



New South Wales

Electricity Supply Amendment Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Electricity Supply Act 1995* (the **Principal Act**) for the following purposes:

- (a) to clarify the operation of provisions relating to the imposition of endorsements on the licences of retail suppliers of electricity,
- (b) to clarify the power of the Independent Pricing and Regulatory Tribunal (**IPART**) to audit and enforce compliance with endorsements attached to licences,
- (c) to require electricity distributors and suppliers to comply with any notice from IPART requiring them to keep specified records or to furnish specified information,
- (d) to extend to related entities of large customers (including joint venture partners) the capacity to elect to be a benchmark participant and to be subject to greenhouse gas benchmark obligations,
- (e) to enable abatement certificates created for the purposes of the greenhouse gas benchmark scheme to be surrendered at any time by their owners,

- (f) to enable the Minister to require information to be provided by the National Electricity Market Management Company Limited (*NEMMCO*) in connection with possible retailer of last resort arrangements and for other purposes,
- (g) to establish a regulation-making power for electricity prepayment meters for small retail customers,
- (h) to clarify the boundary of the electricity distribution system,
- (i) to make other minor and consequential amendments.

The Bill also makes a consequential amendment to the *Independent Pricing and Regulatory Tribunal Act 1992*.

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 that gives effect to the amendments to the *Electricity Supply Act 1995* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *Independent Pricing and Regulatory Tribunal Act 1992* set out in Schedule 2.

Schedule 1 **Amendment of Electricity Supply Act 1995**

Endorsements on retail supplier licences

Section 33A of the Principal Act provides for endorsements to be attached to the licence of a retail supplier of electricity. The section specifies the endorsement category of standard retail supplier and enables other categories of endorsement to be determined by the Minister.

Schedule 1 [1] amends section 33A of the Principal Act to make it clear that endorsements attached to retail suppliers' licences are to be attached by the Minister.

Schedule 1 [2] amends section 33A of the Principal Act to make it clear that endorsements may be attached to a licence when the licence is granted or at any later time and may be removed at any time. Conditions of an endorsement imposed by the Minister may be varied or revoked by the Minister at any time.

Audit and enforcement of endorsements attached to licences

Section 77 of the Principal Act sets out the regulatory functions of IPART under the Principal Act and the matters that IPART is required to make recommendations to the Minister about. Section 87 of the Principal Act requires IPART to monitor, and

report to the Minister on, the extent to which distribution network service providers and retail suppliers comply, or fail to comply, with the conditions imposed on the licences held by them.

Schedule 1 [3], [4] and [5] amend section 77 of the Principal Act to make it clear that IPART has the function of making recommendations to the Minister with respect to the imposition, variation or cancellation of endorsements attached to a licence, the action to be taken, and the sanctions to be applied, in respect of a contravention of an endorsement attached to a licence and any remedial action that may be warranted as a result of a contravention of an endorsement attached to a licence.

Schedule 1 [6] and [7] amend section 87 of the Principal Act to ensure that IPART's licence auditing functions under that section extend to the endorsements attached to licences.

Schedule 1 [8] amends section 87B of the Principal Act to allow IPART to direct a licence holder to keep specified records, including any documents specified by IPART, and to furnish specified information for the purposes of section 87 of the Principal Act.

Schedule 1 [9], [19] and [20] make consequential amendments.

Benchmark participants

The Principal Act provides for certain customers of electricity to be able to elect to participate in the greenhouse gas benchmark scheme established under the Act. One category of customers who may do so is large customers who use the specified amount of electricity at one or more sites and who are within the circumstances specified in the regulations.

Schedule 1 [10] extends the definition of *large customer* contained in section 97AB of the Principal Act for these purposes to groups of customers who are related entities who together use the required amount of electricity and to related entities of such customers (whether or not themselves customers).

Schedule 1 [11] defines a *related entity* of a customer as meaning a person (whether or not a customer) that is a related body corporate, is a beneficiary of a trust for which the customer is or was a trustee, is a trustee of a trust under which a related entity of the customer is a beneficiary or is a joint venture partner of the customer.

Schedule 1 [12] enables regulations to be made under section 97BB of the Principal Act to provide for the circumstances when a related entity of a customer is entitled to make an election to be a large customer benchmark participant subject to a greenhouse gas benchmark and when a person is taken to be engaging in a joint venture with a customer or a related entity of a customer. Regulations may also be made for the purpose of applying part of the principles for determining greenhouse gas benchmarks to related entities of large customers and large customers who do not purchase electricity, or the requisite quantity of electricity, in their own right.

Surrender of abatement certificates

The Principal Act provides for the creation and use of abatement certificates for the purpose of enabling greenhouse gas benchmark participants to meet their obligations to abate greenhouse gas emissions in each year. Currently, the Act only provides for those certificates to be surrendered by participants seeking to comply with those obligations.

Schedule 1 [15] amends section 97EE of the Principal Act to enable a person registered as the owner of an abatement certificate to surrender that certificate at any time by notice in writing to the Scheme Administrator and provides for cancellation of that certificate on acceptance of the surrender by the Scheme Administrator. **Schedule 1 [13] and [14]** make consequential amendments.

Provision of information to Minister

Currently, NEMMCO may not provide information obtained in its role under the National Electricity Code without express authority to do so. The Code permits information to be provided if it is authorised under another law.

Schedule 1 [16] inserts proposed section 105A into the Principal Act. The proposed section enables the Minister, by notice in writing, to require NEMMCO to provide the information specified in the notice. The Minister will be able to require information about action being taken, or proposed, against retail suppliers or other entities and other information required in connection with possible retailer of last resort arrangements. **Schedule 1 [22]** makes a consequential amendment.

Regulation-making power for prepayment meters

Schedule 1 [18] amends section 106 of the Principal Act to enable regulations permitting electricity prepayment meters for small retail customers and making requirements in relation to any such prepayment meters.

Boundaries of distribution systems

The distribution system is that part of the electricity supply system for which a distribution network service provider has responsibility. Currently it is defined as the power lines, equipment and structures that convey and control the conveyance of electricity to the premises of wholesale and retail customers. Some doubt has arisen as to whether the distribution system must end at the land or building to which the electricity is supplied.

Schedule 1 [21] inserts a new definition of *distribution system* for the purposes of the Principal Act. The definition provides for the distribution system to end at the point of supply for the premises concerned and makes it clear that the point of supply may or may not be situated on the building or land comprising the premises being supplied.

Schedule 1 [22] inserts a definition of *point of supply* for the purposes of the Principal Act. The point of supply for particular premises is to be determined in accordance with the regulations. **Schedule 1 [17]** enables regulations to be made under section 106 of the Principal Act with respect to requirements for the marking or labelling of the point of supply in relation to the premises of wholesale or retail customers.

Schedule 2 Amendment of Independent Pricing and Regulatory Tribunal Act 1992

Schedule 2 makes an amendment to the *Independent Pricing and Regulatory Tribunal Act 1992* consequential on the amendments to the Principal Act relating to the audit and enforcement of endorsements attached to licences.

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No. , 2005

A Bill for

An Act to amend the *Electricity Supply Act 1995* with respect to endorsements on licences, greenhouse gas benchmark participants, abatement certificates and distribution systems; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Electricity Supply Amendment Act 2005</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Electricity Supply Act 1995 No 94	6
The <i>Electricity Supply Act 1995</i> is amended as set out in Schedule 1.	7
4 Amendment of Independent Pricing and Regulatory Tribunal Act 1992 No 39	8
The <i>Independent Pricing and Regulatory Tribunal Act 1992</i> is amended as set out in Schedule 2.	10
	11

Schedule 1	Amendment of Electricity Supply Act	1
	1995	2
	(Section 3)	3
[1]	Section 33A Endorsements on retail suppliers' licences	4
	Insert "by the Minister" after "attached" in section 33A (1).	5
[2]	Section 33A (5) and (6)	6
	Insert after section 33A (4):	7
	(5) An endorsement may be attached to a retail supplier's licence when the licence is granted or at any later time and may be removed at any time by the Minister.	8 9 10
	(6) Conditions of an endorsement that are imposed by the Minister may be varied or revoked by the Minister at any time.	11 12
[3]	Section 77 Regulatory functions of Tribunal	13
	Insert "or an endorsement attached to a licence" after "licence" in section 77 (2) (b).	14 15
[4]	Section 77 (2) (c)	16
	Insert "or an endorsement attached to a licence" after "licence".	17
[5]	Section 77 (2) (d)	18
	Insert "or an endorsement attached to a licence" after "licence".	19
[6]	Section 87 Licence auditing functions of Tribunal	20
	Insert "and the endorsements attached to licences held by them" after "licences held by them" in section 87 (1).	21 22
[7]	Section 87 (2)	23
	Insert "and the endorsements attached to licences held by them" after "licences held by them".	24 25
[8]	Section 87B Provision and maintenance of information, documents and evidence	26 27
	Insert after section 87B (2):	28
	(3) For the purposes of monitoring and reporting under section 87, the Chairperson of the Tribunal may, by notice in writing served on the holder of a licence, require that person:	29 30 31

	(a) to keep specified records including any documents specified in the notice, and	1 2
	(b) to furnish specified information to the Tribunal.	3
	(4) Nothing in subsection (3) limits the powers of the Tribunal under subsection (1).	4 5
[9]	Section 88 Annual reports	6
	Insert “and the endorsements attached to licences held by them” after “licences held by them” in section 88 (1).	7 8
[10]	Section 97AB Definitions	9
	Omit the definition of <i>large customer</i> . Insert instead:	10
	<i>large customer</i> means:	11
	(a) a customer (other than a retail supplier) that on its own account, or together with one or more other such customers (who are related entities), uses:	12 13 14
	(i) 100 gigawatt hours or more of electricity at a single site in this State in any year, or	15 16
	(ii) 100 gigawatt hours or more of electricity at more than one site in this State in any year, at least one of which uses 50 gigawatt hours or more of electricity in that year, or	17 18 19 20
	(b) a related entity of a customer referred to in paragraph (a), whether or not the entity is a customer.	21 22
[11]	Section 97AB, definitions of “related body corporate” and “related entity”	23 24
	Insert in alphabetical order:	25
	<i>related body corporate</i> of a person has the same meaning as it has in the <i>Corporations Act 2001</i> of the Commonwealth.	26 27
	<i>related entity</i> of a customer means a person (whether or not a customer) who is:	28 29
	(a) a related body corporate of the customer, or	30
	(b) a beneficiary of a trust of which the customer is or has at any time been a trustee, or	31 32
	(c) a trustee of a trust under which a person is a beneficiary, if the person is a related entity of the customer because of any other application or applications of this definition, or	33 34 35
	(d) engaged in a joint venture with the customer or a related entity of a customer.	36 37

[12] Section 97BB Benchmark participants	1
Insert after section 97BB (2) (d):	2
(e) the circumstances when a related entity of a customer is entitled to make an election to be subject to a greenhouse gas benchmark as a large customer,	3 4 5
(f) the circumstances when a person is taken to be engaged in a joint venture with a customer or a related entity of a customer,	6 7 8
(g) the electricity purchases to be taken into account for the purpose of applying section 97BD (2) (a) to a benchmark participant that is a large customer and is not the purchaser of the whole or part of the electricity that qualifies it (either in its own right or as a related entity of a customer) as a large customer.	9 10 11 12 13 14
[13] Section 97BD Principles for determining compliance with greenhouse gas benchmarks	15 16
Insert “for the purposes of compliance with the participant’s greenhouse gas benchmark” after “for that year” where secondly occurring in section 97BD (3).	17 18 19
[14] Section 97CC Restrictions on surrender of abatement certificates for benchmark purposes	20 21
Insert “for the purposes of compliance with the participant’s greenhouse gas benchmark” after “participant” where firstly occurring in section 97CC (1).	22 23
[15] Section 97EE Duration of certificate	24
Insert after section 97EE (2) (b):	25
(c) if the person registered as the owner of the abatement certificate, by notice in writing, surrenders the certificate to the Scheme Administrator, and the Scheme Administrator accepts the surrender of the certificate.	26 27 28 29
[16] Section 105A	30
Insert after section 105:	31
105A Provision of information to Minister	32
(1) The Minister may, by notice in writing, require NEMMCO to provide to the Minister the information specified in the notice.	33 34
(2) The Minister may only require information to be provided if satisfied that it is required for the following purposes:	35 36

	(a) notification of circumstances that may result in retailer of last resort arrangements being required to be made,	1 2
	(b) determination of whether to implement any such arrangements,	3 4
	(c) the exercise by the Minister of functions under this Act or the regulations.	5 6
	(3) NEMMCO must provide information if requested to do so by the Minister in accordance with this section.	7 8
	(4) The Minister must consult with NEMMCO before disclosing information obtained under this section.	9 10
[17]	Section 106 Regulations	11
	Insert after section 106 (1) (e):	12
	(e1) requirements for the marking or labelling of the point of supply in relation to the premises of wholesale or retail customers,	13 14 15
[18]	Section 106 (1) (j)	16
	Insert at the end of section 106 (1) (i):	17
	(j) permitting electricity prepayment meters for small retail customers and requirements relating to any such prepayment meters.	18 19 20
[19]	Schedule 2 Licences	21
	Insert at the end of clause 8 (3) (b):	22
	, or	23
	(c) an endorsement attached to the licence.	24
[20]	Schedule 2, clause 8A (5)	25
	Insert “, or an endorsement attached to,” after “the conditions of”.	26
[21]	Dictionary, definition of “distribution system”	27
	Omit the definition. Insert instead:	28
	<i>distribution system</i> means the electricity power lines and associated equipment and electricity structures that are used to convey and control the conveyance of electricity:	29 30 31
	(a) to the premises of wholesale and retail customers, up to the point of supply in relation to the premises (which may or may not be situated on the building or land comprising the premises), or	32 33 34 35

(b) to, from and along the rail network electricity system,
but does not include a transmission system or any lines,
equipment and structures prescribed by the regulations.

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[22] Dictionary

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Insert in alphabetical order:

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NEMMCO has the same meaning as it has in Part 8A.

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point of supply, in relation to the premises of a wholesale or retail
customer or a class of wholesale or retail customers, means the
point of supply to an electrical installation supplying electricity
to the premises, as determined in accordance with the regulations.

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**Schedule 2 Amendment of Independent Pricing and
Regulatory Tribunal Act 1992**

(Section 4)

Section 24FA Recommendations and advice

Insert “, or of an endorsement attached to a licence,” after “licence or
authorisation” in section 24FA (5).

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