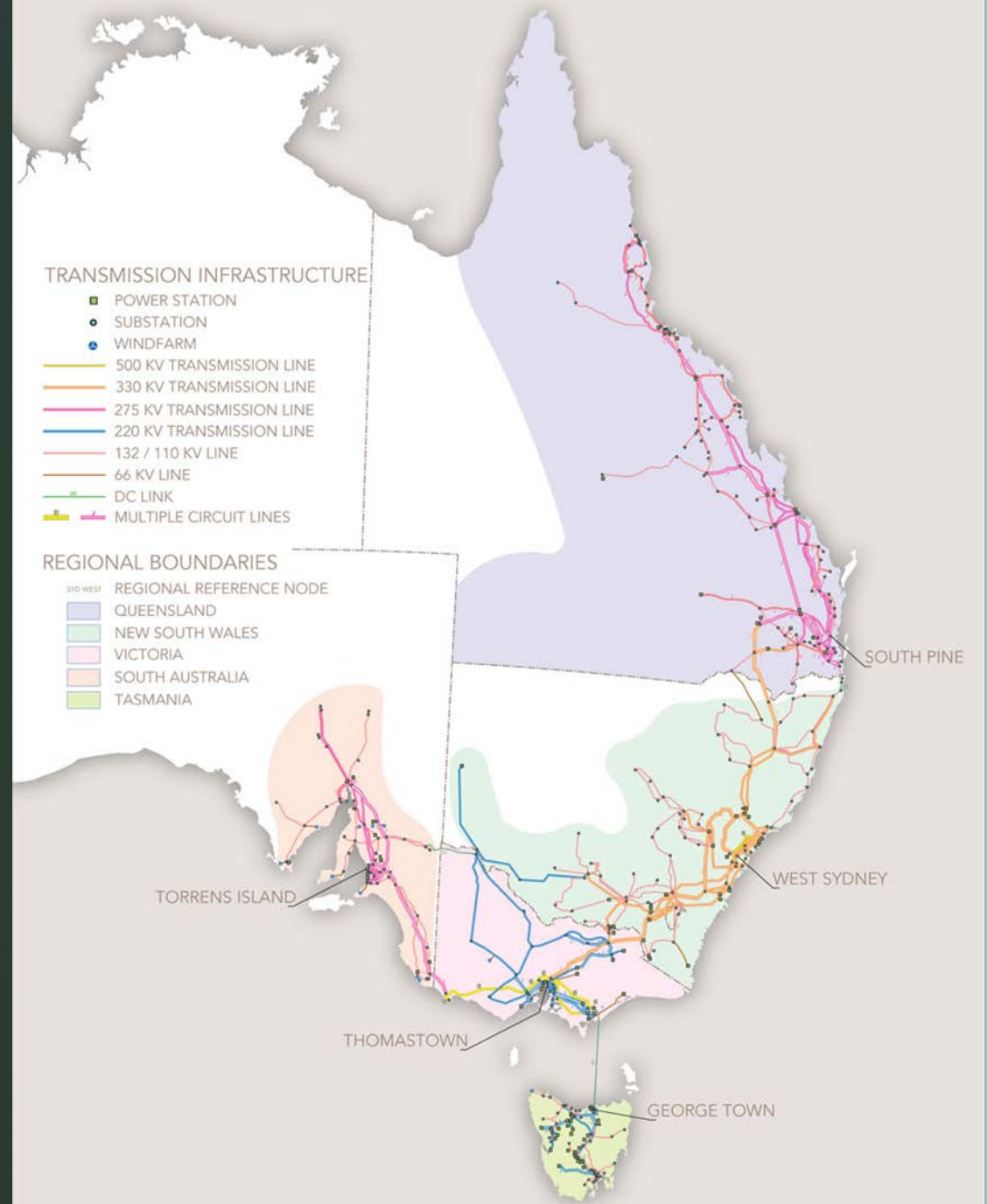


Choosing a regulatory pathway: Australian examples (and a quick climate change litigation update)

Kate Robinson
Australia

East Coast Electricity Grid



Transition from coal generation

➤ AEMO Integrated System Plan [2022](#)

Expected energy transition to 2050

('Step Change' scenario)



Storage capacity
to increase by a factor of 30

(Batteries, virtual power plants, pumped hydro.)

NOW 2 GW → 2030 15 GW → 2050 61 GW



Grid-scale wind and solar
to increase 9-fold

NOW 16 GW → 2030 44 GW → 2050 141 GW



Distributed solar PV
to increase 5-fold

NOW 15 GW → 2030 35 GW → 2050 69 GW



Electricity usage from the grid
to nearly double

NOW 180 TWh → 2030 184 TWh → 2050 320 TWh



Gas-fired peaking plants
to increase

While current mid-merit plants will all retire within that period.

NOW 7 GW → 2050 10 GW



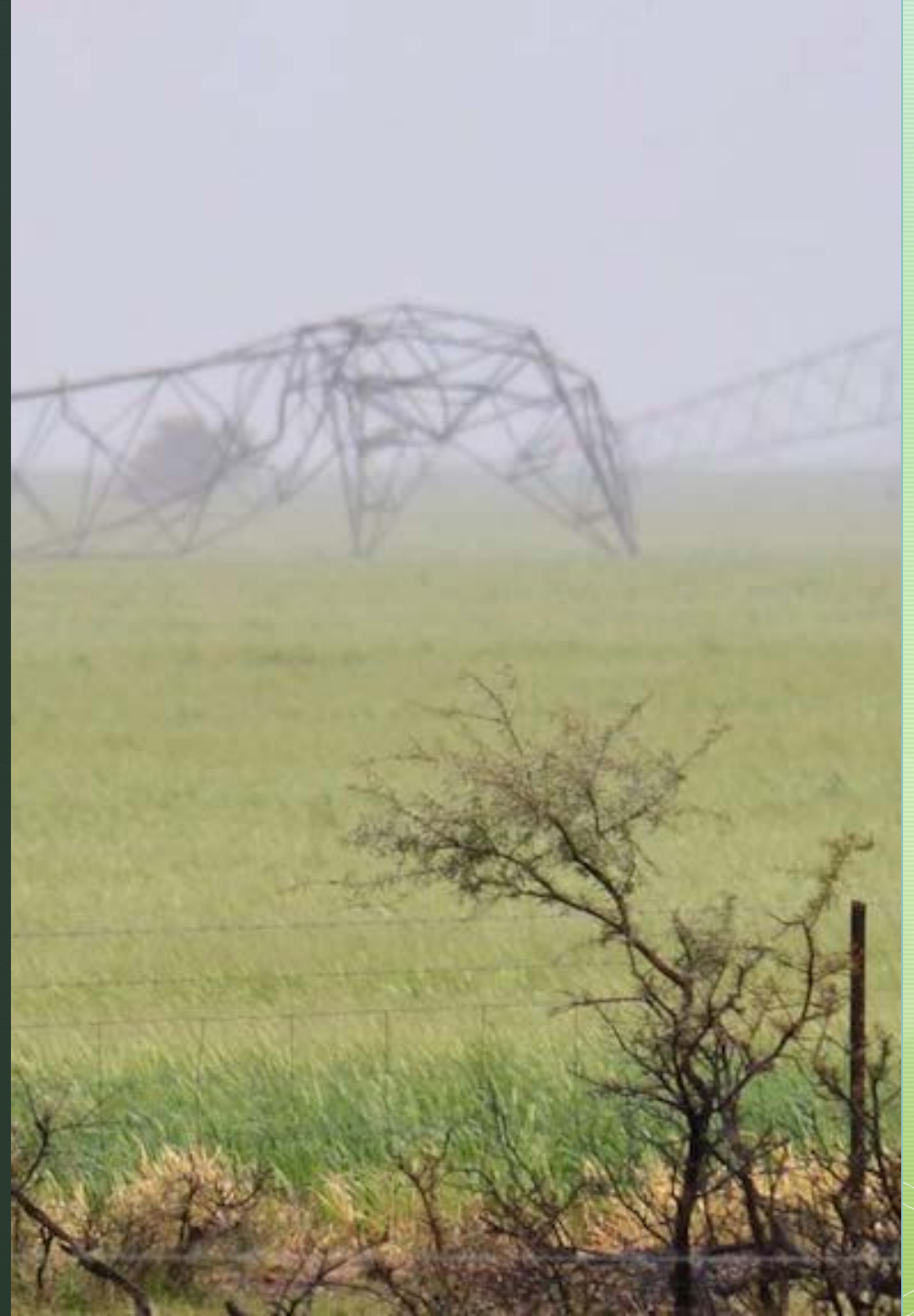
Coal generation
to be withdrawn

Capacity to be retired by:

2030 60% → 2043 100%

Challenges

- 28 September 2016 South Australia
Black System Event (Blackout)



Variety of regulatory options in NSW

Option	Trigger	Action
1. Energy and Utilities Administration Act 1987 <ul style="list-style-type: none"> sections 24 and 25 	where it appears the available supply of a form of non-electricity energy/energy resources is/is likely to become less than sufficient for the reasonable requirements of the community	<ol style="list-style-type: none"> make proclamation (30 days max) and then make regulation authorising people to do necessary /expedient thing including giving directions, control sale of energy, direct supply of energy
2. Essential Services Act 1988 <ul style="list-style-type: none"> sections 8 and 9 	where it appears there is likely to be an interruption/stop/not meet reasonable requirements of community of an essential service (includes energy)	<ol style="list-style-type: none"> make proclamation (30 days max) and then make regulation authorising people to do necessary /expedient thing including giving directions
3. Electricity Supply Act 1995 <ul style="list-style-type: none"> sections 94A and 94B 	that the supply of electricity to all/part of NSW is disrupted to a significant degree or there is a real risk it could be	<ol style="list-style-type: none"> Premier can declare an electricity supply emergency and then Minister can make electricity supply directions reasonably necessary to respond

Variety of regulatory options in NSW

Option	Decision maker	Max Penalty
1. Energy and Utilities Administration Act 1987	Governor (on advice of Premier). Regulations then can allow Minister to make orders	\$1100
2. Essential Services Act 1988	Governor (on advice of Premier) Regulations then can allow Minister to make orders	\$1100
3. Electricity Supply Act 1995	Premier Minister can then make directions	\$220,000 (corporation) \$11,000 (individual)

Variety of regulatory options in NSW

Option	Liability protection	Ref
1. Energy and Utilities Administration Act 1987	For Crown, Minister, anyone executing Act or anything made under Act Against action, claim or demand.	s34(3)
2. Essential Services Act 1988	For Crown, Minister, anyone executing Act or anything made under Act Against action, claim or demand.	s27
3. Electricity Supply Act 1995	For Minister, authorised officer, person executing Act in good faith or acting under direction of Minister. Against action, liability, claim, demand.	s91I

Actions to direct and/or regulate

- Use of electricity by the consumers, industry, utilities, intensive users
- Pre and post black system event
- Suppliers to generators – coal, water, transport

2022 example – gas

- Essential Services Act 1988

- Essential Services Proclamation 2022

The objects of this Proclamation are to (a) declare the supply or distribution of natural gas is an essential service in relation to which regulations may be made, and (b) specify the Minister for Energy is the Minister with responsibility for recommending the making, and for the administration and enforcement, of the regulations.

- Essential Services Regulation 2022

The object of this Regulation is to authorise the Minister for Energy to direct the Australian Energy Market Operator and other persons to take action in response to the likely interruption or reduction of the supply or distribution of natural gas.

Use of powers

- May 2022 - adjust gas market
- June 2022 – coal supply to power stations
‘NSW Energy Minister granted temporary emergency powers to force coal to electricity generators’
<https://www.abc.net.au/news/2022-06-17/nsw-energy-temporary-emergency-coal-generator-powers-matt-kean/101160956>
- December 2022 – coal market price emergency

Alternative Levers?

- Remediation directions
- Stop work and interim protection orders
- Clean up notices
- Chain of responsibility
- Enforceable undertakings



Climate Change Litigation Update

- *Sharma v Minister for the Environment* [\[2021\] FCA 560](#)
 - Whether the Minister has a duty of care to avoid causing harm to Australian children when deciding whether or not to approve a coal mine expansion.
 - If so, whether an injunction could be sought to stop the Minister from approving the coal mine expansion.
- Appeal: *Minister for the Environment v Sharma* [\[2022\] FCAFC 35](#)
- <http://climatecasechart.com/non-us-case/raj-seppings-v-ley/>
- <https://www.abc.net.au/news/2023-07-31/nt-senator-david-pocock-to-propose-climate-duty-of-care-bill/102663706>



Questions

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