



New South Wales

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

under the

Electricity Supply Act 1995

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

IAN MACDONALD, MLC
Minister for Energy

Explanatory note

The object of this Regulation is to make further provision for the energy savings scheme established by the *Electricity Supply Amendment (Energy Savings) Act 2009*.

The Regulation makes provision for the following matters:

- (a) the electricity generators that are taken to be direct suppliers of electricity (and who are therefore required to participate in the energy savings scheme),
- (b) annual CPI adjustment to penalty rates under the scheme,
- (c) assessment of a scheme participant's compliance with the energy savings targets established by the scheme,
- (d) the maximum energy savings shortfall that a scheme participant can carry forward to the year 2010,
- (e) the accreditation of energy savings certificate providers, including eligibility requirements, application procedures and suspension or cancellation of accreditation,
- (f) the conditions of accreditation of energy savings certificate providers, including prescribed conditions in relation to claiming benefits under another similar scheme, record keeping and co-operating with audits,
- (g) the creation, registration, surrender and transfer of energy savings certificates,
- (h) auditing of scheme participants and accredited certificate providers by the Scheme Regulator and the Scheme Administrator,

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Explanatory note

- (i) additional information to be included in the register of accredited certificate providers,
- (j) decisions of the Scheme Administrator that are reviewable by the Administrative Decisions Tribunal.

This Regulation is made under the *Electricity Supply Act 1995*, including sections 125, 135–137, 139, 140, 143, 144, 147, 155 and 162, the sections referred to in the Regulation, and the general regulation-making power in the *Electricity Supply Act 1995*.

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

under the

Electricity Supply Act 1995

1 Name of Regulation

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

2 Commencement

This Regulation commences on 1 July 2009 and is required to be published on the NSW legislation website.

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

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- [1] **Clauses 3 (1) (definition of “exempt last resort arrangement”), 40 (1), 68 (2), 69 (3) and 117**

Renumber the cross-references to sections in Part 9 of the Act, as in force immediately before the commencement of the *Electricity Supply Amendment (Energy Savings) Act 2009*, with the appropriate section numbers in Part 10 of the Act (as in force after that commencement).

- [2] **Part 9A**

Insert after clause 78:

Part 9A Energy savings scheme

Division 1 Interpretation

78A Definitions

- (1) In this Part:
- approved auditor* means a person required to conduct an audit under Division 8.
 - corresponding scheme* means a scheme or arrangement with similar objectives to the energy savings scheme.
- (2) Expressions used in this Part have the same meaning as they have in Part 9 of the Act.

78B Direct suppliers of electricity

- (1) For the purposes of the definition of *direct supplier of electricity* in section 101 (2) of the Act, the following electricity generators are prescribed as direct suppliers of electricity:
- (a) Macquarie Generation,
 - (b) Delta Electricity.
- (2) For the purposes of section 107 (2) (b) of the Act, the following are liable acquisitions:
- (a) the supply of electricity by Macquarie Generation to the Tomago Aluminium Company Pty Ltd,
 - (b) the supply of electricity by Delta Electricity to BlueScope Steel (AIS) Pty Ltd or BHP Billion Limited under an electricity supply arrangement to which section 179 of the Act does not apply.

Division 2 CPI adjustment to base penalty rates**78C CPI adjustment to base penalty rates**

- (1) For the purposes of section 113 (5) of the Act, the base penalty rate for each year is to be adjusted in accordance with the following formula:

$$P = A \times \frac{B}{C}$$

where:

P is the amount of the adjusted base penalty rate for a year.

A is the base penalty rate for the year for which the adjustment is being made as specified in Schedule 5A to the Act.

B is the consumer price index number for the September quarter immediately preceding the year for which the adjustment is being made.

C is the consumer price index number for the March quarter of 2009.

- (2) The first year in which the base penalty rate is to be adjusted is 2010.

Division 3 Assessment of compliance of scheme participants**78D Self-assessment by scheme participants**

- (1) The assessment of the liability of a scheme participant for an energy savings shortfall penalty (if any) that is provided by the scheme participant in an energy savings statement is taken, unless another assessment is or has been made by the Scheme Regulator, to be the liability of the scheme participant for an energy savings shortfall penalty for the year concerned.
- (2) The assessment has effect as if it were a notice of assessment issued by the Scheme Regulator and given to the participant on the day on which the assessment is taken to have been made.
- (3) The assessment is taken to have been made on 1 March in the year after the year to which the statement relates, or on the day on which the energy savings statement is lodged, whichever is the later.

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

78E Default assessments

- (1) The Scheme Regulator may make an assessment of the liability of a scheme participant for an energy savings shortfall penalty for a year if the participant fails to lodge a energy savings statement for the year in accordance with the Act.
- (2) In making an assessment under this section, the Scheme Regulator may:
 - (a) base its assessment on its best estimate of the participant's liable acquisitions, verified by the Market Operator where possible, and
 - (b) take into account any other matters the Scheme Regulator considers appropriate.

78F Amendment of assessments

- (1) The Scheme Regulator may at any time amend any assessment of the liability of a scheme participant for an energy savings shortfall penalty for a year by making any alterations or additions that the Scheme Regulator thinks necessary, whether or not an energy savings shortfall penalty has been paid for the year.
- (2) If the Scheme Regulator is of the opinion that a scheme participant's liability for an energy savings shortfall penalty has been incorrectly assessed, the Scheme Regulator may amend the assessment by making any alterations or additions that the Scheme Regulator thinks necessary to correct the assessment.
- (3) An assessment may be amended no later than one year after the date on which the assessment is made.
- (4) The one-year time limit does not apply to:
 - (a) an amendment that, in the opinion of the Scheme Regulator, is required because of fraud or the provision of false or misleading information by a scheme participant, or
 - (b) an amendment that is made on the application of the scheme participant concerned.

78G Application for amended assessment

- (1) A scheme participant may apply to the Scheme Regulator for an amendment to an assessment of its liability for an energy savings shortfall penalty.
- (2) An application may be made no later than one year after the day on which the assessment is made.

- (3) An application by a scheme participant must be in the form approved by the Scheme Regulator and state the grounds on which the amendment is sought.
- (4) A scheme participant may, in an application under this clause, elect to surrender additional energy savings certificates for the purposes of the amended assessment.
- (5) The election is to contain details of the energy savings certificates proposed to be surrendered.
- (6) The Scheme Regulator may deal with any such election as if it had accompanied the energy savings statement to which the assessment relates.

78H Changes to liability as result of amended assessment

- (1) An energy savings shortfall penalty payable as a result of an amendment to an assessment is taken to be payable on the date that is 7 days after the date notice of the amended assessment is given to the scheme participant by the Scheme Regulator, or on the date an energy savings shortfall would have been payable under the original assessment, whichever is the later.
- (2) The Scheme Regulator may extend the period for payment of any energy savings shortfall penalty that becomes payable as a result of an amendment to an assessment.
- (3) A scheme participant whose liability for an energy savings shortfall penalty is reduced as a result of an amended assessment is entitled to a refund of any excess energy savings shortfall penalty paid under the previous assessment.
- (4) If an assessment has been amended in any particular, the Scheme Regulator may, within one year after the day on which an energy savings shortfall penalty became payable under the amended assessment, make any further amendment of the assessment that, in the Scheme Regulator's opinion, is necessary to effect any just reduction in the scheme participant's liability under the assessment.

78I Appeals

Nothing in this Division prevents the amendment of an assessment of the liability of a scheme participant for an energy savings shortfall penalty to give effect to a decision on any review or appeal under the Act.

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

78J Notice of assessments

As soon as practicable after an assessment of the liability of a scheme participant for an energy savings shortfall penalty is made or amended under this Division, the Scheme Regulator must give written notice of the assessment or amended assessment to the participant.

78K Maximum energy savings shortfall that may be carried forward

For the purposes of section 116 (3) of the Act, the maximum amount of an energy savings shortfall that may be carried forward to the year 2010 by a scheme participant is 50%.

Division 4 Accreditation of certificate providers

78L Eligibility for accreditation

- (1) A person is eligible for accreditation as an energy savings certificate provider in respect of an activity if:
 - (a) the activity is a recognised energy saving activity under the scheme rules and the person is eligible for accreditation in respect of the activity under the scheme rules, and
 - (b) the person has record keeping arrangements with respect to the activity approved by the Scheme Administrator or (in the case of a proposed activity) the Scheme Administrator is satisfied that the person will, when the activity is carried out, have appropriate record keeping arrangements in respect of that activity, and
 - (c) in the case of a proposed activity—the Scheme Administrator is satisfied that the proposal will be undertaken substantially as described in the person's application for accreditation.
- (2) A reference in this Division to an activity includes a reference to an existing or proposed activity.

78M Application for accreditation

An application for accreditation as an energy savings certificate provider in respect of an activity:

- (a) is to be made in the form and manner approved by the Scheme Administrator, and

(b) is to be accompanied by such information relating to the activity as the Scheme Administrator requires, and

(c) is to be accompanied by an application fee of \$500.

Note. Section 136 (5) of the Act allows the Scheme Administrator to charge a fee (in addition to the application fee) in respect of the investigation and determination of an application for accreditation.

78N Benefits under other schemes

The Scheme Administrator may require a person who applies for accreditation to give to the Scheme Administrator an undertaking, in such terms as the Scheme Administrator may require, not to claim any benefit under a corresponding scheme if such an action would result in a benefit being obtained under both that scheme and the energy savings scheme in respect of the same energy savings.

78O Grounds for refusal of application for accreditation

- (1) The Scheme Administrator may refuse an application for accreditation as an energy savings certificate provider in respect of an activity if:
 - (a) the Scheme Administrator is not satisfied that the applicant is eligible for accreditation as an energy savings certificate provider in respect of the activity concerned, or
 - (b) the application for accreditation is not duly made (including if it is not accompanied by any required information or the appropriate fee), or
 - (c) the applicant fails to give the Scheme Administrator an undertaking required to be given in connection with the application under this Division in terms satisfactory to the Scheme Administrator.
- (2) If the Scheme Administrator refuses an application for accreditation as an energy savings certificate provider, the Scheme Administrator must advise the applicant in writing of the grounds on which the application was refused.

78P Suspension or cancellation of accreditation

- (1) The Scheme Administrator may suspend or cancel the accreditation of a person as an energy savings certificate provider in respect of an activity on any of the following grounds:

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

- (a) the Scheme Administrator is satisfied that the person has ceased to be eligible for accreditation as an energy savings certificate provider in respect of the activity,
 - (b) the person has requested the suspension or cancellation,
 - (c) the Scheme Administrator is satisfied that the person has contravened a provision of the Act, the regulations, the scheme rules or a condition to which the accreditation is subject,
 - (d) the person has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
 - (e) the person is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed.
- (2) If the Scheme Administrator suspends or cancels the accreditation of a person, the Scheme Administrator is required to notify the person in writing of the suspension or cancellation and the grounds on which the accreditation is suspended or cancelled.
- (3) A suspension or cancellation takes effect when notice of the suspension or cancellation is given to the person by the Scheme Administrator, or on such later date as may be specified by the Scheme Administrator in the notice.

78Q Transfer of accreditation

An application for transfer of accreditation as an energy savings certificate provider:

- (a) is to be made in the form and manner approved by the Scheme Administrator, and
- (b) is to be accompanied by such information relating to the activity as the Scheme Administrator requires, and
- (c) is to be accompanied by an application fee of \$500.

Division 5 Prescribed conditions of accreditation

78R Conditions of accreditation

For the purposes of section 138 (1) (a) of the Act, it is a condition of the accreditation of a person as an energy savings certificate provider that the person does not contravene any of the provisions of this Division.

78S Claiming benefits under other schemes

An accredited certificate provider must not contravene any undertaking, of a kind referred to in clause 78N, given to the Scheme Administrator in connection with the person's application for accreditation.

78T Record keeping

- (1) An accredited certificate provider in respect of a recognised energy saving activity must keep a record of the following:
 - (a) the location in which the activity occurred,
 - (b) the energy savings (calculated in accordance with the scheme rules) arising from that activity,
 - (c) the methodology, data and assumptions used to calculate those energy savings.
- (2) An accredited certificate provider must keep such other records as the Scheme Administrator, by notice in writing to the accredited certificate provider, requires the accredited certificate provider to keep.
- (3) A record required to be kept by a person by or under this clause must be retained by the person for at least 6 years after the record is made.
- (4) Records are to be kept in a form and manner approved by the Scheme Administrator.

78U Co-operation with audits

- (1) An accredited certificate provider must provide such information and assistance as is necessary to comply with any audit conducted under Division 8.
- (2) Without limiting subclause (1), an accredited certificate provider must provide such access to premises as is necessary to comply with any schedule or timetable of audits agreed to by the accredited certificate provider (whether before or after accreditation).

Division 6 Imposition of conditions by Scheme Administrator

78V Imposition of conditions by Scheme Administrator

- (1) If the Scheme Administrator intends to impose a condition on the accreditation of a person as an energy savings certificate provider under section 138 (1) (b) of the Act, either at the time of

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

accreditation or any time during the period in which the accreditation remains in force, the Scheme Administrator must give notice in writing of that fact to the person.

- (2) The condition takes effect on the date on which the notice is given to the person, or a later date specified in the notice, subject to subclause (3).
- (3) In the case of a condition to be imposed at the time of accreditation, the condition does not take effect until the date on which the person is accredited as an energy savings certificate provider.
- (4) The Scheme Administrator may, at any time by notice in writing given to a person, revoke or vary a condition imposed on the accreditation of the person by the Scheme Administrator.
- (5) If the Scheme Administrator imposes or varies a condition of accreditation of a person, the Scheme Administrator must advise the person in writing of the reasons for the decision to impose or vary the condition.

78W Financial assurances

- (1) This clause applies if the Scheme Administrator imposes a condition on the accreditation of a person as an energy savings certificate provider requiring the person to provide a financial assurance to the Scheme Administrator to secure or guarantee the person's compliance with any order that may be made against the person under section 142 of the Act.
- (2) The amount of any financial assurance required by the Scheme Administrator is to be determined by the Scheme Administrator having regard to the following:
 - (a) the activities in respect of which the person is accredited or to be accredited,
 - (b) the number of energy savings certificates that the person has created or is likely to create,
 - (c) the frequency of audits conducted or to be conducted in respect of the person,
 - (d) any other matters the Scheme Administrator considers relevant.
- (3) A financial assurance is to be in such form as the Scheme Administrator considers appropriate (such as a bank guarantee or bond).

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- (4) A financial assurance provided to the Scheme Administrator may be claimed or realised by the Scheme Administrator only if:
 - (a) an order is made against the person under section 142 of the Act, and
 - (b) the person who gave the financial assurance fails to comply with the order.
 - (5) The Scheme Administrator must give to the person who provided the financial assurance written notice of its intention to make a claim on or realise the financial assurance (or any part of it) at least 21 days before doing so.
 - (6) The maximum amount that the Scheme Administrator may claim or recover under the financial assurance is the compliance cost in respect of the person's failure to comply with the order under section 142 of the Act.
 - (7) For the purposes of this clause, the *compliance cost* in respect of a person's failure to comply with an order under section 142 of the Act is to be determined by the Scheme Administrator by multiplying the number of certificates that the person failed to surrender in compliance with the order by the scheme penalty rate for the year in which the financial assurance is claimed on or realised.

78X Application for variation or revocation of conditions of accreditation

An application for variation or revocation of a condition of accreditation of a person as an energy savings certificate provider imposed by the Scheme Administrator:

- (a) is to be made in the form and manner approved by the Scheme Administrator, and
- (b) is to be accompanied by such information relating to the activity as the Scheme Administrator requires.

Note. Section 139 (3) of the Act allows the Scheme Administrator to charge a fee in respect of the investigation and determination of an application for variation or revocation of a condition of accreditation.

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

Division 7 Energy savings certificates

78Y Registration of creation of certificates

- (1) An application for registration of the creation of an energy savings certificate is to be made to the Scheme Administrator in the form and manner approved by the Scheme Administrator.
- (2) The application is to be accompanied by a fee of \$0.70 for each certificate created.
- (3) The Scheme Administrator may refuse an application for registration of the creation of an energy savings certificate on any of the following grounds:
 - (a) the applicant is not an accredited certificate provider or the accreditation of the person as an energy savings certificate provider is suspended at the time of application,
 - (b) the application for registration was not duly made (including if it is not accompanied by the appropriate fee),
 - (c) the Scheme Administrator is not satisfied that the applicant was entitled to create an energy savings certificate in respect of the activity,
 - (d) the Scheme Administrator is of the opinion that the accredited certificate provider who created the energy savings certificate has contravened a provision of the Act, the regulations, the scheme rules or the conditions of the accredited certificate provider's accreditation.
- (4) If the Scheme Administrator refuses an application for registration of the creation of an energy savings certificate, the Scheme Administrator must notify the applicant in writing of the determination and the reasons for the determination.

78Z Form of energy savings certificates

- (1) Energy savings certificates are to be created in a form approved by the Scheme Administrator.
- (2) Each energy savings certificate is to include the following:
 - (a) a statement of the activity in respect of which the energy savings certificate is created, including any information relating to that activity that the Scheme Administrator, by notice in writing to an accredited certificate provider, requires to be included in the certificate,

- (b) the year in which the energy savings arising from the activity occurred,
- (c) the name of the person who created the certificate.

78ZA Order requiring surrender of energy savings certificates

- (1) This clause applies if an order is made or is proposed to be made under section 142 of the Act against a person who has been found guilty of an offence against section 138 (3) of the Act, being an offence that arose as a result of the person contravening a condition referred to in clause 78S.
- (2) For the purposes of section 142 (4) of the Act, the number of energy savings certificates to be surrendered under the order is the number that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were created in respect of energy savings for which a benefit was obtained under a corresponding scheme.

78ZB Registration of transfer of certificates

- (1) An application for registration of the transfer of an energy savings certificate is to be made to the Scheme Administrator in the form and manner approved by the Scheme Administrator.
- (2) The Scheme Administrator may refuse an application for registration of the transfer of an energy savings certificate on any of the following grounds:
 - (a) the application for registration is not duly made,
 - (b) the Scheme Administrator is of the opinion that the proposed transfer of the energy savings certificate contravenes the Act, the regulations or the scheme rules.
- (3) If the Scheme Administrator refuses an application for registration of the transfer of an energy savings certificate, the Scheme Administrator must notify the applicant in writing of the reasons for the determination.

Division 8 Audits

78ZC Audits of scheme participants

- (1) The Scheme Regulator may at any time conduct or require audits to be conducted of a scheme participant in relation to the scheme participant's compliance with the energy savings scheme.

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

- (2) An audit may be conducted for the purpose of:
 - (a) substantiating information provided to the Scheme Regulator, or
 - (b) determining whether the scheme participant has complied with the Act, the regulations or the scheme rules.
- (3) In the case of an audit required by the Scheme Regulator, the Scheme Regulator may require the audit to be conducted by:
 - (a) a person nominated by the Scheme Regulator, or
 - (b) a person chosen by the scheme participant from a panel of persons nominated by the Scheme Regulator, or
 - (c) a person nominated by the scheme participant and approved by the Scheme Regulator.
- (4) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Scheme Regulator.

78ZD Audits of accredited certificate providers

- (1) The Scheme Administrator may at any time conduct or require audits to be conducted of accredited certificate providers in relation to the following matters:
 - (a) the creation of energy savings certificates,
 - (b) eligibility for accreditation,
 - (c) compliance with any conditions of accreditation.
- (2) An audit may be conducted for the purpose of:
 - (a) substantiating information provided to the Scheme Administrator, or
 - (b) determining whether the provider has complied with the Act, the regulations, the scheme rules or the conditions of the provider's accreditation.
- (3) In the case of an audit required by the Scheme Administrator, the Scheme Administrator may require the audit to be conducted by:
 - (a) a person nominated by the Scheme Administrator, or
 - (b) a person chosen by the accredited certificate provider from a panel of persons nominated by the Scheme Administrator, or
 - (c) a person nominated by the accredited certificate provider and approved by the Scheme Administrator.
- (4) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Scheme Administrator.

78ZE Impersonating approved auditor

A person must not impersonate an approved auditor.

Maximum penalty:

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

Division 9 Registers**78ZF Register of accredited certificate providers**

- (1) The register of accredited certificate providers is to include the following information (in addition to the information specified in section 162 of the Act):
 - (a) the activity or activities in respect of which the accredited certificate provider is accredited as an energy savings certificate provider,
 - (b) the total number of energy savings certificates created by the accredited certificate provider in respect of each of those activities and registered in the register of energy savings certificates in the previous financial year,
 - (c) the States or Territories in which those activities took place,
 - (d) such other information relating to the person's accreditation as the Scheme Administrator considers appropriate.
- (2) The register of accredited certificate providers is to include the following information in relation to a person whose accreditation as an energy savings certificate provider is suspended or cancelled:
 - (a) the name of the person,
 - (b) the reason or reasons why the accreditation was suspended or cancelled,
 - (c) the date on which the accreditation was suspended or cancelled and, in the case of a suspension, the period of the suspension,
 - (d) such other information relating to the person as the Scheme Administrator considers appropriate.
- (3) The information required to be included in the register by this clause is to be made available to the public under the Act (in addition to the information referred to in section 162 (1) (a) of the Act).

2009 No 266

Electricity Supply (General) Amendment (Energy Savings) Regulation 2009

Schedule 1 Amendment of Electricity Supply (General) Regulation 2001

Division 10 Miscellaneous

78ZG Decisions reviewable by Administrative Decisions Tribunal

For the purposes of section 171 (2) (d) of the Act, the following decisions are prescribed:

- (a) a decision of the Scheme Administrator to impose or vary a condition of the accreditation of an accredited certificate provider,
- (b) a decision of the Scheme Administrator to make a claim on or realise any financial assurance provided by an accredited certificate provider.

Note. This clause allows the decisions referred to above to be reviewed by the Administrative Decisions Tribunal.