



New South Wales

# Electricity Supply Amendment (Peak Demand Reduction Scheme) Regulation 2021

under the

Electricity Supply Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Electricity Supply Act 1995*.

MATT KEAN, MP  
Minister for Energy and Environment

## Explanatory note

The object of this Regulation is to create a financial incentive to reduce the consumption of electricity during peak times by creating a peak demand reduction scheme. The peak demand reduction scheme is a scheme established as part of the energy security safeguard under the *Electricity Supply Act 1995*, Part 8B, Division 3.

## **Electricity Supply Amendment (Peak Demand Reduction Scheme) Regulation 2021**

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### **1 Name of Regulation**

This Regulation is the *Electricity Supply Amendment (Peak Demand Reduction Scheme) Regulation 2021*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Electricity Supply Act 1995 No 94

### Schedule 4A Energy security safeguard schemes

Omit Part 2. Insert instead—

## Part 2 Peak demand reduction scheme

### Division 1 Preliminary

#### 81 Definitions

In this Part—

*accredited certificate provider* means a person accredited as a certificate provider under Division 7 and whose accreditation is in force.

*annual statement*—see clause 103(1).

*approved corresponding scheme* means a scheme approved by the Minister, for the purposes of clause 107, by order published in the Gazette.

*carried forward shortfall*—see clause 101(8).

*certificate* means a certificate created under clause 106.

*compliance period* means the period commencing on 1 November and ending on 31 March the following year.

**Example**—The 2022–2023 compliance period means the compliance period commencing on 1 November 2022 and ending on 31 March 2023.

*consumer price index* means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

*direct supplier of electricity* means an electricity generator prescribed by the regulations, or other person prescribed by the regulations, who supplies electricity directly to a customer.

*end user* of electricity means a person who acquires, or proposes to acquire, electricity for consumption purposes.

*forecast peak demand* for a compliance period is the forecast maximum demand for megawatts of electricity used by NSW electricity customers during the compliance period, as determined by the Scheme Regulator under clause 86.

*green hydrogen* means hydrogen energy produced using renewable energy sources.

*individual certificate target*—see clause 92(1).

*individual liable demand*—see clause 89(1).

*peak demand reduction capacity* means the capacity to reduce demand for electricity during the peak demand reduction period.

*peak demand reduction period*—see clause 85(1).

*peak demand reduction scheme* means the peak demand reduction scheme established by this Part.

*peak demand reduction target* for a compliance period means the target prescribed by the regulations for the period under clause 84.

*register* means the register of accredited certificate providers or the register of certificates kept by the Scheme Administrator under Division 11.

*related body corporate* of a person has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**Scheme Administrator** means the person or body required to exercise the functions of Scheme Administrator under this Part.

**scheme certificate target**—see clause 87(1).

**scheme liable demand**—see clause 91(1).

**scheme participant** means a person who is required to participate in the peak demand reduction scheme under clause 83(3).

**scheme penalty rate**—see clause 99(1).

**Scheme Regulator** means the person or body required to exercise the functions of Scheme Regulator under this Part.

**scheme rule** means a rule approved by the Minister under clause 137.

**shortfall**—see clause 97(4).

**shortfall penalty**—see clause 98(1).

## 82 Regulations

- (1) A reference in this Part to regulations is a reference to regulations made under section 98EA.

**Note**—Section 98EA provides that regulations may be made in relation to the peak demand reduction scheme for matters for which regulations may be made under Schedule 4A, Part 1 for the energy savings scheme. Necessary modifications for the peak demand reduction scheme may also be made.

- (2) This Part does not limit the operation of section 98EA.

## 83 Establishment of peak demand reduction scheme

- (1) The principal object of this Part is to create a financial incentive to reduce peak demand for electricity by encouraging activities that create peak demand reduction capacity.

- (2) The other objects of this Part are as follows—

- (a) to improve the reliability of electricity supply,
- (b) to reduce the cost of electricity for customers,
- (c) to improve the sustainability of electricity generation.

- (3) The following persons are required to participate in the peak demand reduction scheme—

- (a) a retailer,
- (b) a direct supplier of electricity,
- (c) a market customer within the meaning of the *National Electricity Rules*.

- (4) A scheme participant is required to surrender certificates in relation to each compliance period in accordance with this Part.

## 84 Peak demand reduction targets

- (1) The **peak demand reduction target** for a compliance period is the target prescribed by the regulations—

- (a) on the commencement of this clause, or
- (b) as amended in accordance with this clause.

**Example**—A peak demand reduction target of 1% for the 2023–2024 compliance period means a target of creating the capacity to reduce demand for electricity during the peak demand reduction period in the 2023–2024 compliance period by 1%.

- (2) The peak demand reduction target for a compliance period is to be used as the basis for the calculation of the scheme certificate target for the compliance period.
- (3) A regulation to amend a prescribed peak demand reduction target for a compliance period must be made at least 12 months before the commencement of the compliance period.  
**Example—** An amendment to the peak demand reduction target for the 2023–2024 compliance period must be made on or before 31 October 2022.
- (4) A regulation to amend a prescribed peak demand reduction target for a compliance period may be made only if the Minister is satisfied that the change to the peak demand reduction target is appropriate—
  - (a) for the purposes of achieving greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the peak demand reduction scheme, or
  - (b) for the purposes of implementing a national scheme with similar objectives to the peak demand reduction scheme, or
  - (c) because of an under supply or over supply of certificates that may be surrendered, as evidenced in the way set out in the regulations, or
  - (d) because of a target breach identified in an energy security target monitor report under the *Electricity Infrastructure Investment Act 2020*, or
  - (e) because of significant changes to the scheme rules relating to the creation of certificates, or
  - (f) because of significant changes to the policy or regulatory framework, or the market conditions, in which the peak demand reduction scheme operates.

#### 85 Peak demand reduction period

- (1) The *peak demand reduction period* for a compliance period is the period prescribed by the regulations—
  - (a) on the commencement of this clause, or
  - (b) as amended in accordance with this clause.
- (2) A regulation to amend a prescribed peak demand reduction period for a compliance period must be made at least 12 months before the commencement of the compliance period.  
**Example—** An amendment to the peak demand reduction period for the 2023–2024 compliance period must be made on or before 31 October 2022.
- (3) A regulation to amend a prescribed peak demand reduction period for a compliance period may be made only if the Minister is satisfied that the change to the peak demand reduction period is appropriate—
  - (a) for the purposes of achieving greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the peak demand reduction scheme, or
  - (b) for the purposes of implementing a national scheme with similar objectives to the peak demand reduction scheme, or
  - (c) because of an under supply or over supply of certificates that may be surrendered, as evidenced in the way set out in the regulations, or
  - (d) because of a target breach identified in an energy security target monitor report under the *Electricity Infrastructure Investment Act 2020*, or

- (e) because of significant changes to the scheme rules relating to the creation of certificates, or
- (f) because of significant changes to the policy or regulatory framework, or the market conditions, in which the peak demand reduction scheme operates.

## **Division 2 Determination of scheme certificate targets and individual certificate targets**

### **86 Scheme Regulator to determine forecast peak demand**

The Scheme Regulator must, before the beginning of each compliance period, determine the forecast peak demand for the compliance period—

- (a) based on a 10% probability of exceedance (POE) forecast specified in a statement of opportunities published by AEMO under the *National Electricity Rules*, and
- (b) in accordance with the scheme rules.

### **87 Scheme Regulator to determine scheme certificate target**

- (1) The Scheme Regulator must, before the beginning of each compliance period, calculate the total number of certificates required to be surrendered for the compliance period by all scheme participants (the *scheme certificate target*) using the following formula—

$$\text{Scheme certificate target} = \frac{\text{forecast peak demand}}{\text{(in megawatts)}} \times \frac{\text{peak demand}}{\text{reduction target}} \times 10,000 \times n$$

where—

*n* is the number of hours within the peak demand reduction period in one day.

**Example—** Assuming the following apply for the 2024–2025 compliance period—

- (a) the forecast peak demand is 14,000 megawatts,
- (b) the regulations prescribe 0.03 as the peak demand reduction target,
- (c) the regulations prescribe 6 hours as the peak demand reduction period.

The scheme certificate target is calculated by multiplying 14,000 by 0.03 by 10,000 by 6 to give the result of 25.2 million certificates.

- (2) The number of certificates must be rounded up or down to the nearest whole number and an amount of 0.5 must be rounded up.
- (3) The Scheme Regulator must, before the beginning of each compliance period, publish on its website the scheme certificate target for the compliance period.

### **88 Information about exemptions and liable acquisitions**

- (1) A scheme participant must, in the form approved by the Scheme Regulator, notify the Scheme Regulator of the following in relation to the previous compliance period—
  - (a) whether the scheme participant intends to rely on an exemption granted in relation to fully or partially exempt electricity load that applies to the scheme participant,
  - (b) whether the scheme participant has made a liable acquisition that is a purchase of electricity from a person other than AEMO.
- (2) The scheme participant must give the notice to the Scheme Regulator by—
  - (a) 31 May, or

(b) a later day specified by the Scheme Regulator for the scheme participant.

Maximum penalty (subclauses (1) and (2))—250 penalty units for a corporation or 100 penalty units for an individual.

#### 89 Scheme participant to determine individual liable demand

(1) A scheme participant must, after the end of a compliance period, calculate the scheme participant's *individual liable demand* for the compliance period using the following formula—

$$\text{Individual liable demand in kilowatts} = \frac{LA}{4 \times n} \times 1000$$

where—

*LA* means the total of the scheme participant's liable acquisitions, in megawatt hours, for the hours occurring in the peak demand reduction period on each of the 4 days nominated by the Scheme Regulator under subclause (2) for the compliance period.

*n* is the number of hours in the peak demand reduction period in one day.

(2) The Scheme Regulator must, by 30 April each year, nominate and publish on its website the 4 days that had the highest maximum demand for megawatts of electricity during the compliance period.

(3) The Scheme Regulator must nominate the 4 days by—

(a) considering the demand for electricity over the whole of each day during the compliance period, not only during the peak demand reduction period, and

(b) using information published by AEMO.

(4) A scheme participant must, in the form approved by the Scheme Regulator, notify the Scheme Regulator of the scheme participant's individual liable demand for the previous compliance period by—

(a) 30 September, or

(b) a later day specified by the Scheme Regulator for the scheme participant.

Maximum penalty (subclause (4))—250 penalty units for a corporation or 100 penalty units for an individual.

(5) If the scheme participant fails to notify the Scheme Regulator of the scheme participant's individual liable demand in accordance with subclause (4), the Scheme Regulator must calculate the scheme participant's individual liable demand for the compliance period in accordance with the regulations.

(6) The Scheme Regulator's calculation is taken to be the scheme participant's individual liable demand.

#### 90 Meaning of "liable acquisitions"

(1) In this Part, a *liable acquisition* for a scheme participant is a purchase of electricity by the scheme participant, from AEMO or another person whether or not a registered participant under the *National Electricity (NSW) Law*, where the electricity is purchased for—

(a) consumption by or onsale to end users in this State, or

(b) use in this State.

- (2) A supply of electricity generated by a scheme participant is also to be treated as a liable acquisition if—
  - (a) the scheme participant is a retailer and the electricity is supplied by the retailer for—
    - (i) consumption by or onsale to end users in this State, or
    - (ii) use in this State, or
  - (b) the scheme participant is a direct supplier of electricity and the supply is of a kind specified by the regulations to be a liable acquisition.
- (3) However, if a scheme participant purchases electricity from another scheme participant, the purchase is not a liable acquisition if the purchase of the electricity is, or the supply of the electricity is to be treated as, a liable acquisition for the other scheme participant or for a scheme participant who is further up the chain of supply of the electricity.
- (4) For the purposes of this Part—
  - (a) a liable acquisition is *made* by a scheme participant on the date the electricity is purchased by the scheme participant or, in the case of a supply of electricity treated as a liable acquisition, supplied by the scheme participant, and
  - (b) the *value* of a purchase or supply of electricity is the amount of electricity purchased or supplied, expressed in megawatt hours.
- (5) Electricity is taken to be purchased by a scheme participant on the date the electricity is physically delivered to the scheme participant, regardless of when the contract or other arrangement for purchase of the electricity was entered into or made.
- (6) The scheme rules may make further provision in relation to determining when a scheme participant is taken to have purchased electricity, for the purposes of determining which liable acquisitions are to be used under clause 89 to calculate the scheme participant's individual liable demand.
- (7) This clause is subject to Division 3.

#### **91 Scheme Regulator to determine scheme liable demand**

- (1) The Scheme Regulator must, after 30 September each year, determine the *scheme liable demand* for the previous compliance period by adding together each scheme participant's individual liable demand for the previous compliance period.
- (2) The Scheme Regulator must publish on its website the scheme liable demand for the previous compliance period by—
  - (a) 15 November, or
  - (b) a later day notified by the Scheme Regulator on its website before 15 November.
- (3) The Scheme Regulator may not amend the scheme liable demand for the previous compliance period after it has been published under subclause (2).

#### **92 Scheme participant to determine individual certificate target**

- (1) A scheme participant must, after 15 November in each year, calculate the number of certificates the scheme participant is required to surrender in relation to the previous compliance period (the *individual certificate target*) using the following formula—

$$\text{Individual certificate target for a compliance period} = \frac{\text{ILD}}{\text{SLD}} \times \text{SCT}$$

where—

**ILD** is the individual liable demand for the compliance period.

**SLD** is the scheme liable demand for the compliance period.

**SCT** is the scheme certificate target for the compliance period.

- (2) The number of certificates must be rounded up or down to the nearest whole number, and an amount of 0.5 must be rounded up.

### Division 3 Exemptions

#### 93 Exemptions

- (1) The Minister may, by order published in the Gazette, grant an exemption from the peak demand reduction scheme in relation to electricity load—
- (a) used by a specified person, or class of persons, or
  - (b) used in connection with a specified activity or class of activities.
- (2) An order granting an exemption may also specify the scheme participant, or class of scheme participants, in relation to whom the exemption applies.
- (3) The Minister may grant an exemption under this clause only if satisfied that the electricity is used—
- (a) in connection with an industry or activity that is both emissions intensive and trade exposed, or
  - (b) to produce green hydrogen.
- (4) The Minister may grant an exemption under this clause only if satisfied that the exemption is otherwise generally consistent with the objects of this Part.
- (5) An exemption must specify whether it is a full or partial exemption.
- (6) If the exemption is a full exemption, the electricity load to which the exemption applies is, for the purposes of this Part, **fully exempt electricity load**.
- (7) If the exemption is a partial exemption, the electricity load to which the exemption applies is, for the purposes of this Part, **partially exempt electricity load**.
- (8) If an exemption is a partial exemption, the order granting the exemption must specify the proportion of electricity load used by the person, or class of persons, or in connection with a specified activity or class of activities, that is exempt from the peak demand reduction scheme (referred to in clause 94 as the **exempt proportion**).

#### 94 Effect of exemption

- (1) A scheme participant is entitled to deduct from the total value of its liable acquisitions the value of each purchase of electricity that—
- (a) is to be used by a person or in connection with an activity, and
  - (b) when so used, is fully exempt electricity load.
- (2) A scheme participant is entitled to deduct from the total value of its liable acquisitions a proportion of the value of each purchase of electricity that—

- (a) is to be used by a person or in connection with an activity, and
  - (b) when so used, is partially exempt electricity load.
- (3) The proportion that may be deducted under subclause (2) is the exempt proportion.
  - (4) An order granting an exemption may specify the allowances that may be made by scheme participants, in applying the exemption, for electricity losses occurring between the purchase of the electricity by the scheme participant and its use by an end user.
  - (5) Electricity the subject of an allowance may also be deducted from the total value of liable acquisitions made by a scheme participant, in accordance with the exemption.
  - (6) An order granting an exemption may authorise the Scheme Regulator to make rules relating to the exemption, including rules relating to assessment of deductions under this Division.
  - (7) A scheme participant must make a deduction under this Division in accordance with the provisions of the relevant exemption and rules made under subclause (6).
  - (8) In proceedings under this Act involving a scheme participant, the burden of establishing that the scheme participant was entitled to deduct the exempt liable demand lies on the scheme participant.
  - (9) In this clause, a reference to a purchase of electricity includes a reference to a supply of electricity that is treated as a liable acquisition under this Part.

**95 Grounds on which electricity load may be exempt**

- (1) The regulations may make further provision with respect to the determination of whether—
  - (a) an industry or activity is emissions intensive or trade exposed, and
  - (b) electricity is taken to be used to produce green hydrogen.
- (2) Subject to the regulations, the Minister may determine the basis on which—
  - (a) an industry or activity is considered to be emissions intensive or trade exposed, and
  - (b) electricity is taken to be used to produce green hydrogen.

**96 General provisions about exemptions**

- (1) An exemption takes effect on—
  - (a) the day on which the order granting the exemption is published in the Gazette, or
  - (b) a later day specified in the order.
- (2) An exemption may be revoked by order of the Minister published in the Gazette.
- (3) If an exemption is revoked, the revocation takes effect on—
  - (a) the day on which the order revoking the exemption is published in the Gazette, or
  - (b) a later day specified in the order.
- (4) The Minister must provide a copy of an order made under this Division to the Scheme Regulator.

- (5) The Scheme Regulator must publish the following on its website—
  - (a) particulars of an exemption under this Division, and
  - (b) rules made under clause 94(6) about an exemption.

## **Division 4 Compliance of scheme participants**

### **97 Surrender of certificates**

- (1) A scheme participant is required to surrender the number of certificates calculated as the scheme participant's individual certificate target for a compliance period.
- (2) An election by a scheme participant to surrender a certificate for the purposes of meeting its individual certificate target or remedying a carried forward shortfall, or to carry forward a shortfall, must be made to the Scheme Regulator in accordance with this Part.
- (3) An election has no effect unless it is accepted by the Scheme Regulator.
- (4) If a scheme participant surrenders less than the number of certificates in its individual certificate target for a compliance period, the scheme participant has a **shortfall** for the compliance period, consisting of the number of certificates the scheme participant failed to surrender.

### **98 Penalties for shortfalls**

- (1) A scheme participant who has a shortfall for a compliance period must pay a penalty for the compliance period (a **shortfall penalty**).
- (2) The amount of the shortfall penalty is the amount, in dollars, calculated by multiplying the shortfall by the scheme penalty rate.
- (3) The amount must be rounded down to the nearest whole number of dollars.
- (4) Regulations may be made in relation to the assessment of the amount of a shortfall penalty payable by a scheme participant, including self-assessment or assessment by the Scheme Regulator.

### **99 Penalty rates**

- (1) The **scheme penalty rate** for a compliance period is the rate prescribed by the regulations—
  - (a) on the commencement of this clause, or
  - (b) as amended in accordance with this clause.
- (2) A regulation to amend a prescribed scheme penalty rate for a compliance period must be made at least 12 months before the commencement of the compliance period.  
**Example—** An amendment to the scheme penalty rate for the 2023–2024 compliance period must be made on or before 31 October 2022.
- (3) A regulation to amend a prescribed scheme penalty rate for a compliance period may be made only if the Minister is satisfied that the change to the prescribed scheme penalty rate is appropriate—
  - (a) for the purposes of achieving greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the peak demand reduction scheme, or
  - (b) for the purposes of implementing a national scheme with similar objectives to the peak demand reduction scheme, or

- (c) because of an under supply or over supply of certificates that may be surrendered, as evidenced in the way set out in the regulations, or
  - (d) because of a target breach identified in an energy security target monitor report under the *Electricity Infrastructure Investment Act 2020*, or
  - (e) because of significant changes to the scheme rules relating to the creation of certificates, or
  - (f) because of significant changes to the policy or regulatory framework, or the market conditions, in which the peak demand reduction scheme operates.
- (4) Subclauses (2) and (3) do not apply to a regulation that provides for the adjustment of scheme penalty rates for movements in the consumer price index.

#### **100 Payment of shortfall penalties**

- (1) A shortfall penalty payable by a scheme participant is, for a compliance period, payable—
- (a) within 12 months of the end of the compliance period, or
  - (b) on a later day determined by the Scheme Regulator for the scheme participant.
- (2) A shortfall penalty is payable to the Scheme Regulator, for payment into the Consolidated Fund as public money.
- (3) A shortfall penalty payable by a scheme participant may be recovered in a court of competent jurisdiction as a debt due to the Crown.

#### **101 Shortfalls may be carried forward**

- (1) A scheme participant may elect to carry forward a shortfall, or part of a shortfall, for a compliance period to the next compliance period in accordance with this clause.
- (2) If a scheme participant elects to carry forward a shortfall, or part of a shortfall, the amount carried forward is not subject to a shortfall penalty for the compliance period to which the shortfall relates.
- (3) The maximum amount of a shortfall that may be carried forward to the 2023–2024 compliance period by a scheme participant is—
- (a) 20% of the scheme participant’s individual certificate target for the 2022–2023 compliance period, or
  - (b) another amount prescribed by the regulations.
- (4) The maximum amount of a shortfall that may be carried forward to another compliance period by a scheme participant is—
- (a) 10% of the scheme participant’s individual certificate target in the previous period, or
  - (b) another amount prescribed by the regulations.
- (5) A shortfall, or part of a shortfall, may be carried forward to the next compliance period only.
- (6) A shortfall, or part of a shortfall, for the 2049–2050 compliance period cannot be carried forward.
- (7) A scheme participant who elects to carry forward a shortfall, or part of a shortfall, to the next compliance period is not prevented from electing to carry

forward a shortfall, or part of a shortfall, for that next compliance period to the following compliance period.

- (8) For the purposes of this Part, a shortfall, or part of a shortfall, for a compliance period that is carried forward to the next period is a *carried forward shortfall*.

#### **102 Carried forward shortfalls must be remedied**

- (1) A scheme participant who has a carried forward shortfall in a compliance period must remedy the carried forward shortfall in the compliance period to which the shortfall is carried forward.
- (2) A scheme participant remedies a carried forward shortfall if the participant surrenders the number of certificates required for the carried forward shortfall.
- (3) A scheme participant fails to remedy a carried forward shortfall if the participant does not surrender the number of certificates required for the carried forward shortfall.
- (4) If a scheme participant fails to remedy a carried forward shortfall, the scheme participant must pay a penalty for the amount by which the carried forward shortfall exceeds the certificates surrendered by the scheme participant for the compliance period (the *non-remedied amount*).
- (5) The penalty must be calculated as if the non-remedied amount were a shortfall for the compliance period to which the shortfall is carried forward.
- (6) The penalty is payable in the same way as, and is taken to be, a shortfall penalty.
- (7) To avoid doubt, a penalty payable by a scheme participant for a failure to remedy a carried forward shortfall in a compliance period is additional to a penalty payable by the scheme participant for a shortfall in the compliance period.

### **Division 5 Assessment of compliance of scheme participants**

#### **103 Annual statements**

- (1) A scheme participant must lodge with the Scheme Regulator a statement (an *annual statement*) each year on or before—
  - (a) 15 December, or
  - (b) a later day specified by the Scheme Regulator for the scheme participant.
- (2) An annual statement must contain the following—
  - (a) an assessment of the scheme participant's individual certificate target for the previous compliance period,
  - (b) an assessment of the amount of any shortfall penalty payable by the scheme participant for the previous compliance period, including any shortfall penalty for a carried forward shortfall,
  - (c) other matters required by the Scheme Regulator.
- (3) If the scheme participant seeks to elect to surrender one or more certificates for the purposes of meeting its individual certificate target for the compliance period to which the annual statement relates, the election must—
  - (a) accompany the annual statement, and
  - (b) contain details of the certificates proposed to be surrendered.

- (4) If a scheme participant seeks to elect to carry forward a shortfall, or part of a shortfall, for the compliance period to which the annual statement relates, the election must accompany the annual statement.
- (5) An annual statement, and any election that accompanies the statement, must be in a form approved by the Scheme Regulator.
- (6) A scheme participant who fails to lodge an annual statement in accordance with this clause is guilty of an offence.  
Maximum penalty (subclause (6))—250 penalty units for a corporation or 100 penalty units for an individual.
- (7) Regulations may be made in relation to the following—
  - (a) assessments by the Scheme Regulator of the matters referred to in subclause (2)(a) and (b), if a scheme participant does not lodge an annual statement as required under this clause,
  - (b) the amendment of assessments of the matters referred to in subclause (2)(a) and (b), at the request of a scheme participant or on the Scheme Regulator's own motion.

#### **104 Restrictions on surrender of certificates**

- (1) A certificate cannot be surrendered by a scheme participant for the purposes of meeting its individual certificate target or remedying a carried forward shortfall unless—
  - (a) the certificate is registered as active in the register of certificates, and
  - (b) the participant is recorded in the register of certificates as the owner of the certificate, and
  - (c) for a certificate that relates to an activity that occurred in a jurisdiction for which there is an approved corresponding scheme—the Minister has, by the order approving the corresponding scheme or a subsequent order published in the Gazette, approved the surrender of certificates of that kind by a scheme participant for those purposes.
- (2) The Scheme Regulator may, by written notice to a scheme participant, refuse to accept an election to surrender a certificate if, in the opinion of the Scheme Regulator—
  - (a) the certificate cannot be surrendered under this clause, or
  - (b) the certificate is surplus to the number required to be surrendered for the purposes of meeting the scheme participant's individual certificate target or remedying a carried forward shortfall.
- (3) If the Scheme Regulator accepts the surrender of a certificate, and the Scheme Regulator is not the Scheme Administrator, the Scheme Regulator must give the Scheme Administrator written notice of the decision, including details of the certificate surrendered.

#### **105 Validity of assessment**

The validity of an assessment of the amount of a shortfall penalty payable by a scheme participant is not affected by a failure to comply with a provision of this Act, the regulations or the scheme rules.

## **Division 6 Certificates**

### **106 Creation of certificates**

- (1) The scheme rules may make provision about the creation of certificates in relation to an activity, or class of activity, that creates peak demand reduction capacity.
- (2) A certificate may be created by an accredited certificate provider, in accordance with the scheme rules, in relation to an activity that creates peak demand reduction capacity.
- (3) Subject to the scheme rules, one certificate may be created for an activity that creates peak demand reduction capacity of 0.1 kilowatt averaged over 1 hour.
- (4) One certificate may be created for each 0.1 kilowatt averaged over 1 hour on 1 day only within the compliance period.  
**Example—** An air conditioner is installed that creates the capacity to reduce demand for electricity by an average of 0.2 kilowatt for each of the 6 hours of the peak demand reduction period between 2:30pm and 8:30pm. The installation of the air conditioner will create 12 certificates for the whole compliance period.
- (5) A certificate may be created in relation to an activity no later than 6 months after the end of the compliance period in which the peak demand reduction capacity is made available.
- (6) The scheme rules may specify—
  - (a) the date after which an activity must have occurred for a certificate to be created in relation to the activity, and
  - (b) when peak demand reduction capacity is taken to have been created or made available.
- (7) The number of certificates arising from an activity must be calculated in accordance with the scheme rules.
- (8) To avoid doubt, an activity may create peak demand reduction capacity in one or more compliance periods.
- (9) Regulations may be made in relation to—
  - (a) the revocation of the cancellation of certificates in connection with an amendment to a scheme participant's individual liable demand or annual statement, and
  - (b) the revival of certificates.

### **107 Creation of certificates for activities outside NSW**

- (1) The scheme rules may make provision about the creation of certificates in relation to an activity, or class of activity, that creates peak demand reduction capacity in another jurisdiction, if an approved corresponding scheme is in operation in the jurisdiction.
- (2) The Minister may approve a corresponding scheme for the purposes of this clause only if the Minister is satisfied that—
  - (a) the corresponding scheme is intended to promote activities that create peak demand reduction capacity, and
  - (b) the objectives of the corresponding scheme are consistent with the objectives of the peak demand reduction scheme established by this Part, and

- (c) the monitoring and enforcement of compliance with the corresponding scheme to be approved is no less stringent than the monitoring and enforcement of compliance with the peak demand reduction scheme established by this Part.

#### **108 Improper creation of certificates**

- (1) A person must not create or purport to create a certificate in contravention of—
  - (a) this Part or the regulations, or
  - (b) the scheme rules, or
  - (c) a condition of accreditation imposed by or under this Act.Maximum penalty (subclause (1))—2,000 penalty units.
- (2) To avoid doubt, a person may be found guilty of an offence against this clause whether or not the certificate is registered in the register of certificates.

### **Division 7 Accreditation of certificate providers**

#### **109 Certificates may be created by accredited certificate providers only**

- (1) A certificate may be created by an accredited certificate provider only.
- (2) A person who is an accredited certificate provider may create a certificate in accordance with this Part, the regulations, the scheme rules and the conditions, if any, of the person's accreditation as a certificate provider.
- (3) A person who is an accredited certificate provider may create a certificate only in relation to the activities in relation to which the person has been accredited as a certificate provider.
- (4) Regulations may be made in relation to—
  - (a) the records that must be kept by accredited certificate providers, and
  - (b) the information required to be provided to the Scheme Administrator in connection with the creation of certificates.

#### **110 Eligibility for accreditation**

- (1) The regulations and scheme rules may make provision about the eligibility of a person for accreditation as a certificate provider.
- (2) Without limiting subclause (1), the following persons are not eligible for accreditation as a certificate provider—
  - (a) a person who is engaged in an industry, or carries out an activity, that benefits from a full exemption from the peak demand reduction scheme,
  - (b) a related body corporate of a person specified in paragraph (a).

#### **111 Application for accreditation**

- (1) A person who is eligible for accreditation as a certificate provider in relation to an activity may apply to the Scheme Administrator for accreditation.
- (2) The Scheme Administrator must determine an application for accreditation as a certificate provider by—
  - (a) accrediting the applicant as a certificate provider in relation to specified activities, or
  - (b) refusing the application.

- (3) The Scheme Administrator may refuse an application for accreditation as a certificate provider on any grounds specified in the regulations.
- (4) The Scheme Administrator may charge a fee for the investigation and determination of an application, in addition to an application fee required to be paid under the regulations.
- (5) The fee for the investigation and determination of an application must be determined by the Scheme Administrator on a cost recovery basis.

#### **112 Accreditation of certificate providers under energy savings scheme**

- (1) This clause applies to a person who—
  - (a) is an accredited certificate provider for the energy savings scheme under Schedule 4A, Part 1 in relation to a specified activity, or
  - (b) has applied for accreditation as a certificate provider for the energy savings scheme under Schedule 4A, Part 1 in relation to a specified activity and the Scheme Administrator under that scheme has not yet determined the application.
- (2) A person to whom this clause applies is eligible for accreditation as a certificate provider under the peak demand reduction scheme in relation to the specified activity if—
  - (a) the specified activity is an activity in relation to which a certificate may be created under the peak demand reduction scheme, and
  - (b) the Scheme Administrator is satisfied that the person is otherwise eligible for accreditation as a certificate provider under the peak demand reduction scheme.
- (3) The Scheme Administrator may accredit a person who is eligible under this clause without requiring the person to apply for accreditation under clause 31.

#### **113 Duration of accreditation**

- (1) Accreditation of a person as a certificate provider in relation to an activity remains in force until suspended or cancelled by the Scheme Administrator.
- (2) The Scheme Administrator may suspend or cancel the accreditation of a person on any grounds specified in the regulations.
- (3) The suspension or cancellation of the accreditation of a person is subject to any conditions imposed by the Scheme Administrator.
- (4) The conditions may include, but are not limited to, a condition to which the accreditation was subject immediately before it was suspended or cancelled.
- (5) The regulations may provide for the variation or revocation of a condition imposed by the Scheme Administrator on the suspension or cancellation of accreditation as a certificate provider.

#### **114 Conditions of accreditation**

- (1) Accreditation as a certificate provider is subject to the following conditions—
  - (a) a condition imposed from time to time by the regulations,
  - (b) a condition imposed by the Scheme Administrator at the time of accreditation, or during the period in which the accreditation remains in force, in accordance with the regulations.
- (2) A person must not contravene a condition of the person's accreditation as a certificate provider.

Maximum penalty (subclause (2))—2,000 penalty units.

- (3) Subclause (2) extends to a condition to which the suspension or cancellation of the accreditation of a person is subject under this Part.

**115 Variation or revocation of conditions of accreditation**

- (1) An accredited certificate provider may apply to the Scheme Administrator for the variation or revocation of a condition of the certificate provider's accreditation imposed by the Scheme Administrator.
- (2) Subclause (1) does not apply to a condition of an accredited certificate provider that is imposed by this Act or the regulations.
- (3) The Scheme Administrator may charge a fee for the investigation and determination of an application, in addition to an application fee required to be paid under the regulations.
- (4) The fee for the investigation and determination of an application must be determined by the Scheme Administrator on a cost recovery basis.

**116 Transfer of accreditation**

- (1) Accreditation as a certificate provider is not transferable, except as otherwise provided by this clause.
- (2) A person who is accredited as a certificate provider may, with the approval of the Scheme Administrator, transfer the accreditation to a related body corporate of the person.
- (3) The Scheme Administrator may approve the transfer of accreditation only if satisfied that the person to whom the accreditation is proposed to be transferred—
- (a) is or will be eligible for accreditation, and
  - (b) will fulfil the obligations that the accredited certificate provider is required to fulfil in relation to the activity.
- (4) Regulations may be made in relation to the transfer of accreditation, including to require a fee to be paid to the Scheme Administrator for an application for approval of a transfer of accreditation.

**117 Scheme Administrator may require surrender of certificates**

- (1) The Scheme Administrator may, by written order to a person, require the person to surrender to the Scheme Administrator, within a period specified in the order, the number of certificates specified in the order.
- (2) An order may be made against a person only if the Scheme Administrator is satisfied, on the balance of probabilities based on an audit under this Act or other information obtained by the Administrator under this Act, that the person is guilty of—
- (a) an offence under clause 108 involving the improper creation of certificates, or
  - (b) an offence under clause 114(2) of contravening a condition of the person's accreditation as a certificate provider.
- (3) The number of certificates required to be surrendered by an order is—
- (a) for an order made under subclause (2)(a)—the number of certificates that is equivalent to the number of certificates that, in the opinion of the Scheme Administrator, were improperly created, and

- (b) for an order made under subclause (2)(b)—the number determined by the Scheme Administrator in accordance with the regulations.
- (4) A person must not fail to comply with an order.  
Maximum penalty (subclause (4))—1,000 penalty units, and an additional 1 penalty unit for each certificate the person fails to surrender in accordance with the order.
- (5) The value of a certificate surrendered for the purposes of compliance with an order cannot be counted towards meeting a scheme participant's individual certificate target or remedying a carried forward shortfall.
- (6) If a person fails to comply with an order, the Scheme Administrator may cancel a certificate in relation to which the person is registered as the owner.
- (7) To avoid doubt, it is not an excuse for a failure to comply with an order that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of certificates to comply with the order.
- (8) Regulations may be made in relation to the orders made by the Scheme Administrator under this clause.

## **Division 8 Registration and duration of certificates**

### **118 Creation of certificate must be registered**

- (1) A certificate has no effect until the creation of the certificate is registered by the Scheme Administrator in the register of certificates.
- (2) An application for registration of the creation of a certificate may be made to the Scheme Administrator by an accredited certificate provider.
- (3) The Scheme Administrator must determine an application for registration of the creation of a certificate by—
  - (a) granting the application and registering the creation of the certificate in the register of certificates, or
  - (b) refusing the application.
- (4) The Scheme Administrator registers the creation of a certificate by—
  - (a) creating an entry for the certificate in the register of certificates, and
  - (b) recording the name of the person who created the certificate as the owner of the certificate.
- (5) The Scheme Administrator must, when registering the creation of a certificate, specify—
  - (a) whether the certificate is active, and
  - (b) if the certificate is not active—the date on which the certificate will be taken to be active, if known.
- (6) The Scheme Administrator may alter the entry for a certificate in the register of certificates at any time to show—
  - (a) the certificate is active, or
  - (b) the date on which the certificate will be taken to be active.
- (7) The scheme rules may make provision about the circumstances in which a certificate is or is not taken to be active.

- (8) A certificate may be registered as active before the beginning of the compliance period during which the peak demand reduction capacity is made available.
- (9) The Scheme Administrator may refuse an application for registration of the creation of a certificate on any grounds specified in the regulations.
- (10) Regulations may be made in relation to applications for registration of certificates, including—
  - (a) to require an application fee to be paid to the Scheme Administrator, and
  - (b) to adjust the amount of the fee for movements in the consumer price index.
- (11) The Scheme Administrator must publish the adjusted application fees on its website before the beginning of the compliance period to which the application fee applies.

#### **119 Duration of certificate**

- (1) A certificate remains in force from the date on which the certificate is active until the end of the period of 3 years from the beginning of the compliance period during which the peak demand reduction capacity is made available, unless sooner cancelled.
- (2) A certificate may be cancelled by the Scheme Administrator—
  - (a) if the person registered as the owner of the certificate is a scheme participant who elects to surrender the certificate for the purposes of meeting its individual certificate target or remedying a carried forward shortfall, and the Scheme Regulator accepts the surrender of the certificate, or
  - (b) if the person registered as the owner of the certificate, by written notice, surrenders the certificate to the Scheme Administrator, and the Scheme Administrator accepts the surrender of the certificate, or
  - (c) in other circumstances authorised by this Part.
- (3) The Scheme Administrator must cancel a certificate that is surrendered by the owner of the certificate if the owner is surrendering the certificate for the purposes of compliance with an order made by the Scheme Administrator requiring the person to surrender a certificate.
- (4) The Scheme Administrator cancels a certificate by altering the entry relating to the certificate in the register of certificates to show that the certificate is cancelled.

### **Division 9 Transfers and other dealings in certificates**

#### **120 Transfer of certificates**

- (1) A certificate is transferable in accordance with this Division.
- (2) A certificate is transferable only if—
  - (a) the certificate is registered as active in the register of certificates, or
  - (b) the date on which the certificate will be taken to be active is specified in the register of certificates.
- (3) The transfer of a certificate does not have effect until the transfer is registered by the Scheme Administrator.

- (4) An application for registration of a transfer of a certificate must be made to the Scheme Administrator by the parties to the transfer.
- (5) The Scheme Administrator must—
  - (a) grant the application by registering the transfer of the certificate in the register of certificates, or
  - (b) refuse the application.
- (6) The Scheme Administrator registers the transfer of a certificate by altering the entry relating to that certificate in the register of certificates to record the new owner of the certificate.
- (7) The Scheme Administrator may refuse an application for registration of a transfer of a certificate on any grounds specified in the regulations.
- (8) Regulations may be made in relation to applications for registration of a transfer, including to require an application fee to be paid to the Scheme Administrator.

**121 Holder of certificate may deal with certificate**

- (1) The person registered as the owner of a certificate may, subject to this Part, deal with the certificate as its absolute owner and give good discharges for a consideration for the dealing.
- (2) This clause is subject to any rights appearing in the register of certificates to belong to another person, being rights that are registered in accordance with the regulations.
- (3) This clause only protects a person who deals with the person registered as the owner of the certificate as a purchaser in good faith for value and without notice of any fraud on the part of the registered owner.
- (4) Despite subclause (3), a person who purchases a certificate in good faith for value does not lose the protection provided by this clause because the person has notice that a person has been found guilty of an offence against this Part in respect of the creation of a certificate.

**122 Scheme Administrator not concerned as to legal effect of transaction**

- (1) The Scheme Administrator is not concerned with the effect in law of a transaction registered under this Part or the regulations.
- (2) The registration of a transaction does not give to the transaction an effect that it would not have if this Part had not been enacted.

**Division 10 Administration of peak demand reduction scheme**

**123 Scheme Regulator**

- (1) The Minister may, by written order, appoint a person or body as the Scheme Regulator.
- (2) The functions of the Scheme Regulator under this Part are to be exercised by the person or body appointed by the Minister as Scheme Regulator or, in the absence of an appointment, the Tribunal.
- (3) Regulations may be made in relation to the appointment of a Scheme Regulator by the Minister.

#### **124 Functions of Scheme Regulator**

- (1) The Scheme Regulator has the following functions—
  - (a) to assess and determine, in accordance with this Part, the regulations and the scheme rules, whether scheme participants have complied with individual certificate targets,
  - (b) if appropriate, to assess and determine, in accordance with this Part, the regulations and the scheme rules, any shortfall penalty payable by a scheme participant,
  - (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
  - (d) to monitor, and report to the Minister on, the extent to which scheme participants comply, or fail to comply, with obligations imposed by or under this Part,
  - (e) to provide advice to the Minister on request about the extent of an under supply or over supply of certificates that may be surrendered,
  - (f) other functions conferred or imposed on it by or under this Act.
- (2) If the Scheme Regulator is appointed by the Minister, the Scheme Regulator also has any other functions conferred or imposed on it by the Minister under the terms of its appointment as Scheme Regulator.
- (3) For the purposes of enabling the Scheme Regulator to exercise its functions, the Minister must provide the Scheme Regulator with information in the Minister's possession in relation to the compliance by scheme participants with this Part, if requested by the Scheme Regulator.
- (4) The Scheme Regulator may, with the approval of the Minister, delegate the exercise of its functions under this Part, other than this power of delegation, to another person or body.
- (5) If the Tribunal is the Scheme Regulator, the *Independent Pricing and Regulatory Tribunal Act 1992*, section 10 does not apply to the Tribunal's functions as Scheme Regulator.

#### **125 Scheme Administrator**

- (1) The Minister may, by written order, appoint a person or body as the Scheme Administrator.
- (2) The functions of the Scheme Administrator under this Part are to be exercised by the person or body appointed by the Minister as Scheme Administrator or, in the absence of an appointment, the Tribunal.
- (3) In determining whether to appoint a person or body as Scheme Administrator, the Minister must consider the following matters—
  - (a) the costs of the appointment,
  - (b) the efficiency of administrative arrangements relating to the peak demand reduction scheme,
  - (c) ability to meet objectives of the peak demand reduction scheme,
  - (d) proposed governance arrangements,
  - (e) arrangements proposed to manage liabilities associated with carrying out the Scheme Administrator's functions.
- (4) The Minister may limit the appointment of a person or body as Scheme Administrator to particular specified functions of the Scheme Administrator.

- (5) Regulations may be made in relation to the appointment of a Scheme Administrator by the Minister.

#### **126 Functions of Scheme Administrator**

- (1) The Scheme Administrator has the following functions—
- (a) the functions conferred by this Part relating to the peak demand reduction scheme,
  - (b) to monitor, and to report to the Minister on, the extent to which accredited certificate providers comply with this Part, the regulations, the scheme rules and conditions of accreditation,
  - (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
  - (d) to provide advice to the Minister on request about the extent of an under supply or over supply of certificates that may be surrendered,
  - (e) other functions conferred or imposed on it by or under this Act or another Act or law.
- (2) If the Scheme Administrator is appointed by the Minister, the Scheme Administrator also has the other functions conferred or imposed on it by the Minister under the terms of the appointment.
- (3) For the purposes of enabling the Scheme Administrator to exercise its functions, the Minister must provide the Scheme Administrator with information in the Minister's possession that relates to compliance by accredited certificate providers with this Part, if requested by the Scheme Administrator.
- (4) The Scheme Administrator may, with the approval of the Minister, delegate the exercise of its functions under this Part, other than this power of delegation, to another person or body.
- (5) If the Tribunal is the Scheme Administrator, the *Independent Pricing and Regulatory Tribunal Act 1992*, section 10 does not apply to its functions as Scheme Administrator.

#### **127 Conduct of audits**

- (1) Regulations may be made in relation to the conduct of audits by the Scheme Regulator, the Scheme Administrator or other persons.
- (2) Each scheme participant and accredited certificate provider is liable to pay to the Treasurer the reasonable costs, as certified by the Scheme Regulator or Scheme Administrator, involved in and in connection with carrying out the audit functions of the Scheme Regulator or Scheme Administrator in relation to the participant or provider.
- (3) An accreditation may include terms and conditions relating to the determination of the cost of carrying out audit functions under subclause (1).

#### **128 Provision of information, documents and evidence**

- (1) For the purposes of exercising its functions under this Part, the Scheme Regulator or Scheme Administrator may, by written notice served on a relevant person, require the person to do one or more of the following—
- (a) to send to the Scheme Regulator or Scheme Administrator, on or before a day specified in the notice, a statement setting out the information specified in the notice,

- (b) to send to the Scheme Regulator or Scheme Administrator, on or before a day specified in the notice, a document or type of document specified in the notice.
- (2) If the Tribunal is the Scheme Regulator or Scheme Administrator, the Tribunal may, in the notice, in addition to or instead of requiring a relevant person to do something specified in subclause (1), require the relevant person to attend a meeting of the Tribunal to give evidence.
- (3) A person must not, without reasonable excuse—
  - (a) refuse or fail to comply with a notice served under this clause, or
  - (b) refuse or fail to answer a question the person is required to answer at a meeting of the Tribunal the person is required to attend under this clause.

Maximum penalty (subclause (3))—250 penalty units for a corporation or 100 penalty units for an individual.
- (4) It is a reasonable excuse for the purposes of subclause (3) that to comply with the notice or to answer the question might—
  - (a) tend to incriminate a natural person, or
  - (b) make the person liable to a forfeiture or penalty.
- (5) If documents are given to the Scheme Regulator or Scheme Administrator under this clause, the Scheme Regulator or Scheme Administrator—
  - (a) may take possession of, and make copies of or take extracts from, the documents, and
  - (b) may keep possession of the documents for the period necessary for those purposes, and
  - (c) during that period must permit the documents to be inspected at all reasonable times by persons who would be entitled to inspect them if the documents were not in the possession of the Scheme Regulator or Scheme Administrator.
- (6) This clause does not affect the law relating to client legal privilege or other legal professional privilege.
- (7) In this clause—

**relevant person** means—

  - (a) an officer of a scheme participant or former scheme participant, or
  - (b) an officer of an accredited certificate provider or former accredited certificate provider, or
  - (c) another person whom the Scheme Regulator or Scheme Administrator, as the case requires, reasonably believes is able to provide information relevant to its functions as Scheme Regulator or Scheme Administrator.

#### **129 Obstruction of Scheme Regulator or Scheme Administrator**

A person must not hinder, obstruct or interfere with the following in the exercise of functions under this Part—

- (a) the Scheme Regulator,
- (b) the Scheme Administrator,
- (c) a member or officer of the Scheme Regulator or Scheme Administrator.

Maximum penalty—250 penalty units for a corporation or 100 penalty units for an individual.

**130 False or misleading information**

A person must not, for the purposes of this Part—

- (a) give to the Scheme Regulator or Scheme Administrator, whether orally or in writing, information or a document that the person knows to be false or misleading in a material particular, unless the person informs the Scheme Regulator or Scheme Administrator, or
- (b) at a meeting of the Tribunal acting as Scheme Regulator or Scheme Administrator, give evidence that the person knows to be false or misleading in a material particular.

Maximum penalty—100 penalty units.

**131 Confidential information**

- (1) If a person provides information to the Scheme Regulator or Scheme Administrator in connection with the functions of the Scheme Regulator or Scheme Administrator under this Part on the understanding that the information is confidential and will not be divulged, the Scheme Regulator or Scheme Administrator must ensure that the information is not divulged by the Scheme Regulator or the Scheme Administrator, as the case requires, to another person.
- (2) Despite subclause (1), the Scheme Regulator or the Scheme Administrator may divulge the information to another person—
  - (a) with the consent of the person who provided the information, or
  - (b) for information provided to the Tribunal while acting as Scheme Regulator or Scheme Administrator, to the extent that the Tribunal is satisfied that the information is not confidential in nature, or
  - (c) to a member or officer of the Scheme Regulator or Scheme Administrator, as the case requires, or
  - (d) as required by another law.
- (3) The Scheme Regulator or Scheme Administrator may give a direction prohibiting or restricting the divulging of information provided to the Scheme Regulator or Scheme Administrator under this Part if satisfied that the direction is desirable because of the confidential nature of the information.
- (4) A person must not contravene a direction given under subclause (3).  
Maximum penalty (subclause (4))—100 penalty units.
- (5) A reference in this clause to information includes information—
  - (a) given at a meeting of the Scheme Regulator or Scheme Administrator, and
  - (b) contained in a document given to the Scheme Regulator or Scheme Administrator.

**132 Cabinet documents and proceedings**

- (1) This Part does not enable the Scheme Regulator or Scheme Administrator—
  - (a) to require a person to give a statement of information or answer a question that relates to confidential proceedings of Cabinet, or
  - (b) to require a person to produce Cabinet information, or
  - (c) to inspect Cabinet information.
- (2) For the purposes of this clause, a certificate of the Secretary of the Department of Premier and Cabinet, or the General Counsel of the Department, that

information or a question relates to confidential proceedings of Cabinet or that information is Cabinet information is conclusive of the matter certified.

(3) In this clause—

**Cabinet** includes a committee of Cabinet or a subcommittee of a committee of Cabinet.

**Cabinet information** means information that is Cabinet information under the *Government Information (Public Access) Act 2009*.

## **Division 11 Registers**

### **133 Keeping of registers**

- (1) The Scheme Administrator must establish and keep the following registers for the purposes of this Part—
  - (a) a register of accredited certificate providers,
  - (b) a register of certificates.
- (2) A register must be kept in the form the Scheme Administrator considers appropriate.
- (3) A register may be kept wholly or partly by electronic means.
- (4) A register must be published on the Scheme Administrator's website.
- (5) The Scheme Administrator may correct an error in, or omission from, a register.

### **134 Register of accredited certificate providers**

The register of accredited certificate providers must contain—

- (a) the name of each accredited certificate provider, and
- (b) other information in relation to each accredited certificate provider required to be included in the register by this Part or the regulations.

### **135 Register of certificates**

The register of certificates must contain the following information in relation to each certificate—

- (a) the name of the person who created the certificate,
- (b) the name of the current registered owner, and any previous registered owners, of the certificate,
- (c) if there is an approved corresponding scheme in another jurisdiction and the activity to which the certificate relates occurred in the other jurisdiction—the jurisdiction in which the activity occurred,
- (d) the date from which the certificate will be taken to be active, if known,
- (e) the period for which the certificate is in force,
- (f) the compliance period during which the peak demand reduction capacity is made available by the activity for which the certificate is created,
- (g) other information required to be included in the register by this Part or the regulations.

### **136 Evidentiary provisions**

- (1) A register is evidence of the particulars registered in it.

- (2) If a register is wholly or partly kept by electronic means, a written document issued by the Scheme Administrator containing particulars included in the register, or the part of the register kept by electronic means, is admissible in legal proceedings as evidence of the particulars.

## **Division 12 Miscellaneous**

### **137 Scheme rules**

- (1) The Minister may approve rules that make provision about—
- (a) matters for which a scheme rule may be made under this Part, and
  - (b) other matters prescribed by the regulations.
- (2) A rule may make provision about a matter by applying, adopting or incorporating, with or without modification, the provisions of an Act or statutory rule or other publication, whether of the same or of a different kind.
- (3) A rule may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise a matter or thing to be from time to time agreed, determined, applied or regulated by a specified person or body.
- (4) The Minister may from time to time approve a rule that amends a rule or revokes a rule.
- (5) Notice of a rule approved by the Minister must be published in the Gazette.
- (6) A rule takes effect on—
- (a) the day on which the written notice is published in the Gazette, or
  - (b) the later day specified in the rule.
- (7) The Minister must make copies of each rule available to each scheme participant and the public.
- (8) A rule must be consistent with this Act and the regulations.
- (9) A person who is a scheme participant or an accredited certificate provider must not contravene a provision of a scheme rule.
- Maximum penalty (subclause (9))—250 penalty units for a corporation or 100 penalty units for an individual.

### **138 Application of Part to persons who cease to be scheme participants**

- (1) If a person ceases to be a scheme participant, this Part and the regulations continue to apply to the person in relation to the period during which the person was a scheme participant.
- (2) For that purpose, a reference to a scheme participant includes a reference to a former scheme participant.
- (3) A former scheme participant continues to be required to lodge an annual statement for the compliance period during which the person ceased to be a scheme participant.
- (4) The requirements of this Part in relation to the conduct of audits and the provision of information, documents and evidence to the Scheme Regulator or

Scheme Administrator continue to apply in relation to the person as if the person were a scheme participant.

- (5) The Minister may, by written notice to the former scheme participant, bring forward the date on which the person would otherwise have to—
  - (a) lodge an annual statement with the Scheme Regulator for the compliance period during which the person ceased to be a scheme participant, and
  - (b) pay a shortfall penalty for the compliance period during which the person ceased to be a scheme participant.
- (6) The notice may specify—
  - (a) the date (the *lodgment date*) by which the former scheme participant must lodge the annual statement, and
  - (b) the date by which the former scheme participant must pay the shortfall penalty.
- (7) The lodgment date must not be earlier than 28 days after the person ceased to be a scheme participant.
- (8) The provisions of this Part relating to the lodgment of an annual statement and the payment of a shortfall penalty apply as if a reference to 15 December were a reference to the lodgment date.

#### **139 Administrative reviews by Civil and Administrative Tribunal**

- (1) A scheme participant or former scheme participant who is aggrieved by the following decisions of the Scheme Regulator may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision—
  - (a) a determination by the Scheme Regulator of whether a scheme participant has complied with the scheme participant's individual certificate target,
  - (b) a decision to refuse to accept the surrender of a certificate for the purposes of meeting the scheme participant's or former scheme participant's individual certificate target or remedying a carried forward shortfall,
  - (c) an assessment of the amount of a shortfall penalty payable by the scheme participant or former scheme participant,
  - (d) other decisions of the Scheme Regulator of a kind prescribed by the regulations.
- (2) A person who is or was accredited, or who has applied to be accredited, as a certificate provider and who is aggrieved by the following decisions of the Scheme Administrator may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision—
  - (a) a decision to refuse accreditation of the person as a certificate provider,
  - (b) a decision to cancel or suspend the accreditation of the person as a certificate provider,
  - (c) a decision to refuse registration of the creation of a certificate,
  - (d) other decisions of the Scheme Administrator of a kind prescribed by the regulations.

- (3) A person who has applied for the registration of a transfer of a certificate and who is aggrieved by a decision of the Scheme Administrator to refuse registration of the transfer may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (4) A person who is the subject of an order by the Scheme Administrator requiring the person to surrender a certificate to the Scheme Administrator and who is aggrieved by a decision of the Scheme Administrator to impose that order may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.

#### 140 Certificate evidence

- (1) This clause applies to a certificate of the Scheme Regulator certifying that, on a date or during a period specified in the certificate—
  - (a) a person was or was not a scheme participant, or
  - (b) the individual certificate target for a scheme participant was the amount specified in the certificate, or
  - (c) the shortfall for a scheme participant for a compliance period, or the carried forward shortfall for a period, was the amount specified in the certificate, or
  - (d) the shortfall penalty payable by a scheme participant was the amount specified in the certificate.
- (2) A certificate is admissible in evidence in proceedings before a court or tribunal and is prima facie evidence of the matters stated in the certificate.

#### 141 Personal liability

- (1) A protected person is not personally subject to any liability for anything done—
  - (a) in good faith, and
  - (b) for the purpose of exercising functions under this Act or another Act.
- (2) The liability instead attaches to the Crown.
- (3) In this clause—

*done* includes omitted to be done.

*liability* means civil liability and includes action, claim or demand.

*protected person* means—
  - (a) the Scheme Regulator, or
  - (b) the Scheme Administrator, or
  - (c) a member or officer of, or a person acting under the direction of, the Scheme Regulator or Scheme Administrator.

#### 142 Annual report by Scheme Regulator

- (1) On or before 31 July in each year, the Scheme Regulator must prepare and provide to the Minister a report on the extent to which scheme participants have complied, or failed to comply, with individual certificate targets during the compliance period ending on the 31 March in the previous year.

**Example—** The annual report for the 2030–2031 compliance period must be prepared on or before 31 July 2032.
- (2) Without limiting subclause (1), the report must contain the following—

- (a) the name of each scheme participant and the performance of the participant in relation to the participant's individual certificate target in the compliance period,
  - (b) the total number of certificates surrendered in the compliance period,
  - (c) the total number of certificates created in the compliance period,
  - (d) the total number of certificates created in previous compliance period and not surrendered before the beginning of the compliance period to which the report relates,
  - (e) an assessment of the extent of an under supply or over supply of certificates that may be surrendered in the compliance period,
  - (f) an estimate, prepared by the Scheme Administrator, of the actual peak demand reduction capacity that is made available by end users under the peak demand reduction scheme in the compliance period, having regard to the number of certificates that have been created,
  - (g) an estimate, prepared by the Scheme Administrator, of the actual peak demand reduction capacity that will be made available by end users under the peak demand reduction scheme in the next 10 years, having regard to the number of certificates that have been created.
- (3) For the purposes of subclause (2), a certificate created under an approved corresponding scheme that is not able to be surrendered by a scheme participant for the purposes of meeting its individual certificate target or remedying a carried forward shortfall is to be disregarded.
- (4) The report must also set out the functions delegated by the Scheme Regulator or Scheme Administrator and the person or body to whom the functions were delegated.
- (5) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (6) For the purposes of enabling the Scheme Regulator to prepare a report, the Scheme Administrator must provide to the Scheme Regulator—
- (a) the estimates the Scheme Administrator is required to prepare under subclause (2), and
  - (b) other information that the Scheme Regulator reasonably requires to complete the report.
- (7) The first report under this clause must be prepared for the 2022–2023 compliance period.

#### **143 Reviews of peak demand reduction scheme**

- (1) The Minister must review the operation of the peak demand reduction scheme to determine whether—
- (a) the policy objectives of the peak demand reduction scheme remain valid, and
  - (b) the terms of this Part remain appropriate for securing the objectives.
- (2) A review must be undertaken—
- (a) as soon as possible after 1 July 2024, and
  - (b) every 5 years after the first review.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period to which the review relates.

**144 Waiver, suspension or reduction of obligations in emergencies**

- (1) The Minister may, by order published in the Gazette, waive, or suspend for a specified period, the obligation of a scheme participant to meet its individual certificate target or remedy a carried forward shortfall.
- (2) The Minister may make an order under subclause (1) only if it appears to the Minister that a scheme participant is or will be unable to meet its individual certificate target or remedy the carried forward shortfall because of—
  - (a) a systems or other failure of the register of certificates, or
  - (b) another emergency affecting the integrity of the peak demand reduction scheme or the register of certificates.
- (3) The Minister may, by order published in the Gazette, reduce the individual certificate target of a small retailer by a specified amount for a specified compliance period if it appears to the Minister that the small retailer is or will be unable to meet the individual certificate target because of an emergency affecting the State or part of the State.
- (4) An order under subclause (1) or (3) may—
  - (a) be made subject to conditions, and
  - (b) apply to all scheme participants or to a specified class of participants, and
  - (c) specify the effect of the waiver or suspension on other rights conferred or obligations imposed under this Part.
- (5) An order under subclause (1) or (3) takes effect on—
  - (a) the day on which it is published in the Gazette, or
  - (b) a later day specified in the order.
- (6) In this clause—

**small retailer** means a scheme participant who, in the 12 months specified in the order under subclause (3)—

  - (a) supplies electricity to no more than 5,000 end users in this State, and
  - (b) makes liable acquisitions not exceeding 30,000 megawatt hours of electricity.

**145 Termination of peak demand reduction scheme on establishment of national scheme**

- (1) The Governor may, by proclamation published on the NSW legislation website, terminate the operation of a provision or all of the provisions of this Part.
- (2) A proclamation may be made only if the Minister is satisfied that New South Wales is, or will be, a participant in a scheme (a **national scheme**) that—
  - (a) has been or will be established—
    - (i) nationally, or
    - (ii) in this State and at least one or more other States or Territories, and
  - (b) is designed to achieve outcomes that include encouraging activities that create peak demand reduction capacity.
- (3) The termination of the operation of a provision takes effect on the day specified in the proclamation, not being a day earlier than the day on which the proclamation is published on the NSW legislation website.

- (4) The day specified in the proclamation must not be a day that is earlier than the day on which New South Wales becomes, or will become, a participant in the national scheme.
- (5) Regulations may be made about the effect of the termination of a provision of this Part on rights conferred or obligations imposed under this Part.

**146 Automatic termination of peak demand reduction scheme at end of year 2050**

- (1) The peak demand reduction scheme terminates at the end of the 2049–2050 compliance period.
- (2) This Part continues to have effect with respect to matters arising, including obligations incurred, before the termination of the peak demand reduction scheme.
- (3) Persons who are scheme participants in the compliance period 2049–2050 continue to be required to lodge an annual statement for the compliance period.
- (4) The requirements of this Part with respect to the conduct of audits and the provision of information, documents and evidence to the Scheme Regulator and Scheme Administrator continue to apply, even though the peak demand reduction scheme is terminated.
- (5) A reference in this Part to a scheme participant includes, after the peak demand reduction scheme is terminated, a reference to a former scheme participant.

## **Schedule 2      Amendment of Electricity Supply (General) Regulation 2014**

### **Part 7**

Omit Part 7. Insert instead—

### **Part 7      Peak demand reduction scheme**

#### **60      Peak demand reduction targets**

For the purposes of the Act, Schedule 4A, clause 84(1), the targets specified in the following table are prescribed for each compliance period—

<b>Compliance period</b>	<b>Target</b>
2022–2023	0.5%
2023–2024	1%
2024–2025	3%
2025–2026	5.5%
2026–2027	7.5%
2027–2028	8.5%
2028–2029	9.5%
2029–2030	10%
2030–2031	10%
2031–2032	10%
2032–2033	10%
2033–2034	10%
2034–2035	10%
2035–2036	10%
2036–2037	10%
2037–2038	10%
2038–2039	10%
2039–2040	10%
2040–2041	10%
2041–2042	10%
2042–2043	10%
2043–2044	10%
2044–2045	10%
2045–2046	10%
2046–2047	10%
2047–2048	10%
2048–2049	10%
2049–2050	10%

**61 Peak demand reduction period**

For the purposes of the Act, Schedule 4A, clause 85(1), the peak demand reduction period for a compliance period is the period between 2:30pm and 8:30pm Australian Eastern Standard Time on each day of the compliance period.

**62 Scheme penalty rates**

- (1) For the purposes of the Act, Schedule 4A, clause 99, the scheme penalty rate is—
- (a) for the 2022–2023 compliance period—\$2.35 per certificate, or
  - (b) for each subsequent compliance period—the amount calculated as follows—

$$SPR \times \frac{CPI_{year-1}}{CPI_{year-2}}$$

where—

*SPR* is the scheme penalty rate for the previous compliance period.

*CPI<sub>year-1</sub>* is the CPI number for the June quarter immediately before the beginning of the compliance period.

*CPI<sub>year-2</sub>* is the CPI number for the June quarter immediately before the beginning of the previous compliance period.

**Example—** The scheme penalty rate for the 2025–2026 compliance period will be calculated by multiplying the 2024–2025 scheme penalty rate by the CPI number for the 2025 June quarter divided by the CPI number for the 2024 June quarter.

- (2) The amount of the scheme penalty rate is to be rounded up to the nearest cent.
- (3) The scheme penalty rate for each compliance period, other than the 2022–2023 compliance period, must be published on the Scheme Regulator’s website before the beginning of the compliance period.