

[Act 2002 No 122]



New South Wales

# Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Bill 2002

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

The objects of this Bill are to amend the *Electricity Supply Act 1995* (the *Principal Act*) to reduce greenhouse gas emissions associated with the production and use of electricity and to encourage participation in activities to offset the production of greenhouse gas emissions, by:

- (a) establishing State greenhouse gas benchmarks and individual greenhouse gas benchmarks for certain participants in the electricity industry and large users of electricity, and

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\* Amended in committee—see table at end of volume.

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- (b) establishing a scheme for the recognition of activities that reduce or promote the reduction of greenhouse gas emissions and to enable trading in, and use of, certificates created as a result of those activities for the purpose of meeting greenhouse gas benchmarks, and
- (c) imposing a penalty on persons who fail to meet greenhouse gas benchmarks in any year.

The Bill also makes consequential amendments to other Acts.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the Principal Act contained in proposed Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to other Acts contained in proposed Schedule 2.

## Schedule 1 Amendment of Electricity Supply Act 1995

**Schedule 1 [1]** makes it clear that appeals against actions taken in relation to a licence under the Principal Act are not restricted to applicants for licences but may be taken by holders of licences.

**Schedule 1 [2]** inserts proposed Part 8A (Reduction of greenhouse gas emissions). The proposed Part contains the following provisions:

### Division 1 Preliminary

Proposed section 97A sets out the objects of the proposed Part.

Proposed section 97AB defines certain words and expressions used in the proposed Part.

## **Division 2      Greenhouse gas benchmarks**

Proposed section 97B sets out the State greenhouse gas benchmarks for the years commencing 1 January 2003 and ending on 31 December 2012. The first State greenhouse gas benchmark is 8.65 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population for the year commencing on 1 January 2003 and the last is 7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population for the years commencing on 1 January 2007 and ending on 31 December 2012. The carbon dioxide equivalent of greenhouse gas emissions attributable to gas emissions is a measure of their equivalence to a mass of carbon dioxide that has the same global warming potential.

Proposed section 97BA imposes a greenhouse gas benchmark on each benchmark participant, subject to the regulations and the greenhouse gas benchmark rules. The greenhouse gas benchmark of a participant is to be calculated in accordance with the proposed Act, the regulations and the greenhouse gas benchmark rules.

Proposed section 97BB specifies the persons who are to be benchmark participants. They are retail suppliers of electricity, electricity generators or other persons prescribed by the regulations who supply electricity on a retail basis but are exempt from being licensed as retail suppliers, market customers and customers who use large quantities of electricity, and persons carrying out State significant development, that elect to be subject to a greenhouse gas benchmark.

Proposed section 97BC sets out the principles for calculating a benchmark participant's greenhouse gas benchmark for a year. It is to be calculated by multiplying the State population for a year by the State greenhouse gas benchmark per head of population to determine the electricity sector benchmark, then determining the proportion of the total electricity demand in the State that is applicable to the participant for that year and applying that proportion to the electricity sector benchmark to calculate the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions that is the participant's benchmark.

Proposed section 97BD sets out the principles for determining whether a benchmark participant has complied with the participant's greenhouse gas benchmark for a year. Compliance is measured by subtracting the benchmark from the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions for which the participant is responsible. If the result is zero or less, compliance has been achieved. If not, there is a greenhouse shortfall and a greenhouse penalty will be payable for that year.

The number of tonnes for which a participant is responsible is determined by multiplying the total amount of electricity supplied or purchased or used by the participant in that year by the NSW pool coefficient for greenhouse gas emissions and subtracting from that figure the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions abated by the participant.

Abatement is measured by the total number of tonnes attributable to any abatement certificates (created under the proposed Act) surrendered by the participant for that year and any renewable energy certificates (created under the *Renewable Energy (Electricity) Act 2000* of the Commonwealth) counted for that year.

Proposed section 97BE enables an amount of greenhouse shortfall (not exceeding 10% of a benchmark participant's greenhouse gas benchmark for a year) to be carried forward to the next year, with the payment of the applicable greenhouse penalty or abatement taking place at the end of that year. This may not be done for the year commencing 1 January 2007.

Proposed section 97BF requires the Independent Pricing and Regulatory Tribunal (the *Tribunal*) to determine and publish in the Government Gazette, not later than 30 November in each year, the value of the NSW pool coefficient, the total State electricity demand, the total State population and the electricity sector benchmark. The matters so determined are to apply to the calculation of benchmark participants' greenhouse gas benchmarks, and to assessing compliance with them, for the following year.

Proposed section 97BG provides for the use of certificates relating to benchmark participants and benchmarks under the proposed Part as prima facie evidence of those matters in court or tribunal proceedings.

### **Division 3      Enforcement of greenhouse gas benchmarks**

Proposed section 97C imposes a condition on each retail supplier's licence requiring compliance with its greenhouse gas benchmark. The proposed section makes it clear that it does not limit any powers of the Minister under the Principal Act to impose licence conditions. However, a monetary penalty may not be imposed for breach of a licence condition, or other action taken against a retail supplier's licence, in respect of a greenhouse shortfall for which a greenhouse penalty is payable under the proposed Part.

Proposed section 97CA makes a benchmark participant who fails to meet the participant's greenhouse gas benchmark for a year liable for a civil penalty of \$10.50 per tonne of carbon dioxide equivalent of greenhouse shortfall for the year

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concerned. Regulations may be made to provide for the adjustment of that amount in accordance with movements in the consumer price index. The penalty may be recovered as a debt due to the Crown in a court of competent jurisdiction.

Proposed section 97CB requires a benchmark participant to lodge an annual greenhouse gas benchmark statement with the Tribunal not later than 1 March in each year or any later day permitted by the Tribunal. The statement is to contain an assessment of the participant's greenhouse gas benchmark and liability (if any) for greenhouse penalty, including any liability relating to a greenhouse shortfall carried forward from the previous year. The statement must be accompanied by details of certificates surrendered or sought to be counted towards compliance with the benchmark. It will be an offence to fail to lodge a greenhouse gas benchmark statement in accordance with the proposed section.

Proposed section 97CC prohibits an abatement certificate from being surrendered by a benchmark participant (and used towards compliance with a greenhouse gas benchmark) if it is not registered, is created in respect of an activity that took place after the end of the relevant year or the participant is not registered as the owner of the certificate. The Tribunal may refuse to accept the surrender of a certificate that is prohibited from being surrendered or surplus to compliance with the benchmark.

Proposed section 97CD enables regulations to be made for or with respect to renewable energy certificates that may not be counted, the circumstances in which renewable energy certificates may or may not be counted and the number of renewable energy certificates that may be counted. The Regulations are to contain provisions restricting the number of renewable energy certificates that may be counted by reference to New South Wales electricity acquisitions. Regulations may also be made for or with respect to assessments of greenhouse shortfall and liability for greenhouse penalty and related matters.

Proposed section 97CE makes it clear that an assessment of liability to pay greenhouse penalty is not affected because a provision of the Principal Act, the regulations or the greenhouse gas benchmark rules has not been complied with.

Proposed section 97CF enables the Minister, by order published in the Government Gazette, to waive or suspend obligations to comply with greenhouse gas benchmarks if it appears that compliance is not possible because of a systems or other failure of the register of abatement certificates or because of an emergency affecting the integrity of the register or the abatement certificate system established under the proposed Part.

#### **Division 4      Accreditation of abatement certificate providers**

Division 4 (proposed sections 97D to 97DE) provides for the accreditation of persons as abatement certificate providers. Accredited abatement certificate providers may create abatement certificates under the proposed provisions. The regulations and the greenhouse gas benchmark rules are to provide for the eligibility of persons to be accredited as abatement certificate providers and the activities in respect of which a person may be accredited as an abatement certificate provider. Those activities may include any activities, or class of activities, that promote the reduction of greenhouse gas emissions, such as the following activities:

- (a) the generation of electricity in a manner that results in reduced emissions of greenhouse gases,
- (b) activities that result in reduced consumption of electricity,
- (c) activities of elective participants, associated with production processes that use electricity in this State, that result in reduced emissions of greenhouse gases.

Accreditation may also be made available in respect of carbon sequestration activities.

The accreditation scheme is to be administered by the Scheme Administrator (who is to be the Tribunal or a person or body appointed by the Minister). Provision is made for applications for accreditation, the suspension or cancellation of accreditation by the Scheme Administrator, and conditions of accreditation. Accreditation is not transferable.

#### **Division 5      Creation of abatement certificates**

Division 5 (proposed sections 97E to 97EG) makes provision for the creation of abatement certificates by accredited abatement certificate providers. Each abatement certificate represents 1 tonne of carbon dioxide equivalent of greenhouse gas emissions abated by the activity in respect of which it was created. The regulations and greenhouse gas benchmark rules may make provision for or with respect to the entitlement of an accredited abatement certificate provider to create abatement certificates, including the number of certificates that may be created in respect of an activity and other matters.

Abatement certificates may be created in respect of an activity after the activity in respect of which it is created takes place, but no later than 6 months after the end of the year in which the activity takes place.

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The Division makes provision for the registration of the creation of an abatement certificate by the Scheme Administrator. An abatement certificate has no effect until it is registered by the Scheme Administrator. Once registered, an abatement certificate remains in force until cancelled by the Scheme Administrator. Abatement certificates may be cancelled by the Scheme Administrator only if surrendered to the Tribunal for the purposes of compliance with a greenhouse gas benchmark or greenhouse shortfall or surrendered to the Scheme Administrator for the purposes of compliance with an order of the Scheme Administrator. The Scheme Administrator may order the surrender of abatement certificates by a person only if abatement certificates have been created improperly by the person or a person has contravened the conditions of the person's accreditation as an abatement certificate provider.

## **Division 6      Transfers and other dealings in abatement certificates**

Division 6 (proposed sections 97F to 97FE) provides for the types of abatement certificates that may be created. Transferable and non-transferable abatement certificates may be created by accredited abatement certificate providers. Entitlement to create those types of certificates is to be determined in accordance with the regulations and the greenhouse gas benchmark rules.

Transferable certificates may be transferred to any person. Non-transferable certificates may be transferred only to a person to whom the business of the holder of the certificate is proposed to be sold or in other circumstances authorised by the regulations.

The Division provides for the registration of transfers of abatement certificates by the Scheme Administrator. A transfer has no effect until registered by the Scheme Administrator. The Division also sets out the right of a registered owner of a certificate to deal with the certificate as its absolute owner if the person was a purchaser in good faith for value and without notice.

The regulations may make provision for the registration of other dealings in abatement certificates.

## **Division 7      Registers**

Division 7 (proposed sections 97G to 97GD) requires the Scheme Administrator to keep and maintain the following registers:

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- (a) a register of accredited abatement certificate providers,
- (b) a register of abatement certificates.

It also makes provision for the form in which the registers are to be kept, the information to be included in the registers, and public availability of the registers.

## **Division 8      Functions of Tribunal and Scheme Administrator**

Proposed section 97H sets out functions of the Tribunal under the proposed Part. They include determining certain matters related to greenhouse gas benchmarks and assessing and determining greenhouse gas benchmarks for benchmark participants and compliance with benchmarks, assessing and determining greenhouse shortfall and liability for a greenhouse penalty, conducting or requiring the conduct of audits and reporting to the Minister on compliance with licence conditions under the proposed Part.

Proposed section 97HA sets out functions of the Scheme Administrator under the proposed Part. They include monitoring, and reporting to the Minister on, the compliance of accredited abatement certificate providers with the Principal Act, regulations, greenhouse gas benchmark rules and conditions of accreditation and conducting or requiring the conduct of audits and functions relating to the abatement certificate scheme. The Scheme Administrator may also delegate functions.

Proposed section 97HB enables regulations to be made for or with respect to the conduct of audits by the Tribunal or Scheme Administrator or other persons under the proposed Part.

Proposed section 97HC enables the Chairperson of the Tribunal or the Scheme Administrator to require an officer of a benchmark participant or an officer of an accredited abatement certificate provider or any other person to provide information or documents or to attend a meeting of the Tribunal to give evidence.

Proposed section 97HD makes it clear that the Tribunal or Scheme Administrator may not make a requirement under the proposed Part that relates to any information or documents relating to confidential Cabinet proceedings or Cabinet documents.

Proposed section 97HE sets out the obligations of the Tribunal or Scheme Administrator to ensure that information provided to the Tribunal or Scheme Administrator on the understanding that it is confidential and will not be divulged is not divulged, except with the consent of the person who provided the information



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or (in the case of the Tribunal) to the extent that the Tribunal is satisfied that it is not confidential in nature or to a member or officer of the Tribunal or an officer of the Scheme Administrator.

Proposed section 97HF requires the Tribunal to report to the Minister annually on benchmark participants who have complied, or failed to comply, with greenhouse gas benchmarks.

## **Division 9      Reviews**

Proposed section 97I enables a benchmark participant or former benchmark participant or a person who is accredited as an abatement certificate provider under the proposed Part, or who applies for accreditation, and who is aggrieved by certain decisions by the Tribunal or Scheme Administrator under the proposed Part, to apply to the Administrative Decisions Tribunal for review of those decisions.

## **Division 10      Offences**

Proposed section 97J makes it an offence for a person to create or purport to create an abatement certificate in contravention of the proposed Act, the regulations or greenhouse gas benchmark rules under the proposed Act or the person's conditions of accreditation as an abatement certificate provider.

Proposed section 97JA makes it an offence, without reasonable excuse, to refuse or fail to comply with a notice issued by the Chairperson of the Tribunal or the Scheme Administrator requesting the provision of a statement or documents or attendance at a meeting of the Tribunal or to refuse to answer a question at a meeting of the Tribunal. It will also be an offence to hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal or the Scheme Administrator exercising functions under the proposed Part.

Proposed section 97JB makes it an offence for a person to give to the Tribunal or Scheme Administrator, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person so informs the Tribunal or Scheme Administrator) or to give evidence at a meeting of the Tribunal that the person knows to be false or misleading in a material particular.

Proposed section 97JC makes it a condition of a retail supplier's licence that the supplier comply with the proposed Part.

## **Division 11      Greenhouse gas benchmark rules**

Proposed section 97K enables the Minister to approve greenhouse gas benchmark rules relating to the methodology for calculating certain matters, including the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions of a gas or activity, the greenhouse gas benchmark for a benchmark participant and whether a participant has complied with the benchmark, the NSW pool coefficient for greenhouse gas emissions, the estimated State demand for electricity, the State population for a year and the value of renewable energy certificates. Rules may also be made for or with respect to other matters specified in the proposed Part or prescribed by regulations. Rules will take effect when notice of them is published in the Government Gazette, or on a later day specified in the rules.

Proposed section 97KA makes it an offence to contravene a greenhouse gas benchmark rule and also makes it a condition of a retail supplier's licence that the supplier must comply with greenhouse gas benchmark rules.

**Schedule 1 [3]** enables fees payable under the proposed Part to be recovered as a debt in a court of competent jurisdiction.

**Schedule 1 [4]** enables penalty notices to be issued for offences prescribed by the regulations under the Principal Act.

**Schedule 1 [5]** enables regulations to be made as to information and returns to be provided to the Tribunal and fees for audits and other monitoring and accreditation activities or services provided under the proposed Part.

**Schedule 1 [6] and [7]** increase the maximum penalty for offences created under the regulations to 250 penalty units for a corporation and 100 penalty units for an individual.

**Schedule 1 [8], [9] and [10]** make consequential amendments.

**Schedule 1 [11] and [12]** enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act and insert other savings and transitional provisions.

## **Schedule 2      Amendment of Acts**

**Schedule 2.1** enables penalty notices issued under the *Electricity Supply Act 1995* to be enforced under the *Fines Act 1996*.

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**Schedule 2.2** amends the *Independent Pricing and Regulatory Tribunal Act 1992* to make it clear that the Tribunal may make arrangements with other entities for the purposes of providing assistance to the Tribunal in connection with its functions under other Acts. It also enables regulations of a savings or transitional nature to be made.

**Schedule 2.3** amends the *Industrial Relations Act 1996* to make it an offence to victimise an employee or prospective employee because the person assisted the Tribunal or Scheme Administrator.