

Guidelines for Access Scheme Declarations

Consultation Draft, February 2024





Acknowledgement of Country

The NSW Government acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Guidelines for Access Scheme Declarations

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CONSULTATION DRAFT

Introduction

Renewable Energy Zone (REZ) access schemes coordinate NSW energy infrastructure investment by managing the access to and use of specific network infrastructure by network operators and generation and storage infrastructure operators. They are fundamental to realising the objectives of the Electricity Infrastructure Roadmap, the *Electricity Infrastructure Investment Act 2020* (the Act) and the Infrastructure Investment Objectives Report.

Access schemes:

- encourage investment in new generation and storage projects in REZs by reducing risk for investors
- enable coordination of investment in new generation, storage, network and related infrastructure
- support improved land-use planning outcomes
- foster local community support for investment in new generation storage, network and related infrastructure
- support local economic development, local industry, manufacturing and jobs
- increase employment and income opportunities for First Nations people and promote consultation and negotiation with the traditional owners of land on which generation and storage projects in REZs are constructed or operated.

The Minister must publish guidelines about the exercise of his or her functions in relation to the declaration of access schemes.¹

What is an access scheme?

An access scheme is a set of rules, terms and conditions that govern the use of specified network infrastructure within a REZ (as specified in a REZ declaration). They provide a range of benefits to generators and investors by controlling how projects connect to REZs and defining their rights to access the REZ scheme network. These include:

- encouraging efficient investment in energy infrastructure to deliver better consumer outcomes
- providing sufficient certainty to generation and storage proponents
- ensuring efficient utilisation of network infrastructure.

¹ Section 25(1) of the Act.

To achieve this, an access scheme may authorise or prohibit access to, and use of, infrastructure in a REZ by network operators and operators of generation and storage infrastructure.² It may include the following components:

- **access rights regime** – authorises access to specified network infrastructure in a REZ according to the terms in a REZ access scheme declaration
- **access control mechanism** – places limits on how specified network infrastructure in a REZ is accessed and used.

These components intend to provide certainty for generation and storage projects, promote efficient utilisation of REZ infrastructure and improve connection processes.

Purpose of the guidelines

The guidelines provide information on how the Minister will exercise the function of declaring access schemes under the Act.

It is important that regulatory instruments facilitating access schemes are flexible so the unique opportunities and challenges of each REZ can be met. The Minister may depart from the guidelines to address the unique characteristics of each REZ. The guidelines support the development of an access scheme declaration by including the:

- purposes of an access scheme declaration
- elements of an access scheme that may be included in the declaration
- process the Minister will follow when exercising the function of declaring access schemes
- considerations for the Minister in making decisions.

These guidelines do not restrict the operation of section 24 or other provisions of the Act. If there is any inconsistency between these guidelines and the Act, the Act prevails to the extent of the inconsistency.

The guidelines do not provide information on other regulatory, procedural or contractual arrangements that may be necessary to implement an access scheme. They do not, for example, include information on:

- **setting access fees** – the consumer trustee determines access fees payable by participants in an access scheme and will notify participants of the access fees payable by them for participation in the scheme
- **contracts** that access rights holders may enter into as a condition of access
- **regulations** to modify the NSW application of the National Electricity Law and National Electricity Rules to enable the operation of access schemes.

² Section 24(2) of the Act.

Terms and phrases

The terms and phrases in this guideline have the same meaning as in the Act and are defined in the table below.

Term/phrase	Definition
Access control mechanism	A mechanism that governs the access of persons to a specified part of the access scheme network other than the access rights network
Access rights network	Specified network infrastructure forming part of a REZ to which an access rights regime applies
Access rights regime	An access mechanism that requires generation or storage projects seeking access to specified network infrastructure in the renewable energy zone to hold access rights. Terms and conditions of the regime are included in an access scheme
Access scheme	<p>A scheme that authorises or prohibits access to, and use of, specified network infrastructure in a REZ by network operators and operators of generation and storage infrastructure.³</p> <p>An access scheme may include an access rights regime (authorise access) and an access control mechanism (limits on how infrastructure is used)</p>
Access scheme declaration	An order made by the Minister under section 24 of the Act that declares the access scheme that is to apply in a REZ or in part of a REZ
Access scheme network	Specified network infrastructure forming part of a REZ to which an access scheme declaration applies an access scheme. This includes infrastructure to which an access rights regime or an access control mechanism applies
Act	<i>Electricity Infrastructure Investment Act 2020 (NSW)</i>
Department	Office of Energy and Climate Change
Minister	The NSW Minister for Energy
Renewable energy zone	The geographical area of the state and the infrastructure specified in a declaration made by the Minister under section 19 of the Act

³ Section 24(2) of the Act.

Section 1: Access scheme declarations explained

Access scheme declarations made under Section 24 of the Act are a key mechanism to enable REZs and enliven access schemes. They provide the legislative basis for key components of the REZ delivery and define how an access scheme will operate.

At any time after the declaration of a REZ, the Minister may declare an access scheme that applies in that REZ. The access scheme must be consistent with the objects of the Act. A REZ may have more than one access scheme.

The purpose of an access scheme declaration is to:

- specify the network infrastructure in a REZ that the access scheme applies to and define the rights of parties to access and use that network infrastructure
- notify stakeholders that an access scheme applies in a REZ or part of a REZ
- where an access rights regime is established, articulate a process for
 - the allocation of access rights
 - the administration of the scheme.

Access scheme declarations provide important information to investors and National Electricity Market participants to enable them to understand the nature and value of access rights. They also provide clarity for host communities about the management of the access scheme that applies to the REZ.

Section 2: Contents of an access scheme declaration

This section outlines the contents of an access scheme declaration.

Under the Act, an access scheme declaration may specify:

- the person or body who will administer the access scheme, which is intended to be Energy Corporation of NSW as the Infrastructure Planner for the first 5 REZs identified in the Act
- the roles and responsibilities of entities under the access scheme including, as applicable, the roles and responsibilities of the infrastructure planner for the relevant REZ, the consumer trustee, the scheme financial vehicle, the regulator, relevant network operators and participants
- the rights and liabilities of the scheme financial vehicle in relation to the access scheme
- the terms and conditions of access rights
- the terms under which amendments to the access scheme declaration may be made
- other matters prescribed by regulation.⁴

⁴ Section 24(5) of the Act.

Network infrastructure

An access scheme authorises or prohibits access to, and use of, specified network infrastructure in a REZ. Specifying the network infrastructure to which an access scheme applies is therefore a key element of an access scheme declaration.

An access scheme declaration may specify all or a subset of the network infrastructure that forms part of a REZ as identified in a declaration under section 19 of the Act.

In specifying the access scheme network and determining the mechanisms that will be used to authorise and prohibit access to that network infrastructure, the Minister will act consistently with the objects of the Act. The Minister also intends to consider the unique characteristics and needs of each REZ when specifying an access scheme network, including the:

- mix of existing and new network infrastructure in the REZ
- built and natural environments within the REZ geographic area
- communities impacted by the implementation of a REZ access scheme
- energy resources and investor interest.

Where the Minister proposes to specify existing infrastructure as forming part of an access scheme network the Minister may include terms in the access scheme declaration to prevent impacts on parties such as generation or storage proponents that are already connected to the relevant network, or that are substantially progressed in their development or in the connection process.

Access rights regime

An access scheme may include an access rights regime under which parties such as generation or storage proponents who wish to connect to specified network infrastructure in a REZ or part of a REZ (the access rights network) are required to hold access rights. The objectives of an access rights regime include:

- ensure strategic and optimal use of the access rights network, maximising benefits to consumers
- reduce risks for investors, encouraging efficient investment in new generation and storage projects in REZs.

If an access scheme includes an access rights regime, the Minister may include:

- **persons that the access rights regime applies to** – eligible generation and storage proponents seeking connection to the access rights network
- **process for the allocation of access rights** – the declaration may place certain rules on the method, quantum and timing of access rights allocation. In determining any process for allocating access rights, the Minister may have regard to the purposes of the access scheme and the declaration set out in the Act
- **conferral of access rights** – including any pre-conditions to the grant of access rights; for example, the access scheme declaration may specify contractual arrangements between participants and the infrastructure planner, the scheme financial vehicle or another person
- **duration of access rights** – including whether, and in what circumstances, an access right can be extended or terminated

- **register of access rights** – how access rights will be recorded or registered; for example, requiring that the access scheme administrator or another party makes and maintains an access rights register and specifying the contents of, and access to, the register
- **impact on network operators** – how an access rights regime applies to network operators, including those seeking connection to the access scheme network such as distribution network service providers
- **transfer of access rights** – including any circumstances in which access rights may be surrendered, reallocated or transferred and whether access rights are tradable
- **other terms, conditions and scheme design elements** the Minister considers appropriate for inclusion. This may include the process to connect to the access rights network, and other details on the nature of the right and curtailment objectives to deliver efficient network utilisation.

Designing an effective access scheme will help ensure REZs deliver their intended outcomes. Whilst the Minister will consider unique characteristics of each REZ when declaring an access scheme, the following positions are expected to form the basis of any access regime that is included in access schemes for the 5 REZs specified in the Act.

- **A physical connection model** – places limitations on the size, nature and operation of generators with an access right based on a targeted level of transmission curtailment. This model provides investor confidence by physically restricting the capacity of generation and storage that can connect to the REZ network. This is distinct from an alternative, more complex financial model where access right holders are compensated when they are curtailed due to other projects
- **Competitive allocation Allocation of access rights** – the primary method for the initial allocation of access rights is through a the consumer trustee's competitive tender process or, from time to time, an application process run by the infrastructure planner.
- **Process for the allocation of access rights** to provide efficient network utilisation. Allocation of access rights may have regard to:
 - **curtailment objectives** that provide a process to set a target transmission curtailment level to deliver efficient network utilisation of the access rights network
 - **initial allocation** through which rights are awarded up to a physical cap at an efficient level above the REZ's intended network capacity set out in the declaration to meet curtailment objectives
 - **headroom assessment** including an assessment of actual network utilisation relative to the curtailment objectives to determine if additional allocations can be made in accordance with a methodology set out in the declaration
 - **market-led augmentations** allowing the market to propose network augmentations to expand the REZ's intended network capacity in accordance with a methodology set out in the declaration
- **Streamlined connection** – access right holders may follow a streamlined process to connect to the access rights network to achieve efficiencies for projects and network operators

Access control mechanism

Parties connecting to network infrastructure in the REZ (other than the access rights network) could impact access right holders.⁵ To safeguard the objectives of an access rights regime, mechanisms for access control may be included in the access scheme. This mechanism may include controlling the access of parties to a specified part of the access scheme network other than the access rights network.

The unique characteristics of each REZ will inform the need for any access control mechanism and the method of access control.

Section 3: Access scheme enforcement

An access scheme declaration may specify an enforcement framework, including:

- the roles of the access scheme administrator, regulator, or other entities (as relevant) in enforcing the access scheme
- any circumstances in which access right holders must surrender access rights under an access rights regime
- any circumstances in which a project may have its approval to connect to the access scheme network under an access control mechanism revoked.

In determining the enforcement framework, the Minister may consider the following matters:

- the potential impacts of a breach of a term or condition of access, including impacts on access right holders, local communities and First Nations people
- any other regulatory or contractual mechanisms available to enforce compliance with the terms and conditions of the access scheme
- the desirability of using remedial rather than punitive enforcement mechanisms.

Section 4: Process for declaring an access scheme

The Minister may declare an access scheme at any time following the declaration of a REZ. Before making a final declaration the Minister will:

- consult with the infrastructure planner for the relevant REZ
- consult with relevant operators who may be affected by the declaration
- make a draft declaration publicly available on the department's website for at least 28 days
- seek and consider submissions from the public (including representatives of NSW electricity consumers, local regional communities, and First Nations people) on the draft declaration.

The access scheme declaration will be published in the NSW Gazette and on the department's website.

⁵ For example, by increasing their curtailment risk or changing the marginal loss factors applicable to their projects.

Section 5: Amending or repealing an access scheme declaration

Amending an access scheme declaration

The Minister may amend a declaration of an access scheme only:

- to correct a minor error or misdescription
- to provide further details and specifications about information contained in the declaration
- if there are no participants in the access scheme immediately before the declaration is amended, or
- if the amendment is made in accordance with the terms of the access scheme.

Repealing an access scheme declaration

The Minister may repeal a declaration of an access scheme only if:

- there are no participants in the access scheme immediately before the repeal, or
- the repeal is made in accordance with the terms of the access scheme.

CONSULTATION DRAFT

Appendix A: Section 24 of the *Electricity Infrastructure Investment Act 2020*

24 Minister may declare access scheme for renewable energy zone

- (1) The Minister may, by order published in the Gazette, declare the access scheme that is to apply in a renewable energy zone or part of a renewable energy zone.
- (2) An access scheme is a scheme that authorises or prohibits access to, and use of, specified network infrastructure in a renewable energy zone by network operators and operators of generation and storage infrastructure.
- (3) An access scheme must be consistent with the objects of this Act.
- (4) There may be more than one access scheme for a renewable energy zone.
- (5) A declaration may also specify the following matters in relation to the access scheme —
 - (a) the person or body who is to administer the access scheme,
 - (b) how access rights are to be conferred on participants, which may include contractual arrangements between participants and the infrastructure planner, the scheme financial vehicle or another person,
 - (c) the terms and conditions of access rights,
 - (d) the functions of the regulator in relation to the access scheme,
 - (e) the rights and liabilities of the scheme financial vehicle in relation to the access scheme,
 - (f) other matters prescribed by the regulations.
- (6) Before making a declaration, the Minister must —
 - (a) consult with the infrastructure planner and relevant operators who may be affected by the declaration, and
 - (b) make a draft declaration publicly available on the Department's website for at least 28 days, and
 - (c) seek and consider submissions from the public on the draft declaration.
- (7) A declaration is to be published on the Department's website.

Appendix B: Objects of the *Electricity Infrastructure Investment Act 2020*

3 Objects of Act

- (1) The objects of this Act are —
 - (a) to improve the affordability, reliability, security and sustainability of electricity supply, and
 - (b) to co-ordinate investment in new generation, storage, network and related infrastructure, and
 - (c) to encourage investment in new generation, storage, network and related infrastructure by reducing risk for investors, and
 - (d) to foster local community support for investment in new generation, storage, network and related infrastructure, and
 - (e) to support economic development and manufacturing, and
 - (f) to create employment, including employment for Aboriginal and Torres Strait Islander people, and
 - (g) to invest in education and training, and
 - (h) to promote local industry, manufacturing and jobs, and
 - (i) to promote export opportunities for generation, storage and network technology.
- (2) The following objects also apply to Parts 4–6 —
 - (a) to increase employment and income opportunities for Aboriginal and Torres Strait Islander people in New South Wales, and
 - (b) to promote consultation and negotiation with the traditional Aboriginal owners of land on which generation, storage and network infrastructure is proposed to be constructed or operated under this Act.
- (3) A person or body exercising a function under this Act must do so in a way that is consistent with the objects of this Act.