



New South Wales

Electricity Supply Amendment (GGAS) Bill 2009

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the transition from the greenhouse gas abatement scheme set out in Part 8A of the *Electricity Supply Act 1995* (the **Principal Act**) when a similar scheme is established either nationally or in this State and at least one other State or Territory, by:

- (a) permitting a termination day to be proclaimed if the Minister for Energy is satisfied that the similar scheme will apply in New South Wales and so long as the termination day does not occur before that scheme applies, and
- (b) providing for a final compliance period that ends on the day immediately preceding the termination day, and
- (c) preventing the creation of abatement certificates in respect of activities occurring on or after the termination day, and
- (d) preventing a person from applying for accreditation as an abatement certificate provider on or after 1 January 2010 (or any later date that may be prescribed), and

- (e) providing that an abatement certificate cannot be created in relation to category A generation occurring on or after 1 July 2010 (or any later date that may be prescribed), and
- (f) providing that compensation is not payable by the State in relation to the enactment, making or operation of Part 8A of the Principal Act or any Act that amends that Part (including the proposed Act), or the termination of the scheme set out in that Part or related conduct or actions.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

Schedule 1 [18] substitutes section 97KB of the Principal Act which provided for the termination of the operation of the greenhouse gas abatement scheme set out in Part 8A of that Act (the *GGAS scheme*) by proclamation of the Governor. The new provision modifies how the GGAS scheme is to be terminated by the Governor. The Governor may, by proclamation, prescribe a termination day for the scheme or repeal any or all of the provisions of Part 8A. The Governor is not to make any such proclamation unless the Minister for Energy is satisfied that a similar scheme (established nationally or with other States or Territories) will apply in New South Wales. That other scheme must be designed to reduce greenhouse gas emissions associated with the production and use of electricity and must encourage participation in activities to offset the production of greenhouse gas emissions. The termination day, or any day specified for the repeal of a provision, must not be a day that is earlier than the day on which that other scheme applies in New South Wales.

Under the GGAS scheme, persons who are subject to the scheme (*benchmark participants*) have obligations that arise annually. However, as the scheme may be terminated part way through a year, a final period of less than one year is likely.

Schedule 1 [1] inserts a definition of *compliance period* that is to replace the use of the term “year” in Part 8A of the Principal Act. A compliance period is a year, except in the case of the final compliance period, which is the period from 1 January until the day immediately preceding the termination day. **Schedule 1 [3], [8] and [10]** replace references to “year” with references to “compliance period” throughout Part 8A. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [1] also inserts definitions of *category A generation*, *Emissions Workbook*, *final compliance period* and *termination day* for the purposes of Part 8A. **Schedule 1 [13] and [14]** make consequential amendments.

Schedule 1 [5] substitutes section 97B of the Principal Act to omit redundant provisions. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [6] updates the principles for determining the greenhouse gas benchmark for a benchmark participant to refer to compliance periods and to provide for a pro rata reduction of that benchmark for the final compliance period. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [7] makes it clear that an amount by which a benchmark participant fails to comply with the participant's greenhouse gas benchmark for the final compliance period (a *greenhouse shortfall*) cannot be carried forward.

Schedule 1 [11] provides that any greenhouse penalty payable by a benchmark participant in respect of a greenhouse shortfall for the final compliance period is payable within 3 months after the termination day or on any later day determined by the Independent Pricing and Regulatory Tribunal (the *Tribunal*).

Schedule 1 [12] requires a benchmark participant to lodge with the Tribunal the participant's greenhouse gas benchmark statement in respect of the final compliance period not later than 3 months after the termination day or such later day as may be permitted by the Tribunal.

Schedule 1 [15] provides that a person may not apply for accreditation as an abatement certificate provider under Part 8A of the Principal Act on or after 1 January 2010 (or any later date that may be prescribed).

Schedule 1 [16] provides that an abatement certificate cannot be created later than 2 months after the termination day or in respect of activities occurring on or after the termination day. That amendment also provides that an abatement certificate cannot be created in relation to category A generation that occurs on or after 1 July 2010 (or any later day that may be prescribed) and any such abatement certificate cannot be created after 1 October 2010, or if a later day is prescribed, 3 months after that later day.

Schedule 1 [17] provides that the Tribunal's report to the Minister on the extent to which benchmark participants have complied, or failed to comply, with greenhouse gas benchmarks during the final compliance period is to be forwarded to the Minister as soon as practicable after the day occurring 3 months after the termination day (but on or before the day occurring 7 months after the termination day).

Schedule 1 [19] provides that compensation is not payable by or on behalf of the State in relation to the enactment, making or operation of Part 8A of the Principal Act, any Act that amends that Part (including the proposed Act) or any instrument under that Part, or in relation to any statement or conduct relating to any such enactment, making or operation or any statement or conduct in relation to accreditation as an abatement certificate provider or to abatement certificates.

Schedule 1 [20] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 1 [21]**

permits such regulations to be made consequent on the repeal of a provision of Part 8A of the Principal Act.

Schedule 1 [22] updates a reference to an abolished Department.

Schedule 2 Amendment of instruments

Schedule 2.2 [1] omits redundant references to an abolished Department.

Schedule 2.2 [2] and [3] make amendments that are consequential on the amendments in Schedule 1.

Schedule 2.2 [4] omits a redundant definition.

Schedule 2.2 [5] provides, in respect of the final compliance period, for a pro rata reduction of the baseline for the activities of a person in respect of which an abatement certificate provider is entitled to create certificates.

Schedule 2.1 and 2.3 omit redundant definitions.

First print



New South Wales

Electricity Supply Amendment (GGAS) Bill 2009

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New South Wales

Electricity Supply Amendment (GGAS) Bill 2009

No. , 2009

A Bill for

An Act to amend the *Electricity Supply Act 1995* with respect to abatement certificates and abatement certificate providers and the liability of the State in connection with the GGAS Scheme and to make provision with respect to the termination of that Scheme; and for other purposes.

| | |
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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Electricity Supply Amendment (GGAS) Act 2009</i> . | 3 |
| 2 Commencement | 4 |
| This Act commences on the date of assent to this Act. | 5 |

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

[1] Section 97AB Definitions

Insert in alphabetical order:

category A generation means category A generation, as referred to in the Emissions Workbook.

compliance period means:

- (a) for a year occurring before the start of the final compliance period, the period of one year commencing on 1 January in that year, or
- (b) the final compliance period.

Emissions Workbook means the document entitled *Greenhouse Gas Emissions from Electricity Supplied in NSW: Emissions Workbook* published by the Ministry of Energy and Utilities in October 2000.

final compliance period means the period ending on the day immediately preceding the termination day and commencing on 1 January in the same year as the termination day.

termination day means the day prescribed by proclamation under section 97KB (1) (a).

[2] Section 97AB, definition of “electricity sector benchmark”

Insert “(1)” after “97BC”.

[3] Sections 97AB, definitions of “greenhouse gas benchmark”, “greenhouse shortfall” and “State population”, 97BD (1)–(3) and (6), 97BE (1)–(4), (6) and (7), 97BF (3), 97BG (b) and (d), 97CA (1) and (2), 97CB (2) (a)–(c) and (4), 97CC (1) (b), 97CD (1) (b), 97I (1) (a) and (d) and 97K (1) (c), (f) and (g)

Omit “year” wherever occurring. Insert instead “compliance period”.

[4] Section 97AB, definition of “State greenhouse gas benchmark”

Omit the definition. Insert instead:

State greenhouse gas benchmark—see section 97B (1).

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| [5] Section 97B | 1 |
| Omit the section. Insert instead: | 2 |
| 97B State greenhouse gas benchmark | 3 |
| (1) The State greenhouse gas benchmark is 7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population per year. | 4 5 6 |
| (2) The State greenhouse gas benchmark is to be the basis for the calculation of the greenhouse gas benchmark for each benchmark participant. | 7 8 9 |
| [6] Section 97BC | 10 |
| Omit the section. Insert instead: | 11 |
| 97BC Principles for determining greenhouse gas benchmarks for benchmark participants | 12 13 |
| (1) The greenhouse gas benchmark for a benchmark participant for a compliance period is to be determined as follows: | 14 15 |
| (a) by multiplying the State population for the compliance period by the State greenhouse gas benchmark to determine the electricity sector benchmark, | 16 17 18 |
| (b) by determining the proportion of the total State electricity demand (as determined by the Tribunal) for the year commencing on the same day as the compliance period that is applicable to the participant during that year, | 19 20 21 22 |
| (c) by applying that proportion to the electricity sector benchmark to calculate the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions comprising the benchmark for that participant. | 23 24 25 26 |
| (2) If the compliance period is the final compliance period, the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions comprising the benchmark for a participant is to be reduced by dividing that number by 365 and then multiplying it by the number of days in the final compliance period. | 27 28 29 30 31 |
| Note. The methodology for determining the matters set out in this section is set out in the greenhouse gas benchmark rules. | 32 33 |
| [7] Section 97BE Greenhouse shortfalls may be carried forward | 34 |
| Insert “or the final compliance period” after “2007” in section 97BE (1). | 35 |

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| [8] Section 97BF Factors to be determined and published before commencement of each compliance period | 1 |
| | 2 |
| Omit “next year” from section 97BF (1). | 3 |
| Insert instead “compliance period commencing on 1 January immediately following that notice (the <i>next compliance period</i>)”. | 4 |
| | 5 |
| [9] Section 97BF (1) (b) | 6 |
| Insert “for a year” after “demand”. | 7 |
| [10] Section 97CA Greenhouse penalties | 8 |
| Omit “a year” from section 97CA (4). | 9 |
| Insert instead “a compliance period (other than the final compliance period)”. | 10 |
| [11] Section 97CA (4A) | 11 |
| Insert after section 97CA (4): | 12 |
| (4A) A greenhouse penalty payable for the final compliance period by a benchmark participant is payable within 3 months after the termination day or on any later day determined by the Tribunal for a benchmark participant. | 13 |
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| [12] Section 97CB Annual greenhouse gas benchmark statements | 17 |
| Omit section 97CB (1). Insert instead: | 18 |
| (1) A benchmark participant must lodge with the Tribunal a greenhouse gas benchmark statement: | 19 |
| | 20 |
| (a) in respect of a compliance period (other than the final compliance period), not later than 1 March in the year immediately following the end of that compliance period, | 21 |
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| | 24 |
| (b) in respect of the final compliance period, not later than 3 months after the termination day. | 25 |
| | 26 |
| (1A) The Tribunal may permit a benchmark participant to lodge a greenhouse gas benchmark statement on a later day. | 27 |
| | 28 |
| [13] Section 97DA Eligibility for accreditation | 29 |
| Omit “, as referred to in the Emissions Workbook” from section 97DA (6). | 30 |
| [14] Section 97DA (7) | 31 |
| Omit the subsection. | 32 |

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| [15] Section 97DB Application for accreditation | 1 |
| Insert after section 97DB (1): | 2 |
| (1A) An application cannot be made on or after 1 January 2010 or such later day as may be prescribed by the regulations. | 3 4 |
| [16] Section 97EC When certificates may be created | 5 |
| Omit section 97EC (2). Insert instead: | 6 |
| (2) An abatement certificate cannot be created in relation to an activity later than 6 months after the end of the compliance period in which the activity takes place. | 7 8 9 |
| (2A) An abatement certificate cannot be created in relation to category A generation occurring on or after 1 July 2010 or such later day as may be prescribed by the regulations. | 10 11 12 |
| (2B) An abatement certificate cannot be created in relation to category A generation after 1 October 2010, or if a later day is prescribed under subsection (2A), more than 3 months after that later day. | 13 14 15 |
| (2C) If a later day is prescribed under subsection (2A), the regulations may also provide for transitional arrangements in relation to any category A generation occurring after 1 July 2010 and before that later day, including by providing an exemption from subsection (2). | 16 17 18 19 20 |
| (2D) An abatement certificate cannot be created in relation to an activity occurring on or after the termination day. | 21 22 |
| (2E) An abatement certificate cannot be created later than 2 months after the termination day. | 23 24 |
| [17] Section 97HF Annual report by Tribunal | 25 |
| Omit section 97HF (1). Insert instead: | 26 |
| (1) The Tribunal must prepare and forward to the Minister a report on the extent to which benchmark participants have complied, or failed to comply, with greenhouse gas benchmarks during a compliance period. | 27 28 29 30 |
| (1A) If the report relates to a compliance period other than the final compliance period, it is to be forwarded to the Minister as soon as practicable after 1 March (but on or before 31 July) in the following year. | 31 32 33 34 |
| (1B) If the report relates to the final compliance period, it is to be forwarded to the Minister as soon as practicable after the day | 35 36 |

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| | occurring 3 months after the termination day (but on or before the day occurring 7 months after the termination day). | 1 2 |
| [18] | Section 97KB | 3 |
| | Omit the section. Insert instead: | 4 |
| | 97KB Termination of scheme | 5 |
| | (1) The Governor may, by proclamation published on the NSW legislation website, do either or both of the following: | 6 7 |
| | (a) prescribe a termination day for the scheme set out in this Part, | 8 9 |
| | (b) repeal any or all of the provisions of this Part. | 10 |
| | (2) A proclamation may be made only if the Minister has certified to the Governor that the Minister is satisfied that a scheme will apply in New South Wales that: | 11 12 13 |
| | (a) has been or will be established (either nationally or in this State and at least one or more other States or Territories), and | 14 15 16 |
| | (b) is designed to achieve outcomes that include the reduction of greenhouse gas emissions associated with the production and use of electricity and encouragement of participation in activities to offset the production of greenhouse gas emissions nationally or in the participating jurisdictions. | 17 18 19 20 21 22 |
| | (3) The repeal of any provisions of this Part takes effect on the day (being a day not earlier than the day on which the proclamation is published on the NSW legislation website) specified in the proclamation. | 23 24 25 26 |
| | (4) The termination day, or any day specified in the proclamation for the repeal of a provision of this Part, must not be a day that is earlier than the day on which the relevant scheme applies in New South Wales. | 27 28 29 30 |
| | (5) If the termination day is on 1 January in any year there is no final compliance period. | 31 32 |
| | (6) Regulations may be made for or with respect to the effect of the repeal of any provisions on rights conferred or obligations imposed under this Part. | 33 34 35 |
| | (7) Without limiting subsection (6), the regulations may specify conditions that must be complied with in respect of the repeal of a provision. | 36 37 38 |

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| [19] Section 179A | 1 |
| Insert before section 179: | 2 |
| 179A Compensation not payable | 3 |
| (1) Compensation is not payable by or on behalf of the State: | 4 |
| (a) because of the enactment, making or operation of any of the following: | 5 |
| (i) Part 8A, | 6 |
| (ii) the <i>Electricity Supply Amendment (GGAS) Act 2009</i> or any other Act that amends Part 8A, | 7 |
| (iii) any instrument under Part 8A, or | 8 |
| (b) because of any consequence of any such enactment, making or operation, or | 9 |
| (c) because of any statement or conduct relating to any such enactment, making or operation, or | 10 |
| (d) because of any statement or conduct relating to accreditation as an abatement certificate provider under Part 8A or to abatement certificates within the meaning of that Part. | 11 |
| (2) This section extends to statements, conduct and any other matter occurring before the commencement of this section. | 12 |
| (3) In this section: | 13 |
| compensation includes damages or any other form of monetary compensation. | 14 |
| conduct includes any act or omission, whether unconscionable, misleading, deceptive or otherwise. | 15 |
| statement includes a representation of any kind: | 16 |
| (a) whether made verbally or in writing, and | 17 |
| (b) whether negligent, false, misleading or otherwise. | 18 |
| the State means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> or an officer, employee or agent of the Crown. | 19 |
| [20] Schedule 6 Savings, transitional and other provisions | 20 |
| Insert at the end of clause 1 (1): | 21 |
| <i>Electricity Supply Amendment (GGAS) Act 2009</i> | 22 |

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| [21] Schedule 6, clause 1A | 1 |
| Insert after clause 1: | 2 |
| 1A Regulations on repeal of provisions of Part 8A | 3 |
| (1) The regulations may contain provisions of a savings or transitional nature consequent on the repeal of a provision of Part 8A. | 4 5 6 |
| (2) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as: | 7 8 9 |
| (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or | 10 11 12 |
| (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. | 13 14 15 |
| [22] Dictionary | 16 |
| Omit the definition of <i>Director-General</i> . Insert instead: | 17 |
| <i>Department</i> means the Department of Industry and Investment. | 18 |
| <i>Director-General</i> means the Director-General of the Department. | 19 20 |

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| Schedule 2 | Amendment of instruments | 1 |
| 2.1 | Electricity Supply (Corrosion Protection) Regulation 2008 | 2 |
| | Clause 3 Definitions | 3 |
| | Omit the definitions of <i>Department</i> and <i>Director-General</i> from clause 3 (1). | 4 |
| 2.2 | Electricity Supply (General) Regulation 2001 | 5 |
| [1] | Clauses 3 (1), definition of “recognised code”, 39 (3) and 98 (5) | 6 |
| | Omit “of the Ministry of Energy and Utilities” wherever occurring. | 7 |
| [2] | Clauses 73BF (a), 73C (1), definition of “M”, 73DA, 73DB, 73E (1), 73EA (1), 73EB (1) and (5) and 73K (2) (b) | 8 |
| | Omit “year” wherever occurring. Insert instead “compliance period”. | 9 |
| [3] | Clause 73E Assessment of compliance with greenhouse gas benchmarks | 11 |
| | Insert “(or on the day occurring 3 months after the termination day in the case of the final compliance period)” after “following year” in clause 73E (3). | 12 |
| [4] | Clause 73G Electricity generation activities | 13 |
| | Omit the definition of <i>Emissions Workbook</i> from clause 73G (4). | 14 |
| [5] | Clause 73KA Determination of baseline | 15 |
| | Insert at the end of the clause: | 16 |
| | (2) The baseline is to be reduced in respect of the final compliance period by dividing the baseline by 365 and then multiplying it by the number of days in the final compliance period. | 17 |
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| 2.3 Electricity Supply (Safety and Network Management) Regulation 2008 | 1 |
| | 2 |
| Clause 3 Definitions | 3 |
| Omit the definition of <i>Director-General</i> from clause 3 (1). | 4 |