

NORTHERN TERRITORY OF AUSTRALIA

ELECTRICITY SYSTEM AND MARKET OPERATOR ACT 2025

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Act No. 30 of 2025

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 30 of 2025

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An Act to establish the Northern Territory Electricity System and Market Operator and for related purposes

[Assented to 30 October 2025]

[Introduced 3 September 2025]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Electricity System and Market Operator Act 2025*.

### 2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 30 August 2027, it commences on that day.

### 3 Definitions

In this Act:

**Board** means the Board of NTESMO established by section 8.

**CEO** means the chief executive officer of NTESMO appointed under section 18.

**director** means a director of the Board appointed under section 10.

**NTESMO** means the Northern Territory Electricity System and Market Operator established by section 5.

**officer**, in relation to NTESMO, means:

- (a) a director; or
- (b) the CEO; or
- (c) any other person who is concerned, or takes part, in NTESMO's management.

**power system**, see section 4(1) of the *Electricity Reform Act 2000*.

**regulated electricity system** means a power system that is a regulated electricity system under the *Electricity Reform Act 2000*.

**TEM rules**, see section 4(1) of the *Electricity Reform Act 2000*.

*Note for section 3*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

#### **4 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 4*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2 Northern Territory Electricity System and Market Operator**

### **Division 1 Establishment of NTESMO**

#### **5 Establishment**

- (1) The Northern Territory Electricity System and Market Operator is established.
- (2) NTESMO:
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and

- (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.
- (3) NTESMO:
- (a) is not within the shield of the Crown; and
  - (b) does not represent the Territory except by express agreement in writing with the Minister; and
  - (c) cannot render the Territory liable for the debts, liabilities or obligations of NTESMO except by express agreement in writing with the Treasurer or as provided by another provision of this Act.

## **Division 2          Functions and powers of NTESMO**

### **6            Functions of NTESMO**

- (1) The functions of NTESMO are as follows:
- (a) to monitor and control the safety, quality, security and reliability of:
    - (i) each regulated electricity system; and
    - (ii) any other power system prescribed by regulation;
  - (b) to operate and administer a wholesale electricity market for each regulated electricity system prescribed by regulation under the *Electricity Reform Act 2000* to have a wholesale electricity market operated and administered by NTESMO;
  - (c) to support the development, and to improve the effectiveness, of each regulated electricity system and wholesale electricity market administered by NTESMO;
  - (d) to undertake whole-of-system planning in relation to the regulated electricity systems in accordance with the *Electricity Reform Act 2000*;
  - (e) to procure electricity infrastructure and services in accordance with investment plans and requirements developed under the *Electricity Reform Act 2000*;
  - (f) to perform any other function conferred on NTESMO:
    - (i) by regulation; or

- (ii) by the Minister; or
  - (iii) by or under the *Electricity Reform Act 2000* or any other Act.
- (2) NTESMO must, in acting under subsection (1)(a), have regard to the impact that any action taken by NTESMO may have on the total cost of electricity in the Territory.
- (3) A function conferred under subsection (1)(f) may include providing services to another person or body:
  - (a) that falls within the expertise of NTESMO, even if it does not relate to an electricity market or power system; and
  - (b) for profit or gain.
- (4) This section does not limit, or derogate from, the operation of:
  - (a) the *Electricity Reform Act 2000*; or
  - (b) the TEM Rules.

## **7 Powers of NTESMO**

- (1) NTESMO has the powers necessary to perform its functions.
- (2) Without limiting subsection (1), NTESMO has, for or in connection with the performance of its functions, all the powers of an individual including the following powers:
  - (a) to enter into contracts;
  - (b) to acquire, hold, dispose of and deal with property;
  - (c) to sue and be sued;
  - (d) to appoint agents and attorneys;
  - (e) to engage consultants.
- (3) NTESMO also has the powers conferred on NTESMO:
  - (a) by regulation; or
  - (b) by the Minister; or
  - (c) by or under the *Electricity Reform Act 2000* or any other Act.

### **Division 3      Board**

#### **8            Constitution**

- (1) There is to be a board of directors of NTESMO.
- (2) The Board consists of at least 3 but not more than 7 members appointed under this Division.

#### **9            Accountability of Board**

- (1) The Board is responsible for the operation of NTESMO.
- (2) Subject to subsection (3), the Board is accountable to the Minister for NTESMO's performance.
- (3) The Board is accountable to the Treasurer for the financial operation of NTESMO.
- (4) The Board must immediately notify the Minister if the Board forms the opinion that matters have arisen that may prevent, or significantly affect, the performance of one or more of NTESMO's functions.

### **Division 4      Directors**

#### **10          Appointment of directors**

- (1) The Minister may appoint a person to be a director.
- (2) The CEO may be appointed as a director.
- (3) The Minister may at any time terminate an appointment under subsection (1).
- (4) The directors of NTESMO are to be appointed to the Board having regard to the expertise necessary for the effective performance of NTESMO's functions.
- (5) Subject to subsection (3), a director holds office for 4 years or any shorter period specified in the instrument of appointment.
- (6) A person appointed as a director is eligible for reappointment.

#### **11          Acting directors**

- (1) The Minister may appoint a person to be an acting director.

- (2) In the absence of a director, the acting director:
  - (a) is, if available, to act in the place of the director; and
  - (b) while acting as a director, has all the functions of the director and is taken to be a director of NTESMO.
- (3) The Minister may at any time terminate an appointment under subsection (1).

## **12 Chairperson and Deputy Chairperson**

- (1) The Minister must appoint:
  - (a) a director to be the Chairperson of NTESMO; and
  - (b) another director to be the Deputy Chairperson of NTESMO.
- (2) The Minister may at any time terminate an appointment under subsection (1).
- (3) The Deputy Chairperson is to act as the Chairperson:
  - (a) during the absence or inability to act of the Chairperson; or
  - (b) during a vacancy in the office of Chairperson.
- (4) A person appointed under this section vacates the office to which the person has been appointed if:
  - (a) the appointment is terminated under subsection (2); or
  - (b) the person resigns the office in writing to the Minister; or
  - (c) the person ceases to hold the office of director on account of section 14.

## **13 Remuneration**

- (1) The Minister may determine the remuneration, including travelling and other allowances, to be paid to a director or acting director after taking into account any matter prescribed by regulation.
- (2) The Minister may alter or revoke a determination under subsection (1), including after a person becomes a director or acting director.
- (3) The *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006* does not apply in relation to an appointment under this Act.

## **14 Vacancy in office of director**

- (1) The office of a director becomes vacant:
- (a) if the director completes a term of office and is not re-appointed; or
  - (b) if the director resigns the office in writing to the Minister; or
  - (c) if the appointment of the director is terminated under this Act; or
  - (d) the director is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in some other manner determined by the Board for the giving of notice of meetings; or
  - (e) if the director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (f) if the director is:
    - (i) found guilty in the Territory of an offence that is punishable by imprisonment for 12 months or more; or
    - (ii) found guilty elsewhere than in the Territory of an offence that, if committed in the Territory, would be an offence punishable by imprisonment for 12 months or more; or
    - (iii) disqualified under Part 2D.6 of the *Corporations Act 2001* (Cth) from managing a corporation.
- (2) Subsection (1)(d) does not apply if the director is absent on leave granted by the Board.

## **15 Disclosure of interests**

- (1) If a director has a direct or indirect interest in a matter being considered, or about to be considered, by the Board, the director must disclose the nature of the interest to a meeting of the Board as soon as practicable after the relevant facts come to the director's knowledge.
- (2) The disclosure must be recorded in the Board's minutes.

- (3) A director who has disclosed an interest under subsection (1):
- (a) must not, while the director has the interest, take part after the disclosure in any deliberation or decision of the Board in relation to the matter in which the director has the interest; and
  - (b) is to be disregarded for the purpose of constituting a quorum of the Board in relation to the deliberation or decision of the Board in relation to the matter in which the director has the interest.
- (4) Subsection (3) does not apply to a director if the Board resolves that the subsection does not apply to the director.
- (5) A director who has disclosed an interest under subsection (1) may withdraw from the meeting during a period of deliberation or decision of the Board in relation to the matter in which the director has the interest, even if the Board has made a resolution under subsection (4) in relation to the matter.
- (6) A person commits an offence if:
- (a) the person is a director; and
  - (b) the person intentionally takes part in a deliberation or decision of the Board in relation to a matter; and
  - (c) the person has a direct or indirect interest in the matter and the person has knowledge of that circumstance.
- Maximum penalty: 100 penalty units.
- (7) Strict liability applies to subsection (6)(a).
- (8) It is a defence to a prosecution for an offence against subsection (6) if:
- (a) the director disclosed the director's interest in the matter to the Board under subsection (1); and
  - (b) the Board resolved under subsection (4) that the director could take part in the Board's deliberation or decision in relation to the matter.
- (9) The Board must maintain a register of the interests of directors.

## **16 Validity of acts**

A decision of the Board is not invalidated by a vacancy in the membership of the Board or a defect in the appointment of a director.

## **Division 5 Meetings of Board**

### **17 Meetings**

- (1) The Chairperson must convene as many meetings of the Board as are necessary for it to perform its functions.
- (2) The quorum for a meeting is a majority of the directors of the Board.
- (3) A meeting of the Board is to be presided over by:
  - (a) the Chairperson; or
  - (b) in the absence of the Chairperson – the Deputy Chairperson; or
  - (c) in the absence of the Chairperson and the Deputy Chairperson – another director elected by the directors present at the meeting.
- (4) Questions arising at a meeting are determined by a majority of votes.
- (5) At a meeting, the presiding member:
  - (a) has a deliberative vote; and
  - (b) in the event of an equality of votes, also has the casting vote.
- (6) The Board must keep accurate minutes of its meetings.
- (7) The Board may determine:
  - (a) a minimum number of meetings that should be held in a particular year; and
  - (b) the form in which the minutes of meetings will be kept; and
  - (c) other procedures and matters relating to meetings of the Board.

## **Division 6 Chief executive officer and staff**

### **18 Chief executive officer**

- (1) There is to be a chief executive officer for NTESMO.
- (2) The Board must appoint a person to be the CEO.
- (3) A director may be appointed as the CEO.
- (4) The Board may at any time terminate the appointment under subsection (2).
- (5) The Board may only appoint a person as the CEO or terminate the appointment of the CEO after consultation with the Minister.
- (6) The CEO holds office:
  - (a) for the period, not exceeding 4 years, specified in the instrument of appointment; and
  - (b) on the terms and conditions (including as to remuneration and allowances) determined by the Board after consultation with the Minister.
- (7) A person appointed as the CEO is eligible for reappointment.
- (8) The CEO is, subject to the directions of the Board, responsible for the day to day management of the operation of NTESMO.
- (9) The CEO may, subject to the directions of the Board, delegate any power or function of the CEO under this or any other Act to an employee of NTESMO.

### **19 Acting chief executive officer**

- (1) The Board may appoint a person to act as the CEO during a period, or during all periods, when:
  - (a) the CEO is, or is expected to be, absent from office; or
  - (b) there is a vacancy in the office of chief executive officer.
- (2) A director may be appointed as the acting CEO.
- (3) The Board may at any time terminate an appointment under subsection (1).
- (4) The Board may only appoint a person as the acting CEO or terminate the appointment of the acting CEO after consultation with the Minister.

- (5) An acting CEO has all the functions and powers of the CEO under this or any other Act.

## **20 Status as Agency**

- (1) NTESMO:
- (a) is an Agency for the purposes of the *Public Sector Employment and Management Act 1993*; and
  - (b) is not an Agency for the purposes of the *Financial Management Act 1995*.
- (2) An Administrative Arrangements Order cannot be made that nominates NTESMO as an Agency.

## **21 Matters relating to management and employment of staff**

- (1) The CEO is the Chief Executive Officer of NTESMO for the purposes of the *Public Sector Employment and Management Act 1993*.
- (2) The *Public Sector Employment and Management Act 1993* applies in relation to NTESMO subject to the following:
- (a) sections 22, 23, 24(2)(a) and (3)(b) and (h), 27 and 28 do not apply;
  - (b) section 24(1) applies as if it read 'The functions of the chief executive officer of the Northern Territory Electricity System and Market Operator (**NTESMO**) under this Act are to employ and manage employees in accordance with this Act for the purpose of enabling NTESMO to perform its functions';
  - (c) section 24(2)(b) applies as if read 'upholds the human resource management principle and performance and conduct principle';
  - (d) section 24(4) applies as if the words 'or any other Act' were omitted and the words 'Act in relation to employees' were inserted in their place.

## **Division 7 Related matters**

### **22 Provision of information to Minister**

- (1) The Minister may direct the Board to give the Minister any information the Minister reasonably requires in connection with the exercise of any of NTESMO's powers or the performance of any of NTESMO's functions.

- (2) The Board must comply with the direction.

### **23 Direction by Minister**

- (1) The Minister may give directions to the Board for the exercise of any of NTESMO's powers or the performance of any of NTESMO's functions.
- (2) The Board must comply with a direction.
- (3) If the Minister gives a direction to the Board, the Board must ensure a copy of the direction, together with a statement setting out the reasons for the direction, are published on NTESMO's website within 5 business days after the direction is given.

### **24 Committees**

- (1) The Board:
- (a) must establish an audit committee; and
  - (b) may establish other committees as it thinks appropriate.
- (2) The CEO may not be a member of the audit committee.
- (3) The chairperson of the audit committee must be a director.

### **25 Delegation by Board**

- (1) The Board may delegate any of the Board's powers or functions to:
- (a) a director; or
  - (b) a committee of the Board; or
  - (c) the CEO; or
  - (d) any other person.
- (2) The Board must advise the Minister of a delegation of a power or function that is, in its opinion, significant.

### **26 Indemnities**

- (1) NTESMO must not:
- (a) indemnify a person who is or has been an officer of NTESMO against a liability incurred as an officer; or
  - (b) exempt a person who is or has been an officer of NTESMO from a liability incurred as an officer.

- (2) An instrument is void so far as it provides for NTESMO to do something that subsection (1) prohibits.
- (3) Subsection (1) does not prevent NTESMO from indemnifying a person against a civil liability (other than a liability to NTESMO) unless the liability arises out of conduct involving lack of good faith.
- (4) Subsection (1) does not prevent NTESMO from indemnifying a person against a liability for costs and expenses incurred by the person:
  - (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.
- (5) In this section:

***indemnify*** includes indemnity through one or more interposed entities.

## **Part 3 Financial matters, accountability and public sector policies**

### **Division 1 Financial matters**

#### **27 Procurement policy**

- (1) NTESMO must develop a procurement policy.
- (2) The procurement policy must be consistent with the principles of the Territory's procurement policy.
- (3) The procurement policy must be approved by the Minister.
- (4) NTESMO must comply with the procurement policy approved by the Minister.
- (5) Until NTESMO's procurement policy is approved under this section, the *Procurement Act 1995* applies to NTESMO as if it were an Agency.
- (6) This section does not apply in relation to any procurement or other step taken under:
  - (a) the TEM Rules; or

- (b) a Regulated Electricity System and Investment Plan under the *Electricity Reform Act 2000*.

## **28 Capital structure**

- (1) The Treasurer may determine or alter the capital structure of NTESMO.
- (2) Before determining or altering the capital structure of NTESMO, the Treasurer must consult with:
  - (a) the Minister; and
  - (b) the Board.
- (3) The Board may, at any time, make a recommendation to the Treasurer about the capital structure of NTESMO.

## **29 Borrowings**

- (1) NTESMO must not borrow money (other than from the Northern Territory Treasury Corporation) without the approval of the Treasurer.
- (2) The Treasurer must consult with the Minister before giving an approval.

## **30 Investments and contracts**

- (1) NTESMO must give at least the designated period of notice to the Treasurer and the Minister before NTESMO:
  - (a) undertakes a capital investment with a value equal to or above the relevant designated threshold; or
  - (b) enters into a contract with a consideration of an amount equal to or above the relevant designated threshold.
- (2) For subsection (1):
  - (a) the designated period of notice is a period determined by the Treasurer and notified to the Board; and
  - (b) the relevant designated threshold is a value or amount determined by the Treasurer for investments and contracts (and the Treasurer may determine different values or amounts for different types or classes of investments or contracts).

- (3) Before determining or altering a value or amount under subsection (2)(b), the Treasurer must consult with:
  - (a) the Minister; and
  - (b) the Board.
- (4) NTESMO must not do either of the following without the approval of the Treasurer:
  - (a) form or acquire a subsidiary, a trust, a joint venture or another similar arrangement involving a third party;
  - (b) undertake a capital or financial investment outside the Territory.

### **31 Government guarantee**

- (1) Except as provided for in this section and despite the provisions of any other Act (including section 20 of *the Northern Territory Treasury Corporation Act 1994*), the obligations of NTESMO are not guaranteed by the Territory.
- (2) The Treasurer may, on the advice of the Minister, agree that the Territory is to guarantee NTESMO to the extent that the Treasurer, the Minister and the Board agree in writing.
- (3) The Treasurer must table a copy of the instrument giving effect to a guarantee agreed under subsection (2) in the Legislative Assembly within 6 sitting days after the date on which the instrument is executed.

## **Division 2 Accounts and financial statements**

### **32 Account keeping**

- (1) The Board must ensure:
  - (a) proper accounts and records of NTESMO's transactions and financial affairs are kept; and
  - (b) there are adequate controls over the incurring of NTESMO's liabilities; and
  - (c) all payments out of NTESMO's money are correctly made and properly authorised; and
  - (d) adequate control is maintained over rights, obligations, property and infrastructure owned, controlled or managed by NTESMO.

- (2) The Treasurer may request the Board to give the Treasurer any information the Treasurer reasonably requires to accurately assess NTESMO's financial position and financial affairs.
- (3) The Board must comply with the request.

### **33 Annual financial statements**

- (1) NTESMO must prepare financial statements relating to each financial year.
- (2) The financial statements must be prepared:
  - (a) within 2 months after the end of the financial year to which they relate; or
  - (b) within another period, after the end of the financial year, determined by the Treasurer.
- (3) The financial statements:
  - (a) must be prepared in the form the Treasurer directs; and
  - (b) except to the extent that the Treasurer otherwise directs – must be a general purpose financial report prepared in accordance with the Australian Accounting Standards determined by the Australian Accounting Standards Board.
- (4) The Board must forward the financial statements to the Auditor-General.

### **34 Auditor-General to audit financial statements**

- (1) The Auditor-General must:
  - (a) audit the financial statements forwarded to the Auditor-General by the Board within 1 month after receiving them or within another period approved by the Treasurer; and
  - (b) report on the financial statements to the Board.
- (2) The Auditor-General may determine the fee payable for an audit under this section after consultation with the Board.
- (3) NTESMO must pay in accordance with a direction of the Auditor-General the fee determined under subsection (2).
- (4) A reference in this section to the Auditor-General includes a reference to a person carrying out functions under this section for the Auditor-General.

**35 Auditor-General to conduct audits**

- (1) The Auditor-General may conduct an audit of NTESMO under the *Audit Act 1995*.
- (2) Sections 16 and 21 of the *Audit Act 1995* apply in relation to NTESMO as if:
  - (a) a reference in those sections to **Accountable Officer** were a reference to **the Board**; and
  - (b) a reference in those sections to **Agency** were a reference to **NTESMO**.

**Division 3 Annual reports**

**36 Annual reports**

- (1) For each financial year, NTESMO must prepare an annual report on its operations during that year.
- (2) The annual report must include the following:
  - (a) financial statements relating to NTESMO's operations for that year prepared under this Act;
  - (b) the Auditor-General's report on the financial statements given to the Board under section 34;
  - (c) any other information:
    - (i) specified by the Minister; or
    - (ii) prescribed by regulation; or
    - (iii) required by or under another Act.
- (3) The Board must give the annual report to the Minister within:
  - (a) 1 month after receiving the Auditor-General's report; or
  - (b) another period specified by the Minister.
- (4) The Minister must table a copy of the annual report in the Legislative Assembly within 6 sitting days after the annual report is given to the Minister.

**Division 4      Public sector policies****37      Public sector policies**

- (1) The Minister may, in writing, notify the Board of a public sector policy that is to apply to NTESMO.
- (2) A notice under subsection (1) may only be given if the Minister:
  - (a) is satisfied that it is in the public interest to do so; and
  - (b) has consulted the Board.
- (3) The Board must ensure that a policy specified in a notice under subsection (1) is carried out in relation to NTESMO.
- (4) The Minister must table a copy of a notice under subsection (1) in the Legislative Assembly within 6 sitting days after the notice is given to the Board.

**Part 4      Miscellaneous matters****38      Authentication of documents**

A summons, process, demand, order, notice, statement, direction or other document requiring authentication by NTESMO is sufficiently authenticated without the seal of NTESMO if signed by a person authorised to do so by the Board.

**39      Compliance with *Fiscal Integrity and Transparency Act 2001***

The *Fiscal Integrity and Transparency Act 2001* applies in relation to NTESMO as if it were a Territory public sector body under the Schedule to that Act.

**40      Regulations**

The Administrator may make regulations under this Act.

*Note for section 40*

*See section 65 of the Interpretation Act 1978.*

## Part 5 Transitional matters

### 41 Definition

In this Part:

**amending Act** means the *Electricity Legislation Amendment (Market Reform) Act 2025*.

### 42 Validation of instruments and decisions made by NTESMO

- (1) This section applies in relation to an instrument or decision made by NTESMO if:
  - (a) the instrument or decision was made:
    - (i) after this Act or the amending Act was enacted; but
    - (ii) before the day (the **operation day**) on which a provision (the **authorising provision**) of this Act, or inserted or amended by the amending Act, had effect or had effect as amended (the **relevant effect**); and
  - (b) had the authorising provision had the relevant effect, the making of the instrument would have been authorised by or under the provision; and
  - (c) for the making of the instrument or decision that would be so authorised subject to the satisfaction of any conditions or other requirements – NTESMO has done everything that would, if the authorising provision had the relevant effect, be required for the instrument or decision to be authorised.
- (2) Without limiting section 8 of the *Interpretation Act 1978*, for the purposes of the authorising provision:
  - (a) the instrument or decision is taken to be valid; and
  - (b) the instrument or decision has effect from the operation day, as varied by any other instrument or decision to which this section applies, unless the other instrument or decision has been revoked.

**43 Authorisation of preliminary steps taken by NTESMO**

- (1) This section applies if:
- (a) NTESMO is required to do something (a ***preparatory step***) before making a decision or making an instrument under a provision (the ***authorising provision***) of one of the following:
    - (i) this Act;
    - (ii) the *Electricity Reform Act 2000* as amended by the amending Act;
    - (iii) regulations under the *Electricity Reform Act 2000*;
    - (iv) the TEM Rules; and
  - (b) NTESMO takes the preliminary step:
    - (i) after this Act or the amending Act was enacted; but
    - (ii) before the day on which the authorising provision had effect, or had effect as amended (as the case requires).
- (2) For the purposes of the authorising provision, NTESMO is taken to have complied with the requirement to take the preliminary step.