

Agreement – Conferral of
functions on the
Australian Energy
Regulator under the
*Electricity Infrastructure
Investment Act 2020*
(NSW)

The Commonwealth of Australia

The State of New South Wales

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Agreement

Between the parties

Commonwealth **The Commonwealth of Australia**

NSW **The State of New South Wales**

Recitals

1. The AER is established by the CC Act.
2. The NSW Minister has appointed the AER to the position of Regulator under the EII Act on 12 November 2021.
3. The Commonwealth supports the AER's appointment as Regulator under the EII Act.
4. This agreement sets out the conferral of functions, duties, and powers on the AER in accordance with the CC Act, and replaces the previous agreement.
5. The AER's performance of functions, powers and duties in relation to the *National Electricity (NSW) Law* (as modified by the EII Act and EII Regulation), EII Act and EII Regulation will be undertaken on a cost-recovery basis.

Definitions

1. The meanings of the terms used in this agreement are set out below.

Term	Meaning
AER	The Australian Energy Regulator
CC Act	The <i>Competition and Consumer Act 2010</i> (Cth)
Commonwealth	The Commonwealth of Australia
Commonwealth Minister	The Commonwealth Minister with portfolio responsibility for the AER
Department	The NSW Department of Climate Change, Energy, the Environment and Water
EII Act	The <i>Electricity Infrastructure Investment Act 2020</i> (NSW)
EII Regulation	The <i>Electricity Infrastructure Investment Regulation 2021</i> (NSW)
National Electricity (NSW) Law	The National Electricity Law, as a law of NSW pursuant to section 6 of the <i>National Electricity (NSW) Act 1997</i> (NSW)
National Electricity Rules	Has the same meaning as in the National Electricity (NSW) Law
NSW	The State of New South Wales
NSW Minister	The NSW Minister responsible for administering the EII Act
provision	A provision, instrument or order, or an amendment to any provision, instrument or order
Regulator	A person or body appointed under section 64 of the EII Act to exercise the functions, powers and duties of a regulator

Conferral of functions, powers and duties

2. For the purposes of section 44AI(3) of the CC Act:

- (a) The parties agree to the conferral on the AER of the functions, powers and duties outlined in Parts A and B of the Schedule.
- (b) For any new or amended provisions that purport to confer functions, powers, or duties that directly relate to those in Part A or B of the Schedule, the parties agree to the conferral of those functions, powers or duties. This is provided that:
 - i. the new or amended functions, powers or duties are consistent with the functions, powers and duties outlined in Part A or B of the Schedule; and
 - ii. the Department consults in writing with the AER regarding the proposed conferral; and
 - a. as part of consultation, the Department provides the AER with the proposed provisions as soon as practicable;
 - b. the AER provides the Department with written submissions detailing any objections to the proposed conferral, if any, within 20 business days of receipt of the proposed provisions;
 - c. the Department considers those submissions, if any, and prepares a written response, and
 - d. following any written correspondence, the AER indicates in writing that it does not object to the proposed conferral.
- (c) For any new or amended provisions of the EII Act, EII Regulation, *National Electricity (NSW) Law* or National Electricity Rules (as modified by the EII Act and/or EII Regulation) that purport to confer functions, powers or duties on the AER and that are not covered by paragraph (a) or (b) of this clause the parties agree to the conferral of those functions, powers and duties on the AER. This is provided that:
 - i. the Department consults in writing with the AER regarding the conferral of the functions, powers or duties; and
 - a. as part of consultation, the Department provides the AER with the proposed provisions as soon as practicable; and
 - b. the AER provides the Department with written submissions detailing any objections to the proposed conferral, if any, within 20 business days of receipt of the proposed provisions;
 - c. the Department considers those submissions, if any, and prepares a written response; and
 - d. following any written correspondence, the AER indicates in writing that it does not object to the proposed conferral; and
 - ii. the NSW Minister seeks, in writing, the agreement of the Commonwealth Minister to the conferral of the additional function, power or duty; and
 - iii. the Commonwealth Minister responds to the NSW Minister in writing agreeing to the proposed conferral, with such conferral to take effect on the date it is agreed to by the Commonwealth Minister (subject to clause 3).
- (d) Where functions, powers or duties are conferred under paragraph (a), (b), or (c) of clause 2 of this agreement under a provision or law that is not a 'State/Territory energy law' within the meaning of section 4(1) of the CC Act, the Commonwealth

must take necessary steps to prescribe that provision or law as a 'State/Territory energy law' as soon as practicable.

3. Clause 2 gives effect to the conferral of each function, power or duty while:
 - (a) that function, power or duty as described in the Schedule to this agreement, or agreed to be conferred under clause 2(b) or 2(c), is in force;
 - (b) the provision or law which confers that function, power or duty is prescribed as a 'State/Territory energy law' within the meaning of section 4(1) of the CC Act; and
 - (c) the AER is appointed as regulator under section 64 of the EII Act.

Cost recovery

4. The parties agree that the AER will carry out the functions, powers and duties conferred under this agreement on the basis that the AER (through its accountable authority) will recover its actual costs for doing so in accordance with the EII Act which provides for cost recovery in relation to regulator functions. To the extent any costs may not be covered by the EII Act cost recovery mechanism the parties agree those costs will be recovered by the AER from the NSW Government.

Termination and replacement of first conferral agreement

5. The parties agree that from the date the last party signs this agreement, this agreement terminates and replaces the agreement entered in 2021 titled "Agreement – Conferral of functions on the Australian Energy Regulator under the *Electricity Infrastructure Investment Act 2020* (NSW)".

Schedule

A. AER functions as regulator under the EII Act and EII Regulation

Primary Functions

Functions, powers and duties of the regulator	EII Act reference
The functions of the regulator in relation to an access scheme, as specified in a declaration made by the Minister under s 24(1)	s 24
The functions of the regulator in respect of network infrastructure projects	Division 3, Part 5
The power of the regulator to authorise the consumer trustee not to conduct a competitive tender for LTES agreements	s 47(1)
The functions of the regulator in respect of the risk management framework	s 51
The functions of the regulator in respect of making annual contribution determinations	s 56
The functions of the regulator in respect of varying a contribution determination	s 57
The functions of the regulator: <ul style="list-style-type: none"> - to issue guidelines in relation to the exercise of functions by the persons and bodies appointed under the EII Act, and - other functions prescribed by the EII Regulation as at the date of this agreement. 	s 64(4)(a) and (b)
The functions of the regulator in respect to prepare an annual report on the exercise of its functions under the EII Act.	s 70(2)
The functions of the regulator in respect of penalty notices	s 76

Consultation Functions

Function, powers and duties of the regulator	EII Act reference
The function of the regulator of responding to consultation by the Minister in relation to directing a network operator to carry out a priority transmission infrastructure project.	s 34(1)
The function of the regulator of responding to consultation by the Minister in relation to network operator authorisations under s 36(2) of the EII Act.	s 36(3)
The function of the regulator of responding to consultation by the Consumer Trustee in relation to rules under s 47(5) of the EII Act with respect to competitive tenders for LTES agreements.	s 47(6)

B. AER functions under the National Electricity (NSW) Law and National Electricity Rules

Functions, powers and duties of the AER	Reference
The functions, powers and duties of the AER under the <i>National Electricity (NSW) Law</i> , as modified by the EII Act (as amended by the <i>Energy Amendment (Long Duration Storage and Investment) Act 2024</i> (NSW)).	s 80 and Schedule 2 of the EII Act
The functions, powers and duties of the AER under the National Electricity Rules as modified by the EII Regulation (as amended by the <i>Electricity Infrastructure Investment Amendment (Functions) Regulation 2024</i> (NSW)).	cl 59 of the EII Regulation

Executed as an agreement

Signed on behalf of the State of New South)
Wales by the **Minister for Energy in New**)
South Wales)

[Redacted Signature]

Signature

[Redacted Witness Signature]

Witness's signature

The Honourable Penny Sharpe MLC,
Minister for Energy

[Redacted Witness Name]

Name of witness

Date: 4/2/25

Signed on behalf of the Commonwealth of)
Australia by the **Minister for Climate**)
Change and Energy of the)
Commonwealth of Australia)

[Redacted Signature]

Signature

[Redacted Witness Signature]

Witness signature

The Honourable Chris Bowen MP, Minister for
Climate Change and Energy

[Redacted Witness Name]

Name of witness

Date: 08/03/21