

[Act 2000 No 91]



New South Wales

Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Bill 2000

Explanatory note

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

Overview of Bill

Part 9.3 of the *Protection of the Environment Operations Act 1997* gives the Environment Protection Authority (*the EPA*) power to develop and implement schemes involving economic measures as a means of achieving cost-effective environmental regulation or environment protection, such as tradeable emission schemes. An example of a tradeable emission scheme is the Hunter River Salinity Trading Scheme, which is a pilot scheme operated by the EPA.

The object of this Bill is to make further provision with respect to such schemes, and with respect to tradeable emission schemes in particular. The principal purposes of the provisions are as follows:

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

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- (a) to provide for more extensive regulation-making powers in respect of tradeable emission schemes and, in particular, to allow the regulations:
 - (i) to prescribe conditions of environment protection licences for the purpose of giving effect to a scheme, and
 - (ii) to provide for the recovery of the costs of administering a tradeable emission scheme from participants in the scheme,
- (b) to confer certain powers on the EPA in connection with tradeable emission schemes, for enforcement purposes and other purposes, including power to impose penalties for contraventions of the scheme, subject to the regulations,
- (c) to exempt regulations relating to tradeable emission schemes from staged repeal under the *Subordinate Legislation Act 1989*,
- (d) to exempt trade in tradeable emission scheme permits and credits from liability for duty,
- (e) to provide further protection to the Crown against claims for compensation and against any other liability that may arise in respect of schemes involving economic measures in general, and tradeable emission schemes in particular.

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 *Protection of the Environment Operations Act 1997* set out in Schedule 1.

Schedule 1 Amendments

Regulation-making powers

The amendments authorise regulations to be made for or with respect to any aspect of a tradeable emission scheme. (See **Schedule 1 [6]**, proposed section 295C). More specific regulation-making powers are also included. These are explained below.

A regulation that makes provision for a tradeable emission scheme will not be subject to staged repeal under the *Subordinate Legislation Act 1989*. However, the operation of the regulation may be periodically reviewed by the Minister, as provided for by the regulation. (See **Schedule 1 [6]**, proposed section 295C).

Licence conditions

Conditions of environment protection licences are attached to licences by the appropriate regulatory authority. At present, the principal Act does not allow conditions to be imposed by the regulations. The amendments allow the regulations to impose conditions of licences for the purpose of giving effect to a tradeable emission scheme. (See **Schedule 1 [6]**, proposed section 295D).

Schedule 1 [1] contains a consequential amendment.

Cost recovery

The amendments allow the regulations to require participants in a tradeable emission scheme to contribute toward the costs of management and administration of the scheme, and other costs relating to the scheme. Such contributions are to be deposited in a fund in the Special Deposit Account, and used for purposes associated with the scheme. (See **Schedule 1 [6]**, proposed sections 295H and 295I).

Powers that may be exercised by EPA

At present, the EPA has power to alter or terminate a scheme involving economic measures. The amendments make it clear that the EPA can also suspend the scheme, or alter, suspend or terminate any part of the scheme (see **Schedule 1 [3]**) and that regulations may be made with respect to those matters (see **Schedule 1 [5]**).

The amendments will authorise the EPA to impose penalties for emissions in contravention of a scheme. The amount of the penalty, or the method of its calculation, is to be set out in the regulations. The penalty can be enforced by cancellation or forfeiture of tradeable emission permits or credits, or by other measures authorised by the regulations. (See **Schedule 1 [6]**, proposed section 295E).

In addition, the regulations may authorise the EPA:

- (a) to cancel or suspend tradeable emission permits or credits, or any entitlement that they confer, or order their forfeiture, and
- (b) to cancel or suspend a person's right to participate in the scheme or impose other restrictions on that right.

See **Schedule 1 [6]**, proposed section 295F.

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The amendments make it clear that the EPA may participate in a tradeable emission scheme by holding or trading in tradeable emission permits or credits (see **Schedule 1 [6]**, proposed section 295G).

Delegation by EPA

The amendments make it clear that the EPA can enter into agreements and other arrangements with other persons or bodies for the exercise of functions under a tradeable emission scheme. The regulations can provide for the establishment of committees to exercise functions under a scheme. (See **Schedule 1 [6]**, proposed section 295J).

Application of Duties Act 1997

The amendments provide that a tradeable emission credit or permit, or any other entitlement, created under a tradeable emission scheme is not dutiable property for the purposes of the *Duties Act 1997* (see **Schedule 1 [6]**, proposed section 295L).

Liability of Crown for schemes involving economic measures

At present, the principal Act provides that compensation is not payable by the EPA or the State for a loss of entitlements under a scheme involving economic measures as a consequence of the alteration or termination of such a scheme.

New section 294 (see **Schedule 1 [4]**) broadens the protection against liability for compensation provided by the Act. The new provision makes it clear that the Crown does not incur any liability for the suspension of a scheme involving economic measures (in addition to alteration or termination), for the alteration, suspension or termination of any part of such a scheme, or for the alteration, suspension, cancellation or forfeiture of any rights or entitlements under such a scheme.

The amendments also provide that the Crown does not incur any liability for any good faith acts or omissions by the EPA or its delegates in connection with the operation of a tradeable emissions scheme, for example, in connection with the operation of a register or other system that facilitates trading under the scheme (see **Schedule 1 [6]**, proposed section 295K).

Schedule 1 [8] contains a transitional provision.

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Elements of tradeable emission scheme

The amendments provide a more extensive definition of the elements that may be included in a tradeable emission scheme. In particular, the amendments make it clear that a tradeable emission scheme may include safeguards against anti-competitive behaviour by participants in the scheme. (See **Schedule 1 [6]**, proposed section 295B).

Miscellaneous

Schedule 1 [2] is a consequential amendment.

Schedule 1 [7] provides power to make regulations of a savings or transitional nature.