

AVOIDING BILL SHOCK: WHAT YOU NEED TO KNOW ABOUT THE ELECTRICITY INFRASTRUCTURE INVESTMENT BILL 2020 (NSW)

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WHAT HAS HAPPENED?

As covered in our previous article [here](#), the NSW Government released its [Electricity Infrastructure Roadmap](#) (the Roadmap) on 9 November 2020. The Roadmap sets out a framework to deliver a modern electricity system which could set NSW up to be a "global energy superpower".

Since then, the *Electricity Infrastructure Investment Bill 2020 (NSW)* (Bill) was introduced to give legal effect to the key features of the Roadmap. The Bill has now passed both houses of the NSW Parliament with the support of all major parties, although the lower house will need to confirm its agreement to some minor amendments made in the upper house before the Bill can be sent for assent and become law. The new legislation will commence on a date to be appointed by proclamation.

WHY IS IT IMPORTANT?

New South Wales (NSW) is at a critical juncture in its energy journey.

Four of NSW's five coal fired power stations (which currently provide 75% of NSW's energy supply) are scheduled to close over the next 15 years, starting in 2022. This opens up vast opportunities for the renewables sector to fill this gap. It is estimated that that AU\$5.1 billion of long-duration energy storage and between AU\$22.4 and AU\$33.6 billion of wind and solar investment will be required to meet the energy requirements of NSW and maintain a reliable supply.

While NSW has some of the best renewable energy and pumped hydro resources in the world, the current NSW electricity system has not been able to harness this power.

The Roadmap represents a 'whole of system approach' to deliver new generation, transmission and long duration storage and firming, based on five key pillars:

1. Investment into regional NSW
2. Energy storage infrastructure
3. Renewable Energy Zones
4. Grid security and reliability
5. Harnessing industry opportunity.

It is expected that the Roadmap will deliver AU\$32 billion in private sector investment by 2030 and support 6,300 construction jobs and 2,800 ongoing jobs in 2030, mostly in regional NSW.

KEY FEATURES OF THE ROADMAP AND THE BILL

Renewable Energy Zones (REZs)

REZs are the centrepiece of the Roadmap. REZs are intended to function as "the modern-day equivalent of traditional power stations".

Under the Bill, the Minister has the power to declare REZs comprising of specified geographical areas and specified electricity infrastructure with or without an application, subject to some procedural steps.

Three REZs were proposed in the Roadmap, but a further two REZs were included in the Bill arising from amendments. The Minister will now initially declare five REZs, being:

6. Central-West Orana with an intended capacity of 3GW (see indicative map [here](#));
7. Illawarra (map not yet available);
8. New England with an intended capacity of 8GW (see indicative map [here](#));
9. South West (map not yet available); and
10. Hunter-Central Coast (map not yet available).

The existence of an REZ enables other features of the Bill (outlined below), however, there is nothing in the Bill which provides for fast-tracking of renewable energy projects in REZs. This is despite the NSW Government's commitment in the Roadmap to support planning processes for REZ projects.

We anticipate that any changes to planning processes for REZs will be achieved:

- administratively (as per the Department's current *Planning System Acceleration Program*); and
- potentially, through reforms to environmental planning instruments or the *Environmental Planning and Assessment Act (1979) (NSW)* (EP&A Act), which would be progressed via the Minister for Planning and Public Spaces (rather than the Minister for Energy and Environment who is responsible for this Bill).

New power to shut down controversial energy projects in REZs

A somewhat counterintuitive inclusion in the Bill is a new power for Energy Corporation of NSW to *prohibit* the connection to the grid of new generation or storage projects of greater than 30MW which are significantly opposed by the community and do not yet have development consent under the EP&A Act (subject to the control or direction of the Minister for Energy and Environment). This presents a risk for renewables projects within REZs which does not exist in areas outside REZs.

To mitigate the risk of renewables developments being shut down in REZs, we recommend that developers:

11. implement stakeholder engagement strategies at an early stage;
12. design projects around significant constraints or concerns;
13. foster support from local communities and government; and

14. ensure that planning applications and associated environmental assessments are legally reviewed and refined in consultation with community and government.

Investment in REZ Network Infrastructure

The Roadmap and the Bill create a new framework to support investment in the network to enable renewables generation in REZs and create more certainty for investors.

Key elements of the framework include:

- Access schemes for REZs to ensure strategic and optimal use of new transmission infrastructure through coordinated investment in transmission infrastructure and community benefit projects, funded by participants in the access scheme.
- A "consumer trustee" who will represent the interests of NSW consumers and:
 - authorise proposed REZ network infrastructure projects; and
 - make recommendations to the Minister about REZ network infrastructure projects.
- An "infrastructure planner" who will coordinate the design and development of REZs and will make recommendations to the consumer trustee about REZ network infrastructure projects.
- A power for the Minister to direct network operators to carry out:
 - network infrastructure projects in REZs on recommendation of the consumer trustee; or
 - priority transmission infrastructure projects, where needed for energy security.
- A cost-recovery process for network operators who carry out REZ network infrastructure projects or priority transmission infrastructure projects to recover costs:
 - at an amount determined by an appointed "regulator"; and
 - paid by a scheme financial vehicle (being a company limited by shares under the *Corporations Act 2001* to be established by a "financial trustee") through a new Electricity Infrastructure Fund (described below).
- New regulation-making powers to switch off or modify provisions of the *National Electricity (NSW) Law* (NEL) or the *National Electricity Rules* (NER) with concurrence of AEMO, including to create REZ-specific rules.

Investment in Energy Security and Firming Capacity

The Roadmap identifies the need for investment in storage and firming capacity due to the variability of wind and solar generation.

To ensure that the State has sufficient firming capacity and reliable electricity supply, the Bill provides for:

- A new "energy security target monitor" with information gathering powers to calculate and report on annual energy security targets to ensure that sufficient capacity is available in the network at peak times.
- An "electricity infrastructure investment safeguard" comprising of:

- legislated objectives for new infrastructure;
- a process for the consumer trustee to plan the development pathway to construct new generation, long duration storage and firming infrastructure; and
- long-term energy service agreements (LTES Agreements) awarded through a competitive tender process run by the consumer trustee.

LTES Agreements will be derivative agreements which:

15. provide for the construction and operation of new renewable energy or storage infrastructure; and
16. give developers an option to exercise a financial derivative arrangement to give certainty that the project can earn an agreed minimum level of revenue.

Put simply, under LTES Agreements, consumers will underwrite the risk of network infrastructure projects through the scheme financial vehicle.

The LTES Agreements will have provisions to encourage projects to come online quickly and are intended to provide a major incentive for investors.

Electricity Infrastructure Fund

The Bill creates a new Electricity Infrastructure Fund (Fund) for the scheme financial vehicle to meet its liabilities, including to pay for network infrastructure projects and to meet its liabilities under LTES Agreements.

The Bill requires money to be paid into the Fund, including by participants in access schemes and distribution network service providers (DNSPs).

The Fund essentially provides a mechanism for consumers and participants to pay for investment in network infrastructure, although it is touted that households will overall save money on their electricity bills under the reforms.

New Board, Plan and Advocate of Jobs in the Renewable Sector

Jobs and economic development are key policy drivers of the Roadmap, and the Bill was amended through parliament to include additional provisions to "ensure that no regional community will be left behind".

In particular, the Bill:

- includes objects and reforms focussed on local jobs and economic development, including local manufacturing, education and training, and employment for Aboriginal and Torres Strait Islander people;
- establishes a NSW renewable energy sector board to be appointed by the Minister with industry, union and consumer representatives;
- requires the new board to develop a plan for the NSW renewable energy sector (which may then be approved by the Minister) setting out how network infrastructure can support local producers, local jobs and local training opportunities;
- requires the Minister and consumer trustee to take the plan into account when exercising functions under the legislation; and

- provides for the appointment of a new electricity infrastructure jobs advocate to provide advice to the Minister.

Funding for Green Hydrogen

Hydrogen is rapidly developing as a global energy source, as discussed in our [Hydrogen Rising podcast](#) and [The H₂ Handbook](#).

The Bill provides positive support towards developing green hydrogen by including a new legislative commitment of AU\$50 million in funding to develop the green hydrogen sector from 2021 and 2030 out of the Climate Change Fund.

WHAT IT MEANS FOR RENEWABLES PROJECTS

The Roadmap and the Bill demonstrate that the NSW Government is committed to supporting renewable energy projects through investment in infrastructure to enable large-scale generation, storage and transmission.

While it is not yet clear what reforms will be made to facilitate planning approvals in REZs, we expect that the new REZs will facilitate development for renewables projects where developers can demonstrate that the project:

- has support of the local community;
- will create significant economic benefits and employment in NSW; and
- delivers benefits in terms of energy security and reliability.

Please contact us if you would like more information on the specific implications which the Roadmap and Bill may have on your NSW projects.

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