

# Appointment Agreement

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New South Wales Treasury acting for and on behalf  
of the Crown in right of the State of New South  
Wales

Independent Pricing and Regulatory Tribunal of  
NSW

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# Appointment Agreement

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Date ►

Between the parties

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NSW Treasury                    **New South Wales Treasury acting for and on behalf of the Crown in right of the State of New South Wales**  
of 52 Martin Place, Sydney, NSW 2000  
**(Treasury)**

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IPART                                **Independent Pricing and Regulatory Tribunal of NSW**  
(49 202 260 878)  
of Level 16, 2 Rawson Place, Haymarket. NSW 2000  
**(IPART)**

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Recitals

- 1 IPART will carry out the Regulator Functions under section 8 of the EII Act and any other Regulator Functions which are not conferred on another person or entity from time to time.
- 2 The Minister appointed IPART as Regulator on 17 December 2021 under section 64(1) of EII Act to exercise Functions.
- 3 This Agreement details the practical arrangements between the parties to give effect to the conferral of Functions under the Instrument of Appointment.

# 1 Definitions and interpretation

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## 1.1 Definitions

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

<b>Term</b>	<b>Meaning</b>
<b>Business Day</b>	a day that is not: 1 Saturday or Sunday; or 2 observed as a public holiday in NSW.
<b>Treasury</b>	New South Wales Treasury, constituted as a Public Service agency listed in Schedule 1, Part 1 of the <i>Government Sector Employment Act 2013</i> (NSW).
<b>Effective Date</b>	the date that this Agreement is executed.
<b>EII Act</b>	the <i>Electricity Infrastructure Investment Act 2020</i> (NSW).
<b>Electricity Infrastructure Fund</b>	the electricity infrastructure fund established under section 53 of the EII Act.
<b>Electricity Infrastructure Taskforce</b>	the implementation group for the Electricity Infrastructure Roadmap policy established for the purposes of implementing, monitoring, reviewing and contributing to the effective achievement of policy outcomes related to the Electricity Infrastructure Roadmap and EII Act through cooperation and collaboration between the Taskforce Members. To avoid doubt, the Electricity Infrastructure Taskforce will not have any decision-making or approval rights with respect to the decisions of IPART.
<b>Energy Corporation</b>	the Energy Corporation of New South Wales constituted by section 7 of the <i>Energy and Utilities Administration Act 1987</i> (NSW).

**Functions** the functions, powers and duties of IPART as Regulator under the EII Act referred to in section 64(4) and as conferred in the Instrument of Appointment signed on 17 December 2021, which include the functions conferred under section 8 of the EII Act and any other Regulator Functions not conferred on another person, or entity under the EII Act, or another Act or law referred to in section 64(4)(c) of the EII Act from time to time.

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**Government Agency** any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

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**Instrument of Appointment** the instrument under which the Minister appoints IPART as the Regulator under the EII Act.

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**Minister** The Minister for Energy of New South Wales

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**Regulator** the person or entity appointed as the Regulator under section 64 of the EII Act for the purposes of carrying out the Regulator Functions under section 8 of the EII Act and any other Regulator Functions which are not conferred on another person, or entity under the EII Act, or another Act or law referred to in section 64(4)(c) of the EII Act from time to time.

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**Scheme Financial Vehicle** the scheme financial vehicle established under section 62 of the EII Act.

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**State of New South Wales** the Crown in right of the State of New South Wales, acting through the New South Wales Treasury

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**Taskforce Members** Treasury, AEMO, the Energy Corporation, the Consumer Trustee (AEMO Services Limited (ABN 59651198364)) and any other persons upon whom a function is (or may in the future be) conferred under or in connection with the EII Act and who are subject to a reciprocal obligation or commitment to collaborate (as notified in writing to IPART by Treasury).

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## 1.2 Interpretation

In this Agreement:

- (a) Headings and boldings are for convenience only and do not affect the interpretation of this Agreement.

- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Agreement and a reference to this Agreement includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes:
  - (1) all amendments or supplements to, or replacements or novations of, that document; and
  - (2) any agreement in writing, or any certificate, notice, instrument or other document of any kind.
- (i) A reference to a party to a document includes the successors and permitted assignees.
- (j) A reference to an agreement other than this Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (k) A reference to an opinion, calculation, consent or approval is to an opinion which is held, a calculation which is made or consent or approval which is given, respectively, in good faith.
- (l) A reference to function includes duty and a reference to power includes authority;
- (m) A reference to a body, (including an institute, association, authority, group or taskforce), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) the powers or functions of which are transferred to another body,is a reference to the body which replaces it or substantially succeeds to its powers or functions.
- (n) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

### **1.3 Interpretation of inclusive expressions**

Specifying anything in this Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### **1.4 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## 1.5 Agreement components

This Agreement includes any schedule.

## 2 Effective Date

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- (a) The date that this Agreement is executed.
- (b) For completeness, the parties acknowledge that as at the Effective Date IPART is yet to exercise functions as the default regulator under section 64(4) of the EII Act, or as the appointed Regulator.

## 3 Term

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### 3.1 Term of Appointment

- (a) The term of appointment of IPART as the Regulator is set out in the Instrument of Appointment and commences on and from the Effective Date.
- (b) For Regulator Functions under section 8 of the EII Act, the appointment will end on the occurrence of either:
  - (i) the appointment is terminated under section 68 of the EII Act and another person or entity is appointed by the Minister to undertake section 8 regulator function(s); or
  - (ii) IPART resigns the appointment under section 69 of the EII Act and another person or entity is appointed by the Minister to undertake section 8 regulator function(s).
- (c) For Regulator Functions which are not conferred on another person, or entity under the EII Act, or another Act or law referred to in section 64(4)(c) of the EII Act, IPART will continue to be the default regulator until that appointment is suspended by the Minister appointing another person or entity to undertake the particular function(s) from time to time.
- (d) For the avoidance of doubt, the parties acknowledge that IPART's obligation to exercise Functions as Regulator for any Function(s) described in clause 4(b) may change from time to time. If the Minister appoints another person or entity to exercise all or part of those Function(s), the parties agree that IPART's obligations under this Agreement will be suspended for the duration of that appointment, to the extent IPART's obligations relate to Functions that another person or entity has been appointed to exercise.

### 3.2 Transitional Arrangements

- (a) In the event of a termination or resignation under section 68 or section 69 of the EII Act and a new regulator is to be appointed to carry section 8 regulator functions, IPART must:
  - (1) enter into such transitional arrangements as are reasonably required to efficiently and effectively transfer some or all of the Functions of the Regulator to the incoming regulator; and

- (2) where possible and subject to any restrictions on the use or disclosure of information under the law, provide Treasury and the incoming regulator with access to all relevant information.
- (b) In the event the Minister appoints a regulator to carry out any Regulator Functions otherwise conferred on IPART from time to time (referred to in clause 4(b) of this Agreement), IPART must:
  - (1) support the transition of the regulator as reasonably required to transfer responsibility of the Function(s) so conferred efficiently and effectively;
  - (2) work collaboratively with the regulator to undertake the Function(s) so conferred, if required;
  - (3) where possible and subject to any restrictions on the use or disclosure of information under the law, provide Treasury and the incoming regulator with access to all relevant information; and
  - (4) work efficiently and effectively with the regulator in its transition back as the Regulator exercising the particular Function(s) upon the termination, resignation, or expiration of the appointment of the person or entity undertaking the Function(s) from time to time.
- (c) The State of New South Wales will reimburse IPART for all costs, charges and expenses incurred by IPART (including reasonable demobilisation costs and any redundancy costs to the extent directly attributable to such termination) in:
  - (1) ceasing to perform the Functions of the Regulator (temporarily or permanently); and
  - (2) transferring and transitioning any Function(s) and responsibilities to a subsequent regulator or in relation to its transition back as the Regulator exercising any Function(s) referred to in clause 4(b).

## 4 Work to be performed

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- (a) IPART will carry out the Regulator Functions under section 8 of the EII Act; recommending the NSW renewable energy sector board plan to the Minister if it is satisfied that the plan:
  - (1) protects the financial interests of NSW electricity customers, and
  - (2) is consistent with Australia's international trade obligations.
- (b) IPART will carry out any other Regulator Functions which are not conferred on another person or entity under the EII Act, or another Act or law referred to in section 64(4)(c) of the EII Act, from time to time.

## 5 Regulator obligations

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- (a) For the duration of its appointment as Regulator, IPART must:
  - (1) carry out the Functions of the Regulator under section 8 EII Act in accordance with the requirements of the EII Act, including any relevant regulations enacted or orders made under the EII Act, or another Act or law;



- (2) carry out any other Regulator Functions which are not conferred on another person or entity under the EII Act, or under another Act or law referred to in section 64(4)(c) of the EII Act from time to time;
  - (3) co-operate in relation to any review undertaken under section 78 of the EII Act and in relation to an audit undertaken in accordance with any regulation made pursuant to section 67(4) of the EII Act; and
  - (4) fully participate in the Electricity Infrastructure Taskforce, and co-operate and collaborate with the other Taskforce Members, in order to contribute to the achievement of the purposes and objectives of the EII Act.
- (b) For the avoidance of doubt, nothing in clause 5(a)(4) requires IPART to provide any data that is protected information under any law or is otherwise subject to a confidentiality obligation.

## 6 Future Functions

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- (a) Treasury will consult with IPART in relation to any amendments to the EII Act (or any other regulation or law referred to in section 64(4)(c) of the EII Act) that it considers directly relate to IPART's performance of existing Functions or confers additional functions on IPART at the earliest opportunity.

## 7 Costs and Invoicing

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### 7.1 Costs required for the Functions

- (a) The parties agree that IPART will provide Treasury with a cost estimate for the work to be performed before undertaking its work as Regulator.
- (b) The parties agree that IPART will charge Treasury in arrears for the work undertaken as the Regulator on a salary cost (or partial salary cost), and time and material basis.
- (c) The parties agree that the salary cost referred to in clause 7(b) will be escalated annually in line with public sector salary changes.
- (d) The parties agree that in the event that IPART engages consultancy services in the performance of its Functions, the costs will be charged to Treasury on a cost pass through and a time and material basis.
- (e) The parties agree that IPART is entitled to fully recover the costs IPART incurs from or in connection with carrying out the Functions on a non-profit basis, including any liabilities and a reasonable allocation of insurance costs and overhead costs.
- (f) The parties agree that IPART will keep Treasury reasonably informed of the costs it has incurred in undertaking its Functions, including (where practicable) by:
  - (1) keeping Treasury reasonably informed about the estimated costs for consultancy services;
  - (2) providing periodic cost reporting (against estimates where practicable); and

- (3) keeping Treasury informed when workstreams are likely to incur material increases in costs.

## **7.2 Payments from the Department**

- (a) Treasury will pay IPART amounts equal to the costs required to enable IPART to exercise the Functions under the EII Act on a non-profit basis, in accordance with clauses 4, 5, 6, and 7.

## **7.3 Invoicing Arrangements**

- (a) IPART will issue an invoice to Treasury setting out its professional fees on completion of the work set out in clause 4 quarterly, in arrears, until the Electricity Infrastructure Fund has sufficient money to cover IPART's costs.
- (b) Treasury will notify IPART in writing when the Electricity Infrastructure Fund has sufficient money to cover IPART's costs.
- (c) After receiving written notification in accordance with clause 7.3(b), IPART will invoice the Scheme Financial Vehicle quarterly, in arrears.

# **8 Acknowledgements**

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## **8.1 IPART to act independently**

The parties acknowledge that in performing the Functions, IPART will not be subject to the control or direction of the Minister, unless any such control or direction is required or permitted under the EII Act, or under another Act or law.

# **9 General**

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## **9.1 Governing law**

This document is governed by the laws of New South Wales.

## **9.2 Variation**

A variation of any term of this Agreement must be in writing and signed by the parties.

## **9.3 Counterparts**

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.

## **9.4 Assignment of rights**

Rights arising out of or under this document are not assignable by a party without the prior written consent of the other parties.

## 9.5 Termination

- (a) Clauses 3.2, 5(a)(3), 7 and 9 survive termination of this Agreement for any reason.

Signing page

Executed as an Agreement

Signed sealed and delivered by **New South Wales Treasury acting for and on behalf of the Crown in right of the State of New South Wales** ) ) )

 3/5/22

Signature

James Hay  
Chief Executive, EnergyCo & Roadmap  
Implementation Taskforce Lead

 3/5/22

Witness signature

Kylie Joughin

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Name of witness

Signed by Liz Livingstone for and on behalf of the **Independent Pricing and Regulatory Tribunal NSW.**

*sign here*  14/04/2022

X \_\_\_\_\_

Signed by: Liz Livingstone  
Signature

20/04/2022

 X \_\_\_\_\_

Signed by: Fiona Towers  
Witness Signature

Fiona Towers  
*print name*