



New South Wales

# Electricity Supply Amendment (Renewable Fuel Scheme) Regulation 2021

under the

Electricity Supply Act 1995

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

MATT KEAN, MP  
Minister for Energy and Environment

## Explanatory note

The object of this Regulation is to create a financial incentive to increase the production of green hydrogen and other renewable fuels by creating a renewable fuel scheme. The renewable fuel scheme is established as part of the energy security safeguard under the *Electricity Supply Act 1995*, Part 8B, Division 3.

## **Electricity Supply Amendment (Renewable Fuel Scheme) Regulation 2021**

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Electricity Supply Act 1995

### **1 Name of Regulation**

This Regulation is the *Electricity Supply Amendment (Renewable Fuel Scheme) Regulation 2021*.

### **2 Commencement**

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

## Schedule 1 Amendment of Electricity Supply Act 1995

### Schedule 4A Energy security safeguard schemes

Insert after Part 2—

## Part 3 Renewable fuel scheme

### Division 1 Preliminary

#### 148 Definitions

(1) In this Part—

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

*annual statement*—see clause 167(1).

*approved corresponding scheme* means a scheme approved by the Minister, for the purposes of clause 171, by order published in the Gazette.

*carried forward shortfall*—see clause 165(8).

*certificate* means a certificate created under clause 170.

*compliance officer* means a compliance officer appointed by the Scheme Administrator under clause 214.

*compliance period* means a calendar year.

**Example—** The 2022 compliance period means the compliance period commencing on 1 January 2022 and ending on 31 December 2022.

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

*end user* of gas means—

- (a) a person who acquires natural gas for consumption purposes who is not a retail customer, or
- (b) a person who produces natural gas for the purposes of consumption by the person.

*fully exempt gas use*—see clause 157.

*gas* means a substance that—

- (a) is in a gaseous state at standard temperature and pressure, and
- (b) is suitable for consumption, and
- (c) consists of hydrocarbons, or a mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane.

*gas retailer* means a person who is the holder of a retailer authorisation issued under the *National Energy Retail Law (NSW)* in relation to the sale of gas, within the meaning of this Part.

*green hydrogen* means hydrogen produced using renewable energy, other than biomass from timber native to Australia.

*individual certificate target*—see clause 153(1).

*individual liable use*—see clause 154.

*partially exempt gas use*—see clause 157.

*register* means the register of accredited certificate providers or the register of certificates kept by the Scheme Administrator under Division 12.

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

**renewable fuel**—see subclauses (2) and (3).

**renewable fuel scheme** means the renewable fuel scheme established by this Part.

**retail customer** of gas means a person to whom gas is sold for premises by a gas retailer.

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

**scheme liable use**—see clause 156(1).

**scheme participant**—see clause 150(2).

**scheme penalty rate**—see clause 163(1).

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

**scheme rule** means a rule approved by the Minister under clause 218.

**scheme target** for a renewable fuel—see clause 151.

**shortfall**—see clause 161(4).

**shortfall penalty**—see clause 162(1).

**timber** means trees of any age or description, including a shrub and a sapling or seeding of a tree, whether growing or dead.

- (2) In this Part, **renewable fuel** means—
  - (a) green hydrogen, or
  - (b) another renewable fuel prescribed by the regulations.
- (3) A fuel is not a **renewable fuel** if it is produced using biomass from timber native to Australia.

#### 149 Regulations

- (1) A reference in this Part to regulations is a reference to regulations made under section 98EA.  
**Note**—Section 98EA provides that regulations may be made in relation to the renewable fuel scheme for matters for which regulations may be made under this Schedule, Part 1 for the energy savings scheme. Necessary modifications for the renewable fuel scheme may also be made.
- (2) This Part does not limit the operation of section 98EA.

#### 150 Establishment of renewable fuel scheme

- (1) The object of this Part is to create a financial incentive to increase the production of green hydrogen and other renewable fuels.
- (2) Each of the following (a **scheme participant**) is required to participate in the renewable fuel scheme—
  - (a) a gas retailer,
  - (b) an end user.
- (3) A scheme participant is required to surrender certificates in relation to each compliance period in accordance with this Part.

#### 151 Scheme targets

- (1) The **scheme target** for a renewable fuel for a compliance period is the target amount of gigajoules of the renewable fuel to be produced in the compliance period.

- (2) The scheme target for a renewable fuel for a compliance period must be used as the basis for the calculation of the individual certificate target for the compliance period.
- (3) The scheme target for green hydrogen for a compliance period is the target prescribed by the regulations on the commencement of this clause.
- (4) The scheme target for another renewable fuel for a compliance period is the target prescribed by the regulations for the renewable fuel.
- (5) The regulations may amend the scheme targets for a compliance period prescribed under subclause (3) or (4).
- (6) A regulation under this clause that prescribes a scheme target or amends a prescribed scheme target for a compliance period must be made at least 12 months before the beginning of the compliance period.

#### **152 Amendment of prescribed scheme targets**

- (1) A regulation made under clause 151(5) to amend a scheme target for a renewable fuel must not reduce the amount of gigajoules prescribed as the scheme target for the renewable fuel for a compliance period.
- (2) A regulation made under clause 151(5) to amend a scheme target for a renewable fuel may be made only if the Minister is satisfied that the change to the scheme target for the renewable fuel is appropriate—
  - (a) for the purposes of achieving greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the renewable fuel scheme, or
  - (b) for the purposes of implementing a national scheme with similar objectives to the renewable fuel scheme, or
  - (c) because of an over supply of certificates that may be surrendered, as evidenced in the way set out in the regulations, or
  - (d) because of significant changes to the scheme rules relating to the creation of certificates, or
  - (e) because of significant changes to the policy or regulatory framework, or the market conditions, in which the renewable fuel scheme operates.

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

#### **153 Scheme participant's individual certificate target**

- (1) A scheme participant must, before 1 March in each year, calculate the number of certificates the scheme participant must surrender in relation to the previous compliance period (the *individual certificate target*) using the following formula—
$$\text{individual certificate target} = \frac{\text{individual liable use}}{\text{scheme liable use}} \times \frac{\text{scheme target}}{\text{(in gigajoules)}}$$
- (2) The individual certificate target is calculated on the basis of one certificate for each gigajoule of renewable fuel.
- (3) The number of certificates must be rounded up or down to the nearest whole number, and an amount of 0.5 must be rounded up.

#### 154 Scheme participant's individual liable use

- (1) A scheme participant must calculate the scheme participant's **individual liable use** for a compliance period, which is the total value of the liable uses of gas for the scheme participant for the previous year.  
**Example—** The individual liable use for the 2026 compliance period is the total value of a scheme participant's gas use in 2025.
- (2) The use of gas by a scheme participant who is a gas retailer is a **liable use** if the gas is conveyed to a retail customer using a relevant pipeline under a contract with the scheme participant.
- (3) The use of gas by a scheme participant who is an end user is a **liable use** if—
  - (a) the scheme participant produced the gas, or
  - (b) the gas is conveyed to the scheme participant using a relevant pipeline or otherwise conveyed to the scheme participant.
- (4) A use of gas is not a liable use for a scheme participant if the gas is a liable use for a scheme participant who is lower down the chain of supply of gas.
- (5) If the gas used by a scheme participant has green hydrogen or renewable methane as a component of the gas, the green hydrogen or renewable methane component is not included in the scheme participant's liable use.
- (6) For the purposes of this Part—
  - (a) a liable use specified in subclause (2) is a liable use for a scheme participant on the date on which the gas is used by the retail customer, and
  - (b) a liable use specified in subclause (3) is a liable use for a scheme participant on the date on which the gas is used by the scheme participant, and
  - (c) the value of a use of gas is the amount of gas used, expressed in gigajoules.
- (7) The scheme rules may make further provision in relation to determining when a use of gas is taken to be a liable use for a scheme participant, for the purposes of determining the scheme participant's individual liable use.
- (8) This clause is subject to Division 3.
- (9) In this clause—  
**relevant pipeline** means—
  - (a) a pipeline licensed under the *Pipelines Act 1967*, Part 3, or
  - (b) a distribution pipeline within the meaning of the *Gas Supply Act 1996*.  
**renewable methane** does not include methane produced using biomass from timber native to Australia.

#### 155 Scheme participant to notify Scheme Regulator of individual liable use

- (1) A scheme participant must, in the form approved by the Scheme Regulator, notify the Scheme Regulator of the scheme participant's individual liable use for a compliance period by—
  - (a) 30 September in the compliance period, or
  - (b) a later day notified by the Scheme Regulator on its website before 30 September.  
Maximum penalty (subclause (1))—
  - (a) for a corporation—250 penalty units, or

- (b) for an individual—100 penalty units.
- (2) If the scheme participant fails to notify the Scheme Regulator of the scheme participant's individual liable use in accordance with subclause (1), the Scheme Regulator must calculate the scheme participant's individual liable use for the compliance period in accordance with the regulations.
- (3) The Scheme Regulator's calculation is taken to be the scheme participant's individual liable use.

#### **156 Scheme Regulator to determine scheme liable use**

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

### **Division 3 Exemptions**

#### **157 Exemptions**

- (1) The Minister may, by order published in the Gazette, grant an exemption from the renewable fuel scheme in relation to gas used—
  - (a) by a specified person or class of persons, or
  - (b) in connection with a specified activity or class of activities.
- (2) An order granting an exemption may also specify the scheme participant, or class of scheme participants, in relation to whom the exemption applies.
- (3) The Minister may grant an exemption under this clause only if satisfied that—
  - (a) the gas is used in connection with an industry or activity that is both emissions intensive and trade exposed, or
  - (b) the exemption meets the criteria specified by the Minister in a notice published in the Gazette.
- (4) The criteria specified by the Minister must be generally consistent with—
  - (a) the object of this Part, or
  - (b) the objects of the energy savings scheme under Part 1, or
  - (c) the object of the safeguard specified in the Act, section 98C.
- (5) An exemption must specify whether it is a full or partial exemption.
- (6) If the exemption is a full exemption, the gas use to which the exemption applies is *fully exempt gas use*.
- (7) If the exemption is a partial exemption, the gas use to which the exemption applies is *partially exempt gas use*.
- (8) If an exemption is a partial exemption, the order granting the exemption must specify the proportion of gas used by the person, or class of persons, or in

connection with a specified activity or class of activities, that is exempt from the renewable fuel scheme, referred to in clause 158 as the *exempt proportion*.

**158 Effect of exemption**

- (1) A scheme participant is entitled to deduct the following from the total value of its liable uses for a compliance period—
  - (a) the value of each use of gas that is fully exempt gas use,
  - (b) a proportion of the value of each use of gas that is partially exempt gas use (the *exempt proportion*).
- (2) An order granting an exemption may specify the allowances that may be made by scheme participants, in applying the exemption, for gas losses occurring during the conveyance of the gas to a retail customer.
- (3) If gas is the subject of an allowance, the gas may also be deducted from the total value of liable uses made by a scheme participant, in accordance with the exemption.
- (4) An order granting an exemption may authorise the Scheme Regulator to make rules relating to the exemption, including rules relating to assessment of deductions under this Division.
- (5) A scheme participant must make a deduction under this Division in accordance with the provisions of the relevant exemption and rules made under subclause (4).
- (6) In proceedings under this Act involving a scheme participant, the burden of establishing that the scheme participant was entitled to deduct the exempt liable use lies on the scheme participant.

**159 Grounds on which gas uses may be exempt**

- (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 the regulations, the Minister may determine the basis on which an industry or activity is considered to be emissions intensive or trade exposed.

**160 General provisions about exemptions**

- (1) An exemption takes effect on—
  - (a) the day on which the order granting the exemption is published in the Gazette, or
  - (b) a later day specified in the order.
- (2) An exemption may be revoked by order of the Minister published in the Gazette.
- (3) If an exemption is revoked, the revocation takes effect on—
  - (a) the day on which the order revoking the exemption is published in the Gazette, or
  - (b) a later day specified in the order.
- (4) The Minister must provide a copy of an order made under this Division to the Scheme Regulator.
- (5) The Scheme Regulator must publish the following on its website—
  - (a) particulars of an exemption under this Division, and
  - (b) rules made under clause 158(4) about an exemption.



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

### **161 Surrender of certificates**

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

### **162 Penalties for shortfalls**

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

### **163 Penalty rates**

- (1) The *scheme penalty rate* for a compliance period is the rate prescribed by the regulations.
- (2) A regulation to prescribe or amend an existing prescribed scheme penalty rate for a compliance period must be made at least 12 months before the beginning of the compliance period.
- (3) A regulation to amend a prescribed scheme penalty rate for a compliance period may be made only if the Minister is satisfied that the change to the prescribed scheme penalty rate is appropriate—
  - (a) for the purposes of achieving greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the renewable fuel scheme, or
  - (b) for the purposes of implementing a national scheme with similar objectives to the renewable fuel scheme, or
  - (c) because of an over supply of certificates that may be surrendered, as evidenced in the way set out in the regulations, or
  - (d) because of significant changes to the scheme rules relating to the creation of certificates, or
  - (e) because of significant changes to the policy or regulatory framework, or the market conditions, in which the renewable fuel scheme operates.

- (4) Subclauses (2) and (3) do not apply to a regulation that provides for the adjustment of scheme penalty rates for movements in the consumer price index.

**164 Payment of shortfall penalties**

- (1) A shortfall penalty payable by a scheme participant is, for a compliance period, payable—
- (a) within 12 months of the end of the compliance period, or
  - (b) on a later day determined by the Scheme Regulator for the scheme participant.
- (2) A shortfall penalty is payable to the Scheme Regulator for payment into the Climate Change Fund under the *Energy and Utilities Administration Act 1987*.
- (3) A shortfall penalty payable by a scheme participant may be recovered in a court of competent jurisdiction as a debt due to the Crown.

**165 Shortfalls may be carried forward**

- (1) A scheme participant may elect to carry forward a shortfall, or part of a shortfall, for a compliance period to the next compliance period in accordance with this clause.
- (2) If a scheme participant elects to carry forward a shortfall, or part of a shortfall, the amount carried forward is not subject to a shortfall penalty for the compliance period to which the shortfall relates.
- (3) The maximum amount of a shortfall that may be carried forward to the 2025 compliance period by a scheme participant is—
- (a) 20% of the scheme participant's individual certificate target for the 2024 compliance period, or
  - (b) another amount prescribed by the regulations.
- (4) The maximum amount of a shortfall that may be carried forward to another compliance period by a scheme participant is—
- (a) 10% of the scheme participant's individual certificate target in the previous compliance period, or
  - (b) another amount prescribed by the regulations.
- (5) A shortfall, or part of a shortfall, may be carried forward to the next compliance period only.
- (6) A shortfall, or part of a shortfall, for the 2044 compliance period cannot be carried forward.
- (7) A scheme participant who elects to carry forward a shortfall, or part of a shortfall, to the next compliance period is not prevented from electing to carry forward a shortfall, or part of a shortfall, for that next compliance period to the following compliance period.
- (8) For the purposes of this Part, a shortfall, or part of a shortfall, for a compliance period that is carried forward to the next period is a *carried forward shortfall*.

**166 Carried forward shortfalls must be remedied**

- (1) A scheme participant who has a carried forward shortfall in a compliance period must remedy the carried forward shortfall in the compliance period to which the shortfall is carried forward.

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

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

### **167 Annual statements**

- (1) A scheme participant must lodge with the Scheme Regulator a statement (an *annual statement*) each year on or before—
  - (a) 1 March, or
  - (b) a later day specified by the Scheme Regulator for the scheme participant.
- (2) An annual statement must contain the following—
  - (a) the scheme participant's individual certificate target for the previous compliance period,
  - (b) the amount of any shortfall penalty payable by the scheme participant for the previous compliance period, including any shortfall penalty for a carried forward shortfall,
  - (c) other matters required by the Scheme Regulator.
- (3) If the scheme participant seeks to elect to surrender one or more certificates for the purposes of meeting its individual certificate target for the compliance period to which the annual statement relates, the election must—
  - (a) accompany the annual statement, and
  - (b) contain details of the certificates proposed to be surrendered.
- (4) If a scheme participant seeks to elect to carry forward a shortfall, or part of a shortfall, for the compliance period to which the annual statement relates, the election must accompany the annual statement.
- (5) An annual statement, and any election that accompanies the statement, must be in a form approved by the Scheme Regulator.
- (6) A scheme participant who fails to lodge an annual statement in accordance with this clause is guilty of an offence.  
Maximum penalty (subclause (6))—
  - (a) for a corporation—250 penalty units, or

- (b) for an individual—100 penalty units.
- (7) Regulations may be made in relation to the following—
  - (a) assessments by the Scheme Regulator of the matters referred to in subclause (2)(a) and (b), if a scheme participant does not lodge an annual statement as required under this clause,
  - (b) the amendment of assessments of the matters referred to in subclause (2)(a) and (b), at the request of a scheme participant or on the Scheme Regulator's own motion.

#### **168 Restrictions on surrender of certificates**

- (1) A certificate cannot be surrendered by a scheme participant for the purposes of meeting its individual certificate target or remedying a carried forward shortfall unless—
  - (a) the certificate is registered in the register of certificates, and
  - (b) the participant is recorded in the register of certificates as the owner of the certificate, and
  - (c) for a certificate that relates to an activity that occurred in a jurisdiction for which there is an approved corresponding scheme—the Minister has, by the order approving the corresponding scheme under clause 171, or a subsequent order published in the Gazette, approved the surrender of certificates of that kind by a scheme participant for those purposes.
- (2) The Scheme Regulator may, by written notice to a scheme participant, refuse to accept an election to surrender a certificate if, in the opinion of the Scheme Regulator—
  - (a) the certificate cannot be surrendered under this clause, or
  - (b) the certificate is surplus to the number required to be surrendered for the purposes of meeting the scheme participant's individual certificate target or remedying a carried forward shortfall.
- (3) If the Scheme Regulator accepts the surrender of a certificate, and the Scheme Regulator is not the Scheme Administrator, the Scheme Regulator must give the Scheme Administrator written notice of the decision, including details of the certificate surrendered.

#### **169 Validity of assessment**

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

### **Division 6 Certificates**

#### **170 Creation of certificates**

- (1) A certificate may be created by an accredited certificate provider, in accordance with the scheme rules, in relation to an activity that produces renewable fuel.
- (2) Subject to the scheme rules, one certificate may be created for an activity that produces 1 gigajoule of renewable fuel.
- (3) The number of certificates created for an activity must be calculated in accordance with the scheme rules.

- (4) A certificate may be created in relation to an activity no later than 6 months after the end of the compliance period in which the activity produces the renewable fuel.
- (5) The scheme rules may make provision about the creation of certificates in relation to an activity, or class of activity, that produces renewable fuel.
- (6) In particular, the scheme rules may—
  - (a) provide for activities that produce renewable fuel before the beginning of the 2024 compliance period, and
  - (b) specify the date before or after which an activity must have commenced for a certificate to be created in relation to the activity.
- (7) The regulations or scheme rules may—
  - (a) specify when an activity is taken to have produced renewable fuel, and
  - (b) provide that an activity is taken to have occurred on the date on which the activity is first commenced.
- (8) Regulations may be made in relation to—
  - (a) the revocation of the cancellation of certificates in connection with an amendment to a scheme participant's individual liable use or annual statement, and
  - (b) the revival of certificates.

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

- (1) The scheme rules may make provision about the creation of certificates in relation to an activity, or class of activity, that produces renewable fuel in another jurisdiction, if an approved corresponding scheme is in operation in the jurisdiction.
- (2) The Minister may, by order published in the Gazette, approve a corresponding scheme for the purposes of this clause only if the Minister is satisfied that—
  - (a) the corresponding scheme is intended to promote activities that produce renewable fuel, and
  - (b) the objectives of the corresponding scheme are consistent with the objectives of the renewable fuel scheme established by this Part, and
  - (c) the monitoring and enforcement of compliance with the corresponding scheme to be approved is no less stringent than the monitoring and enforcement of compliance with the renewable fuel scheme established by this Part.

#### **172 Improper creation of certificates**

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

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

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

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

### **174 Eligibility for accreditation**

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

### **175 Application for accreditation**

- (1) A person who is eligible for accreditation as a certificate provider in relation to an activity may apply to the Scheme Administrator for accreditation.
- (2) The Scheme Administrator must determine an application for accreditation as a certificate provider by—
  - (a) accrediting the applicant as a certificate provider in relation to specified activities, or
  - (b) refusing the application.
- (3) The Scheme Administrator may refuse an application for accreditation as a certificate provider on any grounds specified in the regulations.
- (4) The Scheme Administrator may charge a fee for the investigation and determination of an application, in addition to an application fee required to be paid under the regulations.
- (5) The fee for the investigation and determination of an application must be determined by the Scheme Administrator on a cost recovery basis.

### **176 Duration of accreditation**

- (1) Accreditation of a person as a certificate provider in relation to an activity remains in force until suspended or cancelled by the Scheme Administrator.
- (2) The Scheme Administrator may suspend or cancel the accreditation of a person on any grounds specified in the regulations.
- (3) The suspension or cancellation of the accreditation of a person is subject to any conditions imposed by the Scheme Administrator.

- (4) The conditions may include, but are not limited to, a condition to which the accreditation was subject immediately before it was suspended or cancelled.
- (5) The regulations may provide for the variation or revocation of a condition imposed by the Scheme Administrator on the suspension or cancellation of accreditation as a certificate provider.

#### **177 Conditions of accreditation**

- (1) Accreditation as a certificate provider is subject to the following conditions—
  - (a) a condition imposed from time to time by the regulations,
  - (b) a condition imposed by the Scheme Administrator at the time of accreditation, or during the period in which the accreditation remains in force, in accordance with the regulations.
- (2) Without limiting the types of conditions that may be imposed, 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 a certificate in relation to the production of renewable fuel if—
    - (i) a certificate has already been created in relation to the same production of renewable fuel, or
    - (ii) the production of the renewable fuel has already been used for the purposes of compliance with a scheme or arrangement with similar objectives to the renewable fuel scheme,
  - (b) a condition that requires the person to provide financial assurances to secure or guarantee the person's compliance with this Part,
  - (c) 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,
  - (d) 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.
- (3) A person must not contravene a condition of the person's accreditation as a certificate provider.  
Maximum penalty (subclause (3))—2,000 penalty units.
- (4) Subclause (3) extends to a condition to which the suspension or cancellation of the accreditation of a person is subject under this Part.

#### **178 Amendment of accreditation**

- (1) An accredited certificate provider may apply to the Scheme Administrator to amend the provider's accreditation by—
  - (a) varying the activities for which the provider is accredited, or
  - (b) varying or revoking a condition of the provider's accreditation imposed by the Scheme Administrator.
- (2) Subclause (1)(b) does not apply to a condition of an accredited certificate provider that is imposed by this Act or the regulations.
- (3) The Scheme Administrator must determine an application to amend a provider's accreditation by—
  - (a) granting the application, or

- (b) refusing the application.
- (4) The regulations may make provision for the amendment of a provider's accreditation, including by requiring an application fee to be paid to the Scheme Administrator.
- (5) The Scheme Administrator may refuse an application to amend a provider's accreditation on grounds specified in the regulations.
- (6) In addition to an application fee, the Scheme Administrator may recover from the accredited certificate provider the costs reasonably incurred by the Scheme Administrator in investigating and determining the application.

**179 Transfer of accreditation**

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

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

- (1) The Scheme Administrator may, by written order to a person, require the person to surrender to the Scheme Administrator, within a period specified in the order, the number of certificates specified in the order.
- (2) An order may be made against a person only if the Scheme Administrator is satisfied, on the balance of probabilities, that the person is guilty of—
  - (a) an offence under clause 172 involving the improper creation of certificates, or
  - (b) an offence under clause 177(3) of contravening a condition of the person's accreditation as a certificate provider.
- (3) The number of certificates required to be surrendered by an order is—
  - (a) for an order made under subclause (2)(a)—the number of certificates that is no more than the number of certificates that, in the opinion of the Scheme Administrator, were improperly created, and
  - (b) for an order made under subclause (2)(b)—the number determined by the Scheme Administrator in accordance with the regulations.
- (4) A person must not fail to comply with an order.  
Maximum penalty (subclause (4))—
  - (a) 1,000 penalty units, and
  - (b) an additional 1 penalty unit for each certificate the person fails to surrender in accordance with the order.



- (5) The value of a certificate surrendered for the purposes of compliance with an order cannot be counted towards meeting a scheme participant's individual certificate target or remedying a carried forward shortfall.
- (6) If a person fails to comply with an order, the Scheme Administrator may cancel a certificate in relation to which the person is registered as the owner.
- (7) To avoid doubt, it is not an excuse for a failure to comply with an order that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of certificates to comply with the order.
- (8) Regulations may be made in relation to the orders made by the Scheme Administrator under this clause.

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

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

- (1) An application for registration of the creation of a certificate may be made to the Scheme Administrator by an accredited certificate provider.
- (2) A certificate is created when an application for registration of the creation of the certificate is made under subclause (1).
- (3) A certificate has no effect until the creation of the certificate is registered by the Scheme Administrator in the register of certificates.
- (4) The Scheme Administrator must determine an application for registration of the creation of a certificate by—
  - (a) granting the application and registering the creation of the certificate in the register of certificates, or
  - (b) refusing the application.
- (5) The Scheme Administrator registers the creation of a certificate by—
  - (a) creating an entry for the certificate in the register of certificates, and
  - (b) recording the name of the person who created the certificate as the owner of the certificate.
- (6) The Scheme Administrator may refuse an application for registration of the creation of a certificate on any grounds specified in the regulations.
- (7) Regulations may be made in relation to applications for registration of certificates, including—
  - (a) to require an application fee to be paid to the Scheme Administrator, and
  - (b) to adjust the amount of the fee for movements in the consumer price index.
- (8) The Scheme Administrator must publish the adjusted application fees on its website before the beginning of the compliance period to which the application fee applies.

### **182 Form of certificate**

The regulations may provide for the form in which certificates are to be created.

**183 Duration of certificate**

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

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

**184 Transfer of certificates**

- (1) A certificate is transferable in accordance with this Division.
- (2) A certificate is transferable only if the certificate is registered in the register of certificates.
- (3) The transfer of a certificate does not have effect until the transfer is registered by the Scheme Administrator.
- (4) An application for registration of a transfer of a certificate must be made to the Scheme Administrator by the parties to the transfer.
- (5) The Scheme Administrator must—
  - (a) grant the application by registering the transfer of the certificate in the register of certificates, or
  - (b) refuse the application.
- (6) The Scheme Administrator registers the transfer of a certificate by altering the entry relating to that certificate in the register of certificates to record the new owner of the certificate.
- (7) The Scheme Administrator may refuse an application for registration of a transfer of a certificate on any grounds specified in the regulations.
- (8) Regulations may be made in relation to applications for registration of a transfer, including to require an application fee to be paid to the Scheme Administrator.

**185 Other dealings with certificates**

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

**186 Holder of certificate may deal with certificate**

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

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

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

**Division 10 Administration of renewable fuel scheme**

**188 Scheme Regulator**

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

**189 Functions of Scheme Regulator**

- (1) The Scheme Regulator has the following functions—
  - (a) to assess and determine, in accordance with this Part, the regulations and the scheme rules, whether scheme participants have complied with individual certificate targets,
  - (b) if appropriate, to assess and determine, in accordance with this Part, the regulations and the scheme rules, any shortfall penalty payable by a scheme participant,
  - (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
  - (d) to monitor, and report to the Minister on, the extent to which scheme participants comply, or fail to comply, with obligations imposed by or under this Part,
  - (e) to provide advice to the Minister on request about the extent of an over supply of certificates that may be surrendered,
  - (f) other functions conferred or imposed on it by or under this Act.

- (2) If the Scheme Regulator is appointed by the Minister, the Scheme Regulator also has any other functions conferred or imposed on it by the Minister under the terms of its appointment as Scheme Regulator.
- (3) For the purposes of enabling the Scheme Regulator to exercise its functions, the Minister must provide the Scheme Regulator with information in the Minister's possession in relation to the compliance by scheme participants with this Part, if requested by the Scheme Regulator.
- (4) The Scheme Regulator may delegate the exercise of its functions under this Part, other than this power of delegation, to—
  - (a) with the approval of the Minister—another person or body, and
  - (b) a person who is a member of a class of persons approved by the Minister.
- (5) If the Tribunal is the Scheme Regulator, the *Independent Pricing and Regulatory Tribunal Act 1992*, section 10 does not apply to the Tribunal's functions as Scheme Regulator.

#### **190 Scheme Administrator**

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

#### **191 Functions of Scheme Administrator**

- (1) The Scheme Administrator has the following functions—
  - (a) the functions conferred by this Part relating to the renewable fuel scheme,
  - (b) to monitor, and to report to the Minister on, the extent to which accredited certificate providers comply with this Part, the regulations, the scheme rules and conditions of accreditation,
  - (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
  - (d) to provide advice to the Minister on request about the extent of an over supply of certificates that may be surrendered,

- (e) other functions conferred or imposed on it by or under this Act or another Act or law.
- (2) If the Scheme Administrator is appointed by the Minister, the Scheme Administrator also has the other functions conferred or imposed on it by the Minister under the terms of the appointment.
- (3) For the purposes of enabling the Scheme Administrator to exercise its functions, the Minister must provide the Scheme Administrator with information in the Minister's possession that relates to compliance by accredited certificate providers with this Part, if requested by the Scheme Administrator.
- (4) The Scheme Administrator may delegate the exercise of its functions under this Part, other than this power of delegation, to—
  - (a) with the approval of the Minister—another person or body, and
  - (b) a person who is a member of a class of persons approved by the Minister.
- (5) If the Tribunal is the Scheme Administrator, the *Independent Pricing and Regulatory Tribunal Act 1992*, section 10 does not apply to its functions as Scheme Administrator.

#### **192 Conduct of audits**

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

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

- (1) For the purposes of exercising its functions under this Part, the Scheme Regulator or Scheme Administrator may, by written notice served on a relevant person, require the person to do one or more of the following—
  - (a) to send to the Scheme Regulator or Scheme Administrator, on or before a day specified in the notice, a statement setting out the information specified in the notice,
  - (b) to send to the Scheme Regulator or Scheme Administrator, on or before a day specified in the notice, a document or type of document specified in the notice.
- (2) If the Tribunal is the Scheme Regulator or Scheme Administrator, the Tribunal may, in the notice, in addition to or instead of requiring a relevant person to do something specified in subclause (1), require the relevant person to attend a meeting of the Tribunal to give evidence.
- (3) A person must not, without reasonable excuse—
  - (a) refuse or fail to comply with a notice served under this clause, or

- (b) refuse or fail to answer a question the person is required to answer at a meeting of the Tribunal the person is required to attend under this clause.

Maximum penalty (subclause (3))—

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

*relevant person* means—

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

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

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

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

Maximum penalty—

- (a) for a corporation—250 penalty units, or
- (b) for an individual—100 penalty units.

#### **195 False or misleading information**

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

- (a) give to the Scheme Regulator or Scheme Administrator, whether orally or in writing, information or a document that the person knows to be false or misleading in a material particular, unless the person informs the Scheme Regulator or Scheme Administrator, or

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

Maximum penalty—100 penalty units.

#### **196 Confidential information**

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

#### **197 Identity of persons providing information to be confidential**

- (1) This clause applies if a person (an *information provider*) provides information to the Scheme Regulator or Scheme Administrator about another person's non-compliance with an obligation under this Part.
- (2) The Scheme Regulator or Scheme Administrator must ensure that the identity of an information provider, and anything that may reasonably identify the information provider, is not disclosed to any person except—
  - (a) with the consent of the information provider, or
  - (b) if ordered by a court or tribunal, or
  - (c) if required by another law.
- (3) If the identity of an information provider cannot be disclosed under subclause (2), the information provided by the information provider cannot be used as evidence in proceedings against another person for an offence under this Act.

- (4) Subclause (3) does not prevent the Scheme Regulator or Scheme Administrator using information, including in proceedings for an offence under this Act, obtained as a result of the information received from an information provider.

#### **198 Cabinet documents and proceedings**

- (1) This Part does not enable the Scheme Regulator or Scheme Administrator—
- (a) to require a person to give a statement of information or answer a question that relates to confidential proceedings of Cabinet, or
  - (b) to require a person to produce Cabinet information, or
  - (c) to inspect Cabinet information.
- (2) For the purposes of this clause, a certificate of the Secretary of the Department of Premier and Cabinet, or the General Counsel of the Department, that information or a question relates to confidential proceedings of Cabinet or that information is Cabinet information is conclusive of the matter certified.
- (3) In this clause—
- Cabinet** includes a committee of Cabinet or a subcommittee of a committee of Cabinet.
- Cabinet information** means information that is Cabinet information under the *Government Information (Public Access) Act 2009*.

### **Division 11 Civil penalties**

#### **199 Definitions**

In this Division—

**civil penalty order**—see clause 200.

**civil penalty provision** means a provision prescribed by the regulations as a civil penalty provision.

**scheme entity** means—

- (a) the Scheme Administrator, or
- (b) the Scheme Regulator.

#### **200 Monetary penalty**

- (1) If a person has contravened a civil penalty provision, a scheme entity may, by written order (a **civil penalty order**), require the person to pay a monetary penalty of no more than the penalty notice amount for the provision.
- (2) If a corporation is liable to a monetary penalty under this clause, each of the following persons may be ordered to pay a monetary penalty if the person knowingly authorised or permitted the contravention—
- (a) a director of the corporation,
  - (b) a person concerned in the management of the corporation.

#### **201 Process**

- (1) A scheme entity may not issue a civil penalty order to a person unless—
- (a) the scheme entity has given the person notice of the proposed order and the reasons for it, and
  - (b) the person has been given a reasonable opportunity to make a submission about the proposed order, and



- (c) the scheme entity has considered a submission made by the person, and
- (d) the scheme entity is satisfied on the balance of probabilities that the person—
  - (i) contravened the relevant civil penalty provision, or
  - (ii) knowingly authorised or permitted the contravention.
- (2) A scheme entity must provide written reasons for a decision to issue a civil penalty order to the person.
- (3) A civil penalty order must be issued within 3 years after the date on which evidence of the alleged offence first came to the attention of the scheme entity.
- (4) A civil penalty order must include the date, not less than 28 days after the date the order is issued, by which the monetary penalty imposed by the order must be paid.

#### **202 Double jeopardy**

- (1) A scheme entity may not issue a civil penalty order to a person if—
  - (a) another civil penalty order has been issued to a person for the contravention, or
  - (b) the person has been found guilty, whether a conviction is recorded or not, of an offence under this Act or the regulations for the contravention.
- (2) If criminal proceedings are taken against a person for a contravention after the person pays the monetary penalty imposed by a civil penalty order, a court that finds the person guilty of an offence must discount any penalty imposed by the civil penalty amount paid by the person.

#### **203 Payment not an admission of guilt or liability**

The payment of a monetary penalty under this Division cannot be taken to be an admission of—

- (a) a breach of a civil penalty provision, or
- (b) liability for civil or criminal proceedings arising from substantially the same conduct.

#### **204 Withdrawal of order**

- (1) A scheme entity may withdraw a civil penalty order by written notice to the person the subject of the order.
- (2) A civil penalty order may be withdrawn under this clause at any time before it is complied with.
- (3) A civil penalty order issued to a person is automatically withdrawn on the commencement against the person of criminal proceedings for the contravention.
- (4) A civil penalty order withdrawn under this clause may, subject to clause 202, be reissued.

#### **205 Internal review of order**

- (1) A person who is the subject of a civil penalty order may apply to the scheme entity that issued the order for a review of—
  - (a) the decision to issue the order, or
  - (b) the monetary penalty imposed by the order.

- (2) An application must be made within 28 days of the issuing of the order.
- (3) A person issued a civil penalty order is not required to pay the monetary penalty imposed while an application is being considered.
- (4) The scheme entity's decision on the application must be given to the applicant—
  - (a) by written notice that includes the reasons for the decision, and
  - (b) within 90 days of the making of the application.
- (5) If the written notice of the scheme entity's decision is not given to the applicant within 90 days of the making of the application, the application is taken to have been refused.
- (6) If the scheme entity affirms the decision to issue the civil penalty order, including with a different monetary penalty, the written notice of the decision must include the date, not less than 28 days after the date of the notice, by which the monetary penalty must be paid.

**206 External review of order**

- (1) A person who is not satisfied with the result of an internal review under clause 205 may make an application to the Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997* for administrative review of the internal review decision.
- (2) The *Administrative Decisions Review Act 1997*, section 53 does not apply to a decision under clause 205 that may be reviewed by the Tribunal.

**207 Recovery of monetary penalty**

The monetary penalty imposed by a civil penalty order may be recovered by a scheme entity in a court of competent jurisdiction as a debt owing to the Crown.

## **Division 12 Registers**

**208 Keeping of registers**

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

**209 Register of accredited certificate providers**

The register of accredited certificate providers must contain—

- (a) the name of each accredited certificate provider, and

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

#### **210 Register of certificates**

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

- (a) the name of the person who created the certificate,
- (b) the name of the current registered owner, and any previous registered owners, of the certificate,
- (c) if there is an approved corresponding scheme in another jurisdiction and the activity to which the certificate relates occurred in the other jurisdiction—the jurisdiction in which the activity occurred,
- (d) the period for which the certificate is in force,
- (e) the compliance period during which the activity, in relation to which the certificate is created, produced the renewable fuel,
- (f) other information required to be included in the register by this Part or the regulations.

#### **211 Register of persons refused accreditation as accredited certificate providers**

The register of persons who have applied for and been refused accreditation as an accredited certificate provider must contain the following information about each person—

- (a) the name of the person and, if the person is a corporation, the corporation's ACN,
- (b) the reasons the person's application was refused,
- (c) other information required to be included in the register by this Part or the regulations.

#### **212 Evidentiary provisions**

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

#### **213 Information sharing**

- (1) The Scheme Administrator may enter into an arrangement (an *information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information about the following held by the Scheme Administrator or the relevant agency—
  - (a) offences and alleged offences under this Part, including investigations,
  - (b) the administration of the renewable fuel scheme,
  - (c) other matters of a type prescribed by the regulations.
- (2) Under an information sharing arrangement, the Scheme Administrator and the relevant agency are, despite any other Act or law, authorised—
  - (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party.

- (3) In this clause—  
**relevant agency** means the following—
- (a) a government sector agency within the meaning of the *Government Sector Employment Act 2013*,
  - (b) another person or body prescribed by the regulations.

### **Division 13 Compliance officers and penalty notices**

#### **214 Appointment of compliance officers**

- (1) The Scheme Administrator may, in accordance with any guidelines in force under this clause, appoint compliance officers for the purposes of this Part.
- (2) The Minister may, by written order, issue guidelines for the appointment of compliance officers.
- (3) An order must be published on the Scheme Administrator's website and takes effect on—
  - (a) the day on which it is published, or
  - (b) a later day specified in the order.

#### **215 Powers of compliance officers**

- (1) The powers of a compliance officer may be exercised for the purposes of investigating an accredited certificate provider's compliance with the following—
  - (a) this Part,
  - (b) the regulations,
  - (c) the scheme rules,
  - (d) a condition of the provider's accreditation.
- (2) A compliance officer may at a reasonable time enter—
  - (a) premises that are used in connection with an activity for which a certificate has been created, and
  - (b) the principal place of business of an accredited certificate provider.
- (3) A compliance officer may not enter a part of premises used only for residential purposes without the permission of the occupier of the premises.
- (4) A compliance officer may, at premises lawfully entered, do anything that, in the opinion of the compliance officer, is necessary to be done for the purposes of the investigation, including the following—
  - (a) examine and test plant or equipment on the premises,
  - (b) take photographs, films, audio, video and other recordings,
  - (c) take copies of records or documents on the premises,
  - (d) seize anything that the compliance officer believes on reasonable grounds is connected with an offence under this Part.
- (5) A person must not hinder or obstruct a compliance officer in the exercise of a power.  
Maximum penalty (subclause (5))—
  - (a) for a corporation—200 penalty units, or
  - (b) for an individual—50 penalty units.

- (6) A person is not guilty of an offence under subclause (5) unless it is established that the compliance officer identified themselves as a compliance officer.

#### 216 Penalty notices

- (1) A compliance officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence in this Part, or a regulation under this Part, that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this clause.  
**Note—** The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this clause is the amount prescribed for the alleged offence by the regulations, which must not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This clause does not limit the operation of another provision of, or made under, this or another Act relating to proceedings that may be taken for offences.

### Division 14 Miscellaneous

#### 217 Limit on recovery of scheme compliance costs from small business gas customers

- (1) A scheme participant must not, during a compliance period, charge a small business customer a fee or charge, however described, exceeding the relevant cap for the compliance period if the purpose of the fee or charge is to recover the costs to the scheme participant of complying with the renewable fuel scheme.

Maximum penalty (subclause (1))—

- (a) for a corporation—250 penalty units, or
- (b) for an individual—50 penalty units.
- (2) For the purposes of this clause, the *relevant cap* is—
- (a) for the 2024 compliance period—\$300, and
- (b) in each subsequent compliance period—the amount calculated as follows—

$$\$300 \times \frac{CPI_{year-1}}{CPI_{year-2}}$$

where—

$CPI_{year-1}$  is the CPI number for the September quarter of the immediately preceding compliance period.

$CPI_{year-2}$  is the CPI number for the September quarter of the year before the immediately preceding compliance period.

- (3) The relevant cap is to be rounded up to the nearest cent.
- (4) If the amount of the relevant cap calculated for a compliance period is less than the amount that applied for the previous compliance period, the amount for the previous compliance period applies instead.

- (5) The relevant cap for each compliance period, other than the relevant cap for 2024, must be published on the Scheme Regulator's website before the beginning of the compliance period.
- (6) In this clause—  
**small business customer**, in relation to a scheme participant, means—
  - (a) a person of a class specified by the Scheme Regulator for the purposes of this clause, or
  - (b) if a class is not specified under paragraph (a), a person who—
    - (i) purchases gas from the scheme participant, and
    - (ii) is a small customer under the *National Energy Retail Law (NSW)*, section 5(2)(b).

## 218 Scheme rules

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

**219 Application of Part to persons who cease to be scheme participants**

- (1) If a person ceases to be a scheme participant, this Part and the regulations continue to apply to the person in relation to the period during which the person was a scheme participant.
- (2) For that purpose, a reference to a scheme participant includes a reference to a former scheme participant.
- (3) A former scheme participant continues to be required to lodge an annual statement for the compliance period during which the person ceased to be a scheme participant.
- (4) The requirements of this Part in relation to the conduct of audits and the provision of information, documents and evidence to the Scheme Regulator or Scheme Administrator continue to apply in relation to the person as if the person were a scheme participant.
- (5) The Minister may, by written notice to the former scheme participant, bring forward the date on which the person would otherwise have to—
  - (a) lodge an annual statement with the Scheme Regulator for the compliance period during which the person ceased to be a scheme participant, and
  - (b) pay a shortfall penalty for the compliance period during which the person ceased to be a scheme participant.
- (6) The notice may specify—
  - (a) the date (the *lodgment date*) by which the former scheme participant must lodge the annual statement, and
  - (b) the date by which the former scheme participant must pay the shortfall penalty.
- (7) The lodgment date must not be earlier than 28 days after the person ceased to be a scheme participant.
- (8) The provisions of this Part relating to the lodgment of an annual statement and the payment of a shortfall penalty apply as if a reference to 30 April were a reference to the lodgment date.

**220 Administrative reviews by Civil and Administrative Tribunal**

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

- (2) A person who is or was accredited, or who has applied to be accredited, as a certificate provider and who is aggrieved by the following decisions of the Scheme Administrator may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision—
  - (a) a decision to refuse accreditation of the person as a certificate provider,
  - (b) a decision to cancel or suspend the accreditation of the person as a certificate provider,
  - (c) a decision to refuse registration of the creation of a certificate,
  - (d) other decisions of the Scheme Administrator of a kind prescribed by the regulations.
- (3) A person who has applied for the registration of a transfer of a certificate and who is aggrieved by a decision of the Scheme Administrator to refuse registration of the transfer may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (4) A person who is the subject of an order by the Scheme Administrator requiring the person to surrender a certificate to the Scheme Administrator and who is aggrieved by a decision of the Scheme Administrator to impose that order may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (5) A person who, under a scheme rule, is approved by the Scheme Administrator to undertake a function and who is aggrieved by a decision of the Scheme Administrator to revoke the person's approval may apply to the Civil and Administrative Tribunal for an administrative review of the decision under the *Administrative Decisions Review Act 1997*.

#### **221 Certificate evidence**

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

#### **222 Ancillary offences**

- (1) This clause applies to a person who, for an offence under this Part or the regulations under this Part—
  - (a) causes or permits another person to commit the offence, or
  - (b) aids, abets, counsels or procures another person to commit the offence, or
  - (c) conspires with another person to commit the offence.



- (2) A person to whom this clause applies is guilty of the offence and is liable to the same penalty for an offence against the other provision.

### **223 Personal liability**

- (1) A protected person is not personally subject to any liability for anything done—
- (a) in good faith, and
  - (b) for the purpose of exercising functions under this Act or another Act.
- (2) The liability instead attaches to the Crown.
- (3) In this clause—
- done* includes omitted to be done.
- liability* means civil liability and includes action, claim or demand.
- protected person* means—
- (a) the Scheme Regulator, or
  - (b) the Scheme Administrator, or
  - (c) a member or officer of, or a person acting under the direction of, the Scheme Regulator or Scheme Administrator, or
  - (d) a compliance officer.

### **224 Annual report by Scheme Regulator**

- (1) As soon as practicable after 30 June in each year, the Scheme Regulator must prepare a report on the extent to which scheme participants have complied, or failed to comply, with individual certificate targets during the previous year.
- (2) The report must be provided to the Minister on or before—
- (a) the date prescribed by the regulations, or
  - (b) if the regulations do not prescribe a date—31 August in the same year.
- (3) Without limiting subclause (1), the report must contain the following—
- (a) the name of each scheme participant and the performance of the participant in relation to the participant's individual certificate target during the year to which the report relates,
  - (b) the total number of certificates surrendered during the year to which the report relates,
  - (c) the total number of certificates created during the year to which the report relates,
  - (d) the total number of certificates created in previous years and not surrendered before the beginning of the year to which the report relates,
  - (e) an assessment of the extent of an over supply of certificates that may be surrendered during the year to which the report relates,
  - (f) an estimate, prepared by the Scheme Administrator, of the actual amount of renewable fuels produced during the year to which the report relates, having regard to the number of certificates that have been created.
- (4) For the purposes of subclause (3), a certificate created under an approved corresponding scheme that is not able to be surrendered by a scheme participant for the purposes of meeting its individual certificate target or remedying a carried forward shortfall is to be disregarded.

- (5) The report must also set out—
  - (a) the functions delegated by the Scheme Regulator or Scheme Administrator, and
  - (b) the person or body to whom the functions were delegated.
- (6) 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.
- (7) For the purposes of enabling the Scheme Regulator to prepare a report, the Scheme Administrator must provide to the Scheme Regulator—
  - (a) the estimate the Scheme Administrator is required to prepare under subclause (3)(f), and
  - (b) other information that the Scheme Regulator reasonably requires to complete the report.
- (8) The first report under this clause must be prepared for the 2024 compliance period.

**225 Reviews of renewable fuel scheme**

- (1) The Minister must review the operation of the renewable fuel scheme to determine whether—
  - (a) the policy objectives of the renewable fuel scheme remain valid, and
  - (b) the terms of this Part remain appropriate for securing the objectives.
- (2) A review must be undertaken at least every 5 years after the renewable fuel scheme commences.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period to which the review relates.

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

- (1) The Minister may, by order published in the Gazette, waive, or suspend for a specified period, the obligation of a scheme participant to meet its individual certificate target or remedy a carried forward shortfall.
- (2) The Minister may make an order only if it appears to the Minister that a scheme participant is or will be unable to meet its individual certificate target or remedy the carried forward shortfall because of—
  - (a) a systems or other failure of the register of certificates, or
  - (b) another emergency affecting the integrity of the renewable fuel scheme or the register of certificates.
- (3) 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 other rights conferred or obligations imposed under this Part.
- (4) An order takes effect on—
  - (a) the day on which it is published in the Gazette, or
  - (b) a later day specified in the order.

**227 Exchange of information**

- (1) Despite another provision of this Act, the Scheme Administrator may keep the following information—
  - (a) information about offences or alleged offences under this Part,
  - (b) information collected in the administration of this Act.
- (2) The Scheme Administrator may give the information kept under this clause to the following—
  - (a) a person or body undertaking functions, similar to those undertaken by the Scheme Administrator, in another State or Territory or for the Commonwealth,
  - (b) a government sector agency within the meaning of the *Government Sector Employment Act 2013*.

**228 Termination of renewable fuel scheme at end of 2044**

- (1) The renewable fuel scheme terminates at the end of the 2044 compliance period.
- (2) This Part continues to have effect with respect to matters arising, including obligations incurred, before the termination of the renewable fuel scheme.
- (3) Persons who are scheme participants in the 2044 compliance period continue to be required to lodge an annual statement for the compliance period.
- (4) The requirements of this Part with respect to the conduct of audits and the provision of information, documents and evidence to the Scheme Regulator and Scheme Administrator continue to apply, even though the renewable fuel scheme is terminated.
- (5) A reference in this Part to a scheme participant includes, after the renewable fuel scheme is terminated, a reference to a former scheme participant.
- (6) On the termination of the renewable fuel scheme, regulations may be made about the effect of the termination on rights conferred or obligations imposed under this Part.
- (7) Without limiting subclause (6), the regulations may—
  - (a) prohibit scheme participants from carrying forward a shortfall, or part of a shortfall, for a compliance period to the following compliance period, and
  - (b) specify other conditions that must be complied with following the termination.

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

### **Part 7A**

Insert after Part 7—

### **Part 7A Renewable fuel scheme**

#### **63 Scheme target for green hydrogen**

For the purposes of the Act, Schedule 4A, clause 151(3), the scheme targets for green hydrogen specified in the following table are prescribed for each compliance period—

<b>Compliance period</b>	<b>Target (in gigajoules)</b>
2024	90,000
2025	360,000
2026	890,000
2027	1,780,000
2028	3,200,000
2029	5,330,000
2030–2044	8,000,000