<sup>d</sup> For the purposes of this report a reference to the Roadmap is a reference to the elements of the Roadmap that fall under the EII Act. We note there are other elements of the Roadmap that fall outside the EII Act (e.g. Pumped Hydro Recoverable Grants) which fall outside the scope of this report.

Throughout FY 2021-22 other Regulator functions under the EII Act were the responsibility of the AER. The AER was appointed by the Minister in the role of Regulator under the EII Act in November 2021. A number of regulatory functions in the EII Act were conferred on to the AER as part of this appointment.<sup>2</sup>

Sections 5 and 6 of this report describe the functions of each Regulator and the exercise of these functions during FY 2021-22.

### 1.3 Approach to the report

This first annual report is a factual account of the functions exercised under the EII Act by the Consumer Trustee, Infrastructure Planner and Regulators (AER and IPART) in FY 2021-22. The report does not consider the exercise of functions by the Financial Trustee as this entity was yet to be appointed at the end of the reporting period.

Our factual approach to reporting reflects that in FY 2021-22 the Roadmap was still in its infancy, with Roadmap entities largely in planning and start-up phase. This means many of the functions under the EII Act were not yet exercised in FY 2021-22 across the Roadmap entities. We expect our approach, and the scope of our annual report, may change in future years as the Roadmap and relevant entities progress to delivery phase and our role expands into performance auditing.

Section 2 of this report provides context to aid the reader's understanding of the Roadmap and the functions of the various entities. It assembles dispersed materials including policy documents and information currently available on the NSW Government and various entities' websites to provide an overview of how the Roadmap is intended to work. While this context does not directly respond to our statutory reporting requirement, it provides background for readers new to the Roadmap to help them understand how the functions of the entities fit together within the regulatory framework.

Sections 3 to 6 report on the exercise of functions under the EII Act by each entity. A dedicated section is provided for each entity and includes a table of functions that details:

- Whether or how the entity exercised each of its functions in FY 2021-22
- An explanation of why certain functions were not, or could not, be carried out in FY 2021-22
- Forward-looking information relating to functions expected to be exercised in FY 2022-23.

To support the annual reporting function, the Consumer Trustee, Infrastructure Planner and Regulator were required under section 70(1) of the EII Act to provide IPART with a report on the exercise of their functions during FY 2021-22. Our report is based on the information provided by each entity in these reports and does not include a substantive assessment of each of the functions exercised. Where an entity has exercised a function that has resulted in an output such as a report or guideline, we have verified that the output has been delivered however we have not reviewed or assessed the content of the output. The EII Act establishes specific review and approval functions for key outputs which should be relied upon for this purpose. Where relevant we have reported on these review and approval functions.

The entity level reports will be made available on IPART's website when the annual report is published.

## 2 Context

The Roadmap is the NSW Government's plan to transform the NSW electricity system so that it is cheaper, cleaner and more reliable. It is enabled by the EII Act enacted in December 2020. The supporting *Electricity Infrastructure Investment Regulation 2021* (EII Regulation) was first gazetted on 12 March 2021.

The Roadmap aims to deliver 12 Gigawatts (GW) of renewable energy and 2 GW of long duration storage by 2030, in response to the retirement of ageing coal-fired generation plants and a congested transmission system. This infrastructure is expected to be developed primarily within declared REZs where there is the greatest potential for renewable energy sources, such as wind and sunshine.

The intent of the reform is to improve the coordination and certainty of investment in new capacity, progress the development of this infrastructure in a faster timeframe than has historically occurred, and ensure sufficient capacity is available to cope with unplanned outages during peak periods.

The Roadmap also aims to support new jobs and industries for the regions, including employment and income opportunities for Aboriginal and Torres Strait Islander people.

### 2.1 The entities delivering the Roadmap

The following statutory roles are established under the EII Act to deliver the Roadmap:

- **Infrastructure Planner** - is responsible for planning the location of REZs and will coordinate where the generation, long duration storage and firming capacity will be built. It also coordinates, contracts and oversees the network operators delivering the transmission network infrastructure required to connect the generation built in REZs to the electricity grid. The Infrastructure Planner operates under the direction of the Minister.
- **Consumer Trustee** - is an independent role, appointed by the Minister. The Consumer Trustee delivers competitive tenders for LTES agreements and access rights, coordinated planning of long-term investment in electricity infrastructure, authorisation of REZ network infrastructure and financial risk management and advice.
- **Financial Trustee** - establishes and administers the Scheme Financial Vehicle. It also advises the Regulator in relation to contribution determinations. The Financial Trustee is not subject to the control or direction of the Consumer Trustee or the Minister.
- **Scheme Financial Vehicle** - The Scheme Financial Vehicle is a company limited by shares under the *Corporations Act 2001 (Cth)*. It will administer the Electricity Infrastructure Fund, providing revenue to REZ network infrastructure projects as determined by the Regulator and serve as counterparty to LTES agreements with project proponents. It will also enter into risk management contracts.



- **Regulator (more than one Regulator may be appointed)** – among other functions, the Regulator makes revenue determinations for REZ network infrastructure projects and contribution determinations to facilitate the recovery of costs needed to support the continued operation of the Roadmap. The Regulator also undertakes performance monitoring and reports on exercise of functions by entities. The role of the Regulator is independent of the Minister.

Figure 2.1 below shows the different entities that have been appointed in the statutory roles established to deliver the Roadmap.

Different Infrastructure Planners may be appointed to exercise different functions or functions in relation to different REZs. The Energy Corporation of NSW (EnergyCo) is the Infrastructure Planner appointed for the five REZs declared or proposed for declaration as at the date of this report. It is also the Infrastructure Planner at any time during which a person is not appointed as the Infrastructure Planner for a REZ.

The Minister appointed AEMO Services Ltd, a subsidiary of the Australian Energy Market Operator (AEMO), as the Consumer Trustee. The evaluation was guided by six criteria, including independence, conflict of interests and industry and market knowledge. In making the appointment the Government consulted with industry, and its counterparts in state and federal government and AEMO itself.<sup>3</sup>

The Financial Trustee was not appointed in FY 2021-22. Following an open tender, the Consumer Trustee appointed Equity Trustees Limited as Financial Trustee effective 15 September 2022.

Two entities have been conferred functions as Regulator under the Roadmap. Among other functions, the AER is responsible for determining amounts payable to network operators out of the Electricity Infrastructure Fund and amounts payable by NSW distribution network service providers into the Electricity Infrastructure Fund to recover Roadmap costs as they fall due. IPART is responsible for performance auditing the Roadmap entities and reporting each year on the exercise of their functions.

Figure 2.1 Entities delivering the Roadmap



## 2.2 Roadmap elements

The Roadmap is intended to coordinate investment in new network infrastructure with investment in new energy generation, long duration storage and firming infrastructure. This infrastructure is expected to be developed primarily within REZs, though some projects may be located outside a REZ.

Most relevant to this annual report, the EII Act establishes the following elements to deliver the Roadmap:

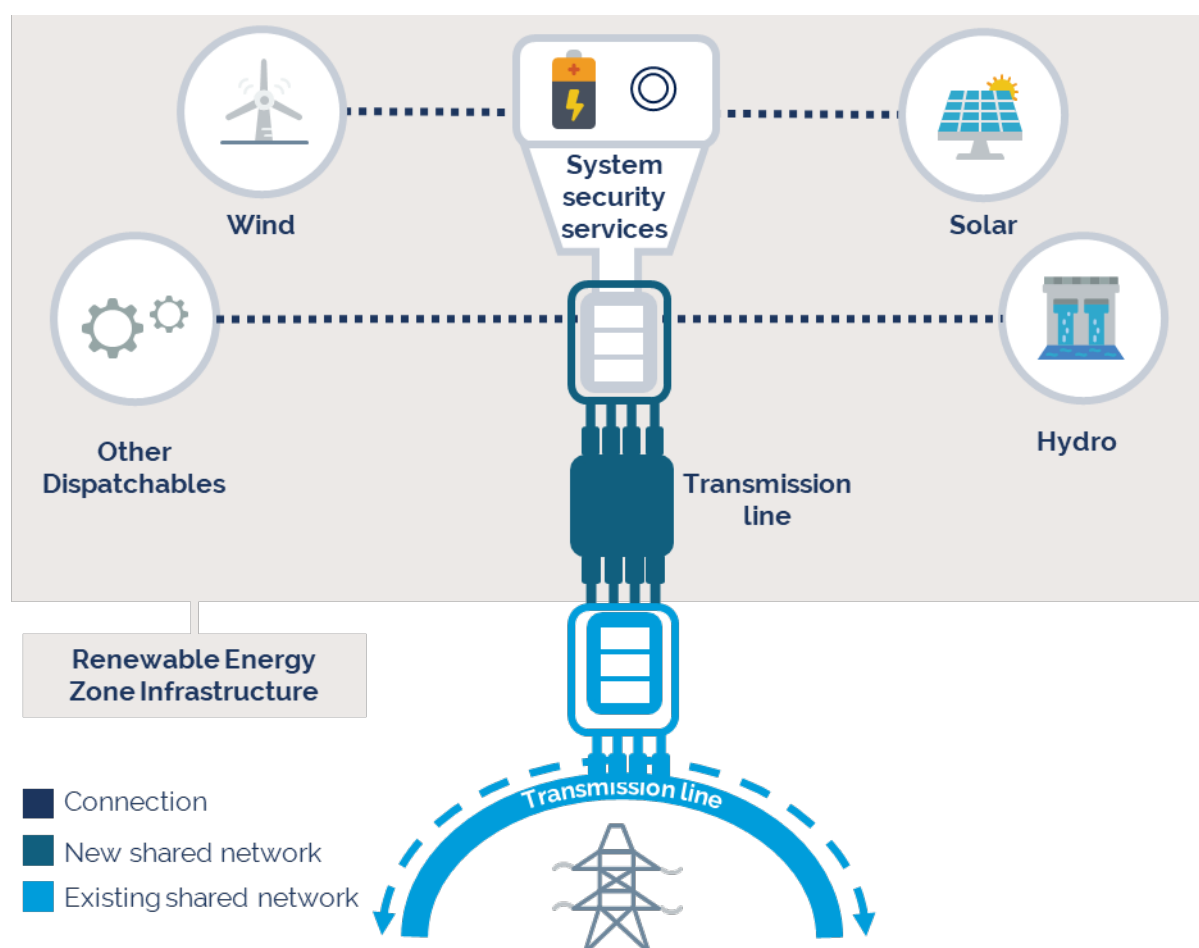
- facilitate the delivery of REZs – Part 4 of the EII Act
- authorise new network infrastructure – Part 5 of the EII Act
- encourage private investment in new generation, long duration storage and firming infrastructure – Part 6 of the EII Act
- determine the costs that can be recovered from electricity customers and paid to private investors and network operators – Part 7 of the EII Act.

### 2.2.1 Establishing Renewable Energy Zones

REZs are modern-day power stations. They combine renewable energy generation such as wind and solar, storage such as batteries and pumped hydro, and high-voltage poles and wires. Figure 2.2 below shows the REZ infrastructure and transmission needed to connect to the existing network.

The EII Act establishes at least five REZs in the Central-West Orana, Illawarra, New England, South West and Hunter-Central Coast regions of NSW. The locations of the REZs are chosen based on analysis to identify areas with strong renewable energy resource potential (e.g. sun and wind), proximity to the existing electricity network, consideration of potential interactions with existing land uses, including agricultural lands and biodiversity conservation.

Figure 2.2 Renewable Energy Zone Infrastructure and Transmission



### Declaring Renewable Energy Zones

The Minister may make a declaration of a REZ, either on the Minister's own initiative, or on the application of the Consumer Trustee or another person.

The Minister's REZ declaration must, among other things, specify the geographic location of the REZ, the intended network capacity for network infrastructure within the REZ, and the Infrastructure Planner for the REZ.

Upfront land-use planning and coordinated community consultation are central to REZs and aim to ensure a strategic approach to electricity infrastructure development. Before declaring a REZ the Minister must consider the potential effects of the declaration on costs for NSW electricity customers, the infrastructure investment objectives as reported by the Consumer Trustee, and consult with the Minister for Planning and Public Spaces, AEMO and the public.



A REZ declaration involves consideration of planning, environmental and heritage matters, as well as the views of the local community of the proposed REZ.

## Declaring access to Renewable Energy Zones

The EII Act gives the Minister power to declare access schemes that operate in or in part of a REZ. The Minister published guidelines for how the Minister will exercise the function of declaring access schemes under the EII Act.<sup>4</sup> An access scheme authorises access to, and use of, specified network infrastructure by operators of generation and storage infrastructure within a REZ. These access schemes are intended to provide investors with confidence that their access to the REZ network infrastructure will not be curtailed beyond certain specified levels.

The Infrastructure Planner grants access rights to eligible operators for eligible projects consistent with the terms in the access scheme declaration.

The declaration of an access scheme may specify how access rights are to be conferred on participants and the fees payable. The fees under the scheme are to be applied towards the cost of the network infrastructure required to enable the REZ and for distribution to funds set up for community and employment and training purposes within the REZ geographical area. The Consumer Trustee determines the fees payable to the Scheme Financial Vehicle by participants in an access scheme.

The Consumer Trustee conducts tenders for access rights. A single tender process will be run for both LTES agreements and access rights. Following the allocation of access rights, the Consumer Trustee will share the connection-related information for access rights holders with the Infrastructure Planner. The Infrastructure Planner will provide information to the access right holders consistent with what is done under the National Electricity Rules (NER).<sup>5</sup> The access right holders will need to apply to connect to the REZ network to the network operator appointed for the new REZ infrastructure.



An access scheme declaration sets out eligibility requirements for connecting to the REZ network with the initial network capacity (in MW) granted to generation, storage and co-located hybrid projects.

## The timing of Renewable Energy Zones

The NSW Government is prioritising the delivery of the Central-West Orana region and the New England region, which were declared in late 2021.

Of the five REZs declared or proposed for declaration, the Central-West Orana REZ is the most progressed of the REZs. It was the first declared in November 2021 and development processes are underway for the new proposed REZ network infrastructure, including a competitive tender process to appoint a network operator. Box 2.1 below steps through the declaration of the Central-West Orana REZ. The detailed methodology for refining the Central-West Orana REZ is available on the Infrastructure Planner's website.<sup>6</sup>

The New England REZ is currently in the early stages of development and details can be found on the Infrastructure Planner's website.<sup>7</sup> The Infrastructure Planner is in the early design stages for the Illawarra, South West and Hunter-Central Coast REZs and these REZs will be declared as this work is progressed.

### Box 2.1 Central-West Orana REZ case study – establishing the REZ

The Central-West Orana REZ was declared by the Minister on 5 November 2021. It has an intended network capacity of at least 3 GW. The Central-West Orana REZ was chosen as a location due to already approved or planned projects, relatively low build costs and a strong mix of solar and wind resources. The Infrastructure Planner has engaged with local communities and key stakeholders since 2020 to help inform how to plan, build and operate the Central-West Orana REZ.

As a second step, on 15 July 2022, the Minister released a draft access scheme declaration for consultation. The draft declaration sets out how generation and storage projects can be granted access rights to new network infrastructure within the Central-West Orana REZ.

Developers will be responsible for lodging their own development applications and preparing Environment Impact Statements for each wind and solar development. There are 11 major renewable generation projects at various stages of development approval in Central-West Orana REZ. Generators are also required to participate in the Consumer Trustee's competitive tender process for access rights before they are able to connect to the REZ network infrastructure. The Consumer Trustee is expected to hold competitive tenders commencing in 2023 to recommend, to the Infrastructure Planner, projects for the grant of access rights.

Source: EnergyCo, [Central-West Orana Renewable Energy Zone](#), DPIE, [Renewable Energy Zones – Access Scheme](#); Issues Paper on Central-West Orana Renewable Energy Zone Access Scheme, March 2021, and OECC CWO REZ, [Access Rights and Scheme Design](#), Positions Paper, July 2022.



## 2.2.2 Supporting investment in network infrastructure

A network operator can be either authorised or directed to carry out REZ network infrastructure projects under the EII Act. The Infrastructure Planner and the Consumer Trustee have key roles in planning and decision making for REZ network infrastructure projects:

- It is the role of the Infrastructure Planner to recommend to the Consumer Trustee the most appropriate network infrastructure project for each REZ and the most appropriate party to be appointed as the network operator to build, fund, operate and maintain the asset
- it is the role of the Consumer Trustee to decide which of these projects should proceed and when and whether to accept the Infrastructure Planner's recommendation for the network operator for each project.

To enable the Infrastructure Planner and the Consumer Trustee to perform their functions, a significant exchange of information occurs throughout the authorisation process. These interactions are managed via a set of guidelines developed and agreed by both parties (the Network Authorisation Guidelines).<sup>8</sup>



A contestable tendering process for the delivery of REZ network infrastructure projects intends to increase competition and therefore put downward pressure on the cost of developing these projects.

### Develop network options for REZs

The Infrastructure Planner identifies and assesses different options for the network infrastructure necessary to deliver a REZ. This includes undertaking preparatory activities and development works for the project, like network studies, planning approvals, land acquisition and community engagement. Once the Infrastructure Planner has decided on its preferred option, its role is to recommend that option as the preferred network infrastructure project to the Consumer Trustee for authorisation.

The Infrastructure Planner also runs a contestable process to procure a network operator to undertake such projects and recommend a network operator to the Consumer Trustee. Alternatively, the Infrastructure Planner can recommend a network operator via a non-contestable process.

### Authorise REZ network infrastructure projects

The Consumer Trustee may authorise a network infrastructure project and network operator upon considering recommendations from the Infrastructure Planner. The Consumer Trustee makes this decision having regard to its long-term planning (i.e. Infrastructure Investment Objectives Report) and its duty to act in the long-term financial interests of NSW electricity customers. After considering the Infrastructure Planner's recommendations, the Consumer Trustee may also recommend the Minister give a direction to a network operator for a REZ network infrastructure project.

Box 2.2 below steps through the process for the Central-West Orana transmission infrastructure project to date, necessary to support new electricity generated in the Central-West Orana REZ.

### Box 2.2 Central-West Orana REZ case study - transmission infrastructure

New transmission infrastructure is needed to connect the new generation and storage projects in the Central-West Orana REZ to the National Energy Market (NEM).

The Minister for Planning declared the Central-West Orana transmission project critical state significant infrastructure on 23 November 2020 under the *Environmental Planning and Assessment Act 1979*. The Central-West Orana REZ will be serviced by a new transmission infrastructure, including high-capacity transmission lines and energy hubs, to connect to the rest of the network.

As Infrastructure Planner, EnergyCo is responsible for developing and overseeing the planning and approval processes for the REZ network infrastructure. This includes preparing the Environmental Impact Statement, which is expected to be displayed for public exhibition in late 2023.

EnergyCo will also run the competitive tender process to appoint a network operator to design, build, finance, operate and maintain the REZ transmission network.

Critical State Significant Infrastructure Source: EnergyCo, Central-West Orana Transmission Project, and Central-West Orana Renewable Energy Zone Transmission Project Scoping Report, September 2022.

### Make a revenue determination for network infrastructure project

If the Consumer Trustee authorises the Infrastructure Planner's recommendation, the EII Act requires the Consumer Trustee to set a maximum amount for the capital costs for the development and construction of the project. The purpose of this cap is to set an amount for the network infrastructure project above which the costs would no longer justify the project or be in the long-term financial interests of NSW electricity customers.

A Transmission Efficiency Test (TET) will be applied by the Regulator to calculate the prudent, efficient and reasonable capital costs incurred by a network operator, which must not exceed the maximum amount set by the Consumer Trustee. The Regulator also makes a determination (drawing on the outcome of any contestable tender process if relevant) of the overall costs the network operator will be paid to carry out the project, including a return on capital costs, an allowance for operating and other costs.

### Priority transmission infrastructure projects

The EII Act also supports the NSW Energy Security Target by providing a process for priority transmission infrastructure projects (PTIPs).

The Energy Security Target is defined in Part 3 of the EII Act and is set to ensure the reliable supply of electricity over the medium to long term. The Energy Security Target is set at the level of firm rated capacity needed to service NSW's electricity needs during a one in ten-year peak demand period, with the largest two units of NSW's generators experiencing an outage.

The Minister may, by order published in the Gazette, direct a network operator to carry out PTIPs that are within the most recent Integrated System Plan published by AEMO and identified by the Minister as an appropriate response to address forecast breaches of the NSW Energy Security Target. Before this, the Minister must consult with several stakeholders, including the Minister for Planning and Public Spaces, AEMO, the Regulator, and distribution businesses and transmission network service providers.

The EII Regulation requires the Infrastructure Planner to assess and make recommendations to the Minister regarding PTIPs. This is different to the process for REZ network infrastructure projects which requires the recommendation be provided to the Consumer Trustee. While the way a PTIP is identified and directed to be carried out is different to a REZ network infrastructure project, the costs are recovered through the same regulatory process.

The NSW Government appointed AEMO as the Energy Security Target Monitor for the Roadmap in October 2021.<sup>e</sup> The Energy Security Target Monitor for the Roadmap is responsible for calculating and setting an energy security target for NSW on a rolling 10 year basis. It is also responsible for assessing and monitoring whether the firm capacity available in NSW will be sufficient to meet the Energy Security Target under different scenarios.

This annual report prepared under the EII Act does not extend to the functions of the Energy Security Target Monitor.

### 2.2.3 Electricity Infrastructure Investment Safeguard

The Roadmap includes an Electricity Infrastructure Investment Safeguard as the primary mechanism to encourage private investment in new generation capacity and storage. The Electricity Investment Infrastructure Safeguard only applies to generation, long-duration storage and firming infrastructure as specified in the EII Act.<sup>e</sup>

The Electricity Infrastructure Investment Safeguard includes:

- Infrastructure investment objectives set out in the EII Act for each type of new generation, long-duration storage and firming infrastructure.
- A process for the Consumer Trustee to plan the development pathway for each type of new generation, long-duration storage and firming infrastructure.

The ability for the Consumer Trustee to award LTES agreements through a competitive tender process, if the Consumer Trustee determines that such agreements are required to meet the development pathway.



Investment in optimal mixes of renewable generation in the Renewable Energy Zones will be driven by the Electricity Infrastructure Investment Safeguard, under which Long Term Energy Services Agreements will be awarded through competitive processes.

<sup>e</sup> Part 6 of the EII Act applies to (a) generation infrastructure that involves generation from a renewable energy source and that has a generation capacity of not less than 30 megawatts, (b) long duration storage infrastructure that consists of storage units with a registered capacity that can be dispatched for at least 8 hours and is scheduled by AEMO under the NER, and (c) firming infrastructure that is scheduled by AEMO under the NER.

## Planning by the Consumer Trustee

The Consumer Trustee publishes an Infrastructure Investment Objectives Report every two years on the 20-Year Development Pathway and a 10-Year Tender Plan. The 20-year development pathway identifies when new generation, long duration storage and firming infrastructure is required in NSW to optimise price and reliable outcomes for NSW consumers. The 10-Year Tender Plan then sets out the tender schedule for when LTES agreements may be tendered to give effect to the 20-Year Development Pathway.<sup>10</sup>

When preparing the Infrastructure Investment Objectives Report, the Consumer Trustee must meet the infrastructure investment objectives in the EII Act. The EII Act sets amount of generation, long-duration storage, and firming infrastructure, including minimum targets by 31 December 2029.<sup>f</sup>

Following the planning process, the Consumer Trustee will run competitive tenders for LTES agreements and for access rights. An additional planning pathway for firming infrastructure may also be used if reasonably necessary to meet the Energy Security Target and in the public interest.

## Awarding Long-Term Energy Service Agreements

A LTES agreement is a financial derivative contract between an LTES operator and the Scheme Financial Vehicle that is intended to provide an LTES operator with mitigation against unexpectedly low electricity prices and exposure to upside where electricity prices are higher. The LTES agreement achieves this by providing the LTES operator with a series of options to enter into fixed length derivative arrangements. There are three LTESA products: Generation LTES agreements, long duration storage LTES agreements and firming LTES agreements.

The Consumer Trustee recommends LTES agreements periodically through competitive tender. The Consumer Trustee has discretion over the timing and scale of competitive tenders and whether to recommend an LTES agreement if it considers doing so would be in the long-term financial interest of NSW electricity customers.



Long-Term Service Agreements are option contracts which give the project optional access to a competitively set minimum price for their energy service.

The Scheme Financial Vehicle is the counterparty to LTES agreements with project proponents. The Scheme Financial Vehicle will recover payments to projects under these LTES agreements by on-selling energy derivative products or from distribution network businesses who will pass these costs on to retailers and in turn NSW electricity customers through their retail bills. The Consumer Trustee appoints a Financial Trustee to administer the Scheme Financial Vehicle.

<sup>f</sup> Section 44 of the EII Act does not set minimum objectives for firming infrastructure.

Benefit-sharing provisions will also be included in the LTES agreements. These will provide for profits above a threshold to be returned to the Scheme Financial Vehicle, to repay payments that have previously been made. Benefit-sharing payments will reduce the amount to be recovered from consumers through distribution businesses.

The Consumer Trustee developed a risk management framework to protect the financial interests of consumers from risks associated with the management of financial liabilities associated with LTES agreements. The risk management framework enables the Scheme Financial Vehicle to manage financial risks associated with LTES agreements to protect the financial interests of NSW electricity customers.

## 2.2.4 Funding the Roadmap costs

The EII Act sets out a framework for costs associated with the Roadmap to be managed through an Electricity Infrastructure Fund established by the Scheme Financial Vehicle.

The Roadmap involves various costs, including payments to network operators, the net costs of LTES agreements, and the administrative costs of scheme entities. The Scheme Financial Vehicle will recover these costs from NSW distribution network businesses, which then pass the costs onto retailers and in turn NSW electricity customers through their retail bills, similar to how energy prices and network costs are currently passed onto consumers.

The Regulator sets the amount required to be recovered from the NSW distribution network service providers through annual contribution determinations. Each determination must also include a minimum prudent cash balance for the Electricity Infrastructure Fund,

In making a contribution determination, the Regulator must consult with the Financial Trustee and has powers to request information from the scheme entities. The EII Act requires the Regulator to gazette a contribution determination by 28 February each year.

## 2.3 Roadmap commitment to communities

The Roadmap aims to foster community support for new investment in energy generation, storage, network and other related infrastructure. It also aims to support new jobs and industries for the regions, including employment and income opportunities for Aboriginal and Torres Strait Islander people.

The Minister issued [guidelines](#) on consultation and negotiations with local First Nations communities for energy infrastructure delivered under the Roadmap as required under the EII Act.<sup>9</sup> The guidelines recommend that project proponents be required to prepare an Aboriginal Participation Plan which documents the engagement approach and the agreed commitments with local Aboriginal stakeholders.

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<sup>9</sup> The guidelines are in addition to and do not replace or change any other existing legislations concerning cultural heritage, environmental, social, or other impacts of proposals.



The guidelines also outline factors decision makers, such as the Consumer Trustee, should take into account in exercising their functions under the EII Act. For example, the guidelines must be considered in the making of LTES agreements and in network infrastructure projects.<sup>h</sup> Monitoring and reporting of progress in meeting commitment under the Aboriginal participation plan may be required.

The Minister also established advisory bodies to ensure employment, training and local supply opportunities are considered in delivering the Roadmap:

- **The Renewable Energy Sector Board** must [prepare a plan](#) setting out how to, in a cost-effective way, maximise locally produced and supplied goods and services, and employment of local workers and foster opportunities for apprentices and trainees, into the construction of new electricity infrastructure in NSW.<sup>11</sup> The Minister and the Consumer Trustee must take the plan into account when exercising their functions under the EII Act.
- **The Electricity Infrastructure Jobs Advocate** will advise the Minister for Energy on strategies and incentives to encourage investment, development, workforce development, employment, and education and training opportunities in the energy sector in NSW including in the Hunter, Central Coast, Illawarra, Far West, South West, New England and the Central West regions of NSW. The Advocate will also advise on the rail, road and port infrastructure which is required in NSW and the regions specified above to promote export opportunities for generation, storage and network technology.

This annual report under the EII Act does not report on the exercise of functions of the Electricity Infrastructure Jobs Advocate or the Renewable Energy Sector Board. The annual report only reports on the exercise of the Regulator's functions to review the Renewable Energy Sector Board Plan. See section 6 for the report on the Regulator's exercise of Functions.

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<sup>h</sup> Figures 1 and 2 of the [First Nations Guidelines](#) provide a high-level summary of where the First Nations guidelines must be considered and by whom, and where they may be required to be considered for LTES agreements and network infrastructure projects respectively.

### 3 Infrastructure planner

The Infrastructure Planner is responsible for planning REZs and recommending where and when network infrastructure to serve the REZ should be built. It is also responsible for coordinating the build of generation and transmission infrastructure in the REZs for which it is appointed Infrastructure Planner. Key functions of the Infrastructure Planner primarily relate to REZ network infrastructure projects and include:

- Investigating, planning, co-ordinating and carrying out planning, design, construction and operation of storage and network infrastructure<sup>12</sup>
- Assessing and recommending REZ network infrastructure projects to the Consumer Trustee for authorisation<sup>13</sup>
- Carrying out competitive assessment processes in relation to proposed REZ network infrastructure projects<sup>14</sup>
- Contracting and overseeing the parties delivering REZ network infrastructure projects.<sup>15</sup>

The Infrastructure Planner is also responsible for:

- Administering REZ access schemes
- Assessing and making recommendations about PTIPs to which the Infrastructure Planner has been appointed.<sup>16</sup>

Under section 23(5) of the EII Act, the Minister is to appoint the Energy Corporation (EnergyCo) as the Infrastructure Planner for each of the five REZs. During FY 2021-22, EnergyCo was appointed as the Infrastructure Planner for the Central-West Orana REZ and the New England REZ.<sup>17,18</sup>

A summary of key functions exercised by the Infrastructure Planner during FY 2021-22 is provided below. Table 3.1 lists each of the Infrastructure Planner's functions and details whether or not, and how, each function was exercised.

#### 3.1 Renewable Energy Zone network infrastructure projects

The Infrastructure Planner is responsible for designing and recommending the required network infrastructure projects for the REZs and recommending a network operator to build, fund and maintain each REZ network infrastructure project. In FY 2021-22, the Infrastructure Planner:

- Commenced investigation and planning works for all five REZs as well as coordination works for the Central-West Orana REZ.
- Progressed a competitive assessment process for the Central-West Orana REZ network operator role by short-listing three tenderers.
- Invited shortlisted tenderers for the Central-West Orana REZ network operator role to respond to a Request for Proposal and identified a preferred network operator.
- Did not make any recommendations to the Consumer Trustee.

In FY 2022-23, the Infrastructure Planner is expected to:

- Progress the design and assessment of REZ network infrastructure projects

- Make recommendations to the Consumer Trustee including a recommendation for the planned development of the Central-West Orana Transmission project and the proposed network operator for the REZ.<sup>19</sup>

In September 2022, the Infrastructure Planner released its [Draft Network Infrastructure Strategy](#) (NIS) for consultation.<sup>20</sup> The NIS outlines a strategy for the practical coordination of NSW electricity infrastructure in the long-term financial interests of NSW consumers. It provides a set of potential network infrastructure options for REZs to achieve the objectives of the EII Act. This document is an important component of the Infrastructure Planner's ongoing planning function. It is proposed to be prepared every two years to inform and support the Consumer Trustee's IIO Report (Section 4.1) and co-ordinated NSW-wide system planning.

## 3.2 Contracts and agreements

The Infrastructure Planner is responsible for entering into contracts or other agreements in connection with the exercise of its functions under the EII Act.<sup>21</sup> There were no contracts or agreements executed in FY 2021-22 for the construction of REZ network infrastructure projects or the appointment of network operators.

As competitive processes for the Central-West Orana Transmission Project and Waratah Super Battery are finalised (refer Section 3.4), it is expected the Infrastructure Planner will enter into the applicable contracts in FY 2022-23.

## 3.3 Administering REZ access schemes

When the Minister declares a REZ access scheme, the declaration must include the person or body who is to administer the access scheme.<sup>22</sup> The [Draft Renewable Energy Zone \(Central-West Orana\) Access Scheme Order 2022](#) (draft order) appoints the Infrastructure Planner of the Central-West Orana REZ, being EnergyCo, as the Administrator of the Central-West Orana REZ Access Scheme.

The draft order requires the Infrastructure Planner to perform certain functions in the role of Administrator. The draft order also imposes a number of additional functions on the Infrastructure Planner in relation to operating the access scheme. The exercise of functions imposed on the Infrastructure Planner through access scheme declarations will be reported on in future annual reports as the access schemes are declared and the orders are finalised.

## 3.4 Priority transmission infrastructure projects

PTIPs are network infrastructure projects located in NSW and identified in AEMO's most recent Integrated System Plan, and which are not REZ network infrastructure. Under the EII Regulation, the Infrastructure Planner must assess and make recommendations to the Minister regarding PTIPs. The Minister then determines whether these projects should proceed to regulatory approval and be constructed via the process under the EII Act, rather than under the National Electricity Rules.

In FY 2021-22 the Minister did not appoint any party as Infrastructure Planner for any PTIPs.

Following Origin Energy's February 2022 announcement of the potential early closure of the Eraring Power Station, the Expenditure Review Committee of Cabinet agreed that the Waratah Super Battery and Hunter Transmission projects should be accelerated. In August 2022, the Minister appointed EnergyCo to be the Infrastructure Planner for both of these projects.

In FY 2022-23, the Infrastructure Planner will undertake competitive procurement processes for the appointment of one or more service providers for the Waratah Super Battery project and make recommendations to the Minister for a network operator to carry out that project.

Table 3.1 Functions of the Infrastructure Planner under the EII Act

Function area	Ref <sup>i</sup>	Function	Mandatory (Y/N)	Comments
Consultee about declarations of access regimes	Section 24(6)(a)	The Infrastructure Planner is to be consulted before the Minister declares an access scheme that will apply in a renewable energy zone, or part of a renewable energy zone.	Y	<p>The Infrastructure Planner was not required to exercise this function in FY 2021-22 as no access schemes were formally declared.</p> <p>The Infrastructure Planner was involved in the development of the <a href="#">draft Central-West Orana REZ Access Scheme Declaration</a> during FY 2021-22 which was subsequently published for consultation in July 2022.</p>
Orders prohibiting connection to network infrastructure	Section 29(1)	The Infrastructure Planner may, by order served on a relevant operator, prohibit the relevant operator from allowing a proponent to connect proposed infrastructure to the relevant operator's network infrastructure.	N	The Infrastructure Planner did not exercise the function in section 29(1) in FY 2021-22.
	Sections 29(2)-(5)	The Infrastructure Planner must seek and consider submissions from relevant parties <sup>j</sup> and must not make an order unless they are satisfied of the criteria in section 29(4).	Y	The Infrastructure Planner did not exercise the functions in sections 29(2)-(5) in FY 2021-22 as no order was made under section 29(1).

<sup>i</sup> In this column, references to sections are to section of the EII Act, while references to clauses are references to clauses of the regulations.

<sup>j</sup> Section 29(3), the relevant operators in the local area, the proponent and the local council in the local area.



Function area	Ref <sup>i</sup>	Function	Mandatory (Y/N)	Comments
	Section 29(6)	The Infrastructure Planner is to publish guidelines on its website about the exercise of its functions under section 29.	Y	<p>The Infrastructure Planner published the <a href="#">draft guidelines on orders prohibiting connection to network infrastructure in REZs</a>. Feedback was sought on the draft guidelines from 1 June until 29 June 2022.<sup>23</sup></p> <p>The Infrastructure Planner plans to publish the final guidelines in FY 2022-23.</p>
Recommend REZ network infrastructure projects for renewable energy zone	Section 30	The Infrastructure Planner for a renewable energy zone (currently EnergyCo) is to assess and make recommendations to the Consumer Trustee about REZ network infrastructure projects required for the renewable energy zone.	Y	<p>The Infrastructure Planner did not make any recommendations to the consumer trustee in FY 2021-22.</p> <p>In FY 2022-23, the Infrastructure Planner will progress the design and assessment of REZ network infrastructure projects and plans to make recommendations to the Consumer Trustee. This includes the planned development of the Central-West Orana REZ network infrastructure project.</p> <p>The Infrastructure Planner will recommend projects based on the latest information from industry registration of interest processes, network modelling, resource mapping, land-use planning, and stakeholder consultation, to design network infrastructure solutions that deliver optimal benefits.</p> <p>Industry registration of interest processes have been completed for all five NSW REZs.<sup>k</sup></p> <p>The Infrastructure Planner's recommendations must meet the requirements of clause 43 and 44 the EII Regulation.</p>

<sup>k</sup> Further information on each of the five ROI processes can be found on the [EnergyCo website](#)

Function area	Ref <sup>i</sup>	Function	Mandatory (Y/N)	Comments
Contracts	Section 63(4)(a)	The Infrastructure Planner has the function of contracting in connection with the exercise of its functions under the EII Act.	N	There were no contracts or agreements executed in FY 2021-22 for the construction of REZ network infrastructure projects or the appointment of network operators.
Generation, storage and network infrastructure	Section 63(4)(b)-(c)	<p>The Infrastructure Planner is to investigate, plan, co-ordinate and carry out planning and design of generation infrastructure.</p> <p>The Infrastructure Planner is to investigate, plan, co-ordinate and carry out planning, design, construction and operation of storage and network infrastructure.</p>	Y	<p>The Infrastructure Planner commenced investigation, planning and co-ordination works for the design of the Central-West Orana REZ.<sup>24</sup></p> <p>The Infrastructure Planner commenced investigation and planning works for the New England, South West, Hunter-Central Coast and Illawarra REZs.<sup>25</sup></p> <p>In September 2022, the Infrastructure Planner released the <a href="#">Draft Network Infrastructure Strategy</a> for public consultation.<sup>26</sup> This document details the Infrastructure Planner's proposed infrastructure development plans and aims to provide investor guidance (for generator and storage proponents, and network operators); co-ordination of electricity infrastructure development; and an opportunity for meaningful engagement with stakeholders.</p>
General functions	Section 63(5)	Where EnergyCo is appointed Infrastructure Planner, the Infrastructure Planner may exercise the functions of EnergyCo under Part 4 of the <i>Energy and Utilities Administration Act 1987</i> .	N	The Energy and Utilities Administration Act 1987 lists a number of functions the Infrastructure Planner may exercise to support their general planning functions. The Infrastructure Planner has only exercised these functions to the extent necessary to enable it to exercise its functions under the EII Act and achieve the EII Act's objectives.

Function area	Ref <sup>i</sup>	Function	Mandatory (Y/N)	Comments
Annual reports	Section 70	The Infrastructure Planner must, as soon as reasonably practicable after the end of each financial year, provide the Regulator with a report on the exercise of the functions under the Act during the financial year.	Y	On 31 August 2022, the Infrastructure Planner provided a report to IPART on the exercise of its functions under the EII Act during FY 2021-22.
Delegation	Section 71	The Infrastructure Planner may delegate any of their functions, other than the power of delegation, to a person of a class prescribed by the regulations	N	<p>The Infrastructure Planner did not exercise the power to delegate any of its functions FY 2021-22 as permitted under section 71(2).</p> <p>In FY 2022-23, it is proposed that the Minister delegate certain consultation functions of the Minister under the EII Act to EnergyCo under section 71(1). This includes functions required to progress priority transmission infrastructure projects.</p>
Contribution determination	Clause 39	The Infrastructure Planner must, if requested to do so by the Regulator, provide information to the Regulator that the Regulator considers reasonably necessary to enable the regulator to make a contribution determination.	Y	The Infrastructure Planner was not required to exercise this function in FY 2021-22 as no contribution determination was made.

Function area	Ref <sup>i</sup>	Function	Mandatory (Y/N)	Comments
Considerations	Clause 41 (s 63)	In exercising functions under Part 5 of the Act, the Infrastructure Planner must take into account the guidelines issued by the Minister under section 4 (guidelines about consultation and negotiation with the local Aboriginal community) of the Act and the plan approved by the Minister under section 8 (Plan for NSW renewable energy sector) of the Act,	Y	<p>The Minister did not issue guidelines under section 4 of the EII Act or approve a plan under section 8 of the EII Act in FY 2021-22.</p> <p>The Minister issued the First Nations Guidelines on 17 August 2022.<sup>27</sup> The guidelines consist of two parts:</p> <ul style="list-style-type: none"> <li>• A <a href="#">general guideline</a></li> <li>• A region-specific guideline</li> </ul> <p>At the time of writing the <a href="#">Central-West Orana guideline</a> was the only region-specific guideline to be finalised.</p> <p>The Minister approved the <a href="#">NSW Renewable Energy Sector Board's Plan</a> and the plan was published on the Office of Energy and Climate Change's website on 5 September 2022.<sup>1</sup></p>
Assessments and recommendations by the Infrastructure Planner	Clause 43 (ss 30 and 63(4))	<p>The Infrastructure Planner must assess and make recommendations about the following—</p> <p>(a) proposed REZ network infrastructure projects,</p> <p>(b) priority transmission infrastructure projects in relation to which the Infrastructure Planner is appointed,</p>	Y	<p>The Infrastructure Planner did not make any recommendations to the Consumer Trustee or the Minister in FY 2021-22.</p> <p>Refer comments in relation to section 30 above.</p>

<sup>1</sup> Under section 8(5) of the EII Act, the plan takes effect on the day it is published

Function area	Ref <sup>i</sup>	Function	Mandatory (Y/N)	Comments
		(c) network operators who may be authorised or directed to carry out—  (i) a REZ network infrastructure project, or  (ii) a priority transmission infrastructure project  (d) other persons who may assist the network operator to carry out—  (i) a REZ network infrastructure project, or  (ii) a priority transmission infrastructure project		
	Clause 44 (s 30)	The technical specifications that the Infrastructure Planner must consider for REZ infrastructure projects are prescribed in this clause.	Y	The Infrastructure Planner did not make any recommendations to the consumer trustee in FY 2021-22.  Refer comments in relation to section 30 above.
Competitive assessment process	Clause 45 (ss 30(5)(a) and 63(4))	The Infrastructure Planner may carry out a competitive assessment process in relation to—	N	In FY 2021-22, the Infrastructure Planner commenced competitive assessment processes for: <ul style="list-style-type: none"> <li>a network operator for the Central-West Orana REZ</li> <li>the appointment of one or more service providers for the Waratah Super Battery project</li> </ul>



Function area	Ref <sup>i</sup>	Function	Mandatory (Y/N)	Comments
		(a) a proposed REZ network infrastructure project, or  (b) a priority transmission infrastructure project in relation to which the Infrastructure Planner is appointed.		
Revenue determinations	Clause 49 (s 38(10)(a))	The Infrastructure Planner must give the Regulator all information about an infrastructure project that the Regulator considers necessary to make the revenue determination, including information about or obtained from a competitive assessment process.	Y	This function only applies when the Regulator has made a determination under section 38. The Regulator did not make a determination under section 38 during FY 2021-22

## 4 Consumer trustee

The purpose of the Consumer Trustee is to act independently and in the long-term financial interests of NSW electricity customers. The Consumer Trustee has a central role in coordinating long-term planning and investment in energy generation, storage and transmission in NSW. The EII Act establishes the Consumer Trustee as an independent entity with various planning, advisory and procurement functions including:

- Planning the level of investment in generation, storage, firming and network infrastructure over time in NSW
- Authorising network infrastructure projects
- Administering tenders to identify the best generation, firming and storage projects to offer Long-Term Energy Service Agreements (LTES agreements) and access rights
- Appointing a Financial Trustee to establish, own and administer the Scheme Financial Vehicle and execute LTES agreements
- Preparing a risk management framework to protect the financial interests of NSW electricity customers in connection with the risks associated with LTES agreements
- Determining fees payable by access scheme participants

On 23 July 2021, the Minister appointed AEMO Services Ltd, a subsidiary of AEMO, in the role of Consumer Trustee under the EII Act. This appointment followed an evaluation and consultation process conducted by the Department of Planning, Industry and Environment (now the Office of Energy and Climate Change) which was guided by a set of strategic principles and selection criteria.<sup>28</sup> The appointment of AEMO Services Ltd became effective on 22 November 2021.

A summary of key functions exercised by the Consumer Trustee during FY 2021-22 is provided below. Table 4.1 lists each of the Consumer Trustee's functions and details whether or not, and how, each function was exercised.

### 4.1 Infrastructure Investment Objectives Report

In December 2021, the Consumer Trustee published the [IIO Report](#). The IIO Report outlines to investors, developers and the public what generation and long duration storage is required in NSW to meet the state's future energy needs. As required by the EII Act,<sup>29</sup> the IIO Report sets out the Consumer Trustee's:

- 20-year development pathway for the construction of electricity infrastructure in NSW to achieve the infrastructure investment objectives of the EII Act<sup>m</sup>
- 10-year plan for conducting competitive tenders for LTES agreements to give effect to the development pathway.

The report also details the approach used to select the 20-year development pathway.

<sup>m</sup> Section 44 of the EII Act sets out the infrastructure investment objectives

The Consumer Trustee modelled and assessed four alternative development pathways against six selection criteria to determine a development pathway that: minimises financial costs to NSW electricity customers, improves sustainability, maintains reliability, promotes resilience, enhances competition and considers supply chain impacts.

The selected development pathway sets out a proactive build to ensure necessary infrastructure is in place to replace coal plants when they withdraw. It incorporates an annual maximum build of generation infrastructure capable of generating approximately 6,000 GWh of electricity per year until 2030, with this limit increased to 7,600 GWh of electricity per year from 2030. It aligns the anticipated construction of generation infrastructure with the expected timeframes for construction of REZ network infrastructure however the development pathway is neither technology or location specific and any generation project connected to the NSW NEM region may be eligible for a LTES agreement.<sup>n</sup>

The IIO Report is a key input to decision making for the Consumer Trustee. It will inform the Consumer Trustee's exercise of its advisory and procurement functions in relation to the timing, scale and scope of competitive tenders for LTES agreements, and authorisation of REZ network infrastructure projects.

The IIO Report is required to be updated every 2 years. Drafting of the 2023 IIO Report will commence in FY 2022-23. The Infrastructure Planner's Network Infrastructure Strategy (Section 3.1) will inform this next iteration of the IIO Report.

## 4.2 Renewable Energy Zone network infrastructure projects

The Consumer Trustee is responsible for independently deciding whether to authorise network operators to carry out REZ network infrastructure projects that have been recommended by the Infrastructure Planner and setting a maximum amount for the prudent, efficient, and reasonable capital cost for development and construction of REZ network infrastructure.<sup>30</sup>

The Consumer Trustee and the Infrastructure Planner have published the [Draft Network Authorisation Guidelines](#) which outlines how the Consumer Trustee and the Infrastructure Planner intend to undertake their functions relating to REZ network infrastructure projects.

In FY 2021-22 most of the Consumer Trustee's functions relating to REZ network infrastructure projects were not exercised as the Infrastructure Planner did not recommend any projects. The Consumer Trustee did exercise its function to provide advice on proposed REZ network infrastructure projects at the request of the Infrastructure Planner.<sup>31</sup> In May 2022, the Consumer Trustee provided advice intended to inform the Infrastructure Planner's assessment of options regarding the Central-West Orana REZ network infrastructure project. The Consumer Trustee also provided information on key issues that may impact its authorisation decision regarding the network infrastructure project.

<sup>n</sup> Subject to the 'outstanding merit' requirement under section 48(3) of the EII Act

## 4.3 Long-term Energy Service Agreements

The Consumer Trustee is responsible for conducting competitive tenders for LTES agreements for projects located across NSW.<sup>32</sup> LTES agreements are financial derivative contracts that are intended to provide an energy project with mitigation against unexpectedly low electricity prices and exposure to upside where electricity prices are higher. The LTES agreement achieves this by providing projects with a series of options to enter into fixed-length derivative arrangements. There are three LTES agreement products: generation LTES agreements, long-duration storage LTES agreements and firming LTES agreements. Projects in and outside a REZ can bid for a LTES agreement.

In July 2022, The Consumer Trustee announced that it would open the first tender round for LTES agreements on 4 October 2022. While no competitive tenders for LTES agreements were conducted in FY 2021-22, the Consumer Trustee did exercise a number of related functions in FY 2021-22 to prepare for the first tender round. The Consumer Trustee:

- Prepared tender rules for the competitive tender for LTES agreements as required under section 47(5) of the EII Act<sup>33</sup>
- Consulted with the Regulator regarding the tender rules for the competitive tender for LTES agreements as required under section 47(6) of the EII Act<sup>34</sup>
- Drafted the terms and conditions of LTES agreements as required under sections 50(1), (5) and (6) of the EII Act.<sup>o</sup>

In correspondence between the Consumer Trustee and the Regulator regarding the tender rules, the Regulator noted that the rules are:

- Comprehensive and provide a good level of detail to the market
- Clearly lay out the legislated requirements
- Include all the key design elements and the detail on each element with reference to the legislation and the regulations

The [LTES Agreement and Access Right Tender Rules](#) were finalised in September 2022.

## 4.4 Risk Management Framework

The Consumer Trustee is responsible for preparing and updating a risk management framework to protect the long-term financial interests of NSW electricity customers in connection with the risks associated with LTES agreements.<sup>35</sup>

<sup>o</sup> Draft long form contracts setting out the LTES agreement terms and conditions are included in the [Tender Pack](#) published on the AEMO Services Ltd website

In FY 2021-22 the Consumer Trustee prepared the risk management framework in accordance with the EII Act and EII Regulation.<sup>36</sup> The Regulator approved the risk management framework as required under the EII Act in July 2022 (refer to section 5.3 of this report).<sup>37</sup> The Regulator noted that the effectiveness of the approved risk management framework is dependent on the practical implementation of its subsidiary policies<sup>p</sup> and urged careful development of such policies by the Consumer Trustee.

The [Risk Management Framework](#) was subsequently published on the AEMO Services Ltd website in July 2022 in accordance with the EII Act.<sup>38</sup>

## 4.5 Appointing the Financial Trustee

The Consumer Trustee is responsible for appointing a person or body as the Financial Trustee.<sup>39</sup> The Financial Trustee was not appointed in FY 2021-22 as discussions regarding the structure of the Scheme Financial Vehicle and the contents of the Scheme Financial Vehicle constituent documents was still ongoing with the NSW Government.

During FY 2021-22, the Consumer Trustee progressed this function by:

- Progressing the procurement process through market sounding, expression of interest and request for proposal stages
- Undertaking preparations to operationalise the Financial Trustee upon appointment to ensure it can carry out its functions and obligations as outlined in the EII Act<sup>40</sup>
- Undertaking reasonable preparations to assist the Financial Trustee, once appointed, to establish the Scheme Financial Vehicle to carry out its functions and obligations under the EII Act<sup>41</sup>

Following a competitive tender process, the Consumer Trustee appointed Equity Trustees Limited as the Financial Trustee effective 15 September 2022. Equity Trustees Limited has established the Scheme Financial Vehicle and will hold all the shares issued in the Scheme Financial Vehicle in trust as required under the EII Act.

The Scheme Financial Vehicle will establish and maintain the Electricity Infrastructure Fund and act as counterparty to LTES agreements with project proponents recommended by the Consumer Trustee through the competitive tender process. It will also provide payments based on the Regulator's revenue determinations (refer Section 5.1), for REZ network infrastructure projects and PTIPs developed under the Roadmap.

<sup>p</sup> The subsidiary policies are the risk policy documents that describe the detailed operation of the Risk Management Framework. They are the responsibility of the Consumer Trustee and Scheme Financial Vehicle to develop, approve and implement to comply with the Risk Management Framework. The AER is not authorised under the EII Act to approve the subsidiary policies but may request them at any time.

## 4.6 Access scheme fees

The Consumer Trustee is responsible for determining the fees payable to the Scheme Financial Vehicle by participants in an access scheme.<sup>42</sup> The Revenue from the access fees will be used to share benefits with the local community, support the costs of administering the access scheme and offset part of the cost of the network infrastructure.

During FY 2021-22 the Minister did not declare any REZ access schemes and there are yet to be any access schemes declared. At the time of writing, the NSW Government has published the [Draft Central-West Orana \(CWO\) REZ Access Scheme Declaration](#) for consultation.

The Consumer Trustee will publish the Central-West Orana REZ Access Fee determination on its website following the declaration. A draft access fee, payment structure and details of the access fee was included in the tender guidelines published by the Consumer Trustee.<sup>43</sup> The final access fee determination will confirm the draft positions and detail the components for community and employment purposes.

Table 4.1 Functions of the Consumer Trustee under the EII Act

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
Consultation and negotiation with local Aboriginal communities	Section 4(4)	Take the guidelines (issued by the Minister) about consultation and negotiation with the local Aboriginal community into account when exercising the Consumer Trustee's functions under Part 6, Divisions 3 and 4. <sup>44</sup>	Y	<p>The Consumer Trustee was not required to exercise the functions contained in section 4(4)-(5) during FY 2021-22, as at 30 June 2022 the Minister had not issue guidelines pursuant to section 4(1).</p> <p>Guidelines<sup>45</sup> under section 4(1) were issued to the Consumer Trustee on 17 August 2022 and will be duly considered and given effect in the exercise of functions by the Consumer Trustee in FY 2022-23.</p>
	Section 4(5)	To give effect to the guidelines about consultation and negotiation with the local Aboriginal community, the Consumer Trustee may include a recommendation (under s.31(1)(a)) to the Minister and impose a condition on an authorisation (under s.31(1)(b)).	N	<p>The Consumer Trustee did not exercise this function in FY 2021-22.</p> <p>Refer comments in relation to section 4(4) above</p>
Plan for NSW renewable energy sector	Section 9(1)	Take into account the Plan for NSW renewable energy sector, when exercising all functions under the Act.	Y	The Consumer Trustee did not exercise this function during FY 2021-22, as the renewable energy sector plan had not been approved by the Minister under section 8(2).

<sup>a</sup> In this column, references to sections are to section of the EII Act, while references to clauses are references to clauses of the regulations.



Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
				<p>The Consumer Trustee engaged and consulted with the renewable energy sector board during FY 2021-22 during the implementation phase of the Electricity Infrastructure Investment Roadmap.</p> <p>The Minister approved the <a href="#">NSW Renewable Energy Sector Board's Plan</a> and the plan was published on the Office of Energy and Climate Change's website on 5 September 2022<sup>r</sup>.</p> <p>The Consumer Trustee will take the plan into account in the exercise of its functions in FY 2022-23.</p>
	Section 9(3)-(4)	To give effect to the plan, the Consumer Trustee may include a recommendation (under s.31(1)(a)) to the Minister and impose a condition on an authorisation (under s.31(1)(b)).	N	<p>The Consumer Trustee did not exercise this function in FY 2021-22.</p> <p>Refer comments in relation to section 9(1) above.</p>
Fees for access schemes	Section 26(1)	<p>Determine the fees payable to the Scheme Financial Vehicle by participants in an access scheme, taking into consideration the following principles:</p> <p>(a) maximising financial value for NSW electricity customers,</p>	Y	<p>The Consumer Trustee did not exercise the functions contained in section 26 in FY 2021-22.</p> <p>The Consumer Trustee, in alignment with the draft Central-West Orana access scheme declaration, published a draft Central-West Orana access fee in July 2022.</p> <p>The final fee will be published in FY 2022-23 in line with Declaration of the Central-West Orana Access Scheme.</p>

<sup>r</sup> Under section 8(5) of the EII Act, the plan takes effect on the day it is published

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
		(b) recovering the cost of the operation of the access scheme,		
		(c) optimal use of the existing and planned network infrastructure in the renewable energy zone,		
		(d) other principles prescribed by the regulations.		
	Section 26(2)-(3)	The fees must include a component that is to be used for a community purpose prescribed by the regulations and the component must not be less than the minimum or exceed the maximum amount prescribed by the regulations.	Y	<p>The Consumer Trustee did not exercise the functions contained in section 26 in FY 2021-22.</p> <p>The regulation for defining the community and setting minimum and maximum amounts was made in August 2022.</p> <p>This function will be exercised at the same time as setting final Central-West Orana access fee when the Declaration is finalised in FY 2022-23.</p>
	Section 26(4)-(5)	The fees must include a component that is to be used for an employment purpose prescribed by the regulations and the component must not be less than the minimum or exceed the maximum amount prescribed by the regulations.	Y	<p>The Consumer Trustee did not exercise the functions contained in section 26 in FY 2021-22.</p> <p>The regulation for defining the employment and setting minimum and maximum amounts was made in August 2022.</p> <p>This function will be exercised at same time as setting final Central-West Orana access fee when the Declaration is finalised in FY 2022-23.</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 26(6)	When exercising its function under 26(4), the Consumer Trustee is to seek advice from the committee established under section 34W(1)(b) of the <i>Energy and Utilities Administration Act 1987</i> .	Y	<p>The Consumer Trustee did not exercise the functions contained in section 26 in FY 2021-22.</p> <p>Section 34W Committee for the purpose of providing advice under section 26(6) was enlivened by the regulations made in August 2022.</p> <p>The Consumer Trustee will seek advice from the Committee in setting the employment component of Central-West Orana REZ access fees prior to access fee determination in FY 2022-23.</p>
Assessment of REZ network infrastructure projects	Section 30(4)	The Consumer Trustee must specify a time period that the Infrastructure Planner must make a recommendation within. <sup>46</sup>	Y	<p>The Consumer Trustee did not exercise the function contained in section 30(4) during FY 2021-22.</p> <p>Under section 60(4) functions, the Consumer Trustee has been liaising with the Infrastructure Planner regarding the proposed timing of recommendations for future REZ network infrastructure projects.</p>
	Section 31(1)	The Consumer Trustee must consider the recommendations by the Infrastructure Planner about REZ network infrastructure projects required for the renewable energy zone. After considering the Infrastructure Planner's recommendations in relation to REZ network infrastructure projects, the Consumer Trustee may—	Y (in part) N (in part)	<p>The Consumer Trustee did not exercise the functions contained in sections 31(1) and 31(5) during FY 2021-22, as development activities by the Infrastructure Planner were in progress but not yet complete.</p> <p>The Consumer Trustee anticipates it will be required to exercise this function in FY 2022-23 for the Central-West Orana REZ once it has received a recommendation from the Infrastructure Planner regarding that REZ.</p> <p>The Central-West Orana REZ was formally declared by the Minister and published in the NSW Gazette on 5 November 2021.</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
		(a) recommend the Minister give a direction under section 32 to a network operator for a REZ network infrastructure project, or		The Consumer Trustee understands that the Infrastructure Planner is conducting various activities to be in a position to make a recommendation under section 31(1), including carrying out a competitive tender to select a network operator to recommend for the Central-West Orana REZ. As at 30 June, this work was in progress.
		(b) authorise a network operator to carry out a REZ network infrastructure project.		<p>Following submission of the Infrastructure Planner's recommendation, the Consumer Trustee will exercise its functions under section 31(1) and (5).</p> <p>During FY 2021-22, the Consumer Trustee advises that it was in regular dialogue with the Infrastructure Planner and the Office of Energy and Climate Change in connection with the Central-West Orana REZ network infrastructure projects, including providing input on the design of the policy and regulatory frameworks underpinning the authorisation process under Part 5 of the EII Act.</p> <p>The Consumer Trustee and the Infrastructure Planner have published the Draft Network Authorisation Guidelines which outline how the Consumer Trustee and the Infrastructure Planner intend to undertake their functions relating to REZ network infrastructure.</p> <p>In addition to the Central-West Orana REZ, the New England REZ was declared in December 2021. The timing for the Infrastructure Planner to make recommendations regarding that REZ, and the other three REZs specified in the EII Act, is subject to EnergyCo's preparation of the Network Infrastructure Strategy (expected in December 2022).</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 31(2)	If the Consumer Trustee authorises a network operator under subsection (1)(b) above, the Consumer Trustee must, by written notice to the Regulator, set a maximum amount for the prudent, efficient and reasonable capital costs for development and construction of the REZ network infrastructure project that may be determined by the Regulator under section 38(4).	Y	<p>The Consumer Trustee did not determine a maximum amount for a REZ network infrastructure project during FY 2021-22, as the Infrastructure Planner did not recommend any projects to the Consumer Trustee.</p> <p>Following submission of the Infrastructure Planner recommendation under 31(1), the Consumer Trustee will exercise its functions under section 31(2).</p>
	Section 31(3)	The Consumer Trustee must not disclose the above maximum amount to any person.	Y	<p>The Consumer Trustee did not determine a maximum amount for a REZ network infrastructure project during FY 2021-22, as the Infrastructure Planner did not recommend any projects to the Consumer Trustee.</p> <p>In developing the methodology for calculating the maximum amount, the Consumer Trustee put controls in place such as confidentiality obligations to ensure that the maximum amount is not disclosed to any person.</p> <p>Controls will be reviewed and further developed as part of AEMO Services Ltd establishment of its enterprise compliance and risk management framework.</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 31(5)	In exercising its functions under section 31, the Consumer Trustee is to consider the development pathway contained in the latest report by the Consumer Trustee under section 45.	Y	<p>The Consumer Trustee did not exercise the functions contained in sections 31(1), (2), (3) and (5) during FY 2021-22, as development activities by the Infrastructure Planner were in progress but not yet complete.</p> <p>Refer comments in relation to section 31(1) above.</p>
Regulator reviewing determinations	Section 40(1)(b)	The Consumer Trustee can direct the Regulator to remake a determination under section 38 at any time (in accordance with the regulation)	N	This function only applies when the Regulator has made a determination under section 38. The Regulator did not make a determination under section 38 during FY 2021-22.
Infrastructure investment objectives report	Section 45(1)	<p>The Consumer Trustee is to prepare a report about the infrastructure investment objectives that contains—</p> <p>(a) the development pathway for the infrastructure to which Part 6 applies that is required to be constructed over the following 20 years to achieve the infrastructure investment objectives, and</p>	Y	<p>An <a href="#">Infrastructure Investment Objectives Report</a> was developed by the Consumer Trustee as per section 45(1) and 45(4) including all requirements specified in section 45(1)(a)–(c) and clauses 24 and 25.</p> <p>A 20-year development pathway for infrastructure was developed and published in FY 2021-22 with the Infrastructure Investment Objectives Report as per section 45(1)(a) (refer pages 4 and 5 of the Report).</p> <p>A 10-year Plan for competitive tenders was developed and published in FY 2021-22 with the Infrastructure Investment Objectives Report as per section 45(1)(b) (refer pages 6 and 7 of the Report).</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
		<p>(b) a plan for the competitive tenders that the Consumer Trustee will conduct during the following 10 years to give effect to the development pathway, including when tenders will be conducted and the classes of LTES agreements for which a tender will be conducted, and</p> <p>(c) other matters prescribed by the regulations.</p>		The regulations (clause 24) sets out other requirements that the Consumer Trustee must include in its Infrastructure Investment Objectives Report. The Consumer Trustee complied with these requirements in preparing the report under section 45(1) that it published in FY 2021-22.
	Section 45(2)	<p>The report must be prepared:</p> <p>(a) as soon as practicable after the commencement of this section, and</p> <p>(b) every 2 years after the first report.</p>	Y	<p>The Consumer Trustee prepared the Infrastructure Investment Objectives Report and all requirements specified in section 45(1) and 4(5)(a-c) as soon as practicable after appointment as the Consumer Trustee (22 November 2021).</p> <p>The report was published on 7 December 2021.</p>
	Section 45(3)	The Consumer Trustee is also to prepare a report as soon as practicable after being directed by the Minister under section 47(2) to conduct a competitive tender for LTES agreements for firming infrastructure.	Y	<p>This function only applies when the Minister directs the Consumer Trustee to conduct a competitive tender for firming infrastructure under section 47(2) initiating the preparation of a report under section 45(3).</p> <p>The Minister did not make a direction under section 47(2) during FY 2021-22.</p> <p>A direction was received from the Minister on 1 August 2022, and it is anticipated that a report for firming infrastructure will be prepared in FY 2022-23.</p>



Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 45(4)	The regulations may prescribe the matters that the Consumer Trustee is to take into account in preparing the report.	Y	<p>An <a href="#">Infrastructure Investment Objectives Report</a> was developed by the Consumer Trustee as per section 45(1) and 45(4) including all requirements specified in section 45(1)(a)-(c) and clauses 24 and 25.</p> <p>The regulations (clause 25) sets out matters that the Consumer Trustee must include in its Infrastructure Investment Objectives Report. The Consumer Trustee complied with these requirements in preparing the report under section 45(1) that it published in FY 2021-22.</p>
	Section 45(5)-(6)	<p>The report is to be published on the Consumer Trustee's website.</p> <p>The Consumer Trustee is to exercise its functions under Part 6 on the basis of the reports prepared under section 45.</p>	Y	The 2021 IIO Report <sup>5</sup> was published on the Consumer Trustee website on the 7 December 2021 in accordance with section 45(5).
Tendering for LTES agreements	Section 47(1)	The Consumer Trustee must conduct a competitive tender for LTES agreements unless the Regulator otherwise authorises generally or in a particular case.	Y	<p>During FY 2021-22, the Consumer Trustee was preparing to exercise the functions contained in sections 47(1).</p> <p>The initial competitive tender for LTES agreements will commence on 4 October.<sup>47</sup></p> <p>Draft documentation to assist bidders was released on 18 July 2022 and is on the Consumer Trustee website.<sup>48</sup></p>

<sup>5</sup> [Infrastructure Investment Objectives Report](#), December 2021

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 47(2)	The Consumer Trustee must not conduct a competitive tender for LTES agreements for firming infrastructure unless directed by the Minister.	Y	<p>This function only applies when the Minister directs the Consumer Trustee to conduct a competitive tender for firming infrastructure under section 47(2).</p> <p>The Minister did not make a direction under section 47(2) during FY 2021-22.</p> <p>The Consumer Trustee received a direction from the Minister on 1 August 2022 and it is anticipated that a competitive tender for firming infrastructure will occur no later than Q4 FY 2022-23.</p>
	Section 47(3)	The Consumer Trustee must carry out a competitive tender in accordance with the regulations and with the rules made by the Consumer Trustee.	Y	<p>During FY 2021-22, the Consumer Trustee was preparing to exercise the functions contained in section 47(3). As at 30 June 2022 a competitive tender was not conducted under section 47(1) or 47(2).</p> <p>All required preparations are well progressed to carry out the competitive tender for LTES agreements under 47(1) in accordance with regulations and rules set by the Consumer Trustee under section 47(5) and in consideration of section 47(4).</p> <p>The Consumer Trustee has engaged in extensive consultation for competitive tender and LTES agreement design.<sup>49 50</sup></p> <p>An LTES agreement competitive tender market briefing series was released to market.<sup>51 52</sup></p> <p>The draft Tender Pack<sup>53</sup> was released to market on the Consumer Trustee's website on 18 July 2022 containing the draft tender rules, draft tender guidelines and draft long-form contracts.</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 47(5)	<p>Before conducting a competitive tender, the Consumer Trustee must make rules that are consistent with the regulations to deal with the following matters—</p> <p>(a) the eligibility criteria for making a tender bid,</p> <p>(b) the notification of the opening of the competitive tender,</p> <p>(c) the procedure for making a tender bid, including the information required to be included in a bid,</p> <p>(d) the fee payable for making a bid and requirements for bonds or other security,</p> <p>(e) the assessment of a tender bid by the Consumer Trustee,</p> <p>(f) other matters the Consumer Trustee considers necessary,</p> <p>(g) other matters prescribed by the regulations.</p>	Y	<p>The tender rules for the competitive tender for LTES agreements were drafted and AER was consulted in FY 2021-22 as required under section 47(5) and consistent with the regulations to deal with the matters specified at 47(5)(a)-(g).</p> <p>Draft Tender Rules covering all required matters under 47(5) were subsequently released to market in July 2022 in the draft Tender Pack published on the Consumer Trustee's website.</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 47(6)	Before making rules, the Consumer Trustee is to consult with the Regulator.	Y	<p>Prior to making the tender rules under section 47(5), the Consumer Trustee consulted with the Regulator in accordance with section 47(6) to agree requirements and the consultation approach for the competitive tender for LTES agreements for the Central-West Orana REZ.</p> <p>Feedback was received from the Regulator on 8 March 2022. The feedback has been considered and incorporated into the rules where appropriate.</p> <p>In its correspondence with the Consumer Trustee<sup>54</sup>, the Regulator noted that the rules are:</p> <ul style="list-style-type: none"> <li>• Comprehensive and provide a good level of detail to the market</li> <li>• Clearly lay out the legislated requirements.</li> <li>• Notes that the Consumer Trustee is to gazette tender rules before running a competitive tender.</li> <li>• Includes all the key design elements and the detail on each element with reference to the legislation and the regulations.</li> </ul>
	Section 47(7)	The rules are to be published in the Gazette	Y	<p>The Consumer Trustee did not exercise the function contained in section 47(7) during FY 2021-22, as at 30 June 2022 the tender rules for the competitive tender for LTES agreements were in draft and not yet ready for publication.</p> <p>The tender rules will be gazetted in FY 2022-23 before commencement of the tender scheduled for 4 October 2022.</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
Recommendations about LTES agreements	Section 48(1)-(2)	The Consumer Trustee must make recommendations to the Scheme Financial Vehicle about the LTES agreements that the Scheme Financial Vehicle may enter into. In making a recommendation, the financial value of LTES agreements is to be the primary consideration.	Y	The Consumer Trustee did not exercise the functions contained in section 48(1) and (2) during FY 2021-22, as this function only applies when a competitive tender is conducted pursuant to section 47(1) in accordance with section 47(3).
	Section 48(3)	The Consumer Trustee must not recommend the making of an LTES agreement that relates to generation infrastructure specified in section 43(1)(a) that is not, or will not be, part of a renewable energy zone, unless the Consumer Trustee is satisfied that the LTES agreement shows outstanding merit.	Y	The Consumer Trustee did not exercise the functions contained in section 48(3) during FY 2021-22, as this function only applies when a competitive tender is conducted pursuant to section 47(1) in accordance with section 47(3).
Terms and conditions of LTES agreements	Section 50(1)	The Consumer Trustee is to determine the terms and conditions of an LTES agreement, subject to any requirements prescribed by the regulations	Y	<p>Section 46 sets out the requirements for an LTES agreement and this section has been included in the functional overview to evidence that these requirements have been taken into account by the Consumer Trustee as it has developed the LTES agreement terms and conditions.</p> <p>The draft terms and conditions of LTES agreement were developed in FY 2021-22 in accordance with section 50(1), (5) and (6).</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
				<p>The commercial framework and design for LTES agreements was finalised in accordance with defined regulations and principles specified in 50(1, (5) and (6), along with the design of the financial derivative product.</p> <p>The LTES agreement term sheets for long-duration storage, generation and project development agreements were developed and approved by the Consumer Trustee board in FY 2021-22.</p> <p>Long-form contracts were released to market in July 2022 in the draft Tender Pack.<sup>55</sup></p>
	Section 50(5)	<p>In determining the terms and conditions of an LTES agreement, the Consumer Trustee is to take into account the following principles—</p> <p>(a) to align the financial incentives offered under LTES agreements with the changing needs of the electricity system,</p> <p>(b) to adopt, to the maximum extent possible, the conventions and standards in relation to similar agreements in the national electricity market,</p>	Y	Refer comments in relation to section 50 above.

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
		<p>(c) to ensure that LTES agreements allow for future changes in the national electricity market,</p> <p>(d) to ensure that LTES agreements are consistent with the risk management framework under Division 5,</p> <p>(e) other principles prescribed by the regulations.</p>		
Risk management framework	Section 51(1)-(3)	<p>The Consumer Trustee must prepare a risk management framework to protect the financial interests of NSW electricity customers in connection with the risks associated with LTES agreements.</p> <p>The risk management framework may provide for the functions of the Consumer Trustee, the financial trustee, the Scheme Financial Vehicle and the Regulator under the framework and must be approved by the Regulator.</p>	Y	<p>A risk management framework<sup>56</sup> was prepared by the Consumer Trustee in accordance with section 51(1) which contains each of the requirements outlined in clauses 32 and 33.</p> <p>The risk management framework provides for the functions of all entities specified in 51(2) as specified on page 3 of the risk management framework published on the Consumer Trustee website.</p> <p>Approval of the risk management framework was sought by the Consumer Trustee in accordance with section 51(3) and granted by the Regulator on 8 July 2022.</p>



Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
	Section 51(4)-(5)	The approved risk management framework <sup>t</sup> is to be published on the Consumer Trustee's website unless Consumer Trustee considers it is in the public interest not to publish a part of it, and the Consumer Trustee has the approval of the Regulator to not publish the part.	Y	<p>The Consumer Trustee did not exercise the functions contained in section 51(4) during FY 2021-22, as at the 30 June 2022 the risk management framework was still in the final stages of development.</p> <p>The risk management framework was subsequently published on the Consumer Trustee website in July 2022.</p> <p>The Consumer Trustee made a determination not to exercise the functions contained in section 51(4) after an assessment of the risk management framework in consideration of section 51(5)(a)-(b).</p> <p>All parts of the risk management framework were published.</p> <p>A notice to this effect was included on page 2 of the statutory risk management framework.</p>
	Section 51(7)	The Consumer Trustee must amend the risk management framework on the direction of the Minister	Y	This function only applies when the Minister directs the Consumer Trustee to amend the risk management framework under section 51(7). The Minister did not make a direction under section 51(7) during FY 2021-22.
Negotiating in relation to LTES agreements	Section 60(4)(b)	The Consumer Trustee must negotiate with a person in relation to LTES agreements, in accordance with the regulations.	Y	The Consumer Trustee did not exercise the functions contained in section 60(4)(b) during FY 2021-22, as this function only applies when a competitive tender is conducted pursuant to section 47(1).

<sup>t</sup> Approved by the Regulator

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
Appoint financial trustee	Section 61	The Consumer Trustee is to appoint a Financial Trustee	Y	<p>The Consumer Trustee was still exercising the functions contained in section 61(1) during FY 2021-22, as discussions regarding the structuring of the Scheme Financial Vehicle and the contents of the Scheme Financial Vehicle constituent documents were ongoing with the NSW Government.</p> <p>In September 2022, the Consumer Trustee appointed Equity Trustees Limited as the Financial Trustee following a competitive procurement process. Equity Trustees Limited then established the Scheme Financial Vehicle.</p>
Suspension or termination of appointment	Section 68(1)-(3)	<p>The appointor<sup>u</sup> may suspend or terminate the appointment of a person or body under this Part by giving written notice to the person or body.</p> <p>The appointor may suspend or terminate the appointment of a person or body only if an audit of the performance of the person or body carried out under section 67 finds incompetence, misconduct or incapacity.</p>	N	The Consumer Trustee was not required to exercise the functions contained in sections 68(1)-(3) as at the 30 June 2022 the Financial Trustee had not been appointed under section 61(1).

<sup>u</sup> Section 65 defines the Consumer Trustee as the appointor in relation to the appointment of the Financial Trustee

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
		<p>Before terminating the appointment of a person or body under this Part, the appointor must –</p> <p>(a) advise the person or body in writing that the person or body's performance is unsatisfactory and the basis on which it is unsatisfactory, and</p> <p>(b) provide the person or body with an opportunity to make submissions and consider the submissions received.</p>		
Annual reports	Section 70(1)	The Consumer Trustee must, as soon as reasonably practicable after the end of each financial year, provide the Regulator with a report on the exercise of functions under this Act during the financial year.	Y	<p>The Consumer Trustee was not required to exercise the function contained in section 70(1) in FY 2021-22, as FY 2021-22 constituted the first financial year of operation for the Consumer Trustee.</p> <p>This report is provided in FY 2022-23 and represents the first exercise of this function.</p>
Delegation	Section 71(3)	The Consumer Trustee may delegate any of their functions, other than the power of delegation, to a person of a class prescribed by the regulations.	N	The Consumer Trustee did not exercise the right to delegate any of its functions during FY 2021-22 as permitted in section 71(3).

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
Advice and recommendations about network infrastructure projects	Clause 18 (s 60(4)(c) of the Act)	<p>The Consumer Trustee may, on request, provide a relevant person advice about a network infrastructure project.</p> <p>Relevant person includes the Minister, the Infrastructure Planner and the Energy Corporation.</p> <p>The Consumer Trustee may also give the advice to other relevant persons.</p>	N	<p>At the Infrastructure Planner's request, the Consumer Trustee provided advice in May 2022, which is intended to inform the Infrastructure Planner's assessment of options (and ultimately its recommendation) regarding the Central-West Orana REZ network infrastructure project.</p> <p>In addition, the Consumer Trustee provided the Infrastructure Planner with a list of key issues that may impact the Consumer Trustee's consideration of its recommendation regarding the Central-West Orana REZ and the Consumer Trustee's authorisation decision. It was intended to help guide the development of a program of works to mitigate the risk that the Infrastructure Planner's formal recommendation is not authorised by the Consumer Trustee in a timely manner.</p>
Recommendations by Consumer Trustee about network infrastructure projects	Clause 19 (ss 60(4)(c) and 66(5)(d) of the Act)	The Consumer Trustee must not make a recommendation <sup>57</sup> that the Minister give a direction under the Act <sup>58</sup> , unless the Consumer Trustee is satisfied the direction is reasonably necessary to achieve the infrastructure investment objectives.	Y	The Consumer Trustee did not exercise the functions contained in clause 19 during FY 2021-22, as development activities by the Infrastructure Planner were in progress but not yet complete, and no recommendation was made under section 31(1)(a).

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
		<p>The Consumer Trustee is not required to consider technical information when considering the Infrastructure Planner's recommendations about a REZ network infrastructure project under the Act,<sup>59</sup> other than technical information—</p> <p>(a) specified in clause 44, and</p> <p>(b) provided to the Consumer Trustee in the Infrastructure Planner's recommendation.</p>		
Infrastructure investment objective reports	Clause 24 and 25 (s 45 of the Act)	These clauses contain what the Consumer Trustee must include in the investment objective reports.	Y	<p>The regulations set out other requirements that the Consumer Trustee must consider when preparing its Infrastructure Investment Objectives Report. The Consumer Trustee complied with these requirements in preparing the report under section 45(1) that it published in FY 2021-22.</p> <p>Refer comments in relation to section 45(1) above.</p>
Tendering for LTES agreements	Clause 26	This clause contains the way in which the Consumer Trustee must conduct a competitive tender.	Y	<p>During FY 2021-22, the Consumer Trustee was preparing to exercise the functions contained in section 47(3). As at 30 June 2022 a competitive tender was not conducted under section 47(1) or 47(2).</p> <p>Refer comments in relation to section 47(3) above.</p>

Function area	Ref <sup>a</sup>	Function	Mandatory (Y/N)	Comments
LTES agreements recommendation	Clause 26A	This clause provides matters the Consumer Trustee must take into consideration when making a recommendation about LTES agreements.	Y	<p>The Consumer Trustee did not exercise the functions contained in section 48(1), (2) and (3) during FY 2021-22, as this function only applies when a competitive tender is conducted pursuant to section 47(1) in accordance with section 47(3).</p> <p>Refer comments in relation to section 48(1), (2) and (3) above.</p>
Risk management framework	Clauses 32-33	Provides the requirements for the risk management framework	Y	<p>A risk management framework<sup>60</sup> was prepared by the Consumer Trustee in accordance with section 51(1) which contains each of the requirements outlined in clauses 32 and 33.</p> <p>Refer comments in relation to section 51(1)-(3) above.</p>
Contribution determination	Clause 39	The Consumer Trustee must, if requested to do so by the Regulator, provide information to the Regulator that the Regulator considers reasonably necessary to enable the regulator to make a contribution determination.	Y	The Infrastructure Planner was not required to exercise this function in FY 2021-22 as no contribution determination was made.

## 5 Regulator - AER

On 12 November 2021, the NSW Government appointed the AER as a Regulator under the NSW Electricity Infrastructure Roadmap. The Commonwealth and NSW executed a conferral agreement<sup>61</sup> which sets out the AER's functions as Regulator.

The key functions of the Regulator under the EII Act include:

- Making 5-year revenue determinations for network infrastructure projects
- Making annual contribution determinations in relation to the Electricity Infrastructure Fund
- Approving a risk management framework developed by the Consumer Trustee
- Reviewing tender rules in relation to LTES agreements.

A summary of key functions exercised by the Regulator during FY 2021-22 is provided below. Table 5.1 lists each of the Regulator's functions and details whether or not, and how, each function was exercised.

### 5.1 Revenue determinations

The Regulator is responsible for determining the amount payable to network operators for network infrastructure projects authorised by the Consumer Trustee or authorised or directed by the Minister.<sup>62</sup> This includes the calculation of the prudent, efficient, and reasonable capital costs of these projects, which is referred to in the EII Act as the 'transmission efficiency test'.

In FY 2021-22, the Regulator did not make any revenue determinations however it progressed this function by drafting revenue determination guidelines as required under the EII Act.<sup>63</sup> The [Revenue Determination Guideline for NSW Contestable Network Projects](#) sets out how the Regulator will undertake the transmission efficiency test, assess capital costs and make revenue determinations for network operators selected through a contestable procurement process undertaken by the Infrastructure Planner. It also details the Regulator's approach to assessing the Infrastructure Planner's procurement strategy and process.

The guidelines allow for network operators to be selected in one of two ways:

1. Under a contestable process - a network operator is selected through a competitive process, run by the Infrastructure Planner, to construct and operate the network infrastructure project.
2. Under a non-contestable process - a network operator is directly selected by the Infrastructure Planner to construct and operate the network infrastructure project.

The draft guideline for contestable projects was released for consultation on 6 May 2022, with the final guideline published on 19 August 2022.<sup>64</sup> It will be used to assess competitive tenders the Infrastructure Planner has commenced for the Waratah Super Battery and Central-West Orana REZ transmission network.

In FY 2022-23, the Regulator will prepare a revenue determination guideline for non-contestable REZ network infrastructure projects.

## 5.2 Contribution determinations

Under the EII Act, the Regulator must make an annual contribution determination to confirm the costs of implementing the Roadmap.<sup>65</sup> The Scheme Financial Vehicle recovers these costs from the NSW distribution network services providers, who then pass the costs on to retailers and in turn NSW electricity customers through their retail bills.<sup>v</sup> The contribution determination process allows the Scheme Financial Vehicle to have sufficient funds to meet its liabilities as they fall due. These include the cost of underwriting new renewable generation or storage investment, the capital and operating costs of network investment and the administration costs of the Roadmap entities.

The Regulator did not make a contribution determination in FY 2021-22 as the Scheme Financial Vehicle had not been established to make and receive payments. The Scheme Financial Vehicle was established in September 2022 (refer Section 4.5) and the first contribution determination process commenced in October 2022. This will lead to the first contribution determination to be made by 28 February 2023 under the EII Act.<sup>66</sup>

In FY 2021-22, the Regulator progressed this function by preparing a draft contribution determination guideline. The purpose of the guideline is to give effect to the Regulator's regulatory functions under the EII Act and EII Regulation in relation to contribution determinations. The guideline sets out the processes and methods the Regulator will use to make a contribution determination, along with the roles and responsibilities of each Roadmap entity.

On 31 May 2022, the Regulator released the draft guideline and model for consultation and subsequently undertook a mock trial determination process to test the arrangements set out in the draft guideline.

The [NSW Electricity Infrastructure Fund-Contribution Determination Guideline](#) was published in September 2022.<sup>67</sup>

## 5.3 Risk management framework

The Consumer Trustee must prepare a risk management framework to protect the financial interests of NSW consumers with respect to LTES agreements (refer Section 4.4). The EII Act requires the Regulator approve the risk management framework developed by the Consumer Trustee.<sup>68</sup>

On 27 June 2022, the Regulator received the risk management framework from the Consumer Trustee and the Regulator approved the framework on 8 July 2022.<sup>69</sup>

In approving the risk management framework, the Regulator assessed the framework against the requirements set out in clause 32 of the EII Regulation, and according to the purpose set out in the EII Act that a risk management framework is to protect the financial interests of NSW electricity customers in connection with the risks associated with LTES agreements.<sup>70</sup>

<sup>v</sup> In December 2021 the AER determined the contribution determination is a jurisdictional scheme which meets the eligibility criteria in the National Electricity Rules. A jurisdictional scheme makes recovery of scheme costs more administratively efficient for Distribution Network Service Providers and allows costs to be recovered through the AER's annual pricing review assessments.



## 5.4 Tender rules for long-term energy service agreements

Under the EII Act, the Consumer Trustee is required to consult with the Regulator on its proposed tender rules for the competitive tender process for LTES agreements.<sup>71</sup>

During FY 2021-22, the Consumer Trustee shared its tender rules with the Regulator, and feedback was exchanged between the Regulator and Consumer Trustee. The Regulator's review was completed in July 2022 (refer Section 4.3). All correspondence exchanged between the Regulator and Consumer Trustee about the tender rules has been published on the Regulator website.<sup>72</sup>

The Consumer Trustee finalised the tender rules in September 2022. The final version reflected the feedback from the Regulator's review.

Table 5.1 Functions of the Regulator (AER) under the EII Act

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
Consideration of recommendations by the Infrastructure Planner	Section 31	The Regulator must not disclose the maximum amount for development and construction of the REZ network infrastructure to any person.	Y	The Regulator did not exercise this function in FY 2021-22 as no revenue proposal was received.
Consultee for priority transmission infrastructure projects	Section 34(1)	The Minister must consult the Regulator before directing a network operator to carry out a priority transmission infrastructure project,	Y	The Regulator did not exercise this function in FY2021-22 as no direction was made.
Consultee for authorising a network operator	Section 36(3)	The Minister must consult with the Regulator before authorising a network operator to carry out a priority transmission infrastructure project.	Y	The Regulator did not exercise this function in FY2021-22 as no authorisation was made.

<sup>w</sup> In this column, references to sections are to section of the EII Act, while references to clauses are references to clauses of the regulations.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
Regulator to take into account principles	Section 37	<p>In exercising its functions in relation to the authorisation of a network operator, the Regulator is to take into account the following principles—</p> <p>(a) a network operator is entitled to recover the prudent, efficient and reasonable costs incurred by the network operator for carrying out the infrastructure project,</p> <p>(b) incentives should be given to network operators to promote economic efficiency,</p> <p>(c) a network operator is entitled to revenue for the ongoing ownership, control and operation of an infrastructure project that is commensurate with the regulatory and commercial risks to the network operator,</p> <p>(d) a network operator is entitled to be informed of material issues being considered by the Regulator under this Division,</p>	Y	The Regulator did not exercise this function in FY2021-22 as no authorisation was made.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
		(e) other principles prescribed by the regulations.		
Making revenue determinations	Section 38	The Regulator to determine amount payable to network operators for network infrastructure projects. Procedural requirements for the determination are set out in sections 38(2)-(4) and (6).	Y	The Regulator did not make any revenue determinations in FY 2021-22
	Section 38(5)	The Regulator is to publish guidelines on its website about the transmission efficiency test.	Y	<p>The AER prepared a draft guideline<sup>73</sup> setting out how it will undertake the transmission efficiency test, assess capital costs and make revenue determinations for network operators selected through a contestable procurement process undertaken by the Infrastructure Planner. The draft guideline was released for consultation on 6 May 2022. The final guideline was published 19 August 2022 and will be used to assess competitive tenders the Infrastructure Planner has commenced for the Waratah Super Battery and transmission network for the Central-West Orana renewable energy zone.</p> <p>The NSW Office of Energy and Climate Change (OECC) is developing regulations in relation to non-contestable guidelines, and the AER expects to release a draft guideline in the second half of 2022.</p>

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
	Section 38(7)	The Regulator may, by written notice to a network operator, require the network operator to provide information to the Regulator that the Regulator considers necessary to enable the Regulator to make a determination.	N	The Regulator did not commence any revenue determination processes in FY 2021-22.
Reviewing determinations	Section 40(1)	The Regulator is, in accordance with the regulations, to remake a determination under section 38—  (a) once every 5 years, and  (b) at any time the Consumer Trustee directs.	Y	The Regulator did not commence any revenue determination processes in FY 2021-22.
	Section 40(2)	The Regulator may review and remake a determination at any time, subject to the regulations.	N	The Regulator did not commence any revenue determination processes in FY 2021-22.
Tendering for LTES agreements	Section 47(1)	The Regulator may authorise the Consumer Trustee to not conduct a competitive tender for LTES agreements.	N	The Regulator did not exercise this function in FY 2021-22.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
Consultee on tendering rules	Section 47(6)	The Regulator is to be consulted before the Consumer Trustee makes tendering rules under section 47(5)	Y	<p>This function was exercised in FY 2021-22.</p> <p>The Consumer Trustee shared its tender rules with the AER, and feedback was exchanged between the AER and Consumer Trustee.</p> <p>The draft tender rules presented by the Consumer Trustee and all correspondence exchanged between the AER and Consumer Trustee has been published on the AER website.<sup>74</sup></p>
Risk management framework	Section 51	The Regulator must approve the risk management framework prepared by the Consumer Trustee. The Minister may require the Regulator to review an approved risk management framework.	Y	<p>On 27 June 2022, the AER received the risk management framework<sup>75</sup> from the Consumer Trustee.</p> <p>The AER approved the risk management framework on 8 July 2022.<sup>76</sup></p> <p>The AER fulfilled this function pursuant to section 51 of the EII Act and clause 32 of the EII Regulation, and according to the purpose set out in section 51(1) EII Act that a risk management framework is to protect the financial interests of NSW electricity customers in connection with the risks associated with LTES agreements.</p>
Regulator to make annual contribution determinations	Section 56(1)	The Regulator is to determine an amount for a financial year (a contribution determination) that is required for the scheme financial vehicle to be able to make the payments from the Fund that are required under the Act, including the amount required for the scheme financial vehicle to meet its liabilities as they fall due.	Y	The Regulator did not make any contribution determinations in FY 2021-22. The first contribution determination will be made by 28 February 2023.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
	Section 56(2)-(5)	<p>The purpose of the contribution determination is to determine the amount required to be recovered from distribution network service providers (DNSPs).</p> <p>The amount determined by the Regulator is to include a minimum prudent cask balance for the Fund and the amount required to be paid by each DNSP.</p> <p>The contribution determination must contain details of how it was made, and other information prescribed by the regulations. It must be published in the Gazette no later than 28 February before the beginning of the financial year to which it applies.</p>	Y	The Regulator did not make any contribution determinations in FY 2021-22. The first contribution determination will be made by 28 February 2023.
	Section 56(6)	In making a contribution determination, the Regulator must consult with the Financial Trustee and take into account the matters prescribed by the regulations.	Y	The Regulator did not make any contribution determinations in FY 2021-22. The first contribution determination will be made by 28 February 2023.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
	Section 56(7)	The Regulator may request the Scheme Financial Vehicle provide the Regulator with information the Regulator considers necessary to enable the Regulator to make a contribution determination.	N	The Scheme Financial Vehicle was not established in FY 2021-22 and no contribution determinations were made.
	Section 57	The Regulator may, by further order published in the Gazette, vary a contribution determination in certain circumstances.	N	The Regulator did not make any contribution determinations in FY 2021-22. The first contribution determination will be made by 28 February 2023.
	Section 57(2)	The Regulator is to publish guidelines on its website about the exercise of the Regulator's functions under this section.	Y	<p>The AER prepared a draft guideline setting out how it will make annual contribution determinations to calculate the annual costs of the NSW Electricity Infrastructure Roadmap.</p> <p>On 31 May 2022, the AER released the draft guideline and model for consultation and subsequently undertook a mock trial determination process to test the arrangements set out in the draft guideline.</p> <p>The final guideline was published in September 2022.<sup>77</sup></p>



Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
Guidelines	Section 64	The Regulator has the function of issuing guidelines in relation to the exercise of functions by the persons and bodies appointed under the Act (see below the entry for clause 42 of the regulations.)	Y	<p>The AER has issued guidelines on how it will:</p> <ul style="list-style-type: none"> <li>undertake a transmission efficiency test and revenue determination for contestable projects<sup>78</sup></li> <li>make annual contribution determinations to facilitate the recovery of the costs of the Roadmap.<sup>79</sup></li> </ul> <p>The OECC is developing regulations in relation to non-contestable guidelines, and the AER expects to release a draft guideline for non-contestable projects in the second half of 2022.</p> <p>The AER intends to develop supporting administration-related guidelines in Q2 2023 (see the below row on clause 42 for detail).</p>
Delegation	Section 71	The Regulator may delegate any of their functions, other than the power of delegation, to a person of a class prescribed by the regulations.	N	The Regulator did not exercise any delegations under this provision of the EII Act in FY 2021-22.
Penalty notices	Section 76	The AER (as an authorised officer) <sup>x</sup> may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.	N	The Regulator did not issue any penalty notices in FY 2021-22.

<sup>x</sup> Clause 3A prescribes the AER is an authorised officer.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
Contribution determination	Clause 35	In making a contribution determination, the Regulator must take into account the matters listed in the clause.	Y	The Regulator did not make any contribution determination in FY 2021-22. The first contribution determination will be made by 28 February 2023.
	Clause 36	The Regulator must, within 1 week after a contribution determination is published in the Gazette, give each distribution network service provider a notice setting out the percentage of the contribution determination relating to LTES agreements for generation infrastructure.	Y	The Regulator did not make any contribution determination in FY 2021-22. The first contribution determination will be made by 28 February 2023.
	Clause 39	The Regulator may require the consumer trustee, financial trustee and Infrastructure Planner to provide information to the Regulator where the Regulator considers it is reasonably necessary to enable the Regulator to make a contribution determination.	N	The Regulator did not commence a contribution determination process in FY 2021-22.  The first process commenced in October 2022, leading into the first contribution determination to be made by 28 February 2023.
Functions of the Regulator	Clause 42	The Regulator must—	Y	Under clause 42 of the EII Act, the Regulator will exercise this function by developing a ring-fencing guideline. The guideline will be developed by Q2 2023.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
		(a) issue guidelines for network operators about the following—		The Regulator has engaged with the relevant entities and advised that no ring-fencing issues are likely to arise before Q2 2023.
		(i) the legal separation of the entity through which a network operator conducts regulated activities from any other entity through which it conducts business,		
		(ii) the establishment and maintenance of consolidated and separate accounts for regulated activities and other activities conducted by the network operator,		
		(iii) the limitations on the flow of information from or within the network operator if there is the potential for a competitive advantage or disadvantage to arise, and		
		(b) set standards about the legal and functional separation of the regulated activities of a network operator from other activities of the network operator, and		

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
		(c) monitor compliance by network operators with the standards.		
Competitive assessment process	Clause 45	<p>In the exercise of the Regulator's functions under Part 5 of the Act, the Regulator may rely on and adopt information provided to the Regulator by the Infrastructure Planner if—</p> <p>(a) the Infrastructure Planner obtained the information from a competitive assessment process, and</p> <p>(b) the Regulator is satisfied that the competitive assessment process was genuine and appropriate.</p>	N	No competitive assessment processes were completed by the Infrastructure Planner in FY2021-22.
Principles for Regulator	Clause 46	The regulations prescribe principles that the Regulator must follow when making revenue determinations.	Y	The Regulator did not make any revenue determinations in FY 2021-22.
Guidelines	Clause 47	The Regulator must publish guidelines on its website about revenue determinations.	Y	The AER has published a guideline on how it will undertake a transmission efficiency test and revenue determination for contestable projects. <sup>80</sup>

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
				The NSW Office of Energy and Climate Change is developing regulations in relation to non-contestable guidelines, and the AER expects to release a draft guideline in the second half of 2022.
Network operator to give information to Regulator	Clause 48	The Regulator may require the provision of information from network operators.	N	The Regulator did not exercise this function in FY 2021-22 as there were no revenue determinations underway.
Consultation with the Infrastructure Planner	Clause 49	The Regulator must consult the Infrastructure Planner before making a revenue determination	Y	The Regulator did not make any revenue determinations in FY 2021-22.
Timing for making revenue determinations	Clause 50	Provides the timeframes within which the Regulator must make a revenue determination in relation to a network operator and details the requirements of the Regulator if it fails to meet the timeframes.	Y	This clause only applies when a network operator has been appointed. No network operators were appointed in FY 2021.
Content and publication	Clauses 51-52	Provides the content the Regulator must include in the revenue determinations.	Y	The Regulator did not make any revenue determinations in FY 2021-22.

Function area	Ref <sup>w</sup>	Function	Mandatory (Y/N)	Comments
	Clause 53	<p>The Regulator must publish the following on its website—</p> <p>(a) if a revenue determination is made or remade—</p> <p>(i) the revenue determination, and</p> <p>(ii) the reasons for making the revenue determination,</p> <p>There are some exemptions to publishing in Clause 53(4).</p>	Y	The Regulator did not make any revenue determinations in FY 2021-22.
Review of errors in revenue determinations	Clause 54	<p>The Regulator may review and remake a revenue determination to the extent necessary to correct—</p> <p>(a) a material error, misdescription or miscalculation, or</p> <p>(b) an error resulting from the provision of false or materially misleading information to the Regulator.</p>	N	The Regulator did not make any revenue determinations in FY 2021-22.

## 6 Regulator - IPART

IPART was appointed as Regulator under section 64(1) of the EII Act on 17 December 2021.<sup>81</sup> In its role as Regulator, IPART has three key functions under the EII Act:

- Assessing whether the Renewable Energy Sector Board Plan
  - protects the financial interests of NSW electricity customers, and
  - is consistent with Australia's international trade obligations.
- Preparing annual reports on the exercise of functions under the EII Act by the Consumer Trustee, Financial Trustee, Infrastructure Planner and Regulator.
- Auditing the performance of the Consumer Trustee, Financial Trustee, Scheme Financial Vehicle, and Infrastructure Planner.

All other regulatory functions under the EII Act have been assigned to the AER, as a co-Regulator.

A summary of key functions exercised by IPART during FY 2021-22 is provided below. Table 6.1 lists each of IPARTS' functions and details whether, and how, each function was exercised.

### 6.1 Renewable Energy Sector Board's Plan

The Renewable Energy Sector Board (Board) is established under the EII Act to provide advice to the Minister on job creation and manufacturing opportunities in the renewable energy sector. The Board's membership is prescribed by the EII Act and consists of representatives of unions, employers, engineers, and NSW electricity consumers. Its members are appointed by the NSW Minister for Energy.

Under section 7(4)(a) of the EII Act, the Board must prepare a plan setting out how to, in a cost-effective way, maximise locally produced and supplied goods and services, and employment of local workers, and foster opportunities for apprentices and trainees, into the construction of new electricity infrastructure in NSW.<sup>82</sup> The Board's members are required to reach majority agreement on the plan.<sup>83</sup>

The Consumer Trustee must take the Board's plan into account when exercising its functions under the EII Act. In line with this requirement, the plan would be considered for example in the design of the LTES agreement tenders and REZ access rights for generators.

IPART may recommend the plan to be approved by the Minister only if it is satisfied that the plan:

- protects the financial interests of NSW electricity customers, and
- is consistent with Australia's international trade obligations.

As required under the EII Act, we completed our first review of the plan in July 2022. We conducted independent analysis to determine the above requirements were met and recommended the plan to the Minister for approval.

We did not conduct public consultation of the plan as part of this role. This is a technical review on limited aspects of the plan.

The plan has subsequently been approved by the Minister and came into effect when published on the OECC's website. The NSW Government has also released a response to the Board's advice on building the capacity and capability of the renewable energy sector. The NSW Government supports, or supports in principle, all of the Board's recommendations in the plan. The response<sup>84</sup> is available on the [NSW Governments website](#) along with independent analysis<sup>85</sup> of costs and economic benefits of the plan.

The IPART may need to review revisions to the NSW Renewable Energy Sector Board Plan in the future.

## 6.2 Annual Report

In our capacity as Regulator, we must prepare an annual report on the exercise of functions under the EII Act by the Consumer Trustee, Financial Trustee, and Infrastructure Planner. We must also report on the functions exercised by both Regulators – IPART and the AER.

The annual report must be provided to the Minister no later than 4 months after the end of the financial year to which the report relates. This annual report covers FY 2021-22 and is due to the Minister by 31 October 2022.

The FY 2021-22 annual report reflects the early stages of the Roadmap and that it is still in preliminary design and establishment phase. The report provides a factual account of the functions exercised by the entities appointed up to 30 June 2022. Accordingly, it does not include the Financial Trustee as it is yet to be appointed and the Scheme Financial Vehicle which has not been established. This report includes the exercise of functions by the AER over FY 2021-22 as a co-Regulator under the EII Act.

The annual report has been informed by submissions from the various entities required to be covered in the report, detailing whether and how they exercised their respective functions in FY 2021-22. The entities are required under section 70(1) of the EII Act to provide these submissions to IPART. The Minister did not require IPART to include any additional information in the FY 2021-22 annual report.

Many of the functions of the Infrastructure Planner, Consumer Trustee and Regulator were not exercised in FY 2021-22. We expect future annual reports will include more commentary on the entities, inter-dependencies between them and delivery of the Roadmap. We will also seek to define linkages between the annual report and the performance audits. Additionally, the annual reports may include reporting on progress, summary of data collected for the Roadmap or other relevant statistics, or stakeholder feedback.

In FY 2022-23, we will expand our reporting to also cover the Financial Trustee.

## 6.3 Performance Audits

IPART is to audit the performance of the different entities that perform functions under the EII Act, including the Consumer Trustee, the Infrastructure Planner, the Financial Trustee and the Scheme Financial Vehicle.<sup>86</sup>



The EII Act does not specify when the performance audits are to be undertaken. There is also no guidance provided yet in the EII Regulation regarding the scope of these audits. However, the regulations may make provision for:

- matters that may be subject of an audit,
- additional entities to be audited,
- functions of the auditor,
- the conduct of the audit,
- reporting on an audit including publication.<sup>87</sup>

IPART has not undertaken performance audits for FY 2021-22 for a number of reasons:

- Regulations relating to performance audits are not yet in place.
- Two of the four entities subject to performance audits were yet to be appointed.
- Entities which have been appointed are still in the start-up and planning stages and many of their functions under the EII Act have not yet been exercised.

In 2023, we expect to develop a performance audit framework and prepare a forward work program to audit entities under the Roadmap. We will engage with relevant stakeholders in this task. The extent of this work will depend on the progress of the Roadmap, the appointment of the remaining entities and the progress that each entity has made with respect to exercising their functions. We will seek to balance the level of assurance required at performance audits against the regulatory burden that will be placed on the entities delivering on the Roadmap's objectives. A risk-based approach to performance audits will allow us to efficiently prioritise efforts to areas of higher consequences, minimise cost to the entities and avoid broader costs to the community.

Our performance audits will aim to provide information to the Minister and the public about how well the Roadmap and the functions of the Consumer Trustee, Financial Trustee, Scheme Financial Vehicle and Infrastructure Planner under the EII Act, are delivered. Ultimately, they aim to improve administration and promote accountability and transparency.

Table 6.1 Functions of the Regulator (IPART) under the EII Act

Function area	Ref <sup>y</sup>	Function	Mandatory (Y/N)	Comments
Plan for NSW renewable energy sector	Section 8(4)	<p>The Regulator may recommend a board's plan to the Minister only if satisfied that the plan:</p> <p>(a) protects the financial interests of NSW electricity customers, and</p> <p>(b) is consistent with Australia's international trade obligations.</p>	N	<p>IPART conducted independent analysis to determine whether the plan satisfied the criteria of section 8(4) of the EII Act.</p> <p>IPART completed its first review of the plan in July 2022 and recommended the plan to the Minister for approval.</p> <p>IPART may need to review revisions to the NSW Renewable Energy Sector Board Plan in the future.</p>
Performance audits	Section 67	<p>The Regulator is to audit the performance of the following—</p> <p>(a) the consumer trustee,</p> <p>(b) the financial trustee,</p> <p>(c) the scheme financial vehicle,</p> <p>(d) the infrastructure planner.</p> <p>The Minister may require the Regulator to conduct an audit under this section.</p>	Y	<p>IPART did not undertake performance audits in FY 2021-22 as:</p> <ul style="list-style-type: none"> <li>Regulations relating to performance audits were not yet in place.</li> <li>Two of the four entities subject to performance audits were yet to be appointed.</li> <li>Entities which had been appointed were still in the start-up and planning stages and many of their functions under the EII Act had not yet been exercised.</li> </ul> <p>In 2023, IPART expects to develop a performance audit framework and prepare a forward work program to audit entities under the EII Act.</p>

<sup>y</sup> In this column In this column, references to sections are to section of the EII Act, while references to clauses are references to clauses of the regulations.

Function area	Ref <sup>y</sup>	Function	Mandatory (Y/N)	Comments
Annual reports	Section 70	<p>The Regulator must prepare an annual report on the exercise of functions under the Act by the consumer trustee, the financial trustee, the infrastructure planner and the Regulator itself.</p> <p>The Regulator must provide the annual report to the Minister no later than 4 months after the end of the financial year to which the report relates and must publish the annual report on its website as soon as reasonably practicable after providing it to the Minister.</p>	Y	<p>This report fulfils the annual reporting function for FY 2021-22.</p> <p>The report will be provided to the Minister by 31 October 2022 and published on IPART's website as soon as reasonably practical thereafter.</p> <p>The report does not report on the exercise of functions by the Financial Trustee as the entity was yet to be appointed at the end of the reporting period. The FY 2022-23 report will include the Financial Trustee.</p>

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- <sup>1</sup> [Instrument of appointment](#), 17 December 2021
  - <sup>2</sup> [Conferral agreement](#), November 2021
  - <sup>3</sup> [Evaluation criteria for appointment of the Consumer Trustee](#), NSW Department of Planning, Industry and Environment EES 2020/0078, March 2021.
  - <sup>4</sup> Minister for Energy, [Guidelines for Access Scheme Declarations](#), July 2022.
  - <sup>5</sup> [Access right tender updates](#), EnergyCo website, accessed on 25 October 2022.
  - <sup>6</sup> [Methodology for refining the Central-West Orana Renewable Energy Zone geographic area](#), EnergyCo, September 2021.
  - <sup>7</sup> [New England Renewable Energy Zone](#), EnergyCo website
  - <sup>8</sup> [Network Authorisation Guidelines \(Draft\)](#), EnergyCo and AEMO Services Ltd, May 2022.
  - <sup>9</sup> [Energy Security Target Monitor](#), NSW Climate and Energy Action website, accessed on 25 October 2022.
  - <sup>10</sup> [Long-Term Energy Service Agreement Design, Consultation paper](#), NSW DPIE, August 2021.
  - <sup>11</sup> [NSW Renewable Energy Sector Board's Plan](#), OECC, September 2022.
  - <sup>12</sup> Section 63(4)(c) of the EII Act
  - <sup>13</sup> Section 30 of the EII Act
  - <sup>14</sup> Clause 45 of the EII Regulation
  - <sup>15</sup> Section 63(4)(a) of the EII Act
  - <sup>16</sup> Clause 43(1)(b) of the EII Regulation
  - <sup>17</sup> [Renewable Energy Zone \(Central-West Orana\) Order 2021](#), 28 October 2021
  - <sup>18</sup> [Renewable Energy Zone \(New England\) Order 2021](#), 10 December 2021
  - <sup>19</sup> [Central-West Orana Transmission Project](#), EnergyCo website
  - <sup>20</sup> [Network Infrastructure Strategy for NSW](#), EnergyCo website
  - <sup>21</sup> Section 63(4)(a) of the EII Act
  - <sup>22</sup> Section 24(5)(a) of the EII Act
  - <sup>23</sup> [Draft guidelines on orders prohibiting connection to network infrastructure in REZs](#), 30 June 2022, EnergyCo website
  - <sup>24</sup> [Central-West Orana REZ](#), EnergyCo website
  - <sup>25</sup> [New England REZ, South-West REZ, Hunter-Central Coast REZ, Illawarra REZ](#), EnergyCo website
  - <sup>26</sup> [Network Infrastructure Strategy for NSW](#), EnergyCo
  - <sup>27</sup> [First Nations Guidelines](#), NSW Government
  - <sup>28</sup> [Evaluation criteria for the Consumer Trustee](#), Department of Planning, Industry and Environment, March 2021
  - <sup>29</sup> Section 45(1) of the EII Act
  - <sup>30</sup> Section 31 of the EII Act
  - <sup>31</sup> Section 60(4)(a) of the EII Act and clause 18 of the EII Regulation
  - <sup>32</sup> Section 47 of the EII Act
  - <sup>33</sup> [LTESA and Access Right Tender Rules](#), AEMO Services Ltd, September 2022
  - <sup>34</sup> [Australian Energy Regulation Consultation](#), AEMO Services Ltd website
  - <sup>35</sup> Section 51(1) of the EII Act
  - <sup>36</sup> Sections 515(1) and 51(2) of the EII Act and clauses 32 and 33 of the EII Regulation
  - <sup>37</sup> [AER letter to Consumer Trustee – Approval of risk management framework](#), 8 July 2022
  - <sup>38</sup> Section 51(4) of the EII Act
  - <sup>39</sup> Section 61(1) of the EII Act
  - <sup>40</sup> Section 61(2) of the EII Act
  - <sup>41</sup> Section 62 and Part 7 of the EII Act
  - <sup>42</sup> Section 26 of the EII Act
  - <sup>43</sup> [NSW Electricity Infrastructure Tenders – Guidelines – Tender Round 1](#), AEMO Services Ltd, September 2022, page 9
  - <sup>44</sup> Part 6 Electricity infrastructure investment safeguard, Division 3 Long-term energy service agreements and Division 4 Operation of long-term energy service agreements, of the EII Act.
  - <sup>45</sup> [First Nations Guidelines](#), NSW Climate and Energy Action website
  - <sup>46</sup> Section 30(4) of the EII Act.
  - <sup>47</sup> [Announcement: First tender for new electricity infrastructure to open October 4](#)
  - <sup>48</sup> [Tenders Webpage](#)
  - <sup>49</sup> [Interactive Session – Competitive Tender Design, LTESA and REZ access rights](#), 7 February 2022
  - <sup>50</sup> [Competitive Tender Design](#), February 2022
  - <sup>51</sup> [Market Briefing One](#), May 2022
  - <sup>52</sup> [Market Briefing Two](#), June 2022
  - <sup>53</sup> [Draft Tender Pack](#), September 2022
  - <sup>54</sup> [AEMO Services Ltd consultation with Australian Energy Regulator](#)
  - <sup>55</sup> [Draft long form contracts: Generation LTESA \(July 22\), LDS LTESA \(July 22\), PDA \(Without Access Rights\) \(July 22\)](#)
  - <sup>56</sup> [Risk Management Framework](#), July 2022
  - <sup>57</sup> Under section 31(1)(a) of the EII Act.
  - <sup>58</sup> Under section 32 of the EII Act.

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- 59 Under section 31 of the EII Act.  
 60 [Risk Management Framework](#), July 2022  
 61 [Conferral Agreement](#)  
 62 Section 38 of the EII Act  
 63 Section 38(5) of the EII Act and clause 47 of the EII Regulation  
 64 [Revenue determination guideline for NSW contestable network projects](#), AER website  
 65 Section 56 of the EII Act  
 66 Section 56(5) of the EII Act  
 67 [Contribution determination guideline under NSW electricity roadmap](#), AER website  
 68 Section 51(3) of the EII Act  
 69 [AER letter to Consumer Trustee – Approval of risk management framework](#), 8 July 2022  
 70 Section 51(1) of the EII Act  
 71 Section 47(6) of the EII Act  
 72 [Provide comments on tender rules for long-term energy service agreements](#), AER website  
 73 [Revenue determination guideline for NSW contestable network projects](#), 19 August 2022  
 74 [Provide comments on tender rules for long-term energy service agreements](#), AER website  
 75 [Risk Management Framework](#), AEMO Services Ltd, July 2022  
 76 [AER letter to Consumer Trustee – Approval of risk management framework](#), 8 July 2022  
 77 [Contribution determination guideline under NSW electricity roadmap](#), September 2022  
 78 [Revenue determination guideline for NSW contestable network projects](#), 19 August 2022  
 79 [Contribution determination guideline under NSW electricity roadmap](#), September 2022  
 80 [Revenue determination guideline for NSW contestable network projects](#), 19 August 2022  
 81 [Instrument of appointment](#), 17 December 2021  
 82 Section 8(1) of the EII Act.  
 83 Schedule 1, cl. 7 of the EII Regulation.  
 84 [Response to the Renewable Energy Sector Board's advice to the NSW Government to build the capacity and capability of the NSW renewable energy sector](#)  
 85 Acil Allen (2022), [Consumer costs and economic benefits for Renewable Energy Sector Board's Plan](#), Report to Department of Planning and Environment, Final Report.  
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 87 Section 67(4) of the EII Act

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