



New South Wales

Electricity Supply Amendment (Energy Savings Scheme) Act 2015 No 35

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Electricity Supply Amendment (Energy Savings Scheme) Act 2015 No 35

Act No 35, 2015

An Act to amend the *Electricity Supply Act 1995* to make changes to the energy savings scheme; and for other purposes. [Assented to 2 November 2015]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Electricity Supply Amendment (Energy Savings Scheme) Act 2015*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

[1] Section 98 Objects of Part

Omit “electricity” wherever occurring in section 98 (1) and (2) (a). Insert instead “energy”.

[2] Section 99 Definitions

Omit the definitions of *carbon dioxide equivalent* and *greenhouse gas* from section 99 (1).

[3] Section 99 (1), definition of “certificate conversion factor”

Omit “*factor*”. Insert instead “*factors*”.

[4] Section 99 (1)

Insert in alphabetical order:

notional megawatt hours—see section 106 (1).

[5] Section 105 Conditions under which energy savings scheme targets may be changed

Omit section 105 (b) and (c). Insert instead:

- (b) the change to the energy savings scheme target is appropriate because of an under supply or over supply of energy savings certificates that may be surrendered under this Part, as evidenced in the manner set out in the regulations, or

[6] Section 106 Individual energy savings targets

Omit “expressed in tonnes of carbon dioxide equivalent of greenhouse gas emissions” from section 106 (1).

Insert instead “expressed in units referred to as *notional megawatt hours*”.

[7] Section 106 (1) (a)

Omit the paragraph. Insert instead:

(a) **Step 1**

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

[8] Section 106 (2)

Omit “tonne” wherever occurring. Insert instead “notional megawatt hour”.

[9] Section 106, note

Omit the note. Insert instead:

Note. For example, if a scheme participant has liable acquisitions in the year 2016 of 75,050 megawatt hours, to calculate the scheme participant’s individual energy savings target under subsection (1):

- (a) Step 1 requires the 75,050 megawatt hours to be multiplied by 0.07 (the energy savings scheme target for 2016), resulting in a megawatt hours target of 5,253.5, and
- (b) Step 2 requires the figure of 5,253.5 to be multiplied by 1.00 (the energy conversion factor for 2016), resulting in an individual energy savings target of 5,253.5 notional megawatt hours.

The result is then rounded up to 5,254 in accordance with subsection (2).

The scheme participant has an individual energy savings target for the year 2016 of 5,254 notional megawatt hours.

The scheme participant can meet this target by surrendering energy savings certificates to the Scheme Regulator in accordance with this Part. Since each certificate has a value of 1 notional megawatt hour (see section 128), the scheme participant can meet this target by surrendering 5,254 certificates.

Energy savings certificates may be created in respect of activities that involve the consumption of electricity or gas or both electricity and gas. Certificate conversion factors are applied to the actual energy savings of end users resulting from an energy saving activity to produce energy savings expressed in notional megawatt hours for the purposes of energy savings targets. See Division 7.

Consequently, the number of notional megawatt hours of individual energy savings targets of scheme participants will not be the same as the number of actual megawatt hours saved by end users as a result of energy saving activities for which energy savings certificates are created.

[10] Section 107 Liable acquisitions

Insert after section 107 (2):

- (2A) However, if a scheme participant purchases electricity from another scheme participant, the purchase is not a liable acquisition if the purchase of the electricity is, or the supply of the electricity is to be treated as, a liable acquisition for that other scheme participant or for a scheme participant who is further up the chain of supply of the electricity.

[11] Section 110 What are the energy savings attributable to a scheme participant?

Insert “or gas or both electricity and gas” after “electricity” in the note at the end of the section.

[12] Section 111 Failure to meet individual energy savings target—energy savings shortfalls

Omit “tonnes of carbon dioxide equivalent of greenhouse gas emissions” from section 111 (2).

Insert instead “notional megawatt hours”.

[13] Section 113 Penalty rates

Omit “tonne of carbon dioxide equivalent of greenhouse gas emissions” from section 113 (1).

Insert instead “notional megawatt hour”.

[14] Section 113 (2)–(7)

Omit the subsections. Insert instead:

- (2) Subject to section 114:
- (a) the base penalty rate is as follows:
- (i) for 2009 and 2010—\$24.50 per notional megawatt hour,
- (ii) for each subsequent year—the base penalty rate for a previous year specified in the regulations and adjusted for movements in the consumer price index in accordance with the regulations, and
- (b) the penalty conversion factor for a year is 0.94.
- (3) The Scheme Regulator is to cause notice of the adjusted base penalty rate for a year to be published on its website before the beginning of that year.

- [15] Section 114 Changes to base penalty rates and penalty conversion factors**
Omit “amend Schedule 5A to” from section 114 (1).
- [16] Section 114 (2)**
Omit the subsection.
- [17] Section 114 (4)**
Omit “to amend Schedule 5A”.
- [18] Section 114 (4) (b) and (c)**
Omit the paragraphs. Insert instead:
 - (b) the change to the base penalty rate is appropriate because of an under supply or over supply of energy savings certificates that may be surrendered under this Part, as evidenced in the manner set out in the regulations, or
- [19] Section 114 (6), note**
Omit the note.
- [20] Section 116 Energy savings shortfalls may be carried forward**
Omit “2020” wherever occurring in section 116 (6) (including the note).
Insert instead “2025”.
- [21] Section 122 General provisions with respect to exemptions**
Omit section 122 (1)–(3). Insert instead:
 - (1) An exemption takes effect on the day the order granting the exemption is published in the Gazette or, if a later day is specified in the order, on that later day.
 - (2) An exemption may be revoked by order of the Minister published in the Gazette.
 - (3) If an exemption is revoked, the revocation takes effect on the day the order revoking the exemption is published in the Gazette or, if a later day is specified in the order, on that later day.
- [22] Section 124 Restrictions on surrender of energy savings certificates**
Insert at the end of section 124 (1) (c):
 - , and
 - (d) in the case of a certificate that relates to an energy saving activity that occurred in a State or Territory for which there is an approved corresponding scheme under section 127—the Minister has, by the order approving the corresponding scheme or by a subsequent order published in the Gazette, approved the surrender of such certificates by a scheme participant for those purposes.
- [23] Section 127 Activities in respect of which energy savings certificates may be created**
Insert “or gas” after “electricity” wherever occurring.
- [24] Section 127 (3)**
Omit “in writing”. Insert instead “published in the Gazette”.

[25] Section 128 Energy savings represented by certificates

Omit “tonne of carbon dioxide equivalent of greenhouse gas emissions” wherever occurring.

Insert instead “notional megawatt hour”.

[26] Section 129

Omit the section. Insert instead:

129 Calculation of energy savings attributable to recognised energy saving activities

- (1) The number of notional megawatt hours attributable to energy savings arising from a recognised energy savings activity is to be calculated by applying the certificate conversion factor or factors for the year in which the energy savings for which the certificate is created occurred to the number of megawatt hours of energy savings arising from the activity.
- (2) Depending on the nature of the energy saving activity and the scheme rules, the calculation may require the application of the certificate conversion factor for electricity or the certificate conversion factor for gas or both the certificate conversion factor for electricity and the certificate conversion factor for gas.
- (3) 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 and for applying the certificate conversion factors.

[27] Section 130 Certificate conversion factor

Omit section 130 (1). Insert instead:

- (1) Subject to this section, the certificate conversion factors for a year are as follows:
 - (a) for electricity—1.06,
 - (b) for gas—0.39.

[28] Section 130 (2)

Omit the subsection.

[29] Section 130 (3)

Omit “amend Schedule 5B to change the”. Insert instead “change a”.

[30] Section 130 (4)

Omit the subsection.

[31] Section 130 (5)

Omit “the certificate”. Insert instead “a certificate”.

[32] Section 135 Eligibility for accreditation

Insert “or gas” after “electricity” in section 135 (2).

[33] Section 142 Scheme Administrator may require surrender of certificates

Omit section 142 (2). Insert instead:

- (2) An order may be made against a person under this section only if the Scheme Administrator is satisfied (on the balance of probabilities on the basis of an

audit conducted under this Act or the regulations or of information otherwise obtained by the Administrator under this Act or the regulations) that:

- (a) the person is guilty of an offence involving the improper creation of energy savings certificates (that is, an offence under section 133), or
- (b) the person is guilty of an offence of contravening a condition of the person's accreditation as a certificate provider (that is, an offence under section 138).

[34] Section 142 (3)

Omit "found guilty of an offence". Insert instead "on grounds".

[35] Section 143 Creation of certificate must be registered

Insert "(adjusted for movements in the consumer price index for each year in accordance with the regulations)" after "fee" in section 143 (6).

[36] Section 143 (7)

Insert after section 143 (6):

- (7) The Scheme Regulator is to cause notice of any adjusted application fee to be published on its website before the beginning of the year to which the application fee applies.

[37] Section 152 Functions of Scheme Regulator

Insert after section 152 (1) (d):

- (d1) to provide advice to the Minister on request about the extent of any under supply or over supply of energy savings certificates that may be surrendered under this Part,

[38] Section 154 Functions of Scheme Administrator

Insert after section 154 (1) (c):

- (c1) to provide advice to the Minister on request about the extent of any under supply or over supply of energy savings certificates that may be surrendered under this Part,

[39] Section 163 Register of energy savings certificates

Insert after section 163 (1) (b):

- (b1) if the Minister has approved a corresponding scheme for a State or Territory for the purposes of section 127 and the energy saving activity to which the certificate relates occurred in such a State or Territory—the State or Territory in which the activity occurred,

[40] Section 167 Scheme rules

Insert "and for applying the certificate conversion factors" after "activity" in paragraph (b) of the note to section 167 (1).

[41] Section 174 Annual report by Scheme Regulator

Insert after section 174 (2) (c):

- (c1) the total number of energy savings certificates created in previous years and not surrendered under this Part before the beginning of the year to which the report relates,

- (c2) an assessment of the extent of any under supply or over supply of energy savings certificates that may be surrendered under this Part in the year to which the report relates,

[42] Section 174 (2) (d)

Omit “actual energy savings that have been realised”.

Insert instead “actual electricity and gas savings that have been realised by end users”.

[43] Section 174 (2) (e)

Omit “actual energy savings that will be realised”.

Insert instead “actual electricity and gas savings that will be realised by end users”.

[44] Section 174 (2A)

Insert after section 174 (2):

- (2A) For the purposes of subsection (2), any energy savings certificates created under an approved corresponding scheme that are not able to be surrendered by a scheme participant for the purpose of meeting its annual energy savings target or remedying a carried forward shortfall are to be disregarded.

[45] Section 178 Automatic termination of scheme at end of year 2025

Omit “2020” wherever occurring. Insert instead “2025”.

[46] Section 187 Penalty notices for certain offences

Omit “authorised officer” from section 187 (1). Insert instead “enforcement officer”.

[47] Section 187 (9)

Insert after section 187 (8):

- (9) In this section, *enforcement officer* means an employee of a government sector agency (within the meaning of the *Government Sector Employment Act 2013*) authorised in writing by the Minister to act as an enforcement officer for the purposes of this section.

[48] Schedule 5 Energy savings scheme—targets and energy conversion factors

Omit the matter relating to the years 2016 to 2020. Insert instead:

2016	0.070	1.00
2017	0.075	1.00
2018	0.080	1.00
2019	0.085	1.00
2020	0.085	1.00
2021	0.085	1.00
2022	0.085	1.00
2023	0.085	1.00
2024	0.085	1.00
2025	0.085	1.00

[49] Schedules 5A and 5B

Omit the Schedules.

[50] Schedule 6 Savings, transitional and other provisions

Insert after Part 12 of Schedule 6:

Part 13 Provisions consequent on enactment of Electricity Supply Amendment (Energy Savings Scheme) Act 2015

65 Units in which energy savings certificates and energy savings shortfalls are expressed

- (1) On and after the date of commencement of Schedule 1 [12] to the *Electricity Supply Amendment (Energy Savings Scheme) Act 2015*, an energy savings shortfall, or a carried forward energy savings shortfall, of a number of tonnes of carbon dioxide equivalent of greenhouse gas emissions, is to be regarded as an energy savings shortfall or a carried forward energy savings shortfall (as the case requires) of the same number of notional megawatt hours.
- (2) On and after the date of commencement of Schedule 1 [25] to the *Electricity Supply Amendment (Energy Savings Scheme) Act 2015*, the value of each registered energy savings certificate is one notional megawatt hour rather than one tonne of carbon dioxide equivalent of greenhouse gas emissions.

[Second reading speech made in—

Legislative Assembly on 13 October 2015

Legislative Council on 20 October 2015]