



New South Wales

Electricity Supply Amendment (Energy Savings) Act 2009 No 36

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New South Wales

Electricity Supply Amendment (Energy Savings) Act 2009 No 36

Act No 36, 2009

An Act to amend the *Electricity Supply Act 1995* to establish an energy savings scheme. [Assented to 19 June 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Electricity Supply Amendment (Energy Savings) Act 2009*.

2 Commencement

This Act commences, or is taken to have commenced, on 1 July 2009.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

[1] **Section 97EC When certificates may be created**

Omit section 97EC (4) and the note to the subsection.

[2] **Part 9**

Insert after Part 8A:

Part 9 Energy savings scheme

Division 1 Preliminary

98 Objects of Part

- (1) The principal object of this Part is to create a financial incentive to reduce the consumption of electricity by encouraging energy saving activities.
- (2) The other objects of this Part are:
 - (a) to assist households and businesses to reduce electricity consumption and electricity costs, and
 - (b) to complement any national scheme for carbon pollution reduction by making the reduction of greenhouse gas emissions achievable at a lower cost, and
 - (c) to reduce the cost of, and the need for, additional energy generation, transmission and distribution infrastructure.

99 Definitions

- (1) In this Part:

accredited certificate provider means a person accredited as an energy savings certificate provider under this Part and whose accreditation is in force.

base penalty rate—see section 113.

carbon dioxide equivalent of greenhouse gas emissions means the mass of carbon dioxide measured in tonnes that has the same global warming potential as those greenhouse gas emissions.

carried forward shortfall—see section 116.

certificate conversion factor—see section 130.

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

direct supplier of electricity has the meaning given by section 101.

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

energy conversion factor—see section 108.

energy savings certificate means an energy savings certificate created under this Part.

energy savings scheme or **scheme** means the energy savings scheme established by this Part.

energy savings scheme target—see section 103.

energy savings shortfall—see section 111.

energy savings shortfall penalty—see section 112.

energy savings statement—see section 123.

greenhouse gas means carbon dioxide, methane, nitrous oxide, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.

individual energy savings target—see section 106.

liable acquisition—see section 107.

Market Operator means the entity that has the function of operating and administering the wholesale exchange under the *National Electricity (NSW) Law*.

penalty conversion factor—see section 113.

recognised energy saving activity means an activity in respect of which an energy savings certificate may be created under this Part.

register means a register kept by the Scheme Administrator under this Part.

related body corporate of a person has the same meaning as it has 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 participant means a person who is required by this Part to participate in the energy savings scheme.

scheme penalty rate—see section 113.

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 Division 13 of this Part.

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- (2) In this Part, a reference to a particular *year* is a reference to the period of 12 months commencing on 1 January of that year, except in relation to the year 2009. A reference to the year 2009 is a reference to the period of 6 months commencing on 1 July 2009.

Division 2 Energy savings scheme

100 Establishment of scheme

There is established by this Part an energy savings scheme.

101 Persons required to participate in scheme

- (1) The following persons are required to participate in the energy savings scheme:
- (a) a retail supplier,
 - (b) a direct supplier of electricity,
 - (c) a market customer.

- (2) In this section:

direct supplier of electricity means an electricity generator prescribed by the regulations, or any other person prescribed by the regulations, who supplies electricity directly to a customer under an electricity supply arrangement to which section 179 does not apply.

market customer means a customer that has classified any of its electricity loads as a market load and that is registered with the Market Operator as a market customer under the *National Electricity Rules* (within the meaning of the *National Electricity (NSW) Law*).

102 Scheme participants required to meet individual energy savings targets

Each scheme participant is required to meet its individual energy savings target for each year, in accordance with this Part.

Note. Failure to meet an individual energy savings target will result in a penalty being payable.

Division 3 Energy savings scheme targets

103 Energy savings scheme targets

- (1) The energy savings scheme targets are to be used as the basis for the calculation of each scheme participant's individual energy savings target.
- (2) The energy savings scheme targets are set out in Schedule 5.
- (3) The energy savings scheme target for a year specified in column 1 of Schedule 5 is the amount specified for that year in column 2 of that Schedule.

Note. The energy savings scheme target is applied to the liable acquisitions made by a scheme participant to calculate an individual energy savings target for the scheme participant. This is explained in Division 4.

104 Changes to energy savings scheme targets

- (1) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5 to change the energy savings scheme target for a specified year or years.
- (2) Accordingly, any such regulation may omit an amount specified in column 2 of Schedule 5 and substitute a new amount.
- (3) Any such regulation does not affect the energy savings scheme target for any year that commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

Note. For example, a regulation to change the energy savings scheme target for the year 2011 would have to be made on or before 31 December 2009.

105 Conditions under which energy savings scheme targets may be changed

The Minister may recommend the making of a regulation to change the energy savings scheme target for a year or years only if the Minister has certified in writing to the Governor that, in the Minister's opinion:

- (a) the change to the energy savings scheme target is appropriate to achieve greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the energy savings scheme, or for the purposes of implementing a national scheme with similar objectives to the energy savings scheme, or
- (b) the change to the energy savings scheme target is appropriate because of a sustained under supply of energy

savings certificates, as evidenced by scheme participants being required to pay a substantial energy savings shortfall penalty for 2 or more consecutive years, or

- (c) the change to the energy savings scheme target is appropriate because of a sustained over supply of energy savings certificates, as evidenced by the total number of certificates created substantially exceeding the total number of certificates required to meet all individual energy savings targets for 2 or more consecutive years, or
- (d) the change to the energy savings scheme target is appropriate because of significant changes to the rules governing the creation of energy savings certificates, or
- (e) the change to the energy savings scheme target is otherwise appropriate because of significant changes to the policy or regulatory framework, or the market conditions, in which the energy savings scheme operates.

Division 4 Individual energy savings targets

106 Individual energy savings targets

- (1) The *individual energy savings target* of a scheme participant for a year is the amount (expressed in tonnes of carbon dioxide equivalent of greenhouse gas emissions) calculated as follows:

- (a) **Step 1**

- Multiply the energy savings scheme target for the year by the total value of all liable acquisitions made by the scheme participant during that year to obtain an individual energy savings target expressed in megawatt hours (*the megawatt hours target*).

- (b) **Step 2**

- Multiply the megawatt hours target by the energy conversion factor for that year.

- (2) If the result obtained at the end of Step 2 includes a fraction of a tonne, the fractional amount is to be rounded up or down to the nearest whole tonne (and, if the amount to be rounded is half a tonne, is to be rounded up).

Note. For example, a retail supplier has liable acquisitions in the year 2010 of 75,000 megawatt hours.

To calculate the individual energy savings target, 75,000 must first be multiplied by 0.015, the energy savings scheme target for the year 2010 (this is Step 1).

Accordingly, the retail supplier has a megawatt hours target of 1,125.

Next, at Step 2, 1,125 must be multiplied by the energy conversion factor for the year 2010, which is 1.01.

The result is 1,136.25, which is then rounded down to 1,136.

The retail supplier has an individual energy savings target for the year 2010 of 1,136 tonnes of carbon dioxide equivalent.

As will be explained further below, the retail supplier can meet this target by surrendering 1,136 energy savings certificates to the Scheme Regulator.

107 **Liable acquisitions**

- (1) For the purposes of this Part, a **liable acquisition** is any purchase of electricity by a scheme participant, from the Market Operator or from a person who is not a registered participant under the *National Electricity (NSW) Law*, where the electricity is purchased for consumption by, or onsale to, end users in this State, or for use in this State.
- (2) A supply of electricity generated by a scheme participant is also to be treated as a liable acquisition under this Part if:
 - (a) the scheme participant is a retail supplier and the electricity is supplied by the retail supplier for consumption by, or onsale to, end users in this State, or for 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 under the scheme.
- (3) 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.
- (4) 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).
- (5) This section is subject to Division 5 (which provides for exemptions).

108 Energy conversion factors

- (1) Energy conversion factors are set out in Schedule 5.
- (2) The energy conversion factor for a year specified in column 1 of Schedule 5 is the amount specified for that year in column 3 of that Schedule.
- (3) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5 to change the energy conversion factor for a specified year or years.
- (4) Accordingly, any such regulation may omit an amount specified in column 3 of Schedule 5 and substitute a new amount.
- (5) Any such regulation does not affect the energy conversion factor for any year that commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

109 How does a scheme participant meet an individual energy savings target?

- (1) A scheme participant meets an individual energy savings target for a year if the energy savings attributable to the scheme participant for the year are equivalent to, or exceed, the individual energy savings target of the scheme participant for that year.
- (2) A scheme participant fails to meet an individual energy savings target for a year if the energy savings attributable to the scheme participant for the year are less than the individual energy savings target of the scheme participant for that year.

110 What are the energy savings attributable to a scheme participant?

For the purposes of this Part, the energy savings attributable to a scheme participant for a year is the total value of all energy savings certificates that the scheme participant elects to surrender, in accordance with this Part, for the purpose of meeting its individual energy savings target for that year.

Note. Energy savings certificates may be created in respect of activities that reduce the consumption of electricity. See Division 7.

111 Failure to meet individual energy savings target—energy savings shortfalls

- (1) If a scheme participant fails to meet its individual energy savings target for a year, the scheme participant has an *energy savings shortfall* for that year.

- (2) The amount of the energy savings shortfall is the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions by which the individual energy savings target of the scheme participant for the year exceeds the energy savings attributable to the scheme participant for that year.

112 Penalties for energy savings shortfalls

- (1) A scheme participant who has an energy savings shortfall for a year is liable to pay a penalty in respect of that year (an *energy savings shortfall penalty*).
- (2) The amount of the energy savings shortfall penalty is the amount (in dollars) calculated by multiplying the amount of the energy savings shortfall by the scheme penalty rate.
- (3) If the result obtained from that calculation is not a whole number of dollars, it is to be rounded down to the nearest whole number of dollars.

113 Penalty rates

- (1) The *scheme penalty rate* is the amount (expressed in dollars per tonne of carbon dioxide equivalent of greenhouse gas emissions) calculated by multiplying the base penalty rate for the year in respect of which the energy savings shortfall penalty is payable by the penalty conversion factor for that year.
- (2) Base penalty rates and penalty conversion factors are set out in Schedule 5A.
- (3) The base penalty rate for a year specified in column 1 of Schedule 5A is the amount (expressed in dollars per megawatt hour) specified for that year in column 2 of that Schedule.
- (4) The penalty conversion factor for a year specified in column 1 of Schedule 5A is the amount specified for that year in column 3 of that Schedule.

Note. For example, the scheme penalty rate for 2009 would be calculated by multiplying \$24.50 (the base penalty rate for that year) by 0.94. Accordingly, the scheme penalty rate would be \$23.03 per tonne of carbon dioxide equivalent of greenhouse gas emissions. A scheme participant who has an energy savings shortfall of 100 tonnes of carbon dioxide equivalent of greenhouse gas emissions in 2009 would be liable for an energy savings shortfall penalty of \$2,303.

- (5) The regulations may provide for the adjustment of base penalty rates in accordance with movements in the consumer price index.

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- (6) If the regulations provide for the adjustment of a base penalty rate in accordance with movements in the consumer price index, the scheme penalty rate is to be calculated using the relevant base penalty rate specified in Schedule 5A adjusted in the manner provided for by the regulations.
 - (7) If a base penalty rate specified in Schedule 5A is adjusted for movements in the consumer price index, the Scheme Regulator is to cause notice of the adjusted rate to be published on its website before the beginning of the year to which the adjusted rate applies.

114 Changes to base penalty rates and penalty conversion factors

- (1) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5A to change the base penalty rate or the penalty conversion factor (or both) for a specified year or years.
- (2) Accordingly, any such regulation may omit an amount specified in column 2 or 3 of Schedule 5A and substitute a new amount.
- (3) Any such regulation does not affect the base penalty rate or penalty conversion factor for any year that commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

Note. For example, a regulation to prescribe a different base penalty rate or penalty conversion factor for the year 2011 and subsequent years would have to be made on or before 31 December 2009.

- (4) The Minister may recommend the making of a regulation to amend Schedule 5A to change the base penalty rate for a year or years only if the Minister has certified in writing to the Governor that, in the Minister's opinion:
 - (a) the change to the base penalty rate is appropriate to achieve greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the energy savings scheme, or for the purposes of implementing a national scheme with similar objectives to the energy savings scheme, or
 - (b) the change to the base penalty rate is appropriate because of a sustained under supply of energy savings certificates, as evidenced by scheme participants being required to pay a substantial energy savings shortfall penalty for 2 or more consecutive years, or
 - (c) the change to the base penalty rate is appropriate because of a sustained over supply of energy savings certificates, as evidenced by the total number of certificates created

substantially exceeding the total number of certificates required to meet all individual energy savings targets for 2 or more consecutive years, or

- (d) the change to the base penalty rate is appropriate because of significant changes to the rules governing the creation of energy savings certificates, or
 - (e) the change to the base penalty rate is otherwise appropriate because of significant changes to the policy or regulatory framework, or the market conditions, in which the energy savings scheme operates.
- (5) To avoid doubt, subsection (4) does not apply to a regulation that changes the penalty conversion factor for a year or years.
- (6) This section does not apply to a regulation that provides for the adjustment of base penalty rates for movements in the consumer price index.

Note. The penalty rates specified in Schedule 5A are base rates only. Adjustments for movements in the consumer price index do not necessitate any change to Schedule 5A.

115 Payment of energy savings shortfall penalties

- (1) An energy savings shortfall penalty payable by a scheme participant in respect of a year is payable on 1 March in the following year or on any later date determined by the Scheme Regulator for the scheme participant.
- (2) An energy savings shortfall penalty is payable to the Scheme Regulator, for payment into the Consolidated Fund as public money.
- (3) An energy savings shortfall penalty payable by a scheme participant may be recovered in any court of competent jurisdiction as a debt due to the Crown.

116 Energy savings shortfalls may be carried forward

- (1) A scheme participant may elect to carry forward an energy savings shortfall, or part of an energy savings shortfall, for a year to the next year in accordance with this section.
- (2) If a scheme participant elects to carry forward an energy savings shortfall, or part of an energy savings shortfall, the amount carried forward is not subject to an energy savings shortfall penalty for the year to which the shortfall relates.

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- (3) The maximum amount of an energy savings shortfall that may be carried forward to the year 2010 by a scheme participant is 20% of the scheme participant's individual energy savings target for the year 2009 or, if the regulations prescribe another amount as the maximum amount that may be carried forward to year 2010, the amount so prescribed.
 - (4) The maximum amount of an energy savings shortfall that may be carried forward to any other year by a scheme participant is 10% of the scheme participant's individual energy savings target in the previous year or, if the regulations prescribe another amount as the maximum amount that may be carried forward to the relevant year, the amount so prescribed.
 - (5) An energy savings shortfall, or part of an energy savings shortfall, may be carried forward to the next year only.
 - (6) However, an energy savings shortfall, or part of an energy savings shortfall, for the year 2020 cannot be carried forward to the next year.
Note. The scheme automatically terminates at the end of the year 2020. It is also possible for the scheme to be terminated earlier under Division 14, in which case the regulations may prohibit scheme participants from carrying forward an energy savings shortfall to the next year if the termination takes effect in that next year.
 - (7) The fact that a scheme participant elects to carry forward an energy savings shortfall, or part of an energy savings shortfall, to the next year does not prevent the scheme participant from electing to carry forward an energy savings shortfall, or part of an energy savings shortfall, for that next year to the following year.
 - (8) For the purposes of this Part, an energy savings shortfall, or part of an energy savings shortfall, for a year that is carried forward to the next year is a *carried forward shortfall* for that next year.

117 Carried forward shortfalls must be remedied

- (1) A scheme participant who has a carried forward shortfall for a year must remedy the carried forward shortfall in that year.
- (2) A scheme participant remedies a carried forward shortfall if the additional energy savings attributable to the scheme participant for the year to which the energy savings shortfall is carried forward are equivalent to, or exceed, the amount of the carried forward shortfall.

- (3) A scheme participant fails to remedy a carried forward shortfall if the additional energy savings attributable to the scheme participant for the year to which the energy savings shortfall is carried forward are less than the amount of the carried forward shortfall.
- (4) For the purposes of this Part, the additional energy savings attributable to a scheme participant for a year is the total value of all energy savings certificates that the scheme participant elects to surrender, in accordance with this Part, for the purpose of remedying its carried forward shortfall for that year.
- (5) If a scheme participant fails to remedy a carried forward shortfall, the scheme participant is liable for a penalty in respect of the non-remedied amount (that is, the amount by which the carried forward shortfall exceeds the additional energy savings attributable to the scheme participant for the year).
- (6) The penalty is to be calculated as if the non-remedied amount were an energy savings shortfall for the year to which the energy savings shortfall is carried forward.
- (7) The penalty is payable in the same manner as, and is taken to be, an energy savings shortfall penalty.
- (8) To avoid doubt, a penalty payable by a scheme participant in respect of a failure to remedy a carried forward shortfall in a year is additional to any penalty payable by the scheme participant in respect of the participant's energy savings shortfall (if any) for that year.

118 Elections by scheme participants

- (1) An election by a scheme participant to surrender an energy savings certificate for the purpose of meeting its individual energy savings target or remedying a carried forward shortfall, or to carry forward an energy savings shortfall, must be made to the Scheme Regulator in accordance with this Part.
- (2) An election has no effect unless it is accepted by the Scheme Regulator.

Note. The election must accompany the scheme participant's annual energy savings statement. See Division 6.

Division 5 Exemptions

119 Exemptions

- (1) The Minister may, by order published in the Gazette, grant an exemption from the scheme in respect of any 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 respect of whom the exemption applies.
- (3) The Minister may grant an exemption under this section only if satisfied that:
 - (a) the electricity load is used in connection with an industry or activity that is both emissions intensive and trade exposed, and
 - (b) the exemption is otherwise generally consistent with the objects of this Part.
- (4) An exemption is to specify whether it is a full exemption or a partial exemption.
- (5) 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***.
- (6) 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***.
- (7) If an exemption is a partial exemption, the order granting the exemption is to specify (as a percentage or otherwise) the proportion of electricity load used by the relevant person or class of persons, or in connection with the relevant activity or class of activities, that is exempt from the scheme. The proportion specified is referred to in this Division as the ***exempt proportion***.

120 Effect of exemption

- (1) A scheme participant is entitled to deduct from the total value of its liable acquisitions the value of any purchase of electricity that is to be used by a person or in connection with an activity and which, 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 any purchase of

electricity that is to be used by a person or in connection with an activity and which, when so used, is partially exempt electricity load. The proportion that may be deducted is the exempt proportion.

- (3) An order granting an exemption may specify any 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.
- (4) Electricity the subject of such an allowance may also be deducted from the total value of liable acquisitions made by a scheme participant, in accordance with the exemption.
- (5) An order granting an exemption may authorise the Scheme Regulator to make rules with respect to the exemption (including rules relating to assessment of deductions under this Division).
- (6) Any deductions made by scheme participants under this Division must be made in accordance with the provisions of the relevant exemption, and any such rules.
- (7) In any proceedings under this Act involving a scheme participant, the burden of establishing that the scheme participant was entitled to deduct any particular amount of electricity purchased by it from the total value of its liable acquisitions lies on the scheme participant.
- (8) In this section, 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.

121 Determination of whether industry or activity is emissions intensive and trade exposed

- (1) The regulations may make further provision with respect to the determination of whether an industry or activity is emissions intensive or trade exposed.
- (2) Subject to any such regulations, the Minister may determine the basis on which an industry or activity is to be considered emissions intensive or trade exposed.

122 General provisions with respect to exemptions

- (1) An exemption does not take effect until the beginning of the year after the order granting the exemption is made.
- (2) An exemption may be revoked by order of the Minister published in the Gazette.

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- (3) If an exemption is revoked, the revocation does not take effect until the beginning of the year after the order revoking the exemption is made.
 - (4) The Minister is to provide a copy of any order made under this Division to the Scheme Regulator.
 - (5) The Scheme Regulator is to make particulars of any exemption under this Division, and any rules it makes with respect to an exemption, available to scheme participants, including by publishing particulars of the exemptions and rules on its website.

Division 6 Assessment of compliance of scheme participants

123 Annual energy savings statements

- (1) A scheme participant must lodge with the Scheme Regulator a statement (an *energy savings statement*) on or before 1 March in each year or on or before any later day specified in respect of the scheme participant by the Scheme Regulator.
- (2) An energy savings statement is to contain the following:
 - (a) an assessment of the scheme participant's individual energy savings target for the previous year, including particulars of liable acquisitions made by the scheme participant during the previous year and of any deductions made in respect of fully exempt or partially exempt electricity load,
 - (b) an assessment of the participant's liability (if any) for an energy savings shortfall penalty for the previous year, including liability for an energy savings shortfall penalty in respect of a carried forward shortfall,
 - (c) any other matters required by the Scheme Regulator.
- (3) If the scheme participant seeks to elect to surrender one or more energy savings certificates for the purposes of meeting its individual energy savings target for the year to which the energy savings statement relates, or to remedy a carried forward shortfall for the year, the election is to accompany the energy savings statement and is to contain details of the energy savings certificates proposed to be surrendered.
- (4) If a scheme participant seeks to elect to carry forward an energy savings shortfall for the year to which the statement relates, or any part of that shortfall, the election is to accompany the statement.

- (5) An energy savings statement, and any election that accompanies the statement, must be in a form approved by the Scheme Regulator.
- (6) A scheme participant that fails to lodge an energy savings statement in accordance with this section is guilty of an offence.
Maximum penalty:
 - (a) in the case of a corporation—250 penalty units, or
 - (b) in the case of an individual—100 penalty units.

124 Restrictions on surrender of energy savings certificates

- (1) An energy savings certificate cannot be surrendered by a scheme participant for the purposes of meeting its individual energy savings target or remedying a carried forward shortfall unless:
 - (a) the certificate is registered in the register of energy savings certificates kept under this Part and the registration is in force, and
 - (b) the participant is recorded in the register of energy savings certificates as the owner of the certificate, and
 - (c) the certificate was created in relation to energy savings that occurred before the end of the year to which the energy savings statement relates.
- (2) The Scheme Regulator may, by notice in writing to a scheme participant, refuse to accept an election to surrender an energy savings certificate:
 - (a) if, in the opinion of the Scheme Regulator, the certificate cannot be surrendered under this section, or
 - (b) if, in the opinion of the Scheme Regulator, the certificate is surplus to the number required to be surrendered for the purpose of meeting the participant's individual energy savings target or to remedy a carried forward shortfall.
- (3) If the Scheme Regulator accepts the surrender of an energy savings certificate, and the Scheme Regulator is not the Scheme Administrator, the Scheme Regulator must give the Scheme Administrator notice in writing of the decision, including details of the certificates surrendered.

125 Regulations relating to assessments

Regulations may be made for or with respect to the following matters:

- (a) the assessment of the liability of a scheme participant for an energy savings shortfall penalty, including self-assessment or assessment by the Scheme Regulator,
- (b) the date on which an assessment is taken to have been made and the date on which an assessment takes effect,
- (c) default assessments where an energy savings statement is not lodged by a scheme participant,
- (d) amendment of assessments, at the request of a scheme participant or on the Scheme Regulator's own motion,
- (e) revocation of the cancellation of energy savings certificates in connection with amended assessments and the revival of the certificates,
- (f) payments resulting from amended assessments,
- (g) notice of assessments.

126 Validity of assessment

The validity of an assessment of a liability to pay an energy savings shortfall penalty is not affected by any failure to comply with a provision of this Act, the regulations or the scheme rules.

Division 7 Creation of energy savings certificates

127 Activities in respect of which energy savings certificates may be created

- (1) The scheme rules may make provision for or with respect to the creation of energy savings certificates in respect of any activity, or class of activities, that reduces the consumption of electricity in this State.
- (2) The scheme rules may also make provision for or with respect to the creation of energy savings certificates in respect of any activity, or class of activities, that reduces the consumption of electricity in another jurisdiction, if an approved corresponding scheme is in operation in that jurisdiction.
- (3) An *approved corresponding scheme* is a scheme approved by the Minister for the purposes of this section, by order in writing.

- (4) The Minister may approve a scheme for the purposes of this section only if the Minister is satisfied that:
- (a) the scheme is intended to promote the reduced consumption of electricity and the objectives of the scheme are consistent with the objectives of the energy savings scheme established by this Part, and
 - (b) the monitoring and enforcement of compliance with the scheme to be approved is no less stringent than that applicable to the energy savings scheme established by this Part.
- (5) An energy savings certificate cannot be created in respect of an activity unless the activity commenced or commences on or after 1 July 2008.
- Note.** However, energy savings certificates may be created only in respect of energy savings occurring on or after 1 July 2009. For example, a project that results in energy savings that commenced in September 2008 may be eligible for accreditation under the scheme, but energy savings certificates may be created only in respect of energy savings arising from the project that occur on or after 1 July 2009.
- (6) An activity in respect of which an energy savings certificate may be created under this Part is a *recognised energy saving activity*.

128 Energy savings represented by certificates

- (1) An energy savings certificate may be created for each whole tonne of carbon dioxide equivalent of greenhouse gas emissions attributable to energy savings arising from a recognised energy saving activity.
- (2) Accordingly, each energy savings certificate has a value of 1 tonne of carbon dioxide equivalent of greenhouse gas emissions.

129 Calculation of energy savings attributable to recognised energy saving activities

- (1) The number of tonnes of carbon dioxide equivalent of greenhouse gas emissions attributable to energy savings arising from a recognised energy saving activity is to be calculated by multiplying the number of megawatt hours of energy savings arising from that activity by the certificate conversion factor for the year in which the energy savings for which that certificate is created occurred.
- (2) The scheme rules may provide for the methodology for calculating the number of megawatt hours of energy savings arising from a recognised energy saving activity.

130 Certificate conversion factor

- (1) Certificate conversion factors are set out in Schedule 5B.
- (2) The certificate conversion factor for a year specified in column 1 of Schedule 5B is the amount specified for that year in column 2 of that Schedule.
- (3) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5B to change the certificate conversion factor for a specified year or years.
- (4) Accordingly, any such regulation may omit an amount specified in column 2 of Schedule 5B and substitute a new amount.
- (5) Any such regulation does not affect the certificate conversion factor for any year that commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

131 When energy savings certificates may be created

- (1) An energy savings certificate may be created by an accredited certificate provider in respect of the energy savings arising from a recognised energy saving activity immediately after those energy savings occur.
- (2) An energy savings certificate may be created in respect of energy savings only if the energy savings occur on or after 1 July 2009.
- (3) An energy savings certificate may be created in respect of energy savings that occur during a particular year no later than 6 months after the end of that year.
- (4) The regulations or scheme rules may specify when the energy savings arising from a recognised energy saving activity are considered to have occurred for the purposes of this Part.
- (5) Without limiting the above, the regulations or scheme rules may provide that energy savings are taken to have occurred on the date on which the recognised energy saving activity is first commenced. Accordingly, energy savings certificates may be created in respect of the energy savings arising from the activity immediately after the activity is first commenced.

Note. Subsection (5) makes it clear that the regulations or scheme rules may allow certificates to be created in respect of an activity that has ongoing energy saving effects as soon as the activity is commenced. It will not be necessary to wait until all the energy savings arising from the activity actually occur before creating a certificate in respect of the activity. Such provisions may apply, for example, if the regulations or

scheme rules allow for the creation of certificates in respect of the installation of energy efficient lighting, which has ongoing energy savings.

132 No double counting of energy savings

An energy savings certificate cannot be created in respect of energy savings arising from a recognised energy saving activity if an abatement certificate under Part 8A has already been created in respect of those energy savings.

133 Improper creation of energy savings certificates

- (1) A person must not create or purport to create an energy savings certificate in contravention of this Act, the regulations or the scheme rules (including any conditions of accreditation imposed by or under this Act).

Maximum penalty: 2,000 penalty units.

- (2) For avoidance of doubt, a person may be found guilty of an offence against this section whether or not the certificate concerned is registered in the register of energy savings certificates kept under this Part.

Division 8 Accreditation of certificate providers

134 Certificates may be created by accredited certificate providers only

- (1) Energy savings certificates may be created by accredited certificate providers only.
- (2) A person who is an accredited certificate provider may create energy savings certificates 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 energy savings certificates only in relation to those activities in relation to which the person has been accredited as a certificate provider.

135 Eligibility for accreditation

- (1) The regulations and scheme rules may make provision for or with respect to the eligibility of a person for accreditation as a certificate provider.
- (2) Without limiting the above, a person who is engaged in an industry, or carries out an activity, that benefits from a full

exemption from the scheme, or is a related body corporate of such a person, is not eligible for accreditation as a certificate provider in respect of an activity that reduces the consumption of electricity used in that industry or activity.

- (3) For the purposes of this section, an industry or activity benefits from a full exemption from the scheme if the electricity load used in that industry or activity is fully exempt electricity load.

136 Application for accreditation

- (1) Any 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 is to determine an application for accreditation as a certificate provider:
- (a) by accrediting the applicant as a certificate provider in relation to specified activities, or
- (b) by refusing the application.
- (3) The Scheme Administrator may refuse an application for accreditation as a certificate provider on such grounds as may be specified in the regulations.
- (4) The regulations may make provision for or with respect to applications for accreditation, including by requiring an application fee to be paid to the Scheme Administrator.
- (5) The Scheme Administrator may charge a fee (in addition to any application fee) in respect of the investigation and determination of an application for accreditation. The fee is to be determined by the Scheme Administrator on a cost recovery basis.

137 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 as a certificate provider on such grounds as may be specified in the regulations.
- (3) The suspension or cancellation of the accreditation of a person as a certificate provider is subject to such conditions as the Scheme Administrator imposes. Any such conditions may include (but are not limited to) any condition to which the accreditation was subject immediately before it was suspended or cancelled.

- (4) The regulations may provide for the variation or revocation of any conditions that are imposed by the Scheme Administrator on the suspension or cancellation of accreditation as a certificate provider.

138 Conditions of accreditation

- (1) Accreditation as a certificate provider is subject to the following conditions:
- (a) such conditions as may be imposed from time to time by the regulations,
 - (b) such conditions as may be 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) Without limiting the above, the following are examples of the types of conditions that may be imposed on the accreditation of a person as a certificate provider:
- (a) a condition that requires the person not to create an energy savings certificate in respect of the energy savings arising from an activity if an energy savings certificate has already been created in respect of that energy saving or if that energy saving has already been used for the purposes of compliance with a scheme or arrangement with similar objectives to the scheme established by this Part,
 - (b) a condition that requires the person not to use the energy savings arising from a recognised energy saving activity for the purposes of compliance with a scheme or arrangement with similar objectives to the scheme established by this Part, if an energy savings certificate has already been created in respect of those energy savings,
 - (c) a condition that requires the person to provide financial assurances to secure or guarantee the person's compliance with this Part,
 - (d) a condition that requires the person to take out and maintain a policy of insurance in connection with the person's functions as an accredited certificate provider,
 - (e) a condition that requires the person to provide information, assistance and access to the Scheme Administrator (or persons appointed by the Scheme Administrator) for the purposes of monitoring and auditing compliance by the person with this Part.

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- (3) A person must not contravene any of the conditions of the person's accreditation as a certificate provider.
Maximum penalty: 2,000 penalty units.
 - (4) Subsection (3) extends to any conditions to which the suspension or cancellation of the accreditation of a person is subject under this Part.

139 Variation or revocation of conditions of accreditation

- (1) An accredited certificate provider may apply to the Scheme Administrator for the variation or revocation of any condition of the certificate provider's accreditation imposed by the Scheme Administrator (not being a condition imposed by this Act or the regulations).
- (2) The regulations may make provision for or with respect to the variation or revocation of any conditions of accreditation that are imposed by the Scheme Administrator, including the fee (if any) to be paid to the Scheme Administrator in respect of an application for variation or revocation of a condition.
- (3) The Scheme Administrator may charge a fee (in addition to any application fee) in respect of the investigation and determination of an application for variation or revocation of a condition of accreditation. The fee is to be determined by the Scheme Administrator on a cost recovery basis.

140 Transfer of accreditation

- (1) Accreditation as a certificate provider is not transferable, except as otherwise provided by this section.
- (2) A person who is accredited as a certificate provider may, with the approval of the Scheme Administrator, transfer that 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 is or will be eligible for accreditation and will fulfil the obligations that the accredited certificate provider is required to fulfil in respect of the recognised energy saving activity or activities for which accreditation is to be transferred.
- (4) The regulations may make further provision with respect to the transfer of accreditation, including by requiring a fee to be paid to the Scheme Administrator in connection with an application for approval of a transfer of accreditation.

141 Records to be kept by accredited certificate providers

The regulations may make provision for or with respect to the records to be kept by accredited certificate providers and the information required to be provided to the Scheme Administrator in connection with the creation of energy savings certificates.

142 Scheme Administrator may require surrender of certificates

- (1) The Scheme Administrator may, by order in writing to a person, require the person to surrender to the Scheme Administrator, within a period specified in the order, a number of energy savings certificates specified in the order.
- (2) An order may be made against a person under this section only if:
 - (a) the person is found guilty of an offence of contravening any condition of the person's accreditation as a certificate provider, or
 - (b) the person is found guilty of an offence involving the improper creation of energy savings certificates (that is, an offence under section 133).
- (3) In the case of an order made against a person found guilty of an offence involving the improper creation of energy savings certificates, the Scheme Administrator is to require the surrender of a number of certificates that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were improperly created by the person and registered under this Part.

Note. The purpose of the order is to remove from circulation a number of energy savings certificates that is equivalent to the number of certificates improperly created by a person, so that the improper creation of those certificates does not result in energy savings that have not actually been achieved from being attributed to a scheme participant.

- (4) In any other case, the Scheme Administrator is to determine the number of energy savings certificates to be surrendered in accordance with the regulations.
- (5) A person must not fail to comply with an order under this section. Maximum penalty: 1,000 penalty units, and an additional 1 penalty unit for each energy savings certificate the person fails to surrender in accordance with the order.
- (6) The value of any energy savings certificates surrendered for the purposes of compliance with an order under this section cannot be counted towards meeting a scheme participant's individual energy savings target or remedying a carried forward shortfall.

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- (7) If a person fails to comply with an order under this section, the Scheme Administrator may cancel any energy savings certificates in respect of which the person is registered under this Part as the owner.
- (8) For avoidance of doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of energy savings certificates to comply with the order.
- Note.** If the person who is the subject of the order does not hold a sufficient number of certificates to comply with the order, the person may obtain the required number by purchasing them.
- (9) The regulations may make further provision for or with respect to orders under this section.

Division 9 Registration, form and duration of energy savings certificates

143 Creation of certificate must be registered

- (1) An energy savings certificate has no force or effect until the creation of the certificate is registered by the Scheme Administrator in the register of energy savings certificates kept under this Part.
- (2) An application for registration of the creation of an energy savings certificate may be made to the Scheme Administrator by an accredited certificate provider.
- (3) The Scheme Administrator is to determine an application for registration of the creation of an energy savings certificate by:
- (a) granting the application and registering the creation of the energy savings certificate in the register of energy savings certificates kept under this Part, or
 - (b) refusing the application.
- (4) The Scheme Administrator registers the creation of an energy savings certificate by creating an entry for the certificate in the register of energy savings certificates and recording the name of the person who created the certificate as the owner of the certificate.
- (5) The Scheme Administrator may refuse an application for registration of the creation of an energy savings certificate on such grounds as may be specified in the regulations.

- (6) The regulations may make provision for or with respect to applications for registration of the creation of an energy savings certificate, including by requiring an application fee to be paid to the Scheme Administrator.

144 Form of certificate

The regulations may make provision for or with respect to the form in which energy savings certificates are to be created.

145 Duration of certificate

- (1) An energy savings certificate, when registered by the Scheme Administrator, remains in force until it is cancelled by the Scheme Administrator.
- (2) An energy savings certificate may be cancelled by the Scheme Administrator:
- (a) if the person registered as the owner of the energy savings certificate is a scheme participant who elects to surrender the certificate for the purpose of meeting its individual energy savings 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 energy savings certificate, by notice in writing, surrenders the certificate to the Scheme Administrator, and the Scheme Administrator accepts the surrender of the certificate, or
 - (c) in any other circumstances authorised by this Part.
- (3) The Scheme Administrator must cancel any energy savings 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 under this Part by the Scheme Administrator requiring the person to surrender energy savings certificates.
- (4) The Scheme Administrator cancels an energy savings certificate by altering the entry relating to the certificate in the register of energy savings certificates kept under this Part to show that the certificate is cancelled.

Division 10 Transfers and other dealings in certificates

146 Certificates are transferable

An energy savings certificate is transferable in accordance with this Division.

147 Application for registration of transfer

- (1) The transfer of an energy savings certificate does not have effect until the transfer is registered by the Scheme Administrator under this Part.
- (2) An application for registration of a transfer of an energy savings certificate is to be made to the Scheme Administrator by the parties to the transfer.
- (3) The Scheme Administrator must:
 - (a) grant the application by registering the transfer of the energy savings certificate in the register of energy savings certificates kept under this Part, or
 - (b) refuse the application.
- (4) The Scheme Administrator registers the transfer of an energy savings certificate by altering the entry relating to that certificate in the register of energy savings certificates so as to record the new owner of the certificate.
- (5) The Scheme Administrator may refuse an application for registration of a transfer of an energy savings certificate on such grounds as may be specified in the regulations.
- (6) The regulations may make provision for or with respect to applications for the registration of transfers of energy savings certificates, including by requiring an application fee to be paid to the Scheme Administrator.

148 Other dealings in certificates

The regulations may make provision for or with respect to the registration of any mortgage, assignment, transmission or other dealing in an energy savings certificate.

149 Holder of certificate may deal with certificate

- (1) The person registered as the owner of an energy savings certificate may, subject to this Part, deal with the certificate as its absolute owner and give good discharges for any consideration for any such dealing.
- (2) This section is subject to any rights appearing in the register of energy savings certificates to belong to another person, being rights that are registered in accordance with any regulations made under this Part.

- (3) This section only protects a person who deals with the person registered as the owner of the energy savings certificate as a purchaser in good faith for value and without notice of any fraud on the part of the registered owner.
- (4) Despite subsection (3), a person who purchases an energy savings certificate in good faith for value does not lose the protection provided by this section because the person has notice that a person has been found guilty of an offence against this Part in respect of the creation of an energy savings certificate.

Note. This Part makes it an offence to improperly create an energy savings certificate. The Scheme Administrator may require a person who has been convicted of such an offence to "make good" the improper creation of the certificates by surrendering to the Scheme Administrator an equivalent number of certificates to those improperly created. It is not necessary for those certificates to be the actual certificates improperly created (as those certificates may already have been sold).

150 Scheme Administrator not concerned as to legal effect of transaction

The Scheme Administrator is not concerned with the effect in law of any transaction registered under this Part or the regulations and the registration of the transaction does not give to the transaction any effect that it would not have if this Division had not been enacted.

Division 11 Administration of scheme

151 Scheme Regulator

- (1) The Minister may, by order in writing, 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 such an appointment, the Tribunal.
- (3) The regulations may make provision for or with respect to the appointment of a Scheme Regulator by the Minister.

152 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 energy savings targets,

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- (b) if appropriate, to assess and determine, in accordance with this Part, the regulations and the scheme rules, any energy savings 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) such other functions as are 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 such other functions as are conferred or imposed on it by the Minister under the terms of its appointment as Scheme Regulator.
 - (3) For the purpose of enabling the Scheme Regulator to exercise its functions, the Minister must furnish the Scheme Regulator with such information in the possession of the Minister as the Scheme Regulator may request in relation to the compliance by scheme participants with this Part.
 - (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 any other person or body.
 - (5) If the Tribunal is the Scheme Regulator, section 10 of the *Independent Pricing and Regulatory Tribunal Act 1992* does not apply to its functions as Scheme Regulator.

153 Scheme Administrator

- (1) The Minister may, by order in writing, 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 such 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 any such appointment,
 - (b) the efficiency of administrative arrangements relating to the energy savings scheme,
 - (c) ability to meet objectives of the energy savings scheme,

- (d) proposed governance arrangements,
 - (e) arrangements proposed to manage liabilities associated with carrying out the Scheme Administrator's functions.
- (4) The regulations may make provision for or with respect to the appointment of a Scheme Administrator by the Minister.
- (5) The Minister may limit the appointment of a person or body as Scheme Administrator to particular specified functions of the Scheme Administrator. In such a case, a reference in this Act to the Scheme Administrator, in relation to any functions of the Scheme Administrator, is a reference to the person or body appointed to exercise those functions (or, in the absence of such an appointment, the Tribunal).

154 Functions of Scheme Administrator

- (1) The Scheme Administrator has the following functions:
- (a) the functions conferred by this Part relating to the energy savings 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 any conditions of accreditation,
 - (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
 - (d) such other functions as are conferred or imposed on it by or under this Act or any other Act or law.
- (2) If the Scheme Administrator is appointed by the Minister, the Scheme Administrator also has such other functions as are conferred or imposed on it by the Minister under the terms of its appointment as Scheme Administrator.
- (3) For the purpose of enabling the Scheme Administrator to exercise its functions, the Minister must furnish the Scheme Administrator with such information in the possession of the Minister as the Scheme Administrator may request in relation to the compliance by accredited certificate providers with this Part.
- (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 any other person or body.
- (5) If the Tribunal is the Scheme Administrator, section 10 of the *Independent Pricing and Regulatory Tribunal Act 1992* does not apply to its functions as Scheme Administrator.

155 Conduct of audits

- (1) The regulations may make provision for or with respect to the conduct of audits by the Scheme Regulator, the Scheme Administrator or other persons for the purposes of this Part.
- (2) Without limiting the above, the regulations may provide for the following matters:
 - (a) the matters that may be the subject of an audit,
 - (b) the persons who may conduct an audit,
 - (c) the functions that may be exercised by persons who conduct an audit,
 - (d) offences relating to obstructing or hindering persons, or refusing or failing to comply with requirements made by persons, who conduct audits.
- (3) Each scheme participant and accredited certificate provider is liable to pay to the Treasurer the reasonable cost (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.
- (4) Without limitation, a licence or accreditation may include terms and conditions relating to the determination of the cost of carrying out those functions.

156 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 notice in writing served on any relevant person, require the person to do any 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, any document or type of document specified in the notice.
- (2) If the Tribunal is the Scheme Regulator or Scheme Administrator, the Tribunal may, in such a notice, in addition to or instead of requiring any of the above, require a 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 section, or
 - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson of the Tribunal at any meeting of the Tribunal, acting as Scheme Regulator or Scheme Administrator, that the person is required to attend under this section.
- Maximum penalty:
- (a) in the case of a corporation—250 penalty units, or
 - (b) in the case of an individual—100 penalty units or 6 months imprisonment, or both.
- (4) It is a reasonable excuse for the purposes of subsection (3) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
- (5) If documents are given to the Scheme Regulator or Scheme Administrator under this section, 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 them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Scheme Regulator or Scheme Administrator.
- (6) This section does not affect the law relating to client legal privilege (or other legal professional privilege).
- (7) In this section, a *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) any other person whom the Scheme Regulator or Scheme Administrator (as the case requires) has reason to believe is able to provide information relevant to its functions as Scheme Regulator or Scheme Administrator.

157 Obstruction of Scheme Regulator or Scheme Administrator

A person must not hinder, obstruct or interfere with the Scheme Regulator, the Scheme Administrator or any member or officer of the Scheme Regulator or the Scheme Administrator in the exercise of functions under this Part.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—100 penalty units or 6 months imprisonment, or both.

158 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 of that fact), 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 or 6 months imprisonment, or both.

159 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 is required to ensure that the information is not divulged by it to any person, except:
 - (a) with the consent of the person who provided the information, or
 - (b) in the case of 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 any other law.

- (2) If the Scheme Regulator or Scheme Administrator is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Scheme Regulator or Scheme Administrator in connection with its functions under this Part, it may give directions prohibiting or restricting the divulging of the information.
- (3) A person must not contravene a direction given under subsection (2).
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (4) A reference in this section to information includes information given at a meeting of the Scheme Regulator or Scheme Administrator and information contained in any documents given to the Scheme Regulator or Scheme Administrator.

160 Cabinet documents and proceedings

- (1) This Part does not enable the Scheme Regulator or Scheme Administrator:
 - (a) to require any person to give any statement of information or answer any question that relates to confidential proceedings of Cabinet, or
 - (b) to require any person to produce a Cabinet document, or
 - (c) to inspect a Cabinet document.
- (2) For the purposes of this section, a certificate of the Director-General of the Department of Premier and Cabinet, or the Deputy Director-General (General Counsel) of that Department, that any information or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.
- (3) In this section:
Cabinet includes a committee of Cabinet or a subcommittee of such a committee.
Cabinet document means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the *Freedom of Information Act 1989*.

Division 12 Registers

161 Establishment and keeping of registers

- (1) The Scheme Administrator is required to establish and keep the following registers for the purposes of this Part:
 - (a) a register of accredited certificate providers,
 - (b) a register of energy savings certificates.
- (2) A register is to be kept in such form as the Scheme Administrator considers appropriate.
- (3) A register may be kept wholly or partly by electronic means.

162 Register of accredited certificate providers

- (1) The register of accredited certificate providers is to contain the following information in relation to each accredited certificate provider:
 - (a) the name of the accredited certificate provider,
 - (b) any other information required to be included in the register by this Part or the regulations.
- (2) The register of accredited certificate providers may also contain such information as the regulations may prescribe in relation to a person whose accreditation as a certificate provider is suspended or cancelled.
- (3) Copies of the register of accredited certificate providers are to be made available for public inspection (free of charge) at the principal office of the Scheme Administrator during ordinary business hours.
- (4) However, the information required to be included in the register by the regulations is required to be made available to the public under this section only if the regulations require it to be made so available.

163 Register of energy savings certificates

- (1) The register of energy savings certificates is to contain the following information in relation to each energy savings certificate that is created under this Part:
 - (a) the name of the person who created the energy savings certificate,
 - (b) the name of the current registered owner, and any previous registered owners, of the energy savings certificate,

- (c) whether the certificate is in force, or has been cancelled,
 - (d) any other information required to be included in the register by this Part or the regulations.
- (2) Copies of the register of energy savings certificates are to be made available for public inspection (free of charge) at the principal office of the Scheme Administrator during ordinary business hours.
- (3) However, the information required to be included in the register by the regulations is required to be made available to the public under this section only if the regulations require it to be made so available.

164 Information from registers

The Scheme Administrator may compile the following information from a register and make that information available for public inspection (free of charge) in such form as the Scheme Administrator thinks fit:

- (a) information concerning the creation or cancellation of energy savings certificates under this Part,
- (b) information concerning current and previous registered owners of energy savings certificates,
- (c) information concerning the transfer of energy savings certificates,
- (d) other information of a kind prescribed by the regulations.

165 Evidentiary provisions

- (1) A register kept under this Division is evidence of any particulars registered in it.
- (2) If a register is wholly or partly kept by electronic means, a document issued by the Scheme Administrator producing in writing particulars included in the register, or the part kept by electronic means, is admissible in legal proceedings as evidence of those particulars.

166 Correction of register

The Scheme Administrator may correct any error in, or omission from, a register.

Division 13 Scheme rules

167 Scheme rules

- (1) The Minister may approve rules for or with respect to the following matters:
 - (a) any matter for which a scheme rule may be made under this Part,
 - (b) any other matter prescribed by the regulations.

Note. Under Division 7, the scheme rules may make provision for:

 - (a) the activities in respect of which energy savings certificates may be created, and
 - (b) the methodology for calculating the number of megawatt hours of energy savings arising from a recognised energy saving activity.
- (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any 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 any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.
- (4) The Minister may from time to time approve amendments to the rules or a revocation of rules.
- (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:
 - (a) written notice of the approval of the rule must be published in the Gazette, and
 - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
 - (c) the Minister must make available a copy of the rule to each scheme participant and make copies available to the public.
- (6) A rule must be consistent with this Act and the regulations.

168 Obligations under scheme rules

A person who is a scheme participant or an accredited certificate provider must not contravene a provision of a scheme rule.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—100 penalty units.

Division 14 Miscellaneous

169 Licence condition for retail suppliers

- (1) It is a condition of a retail supplier's licence that the retail supplier comply with this Part, the regulations under this Part and the scheme rules.
- (2) This section does not limit the power of the Minister to impose conditions on the licence of a retail supplier under this Act, including conditions (not inconsistent with this Part) relating to greenhouse gas emissions, energy efficiency, the provision of information to the Scheme Regulator or Scheme Administrator about matters related to this Part and other matters related to the scheme.
- (3) A monetary penalty cannot be imposed on a retail supplier under clause 8 or 8A of Schedule 2, and no other action can be taken against a retail supplier under Schedule 2, in respect of an energy savings shortfall or carried forward shortfall if an energy savings shortfall penalty is payable in respect of the relevant shortfall under this Part.

Note. Under clauses 8 and 8A of Schedule 2, the Minister and the Tribunal may impose monetary penalties for breaches of the requirements of this Act and the regulations, as well as breaches of licence conditions. Other penalties may also be imposed under Schedule 2.

170 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 under this Part continue to apply to the person in respect of the period during which the person was a scheme participant and, for that purpose, a reference to a scheme participant includes a reference to a former scheme participant.
- (2) In particular, the former scheme participant continues to be required to lodge an energy savings statement in respect of the year during which the person ceased to be a scheme participant, and the requirements of this Part with respect to the conduct of

audits and the provision of information, documents and evidence to the Scheme Regulator or Scheme Administrator continue to apply in respect of the person as if the person were a scheme participant.

- (3) The Minister may, by notice in writing to the former scheme participant, bring forward the date on which the person would otherwise be required to lodge an energy savings statement with the Scheme Regulator in respect of the year during which the person ceased to be a scheme participant.
- (4) The notice may specify a date (a **submission date**) on which the former scheme participant is required to lodge the energy savings statement with the Scheme Regulator, being a date that is earlier than the date on which the person would otherwise be required to lodge the statement.
- (5) The submission date must not be earlier than 28 days after the person ceased to be a scheme participant.
- (6) If the Minister brings forward the date for submission of an energy savings statement under this section, the provisions of this Act regarding the lodgment of an energy savings statement and the payment of an energy savings shortfall penalty apply as if a reference to the date of 1 March were a reference to the submission date.

171 Appeals to Administrative Decisions Tribunal

- (1) A scheme participant or former scheme participant who is aggrieved by any of the following decisions of the Scheme Regulator may apply to the Administrative Decisions Tribunal for a review of the decision:
 - (a) a determination as to the individual energy savings target for the scheme participant or former scheme participant for a year,
 - (b) a decision to refuse to accept the surrender of an energy savings certificate for the purposes of meeting the scheme participant's or former scheme participant's individual energy savings target or remedying a carried forward shortfall,
 - (c) an assessment of the amount of any energy savings shortfall penalty payable by the scheme participant or former scheme participant for a year,
 - (d) any other decision 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, under this Part as a certificate provider and who is aggrieved by any of the following decisions of the Scheme Administrator may apply to the Administrative Decisions Tribunal for a review 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 an energy savings certificate,
 - (d) any other decision of the Scheme Administrator of a kind prescribed by the regulations.
- (3) A person who has applied for the registration of a transfer of an energy savings certificate under this Part and who is aggrieved by a decision of the Scheme Administrator to refuse registration of the transfer may apply to the Administrative Decisions Tribunal for a review of the decision.
- (4) A person who is the subject of an order by the Scheme Administrator under this Part requiring the person to surrender energy savings certificates to the Scheme Administrator and who is aggrieved by a decision of the Scheme Administrator to impose that order may apply to the Administrative Decisions Tribunal for a review of the decision.

172 Certificate evidence

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 energy savings target for a scheme participant was the amount specified in the certificate, or
- (c) the energy savings shortfall for a scheme participant for a year, or the carried forward shortfall for a year, was the amount specified in the certificate, or
- (d) the energy savings shortfall penalty payable by a scheme participant was the amount specified in the certificate,

is admissible in evidence in proceedings before any court or tribunal and is prima facie evidence of the matters stated in the certificate.

173 Personal liability

A matter or thing done or omitted to be done by the Scheme Regulator, the Scheme Administrator, or a member or officer of, or a person acting under the direction of, the Scheme Regulator or Scheme Administrator does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member, officer or person so acting personally to any action, liability, claim or demand.

174 Annual report by Scheme Regulator

- (1) As soon as practicable after 1 March (but on or before 31 July) in each year, the Scheme Regulator must prepare and forward to the Minister a report on the extent to which scheme participants have complied, or failed to comply, with individual energy savings targets during the previous year.
- (2) Without limiting the above, the report is to contain the following:
 - (a) the name of each scheme participant and the performance of the participant in relation to the participant's individual energy savings target in the year to which the report relates,
 - (b) the total number of energy savings certificates surrendered in the year to which the report relates,
 - (c) the total number of energy savings certificates created in the year to which the report relates,
 - (d) an estimate, prepared by the Scheme Administrator, of the actual energy savings that have been realised under the scheme in the year to which the report relates (having regard to the number of energy savings certificates that have been created),
 - (e) an estimate, prepared by the Scheme Administrator, of the actual energy savings that will be realised under the scheme in the next 10 years (having regard to the number of energy savings certificates that have been created).
- (3) The report must also set out the functions delegated by the Scheme Regulator or Scheme Administrator and the person or body to whom they were delegated.
- (4) 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.

- (5) For the purposes of enabling the Scheme Regulator to compile a report under this section, the Scheme Administrator must furnish the Scheme Regulator with:
 - (a) the estimates the Scheme Administrator is required to prepare for inclusion in the report, and
 - (b) such other information as the Scheme Regulator reasonably requires to complete the report.
- (6) The first report under this section is to be made in the year 2010.

175 Five-yearly reviews of scheme

- (1) The Minister is to review the operation of the scheme to determine whether the policy objectives of the scheme remain valid and whether the terms of this Part remain appropriate for securing those objectives.
- (2) The first review is to be undertaken as soon as possible after the end of the period of 5 years from 1 July 2009.
- (3) After that, a review is to be undertaken at the end of each subsequent period of 5 years.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period to which the review relates.

176 Waiver or suspension 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 energy savings target or remedy a carried forward shortfall, but only if it appears to the Minister that a scheme participant is or will be unable to meet the individual energy savings target or remedy the carried forward shortfall because of:
 - (a) a systems or other failure of the register of energy savings certificates kept under this Part, or
 - (b) any other emergency affecting the integrity of the register or the energy savings scheme.
- (2) An order 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 any other rights conferred or obligations imposed under this Part.

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- (3) An order takes effect on the day on which it is published in the Gazette or, if a later day is specified in the order, on that day.

177 Termination of scheme on establishment of national scheme

- (1) The Governor may, by proclamation published on the NSW legislation website, terminate the operation of any or all of the provisions of this Part.
- (2) A proclamation may be made only if the Minister has certified to the Governor that the Minister is satisfied that New South Wales is, or will be, a participant in a scheme that:
- (a) has been or will be established either nationally or in this State and at least one or more other States or Territories, and
 - (b) is designed to achieve outcomes that include a reduction in the consumption of electricity and the encouragement of participation in activities that result in energy savings.
- (3) The termination of the operation of the provisions concerned takes effect on the day (not being a day earlier than the day on which the proclamation is published on the NSW legislation website) specified in the proclamation.
- (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 scheme concerned.
- (5) Regulations may be made for or with respect to the effect of the termination of any provisions on rights conferred or obligations imposed under this Part.
- (6) Without limiting the above, the regulations may:
- (a) prohibit scheme participants from carrying forward an energy savings shortfall, or part of an energy savings shortfall, for a year to the following year as a consequence of the termination of the operation of all or any of the provisions of this Part in respect of that following year, and
 - (b) specify any other conditions that must be complied with respect to termination of all or any of the provisions of this Part.

178 Automatic termination of scheme at end of year 2020

- (1) The scheme terminates at the end of the year 2020.
- (2) This Part continues to have effect with respect to matters arising (including obligations incurred) before the termination of the scheme.
- (3) In particular, persons who are scheme participants in the year 2020 continue to be required to lodge an energy savings statement in respect of that year in accordance with this Part, and 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 scheme is terminated.
- (4) A reference in this Part to a scheme participant includes, after the scheme is terminated, a reference to a former scheme participant.

[3] Section 103 Recovery of fees and penalties (before its renumbering by item [6])

Insert “or 9” after “Part 8A”.

[4] Section 106 Regulations (before its renumbering by item [6])

Omit section 106 (1) (h1). Insert instead:

- (h1) information and returns to be provided by benchmark participants under Part 8A and scheme participants under Part 9,

[5] Section 106 (1) (h2) (before its renumbering by item [6])

Insert “or by the Minister, the Scheme Regulator or the Scheme Administrator under Part 9” after “Part 8A”.

[6] Part 9 Miscellaneous

Renumber existing Part 9 as Part 10 and renumber the sections in that Part with consecutive section numbers starting from section 179. Cross-references in the Act to sections in the new Part 10 are to be renumbered accordingly.

[7] Schedules 5–5B

Insert after Schedule 4:

Schedule 5 Energy savings scheme—targets and energy conversion factors

(Sections 103, 104 and 108)

Column 1	Column 2	Column 3
Year	Energy savings scheme target	Energy conversion factor
2009	0.01	1.01
2010	0.015	1.01
2011	0.025	1.01
2012	0.035	1.01
2013	0.045	1.01
2014	0.05	1.01
2015	0.05	1.01
2016	0.05	1.01
2017	0.05	1.01
2018	0.05	1.01
2019	0.05	1.01
2020	0.05	1.01

Schedule 5A Energy savings scheme—calculation of penalties

(Sections 113 and 114)

Column 1	Column 2	Column 3
Year	Base penalty rate (\$) per megawatt hour	Penalty conversion factor
2009	24.50	0.94
2010	24.50	0.94

Column 1	Column 2	Column 3
Year	Base penalty rate (\$) per megawatt hour	Penalty conversion factor
2011	24.50	0.94
2012	24.50	0.94
2013	24.50	0.94
2014	24.50	0.94
2015	24.50	0.94
2016	24.50	0.94
2017	24.50	0.94
2018	24.50	0.94
2019	24.50	0.94
2020	24.50	0.94

Note. The base penalty rates set out in column 2 are the base penalty rates prior to any adjustment for movements in the consumer price index. If the regulations provide for the adjustment of the base penalty rate for movements in the consumer price index, the scheme penalty rate is to be calculated using the base penalty rate as so adjusted.

Schedule 5B Energy savings scheme—certificate conversion factors

(Section 130)

Column 1	Column 2
Year	Certificate conversion factor
2009	1.06
2010	1.06
2011	1.06
2012	1.06
2013	1.06
2014	1.06
2015	1.06
2016	1.06
2017	1.06

Column 1	Column 2
Year	Certificate conversion factor
2018	1.06
2019	1.06
2020	1.06

[8] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Electricity Supply Amendment (Energy Savings) Act 2009

[9] Schedule 6, Part 9

Insert after Part 8:

Part 9 Provisions consequent on enactment of Electricity Supply Amendment (Energy Savings) Act 2009

52 Definitions

(1) In this Part:

abatement certificate means an abatement certificate under Part 8A.

demand side abatement activity means an activity that, immediately before the commencement of the energy savings scheme:

- (a) is a demand side abatement activity under the greenhouse gas benchmark rules for Part 8A, and
- (b) is an activity in respect of which abatement certificates can be created under Part 8A.

energy savings scheme means the energy savings scheme established by Part 9.

recognised energy saving activity has the same meaning as it has in Part 9.

(2) In this Part, a reference to the commencement of the energy savings scheme is a reference to the commencement of Part 9, as inserted by the *Electricity Supply Amendment (Energy Savings) Act 2009*.

53 Accreditation of abatement certificate providers as energy savings certificate providers

- (1) A person who, immediately before the commencement of the energy savings scheme, was an accredited abatement certificate provider under Part 8A in respect of a demand side abatement activity, or an applicant for accreditation under Part 8A in respect of a demand side abatement activity, is eligible for accreditation as a certificate provider under the energy savings scheme in respect of that activity if:
 - (a) the activity is a recognised energy saving activity, and
 - (b) the Scheme Administrator under Part 9 is satisfied the person is otherwise eligible for accreditation as a certificate provider in respect of the activity concerned under Part 9.
- (2) A person to whom this clause applies is eligible for accreditation in respect of an activity and, on accreditation, may create energy savings certificates in respect of an activity, even if the activity commenced before 1 July 2008 (despite section 127 (5)).
- (3) The Scheme Administrator under Part 9 may grant such accreditation without requiring the person to apply for accreditation under Part 9.
- (4) If the person is engaged in an industry or activity that benefits from a full exemption under the energy savings scheme, or is a related body corporate of a person who is so engaged, the Scheme Administrator may grant accreditation to the person as a certificate provider in respect of an activity that reduces consumption of electricity in the industry or activity concerned (despite section 135) subject to a condition that the person must not create energy savings certificates in respect of the relevant activity if the activity commences on or after 1 January 2013.
- (5) Section 171 (Appeals to Administrative Decisions Tribunal) does not apply in respect of the condition of accreditation referred to in subclause (4).

54 Creation of abatement certificates in respect of demand side abatement activities

- (1) On the commencement of the energy savings scheme, an abatement certificate cannot be created in respect of a demand side abatement activity that is a recognised energy saving activity, unless the activity took place before the commencement of the energy savings scheme.

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- (2) On the commencement of the energy savings scheme, the accreditation of any person as an abatement certificate provider under Part 8A is taken to be subject to a condition that the person must not create abatement certificates in respect of a demand side abatement activity that is a recognised energy saving activity, unless the activity took place before the commencement of the energy savings scheme.
 - (3) The Scheme Administrator under Part 8A may, by notice in writing to an accredited abatement certificate provider, cancel the accreditation of the person as an abatement certificate provider in respect of any demand side abatement activity that, on the commencement of the energy savings scheme, is a recognised energy saving activity.
 - (4) The regulations and greenhouse gas benchmark rules under Part 8A apply in relation to this clause in the same way as they apply to Part 8A.

Note. The regulations and greenhouse gas benchmark rules under Part 8A can specify when an activity is considered to have "taken place".

55 Exemptions for year 2009

- (1) An exemption for the year 2009 may be granted under Division 5 of Part 9 at any time before the beginning of the year 2010.
- (2) Any such exemption is taken to have effect in respect of the whole of the year 2009.
- (3) This clause has effect despite section 122.

56 Amendments by other Acts to renumbered provisions

- (1) An amendment made by another Act to a provision of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009* has effect as if the amendment were referring to the provision of this Act as renumbered.
- (2) If an amendment made by another Act to this Act inserts a provision in a Part of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009*, the inserted provision is to be appropriately renumbered.
- (3) If an amendment made by another Act to this Act contains a reference to a provision of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009*, the reference to the provision is also to be appropriately renumbered.

- (4) This clause applies only in respect of an amendment enacted, but not commenced, before the commencement of Schedule 1 [6] to the *Electricity Supply Amendment (Energy Savings) Act 2009*.

57 References in other Acts to renumbered provisions

- (1) A reference in any provision of another Act to a provision of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009* is, from the commencement of Schedule 1 [6] to the *Electricity Supply Amendment (Energy Savings) Act 2009*, to be read as a reference to the provision as renumbered.
- (2) This clause applies only in respect of a provision of another Act that commenced before the commencement of Schedule 1 [6] to the *Electricity Supply Amendment (Energy Savings) Act 2009*.

[Agreement in principle speech made in Legislative Assembly on 13 May 2009
Second reading speech made in Legislative Council on 16 June 2009]

BY AUTHORITY