



New South Wales

Electricity Supply (General) Amendment (Large Customers) Regulation 2005

under the

Electricity Supply Act 1995

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

CARL SCULLY, M.P.,
Minister for Utilities

Explanatory note

Part 8A of the *Electricity Supply Act 1995* (*the Act*) deals with the reduction of greenhouse gas emissions. Currently, the term **large customer** is defined in Part 8A to mean a customer (other than a retail supplier) who:

- (a) uses 100 gigawatt hours or more of electricity at a single site in this State in any year, or
- (b) uses 100 gigawatt hours or more of electricity at more than one site in this State in any year, at least one of which uses 50 gigawatt hours or more of electricity in that year.

The *Electricity Supply Amendment Act 2005* amends the Act in various respects, including replacing the definition of **large customer**. The new definition is that **large customer** means:

- (a) a customer (other than a retail supplier) that on its own account, or together with one or more other such customers (who are related entities), uses:
 - (i) 100 gigawatt hours or more of electricity at a single site in this State in any year, or
 - (ii) 100 gigawatt hours or more of electricity at more than one site in this State in any year, at least one of which uses 50 gigawatt hours or more of electricity in that year, or
- (b) a related entity of a customer referred to in paragraph (a), whether or not the entity is a customer.

The object of this Regulation is to amend the *Electricity Supply (General) Regulation 2001*:

- (a) to make changes as a consequence of the amendment of the meaning of large customer, that is, to reflect that either a customer or a related entity of a customer may now be taken to be a large customer under section 97BB of the Act, and

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- (b) to make provision concerning elections by large customers to become *elective participants* within the meaning of the Act, and
- (c) to prescribe the circumstances when a person is taken to be engaged in a joint venture with a customer or a related entity of a customer, and
- (d) to prescribe the electricity purchases to be taken into account for the purposes of applying section 97BD (2) (a) of the Act, and
- (e) to make an amendment by way of law revision (Schedule 1 [11]).

This Regulation is made under the *Electricity Supply Act 1995*, as amended by the *Electricity Supply Amendment Act 2005*, including sections 97BB (Benchmark participants), 97BD (Principles for determining compliance with greenhouse gas benchmarks) and 106 (the general regulation-making power).

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under the

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1 Name of Regulation

This Regulation is the *Electricity Supply (General) Amendment (Large Customers) Regulation 2005*.

2 Commencement

This Regulation commences on 7 October 2005.

3 Amendment of Electricity Supply (General) Regulation 2001

The *Electricity Supply (General) Regulation 2001* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Clause 3)

[1] Clause 73BA Circumstances in which person is taken to be a large customer

Insert “or a related entity of a customer” after “a customer” in clause 73BA (1).

[2] Clause 73BA (1) (a)

Insert “or the related entity of a customer (whether on the customer’s or related entity’s own account or together with one or more other such customers as are related entities)” after “the customer”.

[3] Clause 73BA (1) (b)

Insert “or related entity (as the case may require)” after “customer”.

[4] Clause 73BA (1) (b)

Insert “(whether the customer or related entity is likely to do so on its own account or together with one or more other such customers as are related entities)” after “effect”.

[5] Clause 73BA (2)

Insert “or a related entity of a customer” after “a customer”.

[6] Clause 73BA (2) (a)

Insert “or related entity (as the case may require)” after “customer”.

[7] Clause 73BA (2) (b)

Omit the paragraph. Insert instead:

- (b) each site is owned or occupied:
 - (i) by either the customer or one of the other customers referred to in subclause (1) (a) and (b), or
 - (ii) by the related entity,
as the case may require.

[8] Clause 73BA (3)

Omit the clause 73BA (3) and (4). Insert instead:

- (3) In this clause, *related entity of a customer* means a related entity referred to in paragraph (b) of the definition of *large customer* in section 97AB of the Act.

[9] Clause 73BC Election by large customers

Omit clause 73BC (1) and (2). Insert instead:

- (1) A person who makes an election to become an elective participant as a large customer must, before or when making the election, provide evidence to the Tribunal that the person is a customer, or a related entity of a customer, that used or is likely to use 100 gigawatt hours or more of electricity at a single site, or at more than one site (at least one of which used or is likely to use 50 gigawatt hours or more), in this State, as referred to in clause 73BA (2) (whether on its own account or together with one or more other such customers as are related entities).
- (1A) The evidence referred to in subclause (1) includes evidence of who used, or is likely to use, the electricity to be included in the election.
- (2) The Tribunal may require a person who makes an election referred to in this clause to provide specified information and documents for the purposes of providing the evidence required by this clause.
- (2A) A person must not make an election to become an elective participant as a large customer for a period in respect of the whole or part of a site if the site, or the relevant part of the site, is the subject of an election by another person for the same period.

[10] Clause 73BC (3)

Insert “, and whether or a not it includes the load, or part of the load, of one or more such customers as are related entities of the person” after “one site”.

[11] Clause 73BC (3)

Omit “classification”. Insert instead “the classification of the person”.

[12] Clause 73BC (3A)

Insert after clause 73BC (3):

- (3A) In this clause, *related entity of a customer* means a related entity referred to in paragraph (b) of the definition of *large customer* in section 97AB of the Act.

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Schedule 1 Amendments

[13] Clauses 73BEA and 73BEB

Insert after clause 73BE:

73BEA Joint ventures

The circumstances when a person is taken to be engaged in a joint venture with a customer or a related entity of a customer are where the person is a party to a written contract or agreement with that customer or that related entity of a customer, under which they are or will be:

- (a) undertaking a task, project or commercial venture either jointly, in common or in partnership (whether incorporated or not), and
- (b) doing so with a view to sharing in the profits or benefits generated from that task, project or commercial venture.

73BEB Electricity purchases

For the purposes of applying section 97BD (2) (a) of the Act, and any rules made under section 97K (1) (c) of the Act, an elective participant:

- (a) that is a large customer, and
- (b) that is not the purchaser of the whole or part of the electricity that qualifies it (either in its own right or as a related entity of a customer) as a large customer,

is taken to be the purchaser of all the electricity that applies to the election that qualifies it to become an elective participant.

BY AUTHORITY
