

# Electricity Supply Act 1995 No 94

[1995-94]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Energy Legislation Amendment \(Infrastructure Protection\) Act 2009 No 31](#) (not commenced)
  - [Government Information \(Public Access\) \(Consequential Amendments and Repeal\) Act 2009 No 54](#) (not commenced)
  - [Electricity Supply Amendment \(Solar Bonus Scheme\) Act 2009 No 101](#) (not commenced — to commence on 1.1.2010)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) (not commenced — to commence on 8.1.2010)

### Authorisation

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# Electricity Supply Act 1995 No 94



New South Wales

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# Electricity Supply Act 1995 No 94



New South Wales

An Act to regulate the supply of electricity in the retail market; to set out the functions of persons engaged in the conveyance and supply of electricity; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Electricity Supply Act 1995*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects

The objects of this Act are:

- (a) to establish a competitive retail market in electricity so as to promote efficient and environmentally responsible production and use of electricity and to deliver a safe and reliable supply of electricity, and
- (b) to confer on network operators such powers as are necessary to enable them to construct, operate, repair and maintain their electricity works, and
- (c) to regulate network operations and electricity supply in the retail market in a manner that ensures open access to electricity distribution systems, promotes customer choice and creates customer rights in relation to electricity connections and electricity supply, and
- (d) to promote and encourage the safety of persons and property in relation to the generation, transmission, distribution and use of electricity.

### 4 Definitions and notes

- (1) Expressions used in this Act that are defined in the dictionary at the end of this Act have the meanings set out in the dictionary.
- (2) Notes included in this Act do not form part of this Act.

## **5 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2**

### **6-12 (Repealed)**

## **Part 3 Network operations in the retail market**

### **Division 1 Network operations**

#### **13 Operation of distribution systems for retail supply**

A person must not operate a distribution system for the purpose of conveying electricity, for or on behalf of retail suppliers, otherwise than under the authority of a distribution network service provider's licence.

Maximum penalty: 500 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

#### **14 Licences**

- (1) The Minister may grant distribution network service providers' licences for the purposes of this Act.
- (2) Schedule 2 has effect with respect to the granting, variation, transfer and cancellation of distribution network service providers' licences.

#### **15 Right to connection to local distribution system for all customers**

- (1) An application may be made to a distribution network service provider:
  - (a) by any person who owns or occupies premises within the distribution network service provider's distribution district (other than a person who is entitled to the provision of customer connection services under a wholesale market access regime), or
  - (b) by any other person on behalf of any such person,for the provision of customer connection services to those premises.
- (2) A distribution network service provider to which such an application is made is obliged:
  - (a) to provide customer connection services to the applicant's premises under the customer connection contract relevant to the applicant, or
  - (b) to ensure that customer connection services are so provided.

- (3) The right that a person has under this section to have premises provided with customer connection services is subject to any provision of this Act or the regulations that authorises the disconnection of those premises from, or the refusal to connect those premises to, a distribution system.
- (4) It is a condition of a distribution network service provider's licence that the distribution network service provider must fulfil the obligations imposed on the distribution network service provider by this section.
- (5) This section does not apply to a distribution network service provider that does not have a distribution district.

#### **16 Distribution network service providers to convey electricity for certain persons only**

It is a condition of a distribution network service provider's licence that the distribution network service provider must not operate its distribution system for the purpose of conveying electricity for or on behalf of any person unless the person is:

- (a) (Repealed)
- (b) a retail supplier, or
- (c) (Repealed)
- (d) a Code participant within the meaning of the *National Electricity (NSW) Law*.

#### **17 (Repealed)**

#### **18 Distribution network service providers to connect premises under customer connection contracts**

It is a condition of a distribution network service provider's licence that the distribution network service provider must not provide customer connection services otherwise than under a customer connection contract.

### **Division 2 Standard form customer connection contracts**

#### **19 Procedure for making standard form customer connection contracts**

- (1) It is a condition of a distribution network service provider's licence that the distribution network service provider must prepare a standard form customer connection contract to establish the conditions on which it will provide customer connection services.
- (2) It is a condition of a distribution network service provider's licence that the distribution network service provider must notify any relevant customer consultative group, and must have due regard to its comments, before completing its preparation of a standard form customer connection contract.

- (3) Different forms of customer connection contract may be prepared for different classes of customer.

**20 Matters for which standard form customer connection contracts must provide**

- (1) A standard form customer connection contract must make provision for the following matters:
- (a) the basis on which charges for its customer connection services are to be calculated,
  - (b) any security to be provided by customers for payment of any such charges,
  - (c) the standard of service to be provided to customers by the distribution network service provider,
  - (d) the requirements to be complied with by customers under Division 4,
  - (e) the circumstances under which premises may be disconnected from the distribution network service provider's distribution system,
  - (f) the procedures established by the distribution network service provider for handling enquiries and complaints made by customers, and resolving disputes with customers, in relation to matters arising under the contract,
  - (g) such other matters as may be prescribed by the regulations.
- (2) A standard form customer connection contract:
- (a) must indicate that this Act confers powers, duties, rights and obligations on the distribution network service provider and customers, and
  - (b) must briefly describe the nature of those powers, duties, rights and obligations, but is not unenforceable merely because of any failure to do so.
- (3) A standard form customer connection contract must comply with:
- (a) any conditions imposed on the distribution network service provider by its distribution network service provider's licence, and
  - (b) any relevant determination made by the Independent Pricing and Regulatory Tribunal,
- but is not unenforceable merely because of any failure to do so.
- (4) A standard form customer connection contract must not be inconsistent with the provisions of this Act or the regulations, and is unenforceable to the extent of any such inconsistency.

## **21 Effect of standard form customer connection contracts**

- (1) Except to the extent to which the regulations otherwise provide, a standard form customer connection contract takes effect:
  - (a) on the first day on which notice of its terms is published in a newspaper circulating throughout the distribution network service provider's distribution district, or
  - (b) on such later day as may be specified in the notice.
- (2) The particulars to be set out in a notice under this section:
  - (a) must specify the date on or after which the customer connection contract is to take effect, not being a date that is earlier than the date the notice is published or served, and
  - (b) must include such other particulars as may be prescribed by the regulations.
- (3) A notice under this section may be of general application or be limited in its application by reference to specified exceptions or factors.
- (4) A standard form customer connection contract does not have effect in respect of any period before the date specified in the relevant notice as the date on or after which the contract is to take effect.
- (5) On the day on which a customer applies to a distribution network service provider for the provision of customer connection services, the customer and the distribution network service provider are taken to have entered into an agreement for the provision of customer connection services on the conditions set out in the relevant standard form customer connection contract, and the contract is enforceable accordingly.

## **22 Amendment of standard form customer connection contracts**

- (1) From time to time a distribution network service provider may amend a standard form customer connection contract to vary the conditions on which it will provide customer connection services.
- (2) This Division applies to an amendment of a standard form customer connection contract in the same way as it applies to a standard form customer connection contract.

## **Division 3 Negotiated customer connection contracts**

### **23 Negotiated customer connection contracts**

- (1) This section applies to arrangements for the provision of customer connection services by a distribution network service provider in circumstances in which the

distribution network service provider and customer agree for customer connection services to be provided otherwise than under any of the distribution network service provider's standard form customer connection contracts.

- (2) An arrangement to which this section applies (a ***negotiated customer connection contract***) may contain such terms as the distribution network service provider and customer may agree, and the contract is enforceable accordingly.
- (3) A negotiated customer connection contract must comply with any conditions imposed on the distribution network service provider by its distribution network service provider's licence, but is not unenforceable merely because of any failure to do so.
- (4) A negotiated customer connection contract must not be inconsistent with the provisions of this Act or the regulations, and is unenforceable to the extent of any such inconsistency.

## **Division 4 Requirements relating to customer connection services**

### **24 Application**

- (1) This Division applies to any person who applies to a distribution network service provider for the provision of customer connection services or to whom customer connection services are provided.
- (2) A distribution network service provider may refuse to provide customer connection services to a person who fails to comply with a requirement under this Division.

### **25 Contributions to augmentation of distribution system**

- (1) A distribution network service provider may require a new customer to contribute towards the costs incurred or to be incurred by the distribution network service provider:
  - (a) in extending its distribution system, or
  - (b) in increasing the capacity of its distribution system,so as to enable it to provide customer connection services to the customer.
- (2) For the purpose of ensuring that previously incurred costs of the kind referred to in subsection (1) are equitably borne by customers in the same vicinity, the distribution network service provider:
  - (a) may require further new customers to contribute towards those costs, and
  - (b) may apply the whole or any part of the contributions received from those customers to the repayment of existing customers who have previously contributed towards those costs.

- (3) A distribution network service provider must comply with any determination of the Tribunal in force under the *Independent Pricing and Regulatory Tribunal Act 1992* relating to the proportion of contributions that may be required from customers under this section or the repayment of existing customers under this section.
- (3A) It is a condition of a distribution network service provider's licence that the distribution network service provider must comply with this section.
- (4) In this section, **new customer** means a customer requiring new or additional customer connection services.

## **26 Service lines**

- (1) A distribution network service provider may require the installation of such service lines, and provision for their attachment, as it considers necessary to provide a supply of electricity to a customer.
- (2) The type, construction and route of a service line and its point of connection are to be as determined by the distribution network service provider.
- (3) A distribution network service provider may require premises to be provided with more than one point of connection if the distribution network service provider considers it necessary to avoid interference with the supply of electricity to any other premises.

## **27 Service equipment**

- (1) A distribution network service provider may require the installation of such service equipment, and provision for its mounting, as it considers necessary for the provision of a safe and efficient supply of electricity to a customer.
- (2) The position and standards of installation of service equipment are to be as determined by the distribution network service provider.

## **28 Transformers**

- (1) This section applies if, in the opinion of the distribution network service provider, the supply of electricity required by a customer:
  - (a) exceeds that which can be provided by a service line from its street mains, and
  - (b) can best be given by installing transformers, switchgear or other equipment on the premises to be supplied.
- (2) In such a case, the distribution network service provider may require the customer to provide for use by the distribution network service provider, free of cost, a place within those premises to accommodate the transformers, switchgear or other equipment that the distribution network service provider considers should be installed.

- (3) The place provided must be approved by, and must be enclosed in a manner approved by, the distribution network service provider.

## **29 Electricity meters**

- (1) A distribution network service provider may require the installation of such electricity meters as it considers necessary to ascertain the quantity of electricity supplied to a customer.
- (2) The position and standards of installation of electricity meters are to be as determined by the distribution network service provider.

## **30 Requirements as to installation and use of apparatus**

- (1) A distribution network service provider:
  - (a) may impose such requirements as to the installation and use of electrical appliances and equipment by the customer as the distribution network service provider considers necessary to prevent or minimise adverse effects on the supply of electricity to other customers, and
  - (b) may impose requirements relating to loading of, and the balancing of the load over, the phases of the customer's electricity supply, and
  - (c) may impose requirements as to the minimum rupture rating or minimum breaking capacity of the customer's main protective devices, and
  - (d) may require the customer to install relays, current transformers and other protective equipment having characteristics to suit the distribution network service provider's protective system.
- (2) A customer must comply with any requirement imposed on the customer under this section.

## **31 Customer may choose supplier and contractor**

- (1) For the purpose of complying with any requirement imposed under this Division or under a customer connection contract, a customer may elect:
  - (a) to have any required electrical or other goods provided by the distribution network service provider (in the case of goods that are available from the distribution network service provider) or by any other person, and
  - (b) to have any required electrical or other services provided by the distribution network service provider (in the case of services that are available from the distribution network service provider) or by any other person.
- (2) A person who provides electrical or other services of a kind prescribed by the regulations must be accredited, in accordance with the regulations, to provide those



services.

### **32 Sealing of electrical installations**

A distribution network service provider may attach seals to a customer's electrical installation if it considers it appropriate to do so.

## **Division 5 Levy**

### **32A Definitions**

In this Division:

**licensee** means the holder of a distribution network service provider's licence.

**network income** of a licensee means the income derived by the licensee from the use of the distribution system of the licensee in the provision of electricity network services.

### **32B Distribution network service provider's levy**

- (1) A licensee must pay to the Treasurer, in respect of each financial year during which the licensee holds a distribution network service provider's licence, the levy determined in respect of that year by order of the Governor, on the recommendation of the Treasurer, applying to the licensee and published in the Gazette.
- (2) The Treasurer, in recommending the amount of a levy for a financial year payable by a licensee, must be satisfied that the amount reasonably represents the amount by which the network income (as estimated by the Treasurer) of the licensee in that year is likely to exceed the sum of the amounts (as estimated by the Treasurer) to be:
  - (a) the costs of deriving the income, and
  - (b) the taxes payable in deriving that income, and
  - (c) a reasonable return on the capital of the licensee used in deriving that income, having regard to:
    - (d) the likely consumption of electricity in that financial year by customers (other than customers who are specified or described in an order made under section 43E (6)) who are connected to the licensee's distribution system, and
    - (e) such other matters as the Treasurer determines after consultation with the licensee.
- (3) The levy is payable for the financial year commencing on 1 July 1997 and later financial years.
- (4) Despite the other provisions of this section, no levy is to be determined in respect of the year commencing on 1 July 2001, or any subsequent year, unless the Treasurer, by

order published in the Gazette, approves the determination of a levy.

- (5) An approval of the Treasurer under subsection (4):
- (a) must be published in the Gazette before the beginning of a year to which it applies, and
  - (b) may apply to one or more years as specified or described in the approval.

### **32C Variation of levy**

- (1) The amount of a levy payable by a licensee in respect of a financial year may be varied by order of the Governor applying to the licensee and published in the Gazette.
- (2) Such an order may be made before or during the financial year concerned or during the following financial year, but not later.
- (3) The Treasurer, in recommending a variation of a levy for a financial year payable by a licensee, must be satisfied of the matters referred to in section 32B (2).

### **32D Becoming a licensee during a year**

- (1) If a person becomes a licensee during a financial year, a levy may be determined under this Division for the licensee in respect of the remaining part of that financial year.
- (2) The other sections of this Division apply to the licensee in respect of that financial year as if references in those sections to a financial year were references to the remaining part of that financial year.

### **32E Ceasing to be a licensee during a year**

- (1) If a person ceases to be a licensee during a financial year, the amount of levy payable by the licensee may be adjusted by order of the Governor, applying to the licensee and published in the Gazette, having regard to the length of the portion of that financial year that the distribution network service provider's licence was in force.
- (2) Such a person is entitled to a refund of any money paid in excess of the amount of the levy as so adjusted.
- (3) However, a person does not, by ceasing to be a licensee, cease to be liable to a levy, or to a variation of a levy under section 32C, in respect of any period during which the person was a licensee.
- (4) Accordingly, a reference in this Division to a licensee includes a reference to a former licensee, but without making the former licensee liable to a levy in respect of any period after the person ceased to be the holder of a distribution network service provider's licence.

- (5) The other sections of this Division apply for the purpose of calculating an adjustment referred to in subsection (1) or a variation referred to in subsection (3) as if references in those sections to a financial year were references to the portion of the financial year during which the distribution network service provider's licence was in force.

### **32F Payment and recovery of levy**

- (1) The levy in respect of a financial year is payable at such times (whether during or after that year) and in such manner as are:
  - (a) determined in the order imposing, varying or adjusting it (subject to any agreement referred to in paragraph (b)), or
  - (b) agreed on between the Treasurer and the licensee under section 182.
- (2) A levy under this Division is recoverable as a debt due to the Crown in any court of competent jurisdiction.

### **32G Operation of Division**

- (1) It is a condition of a distribution network service provider's licence that the licensee must pay the levy in accordance with this Division.
- (2) Nothing in this Division affects the operation of section 59B of the *Public Finance and Audit Act 1983*.

## **Part 4 Electricity supply in the retail market**

### **Division 1 Licences**

#### **33 Licences**

- (1) The Minister may grant retail suppliers' licences for the purposes of this Act.
- (2) Schedule 2 has effect with respect to the granting, variation, transfer and cancellation of retail suppliers' licences.

#### **33A Endorsements on retail suppliers' licences**

- (1) One or more of the following endorsements may be attached by the Minister to a retail supplier's licence:
  - (a) a standard retail supplier's endorsement,
  - (b) such other categories of endorsements as the Minister determines.
- (2) A standard retail supplier's endorsement consists of:
  - (a) a condition that designates the endorsement as a standard retail supplier's endorsement in respect of a supply district as referred to in section 33C, and

- (b) conditions of the kind referred to in sections 34 (7), 36, 39 (1) and (2), 43EF (3), 43ER and 87D, and
  - (c) any other condition imposed by the Minister or the regulations.
- (3) Other categories of endorsements have such designations and are subject to such conditions as the Minister thinks fit or as are imposed by the regulations.
  - (4) A retail supplier's licence may have no endorsements, or one or more endorsements, attached to it.
  - (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.
  - (6) Conditions of an endorsement that are imposed by the Minister may be varied or revoked by the Minister at any time.

### **33B Transfer of endorsements**

- (1) Subject to the regulations, the provisions of this Act that apply to the transfer of licences extend to the transfer of endorsements referred to in section 33A.
- (2) The regulations may make provision for or with respect to the transfer of endorsements between holders of retail suppliers' licences.
- (3) When approving the transfer of an endorsement, or of a licence together with an endorsement:
  - (a) the Minister may impose such additional conditions on the licence as the Minister considers appropriate, including conditions imposed for the purpose of ensuring that the transferee will comply with the conditions comprised in the endorsement, and
  - (b) the Minister may impose a condition transferring specified customers or classes of customers, and
  - (c) the Minister may amend a condition describing the supply district of a standard retail supplier by varying the supply district, whether by way of reducing or increasing its size, or may revoke such a condition.
- (4) Without limitation, the supply district of a standard retail supplier may be varied by the addition of the whole or a part of the supply district of another standard retail supplier or former standard retail supplier.
- (5) The regulations may make provision for or with respect to the conditions that may be imposed by the Minister under subsection (3).

### **33C Supply district of standard retail supplier**

The supply district of a standard retail supplier is to be described in a condition of the retail supplier's licence, and may cover either or both of the following:

- (a) one or more distribution districts,
- (b) one or more parts of one or more distribution districts.

## **Division 1A Electricity supply**

### **34 Right to supply of electricity from standard retail supplier for all customers**

- (1) All persons who own or occupy premises that are within a standard retail supplier's supply district, and that are connected or have a right under section 15 to apply to be connected to a distribution system, may apply to the standard retail supplier to be supplied with electricity at those premises under a negotiated customer supply contract.
- (2) Such of those persons as are small retail customers have a right to elect to be supplied with electricity at those premises by the standard retail supplier under a standard form customer supply contract instead of under a negotiated customer supply contract.
- (3) An application or election may be made by any other person on behalf of the person entitled to make the application or election.
- (4) If a person who has a right under this section to do so makes an application to a standard retail supplier, the standard retail supplier is under an obligation:
  - (a) to supply electricity to the applicant's premises under a negotiated customer supply contract or to ensure that electricity is so supplied, or
  - (b) in the case of any customer who is a small retail customer and who elects under this section to be supplied under a standard form customer supply contract, to supply electricity to the customer's premises under such a contract or to ensure that electricity is so supplied.
- (5) If a small retail customer who has a right under this section to do so makes an application to a standard retail supplier, the standard retail supplier is under an obligation to arrange, on behalf of the customer, for customer connection services to be provided to the premises concerned.
- (6) The right that a person has under this section to be supplied electricity to premises is subject to:
  - (a) any provision of this Act or the regulations that authorises the refusal, suspension or discontinuance of the supply of electricity, and

(b) the maximum capacity of the connection of the premises to the distribution system.

- (7) It is a condition of a licence held by a standard retail supplier that the retail supplier must fulfil the obligations imposed on the retail supplier by this section.
- (8) The regulations may make provision for or with respect to elections referred to in this section, including provisions for or with respect to circumstances in which an election is or may be taken to have occurred.

### **35 Discrimination prohibited**

- (1) It is unlawful for a retail supplier:
- (a) to refuse to supply electricity to any person, or
  - (b) to supply electricity to any person on terms that are less advantageous than those on which the retail supplier supplies electricity to other persons,
- on the basis that the person uses or supplies alternative forms of energy, uses or supplies energy from alternative sources, or uses or supplies products, processes, designs or services that reduce the demand for energy.
- (2) It is a condition of a retail supplier's licence that the retail supplier must not contravene this section.

### **36 Supply of electricity under standard form customer supply contracts (tariffs and charges)**

It is a condition of a licence held by a standard retail supplier that the retail supplier, in imposing tariffs and charges for or in relation to supplying electricity under a standard form customer supply contract, must impose them in accordance with any relevant determination of the Tribunal in force under Division 5.

### **37 Supply of electricity by retail suppliers**

- (1) A retail supplier may, but is not required to, supply electricity to the premises of any customer.
- (2) Without limitation, a standard retail supplier may, but is not required to, supply electricity to the premises of any customer within or outside the standard retail supplier's supply district.
- (3) However, this section does not affect any obligation that a retail supplier has as the holder of an endorsement under section 33A (including, for example, the obligations of a standard retail supplier under section 34).

### **38 Retail suppliers to supply electricity under customer supply contracts**

It is a condition of a retail supplier's licence that the retail supplier must not supply electricity to the premises of a retail customer otherwise than under a customer supply contract.

## **Division 2 Negotiated customer supply contracts**

### **38A Negotiated customer supply contracts**

- (1) This section applies to arrangements for the supply of electricity by a retail supplier to the premises of retail customers, other than the supply of electricity under standard form customer supply contracts.
- (2) An arrangement to which this section applies (a ***negotiated customer supply contract***) may contain such terms as the retail supplier and the customer agree, and the contract is enforceable accordingly.
- (3) A negotiated customer supply contract must comply with any conditions imposed on the retail supplier by its retail supplier's licence, but is not unenforceable merely because of any failure to do so.
- (4) A negotiated customer supply contract must not be inconsistent with the provisions of this Act or the regulations, and is unenforceable to the extent of any such inconsistency, except as provided by subsections (3) and (5).
- (5) A negotiated customer supply contract with a small retail customer must comply with any requirements prescribed by the regulations for the purposes of this subsection, but is not unenforceable merely because of any failure to do so.
- (6) It is a condition of a retail supplier's licence that any negotiated customer supply contract with a small retail customer must comply with any requirements prescribed for the purposes of subsection (5).

## **Division 3 Standard form customer supply contracts**

### **39 Procedure for making standard form customer supply contracts**

- (1) It is a condition of a licence held by a standard retail supplier that the standard retail supplier must prepare a standard form customer supply contract to establish the conditions on which it will supply electricity to the premises of small retail customers who elect to be supplied with electricity under standard form customer supply contracts.
- (2) It is a condition of a licence held by a standard retail supplier that the standard retail supplier must notify any relevant customer consultative group, and must have due regard to its comments, before completing its preparation of a standard form

customer supply contract.

- (3) Different forms of standard form customer supply contracts may be prepared for different classes of small retail customers.
- (4) Notice of the terms of a standard form customer supply contract must be published in a newspaper circulating throughout the State or in a newspaper circulating throughout the relevant supply district.
- (5) The particulars to be set out in a notice under this section:
  - (a) must specify the date on or after which the standard form customer supply contract is to take effect, not being a date that is earlier than the first date the notice is published, and
  - (b) must include such other particulars as may be prescribed by the regulations.
- (6) A notice under this section may be of general application or be limited in its application by reference to specified exceptions or factors.

#### **40 Matters for which standard form customer supply contracts must provide**

- (1) A standard form customer supply contract must make provision for the following matters:
  - (a) the basis on which charges for or in relation to the supply of electricity to customers are to be calculated or imposed,
  - (b) any security to be provided by customers for payment of any such charges,
  - (c) the standard of service to be provided to customers by the retail supplier,
  - (d) the circumstances under which the supply of electricity to customers may be discontinued,
  - (e) the procedures established by the retail supplier for handling enquiries and complaints made by customers, and resolving disputes with customers, in relation to matters arising under the contract,
  - (f) the estimation of electricity supplied otherwise than through an electricity meter or in circumstances in which an electricity meter fails to operate or fails to operate correctly,
  - (g) the rate at which electricity is taken to have been supplied between consecutive meter readings,
  - (h) such other matters as may be prescribed by the regulations.
- (2) A standard form customer supply contract:



- (a) must indicate that this Act and the regulations confer powers, duties, rights and obligations on the retail supplier and the customer, and
  - (b) must briefly describe the nature of those powers, duties, rights and obligations, but is not unenforceable merely because of any failure to do so.
- (3) A standard form customer supply contract must comply with:
- (a) any conditions imposed on the retail supplier by its retail supplier's licence, and
  - (b) any relevant determination of the Tribunal in force under Division 5, but is not unenforceable merely because of any failure to do so.
- (4) A standard form customer supply contract must not be inconsistent with the provisions of this Act or the regulations, and is unenforceable to the extent of any such inconsistency, except as provided by subsections (2) and (3).

#### **41 Effect of standard form customer supply contracts**

- (1) Except to the extent to which the regulations otherwise provide, a standard form customer supply contract takes effect:
- (a) on the first day on which notice of its terms is published in a newspaper under section 39, or
  - (b) on such later day as may be specified for the purpose in the notice.
- (2) A standard form customer supply contract does not have any effect in respect of any period before the date specified in the relevant notice as the date on or after which the contract is to take effect.
- (3) On the day on which a customer applies to a standard retail supplier for the supply of electricity under a standard form customer supply contract, the customer and the retail supplier are taken to have entered into an agreement for the provision of electricity on the conditions set out in the relevant standard form customer supply contract, and the contract is enforceable accordingly.

#### **42 Amendment of standard form customer supply contracts**

- (1) From time to time a standard retail supplier may amend a standard form customer supply contract so as to vary the conditions on which it supplies electricity to small retail customers.
- (2) This Division applies to and in respect of an amendment of a standard form customer supply contract in the same way as it applies to a standard form customer supply contract.

## Division 3A Passing through contributions made to Climate Change Fund

### 42A Definitions

In this Division:

**Climate Change Fund** means the Climate Change Fund established under section 34E of the *Energy and Utilities Administration Act 1987*.

**Fund contribution** means any contribution that a distribution network service provider is required to make to the Climate Change Fund by an order made under section 34J of the *Energy and Utilities Administration Act 1987*.

**modification** includes addition, exception, omission or substitution.

### 42B Operation of Division

- (1) It is a condition of a retail supplier's licence that the licensee comply with the requirements specified by this Division or in regulations made for the purposes of this Division.
- (2) This Division applies to retail customers of retail suppliers.
- (3) However, this Division does not apply with respect to:
  - (a) any customer supply contract entered into before 6 April 2005 that contains a provision in force before that date that expressly precludes payment of additional charges for the supply of electricity under it, or
  - (b) any other person, matter or thing (or class of person, matter or thing) prescribed by the regulations.
- (4) A provision of any customer supply contract entered into on or after 6 April 2005 that:
  - (a) expressly precludes the payment of costs of the kind referred to in section 42C (1), or
  - (b) otherwise precludes the payment of additional charges for the supply of electricity under it,is of no force or effect to the extent that it would, but for this subsection, preclude a retail supplier from recovering under this Part costs of the kind referred to in section 42C (1) from the customer.
- (5) Any Fund contributions recovered under this Part by a retail supplier from customers are to be disregarded for the purposes of applying clause 7 of Determination No 1, 2004 made by the Independent Pricing and Regulatory Tribunal in June 2004 and set out in its report entitled *NSW Electricity Regulated Retail Tariffs 2004/05 to 2006/07*:

*Final Report and Determination*, (ISBN 1 877049 49 2).

- (6) Nothing in this Division gives rise to any rights that are justiciable by a customer of a licensee or to any grounds that constitute a defence to proceedings for the recovery of any amount from a customer of a retail supplier.

#### **42C Regulations may make provision for passing through of Fund contributions to retail customers**

- (1) The regulations may make provision for or with respect to requiring or permitting any retail supplier to recover from its retail customers:
- (a) if the retail supplier is also a distribution network service provider—the cost of any Fund contributions it has made in its capacity as a distribution network service provider, or
  - (b) if the retail supplier is not a distribution network service provider—the cost of any Fund contributions made by a distribution network service provider that has been passed through to the retail supplier by the provider.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to any of the following matters:
- (a) the conferral or imposition of functions on the Tribunal with respect to the determination of amounts of the kind referred to in subsection (1) that may be recovered by retail suppliers from their retail customers (including applying provisions of Division 5 or the *Independent Pricing and Regulatory Tribunal Act 1992* (or both) with such modifications, if any, as may be prescribed),
  - (b) the imposition of conditions on the licences of retail suppliers with respect to the recovery of amounts of the kind referred to in subsection (1),
  - (c) the imposition or inclusion of conditions in customer supply contracts with respect to the recovery of amounts of the kind referred to in subsection (1).

#### **43 (Repealed)**

### **Division 4 Pricing of electricity**

#### **43A Definitions**

In this Division:

***electricity network pricing determination*** means a determination of the distribution network service pricing in accordance with the *National Electricity Code* for the provision of electricity network services by a licensee.

***licensee*** means the holder of a distribution network service provider's licence.

### **43B Pricing of electricity for customers other than exempt customers**

- (1) The price for electricity network services that are the subject of an electricity network pricing determination and that are provided by a licensee with respect to customers (other than customers who are specified or described in an order made under section 43E (6)) is increased by an amount determined by an order made by the Governor on the recommendation of the Treasurer and published in the Gazette that does not exceed 0.550 cents per kilowatt hour of the electricity supplied.
- (2) An electricity network pricing determination increased in accordance with this section has effect under the *National Electricity Code* as if the determination included the increase.
- (3) An electricity network pricing determination that includes an amount determined by an order made as referred to in subsection (1) is not to be further increased in accordance with this section.

### **43C (Repealed)**

### **43D Returns**

- (1) A licensee is, within such periods as are specified or described from time to time by the Treasurer by notice to the licensee or by notice published in the Gazette, required to furnish to the Treasurer a return setting out:
  - (a) such information relating to forecast and actual consumption of electricity by customers (other than customers who are specified or described in an order made under section 43E (6)) as is specified or described in such a notice, and
  - (b) such other information as is specified or described in such a notice, being information that is relevant to the licensee's obligations under this Division.
- (2) The information in such a return is to be furnished in such manner and form as is specified or described in such a notice.
- (3) The Treasurer may, by notice to the licensee or by notice published in the Gazette, require supplementary or further information from the licensee at any time.

### **43E Operation of Division**

- (1) It is a condition of a distribution network service provider's licence that the licensee must comply with the requirements of this Division.
- (2) This Division applies to customers provided with electricity network services under any contract.
- (3) The regulations may make provision for or with respect to phasing in the increase effected by section 43B (1) in relation to any class or classes of customers, in cases

where it is not practicable to ascertain the exact amount of electricity supplied for any period commencing with the commencement of this section.

- (4) This Division does not apply to electricity network services provided to a customer under a contract that:
  - (a) was entered into before 6 May 1997, and
  - (b) contains a provision in force before that date that expressly precludes payment of additional charges for electricity network services provided under it.
- (5) This Division does not apply in relation to electricity network services provided during any period specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette.
- (6) This Division does not apply in relation to electricity network services provided to customers of a class specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette.
- (6A) This Division does not apply to transmission services within the meaning of the *National Electricity Code* that are regulated under Chapters 6 and 9 of that Code.
- (7) Nothing in this Division gives rise to any rights that are justiciable by a customer of a licensee or to any grounds that constitute a defence to proceedings for the recovery of any amount from a customer of a licensee.

## **Division 5 Regulated retail tariffs and regulated retail charges**

### **43EA Referrals for determinations**

- (1) The Minister may refer to the Tribunal, for investigation and report, the determination of regulated retail tariffs or regulated retail charges, or both.
- (2) The Tribunal may request the Minister to refer to it, for investigation and report, the determination of regulated retail tariffs or regulated retail charges, or both, under subsection (1).
- (3) The reference may specify a period within which the Tribunal is to submit a report to the Minister and may require the Tribunal to consider specified matters when making its determination.
- (4) The Tribunal is to conduct an investigation and make a determination in a report to the Minister in accordance with this Division.
- (5) If the Minister has given a reference to the Tribunal, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal.

- (6) A report is to include any minority report by a member of the Tribunal who wishes to make such a report.

**43EB Tribunal to determine regulated retail tariffs and regulated retail charges**

- (1) The Tribunal may in a report to the Minister determine regulated retail tariffs or the regulated retail charges, or both, if a referral is made under section 43EA.
- (2) Before determining regulated retail tariffs or the regulated retail charges, the Tribunal must have regard:
  - (a) to any matter it is required by the reference to consider, and
  - (b) to the effect of the determination on competition in the retail electricity market.
- (3) A determination of regulated retail tariffs or regulated retail charges may:
  - (a) specify the tariff or charges, or
  - (b) specify the methodology for determining the tariffs or charges.
- (4) A determination 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 any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

**Note—**

Under section 36, it is a condition of a licence held by a standard retail supplier that the standard retail supplier supply electricity to small retail customers in accordance with any determination in force under this Division.

**43EC Publication of regulated retail tariffs and regulated retail charges**

- (1) A determination of the Tribunal determining regulated retail tariffs or regulated retail charges is to be published in the Gazette by the Minister and takes effect on the day it is so published or on a later day specified in the determination for that purpose.
- (2) A determination may specify different days for the commencement of different parts of the determination.
- (3) The determination must be published in the Gazette as soon as practicable after the Minister receives a report from the Tribunal under this Division.

**43ED Public inspection of Tribunal reports**

- (1) As soon as practicable after the Minister receives a report from the Tribunal under this

Division, the Minister is to arrange for copies of the report to be made available for public inspection.

- (2) However, the Minister is not required to release any part of the report that, in the opinion of the Minister or the Tribunal, contains confidential information.

**43EE Powers of Tribunal and conduct of investigations**

- (1) In an investigation, the Tribunal:
- (a) is to act with as little formality as possible, and
  - (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
  - (c) may receive information or submissions in the form of oral or written statements, and
  - (d) may consult with such persons as it thinks fit.
- (2) The Tribunal may, but is not required to, hold hearings or public seminars, conduct workshops and establish working groups and task forces for the purposes of an investigation.
- (3) The Tribunal must consult with standard retail suppliers in an investigation.
- (4) If the Tribunal holds hearings, it must give reasonable notice, by advertisement published in a newspaper circulating in the State, of the hearings.
- (5) The Tribunal may call for written submissions and may specify a time and date by which those submissions must be made. The Tribunal may extend the time for the making of submissions.
- (6) A hearing may be held in public or in private, at the discretion of the Tribunal, and may be conducted as determined by the Tribunal.

**43EF Provision of information, documents and evidence**

- (1) For the purposes of an investigation and report, the Chairperson of the Tribunal may, by notice in writing served on an officer of a standard retail supplier or any other person, require the officer or person to do any one or more of the following:
- (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,
  - (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,
  - (c) to attend a meeting or hearing of the Tribunal to give evidence.

- (2) If documents are given to the Tribunal under this section, the Tribunal:
  - (a) may take possession of, and make copies of or take extracts from, the documents, and
  - (b) may keep possession of the documents for such period as is necessary for the purposes of the investigation to which they relate, and
  - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.
- (3) It is a condition of a licence held by a standard retail supplier that the standard retail supplier must comply with a requirement made by the Tribunal under this section.

#### **43EG Confidential information**

- (1) If a person provides information (**protected information**) to the Tribunal for the purposes of an investigation on the understanding that the information is confidential and will not be divulged, the Tribunal is required to ensure that the information is not divulged by it to any person, except:
  - (a) with the consent of the person who provided the information, or
  - (b) to the extent that the Tribunal is satisfied that the information is not confidential in nature, or
  - (c) to a member or officer of the Tribunal.
- (2) If the Tribunal is satisfied that protected information provided to the Tribunal by a person needs to be divulged for the purposes of its report, and the exceptions in subsection (1) (a)–(c) are not applicable, the Tribunal may notify the person that the Tribunal proposes to divulge the information in its report after a specified period.
- (3) After the specified period, and despite subsection (1), the Tribunal may divulge the information in its report.
- (4) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any information provided to it in connection with its functions under this Division, it may give directions prohibiting or restricting the divulging of the information.
- (5) A person must not contravene a direction given under subsection (4).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (6) A reference in this section to information includes information given at a meeting or hearing of the Tribunal and information contained in any documents given to the Tribunal.



### **43EH Offences**

- (1) A person must not, without reasonable excuse:
  - (a) refuse or fail to comply with a notice served under this Division, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting or hearing before the Tribunal under this Division.
- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
  - (a) give to the Tribunal, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact), or
  - (b) at a meeting of or hearing before the Tribunal, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions for the purposes of this Division as Chairperson or other member.
- (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

### **43EI Cabinet documents and proceedings**

- (1) This Division does not enable the Tribunal:
  - (a) to require any person to give any statement of information or answer any question that relates to confidential proceedings of Cabinet, or
  - (b) to require any person to produce a Cabinet document, or
  - (c) to inspect a Cabinet document.
- (2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.
- (3) In this section:

**Cabinet** includes a committee of Cabinet or a subcommittee of such a committee.

**Cabinet document** means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the [Freedom of Information Act 1989](#).

#### **43EJ Division to cease to have effect**

- (1) This Division ceases to have effect on 30 June 2004 or on such earlier or later day as may be prescribed by the regulations.

**Editorial note—**

This Division ceases to have effect on 30.6.2013. See clause 121A of the [Electricity Supply \(General\) Regulation 2001](#).

- (2) Regulations containing provisions of a savings or transitional nature may be made consequent on the operation of subsection (1).

### **Division 6 Regulated retail tariffs equalisation**

#### **43EK Objects of Division**

The objects of this Division are to provide for the establishment, operation and management of a fund, to be known as the Electricity Tariff Equalisation Fund, so as:

- (a) to maintain the ability of standard retail suppliers to supply electricity at regulated retail tariffs, and
- (b) to be transparent in its operation, and
- (c) to manage the wholesale purchase cost risk borne by standard retail suppliers required to supply electricity at regulated retail tariffs, and
- (d) to minimise any competitive advantage or disadvantage to those standard retail suppliers resulting from the requirement to supply electricity at regulated retail tariffs.

#### **43EL Definitions**

In this Division:

**electricity generator** means a corporation whose corporate name is listed in Part 1 of Schedule 1 to the [Energy Services Corporations Act 1995](#).

**Fund** means the Electricity Tariff Equalisation Fund established under section 43EN.

**Ministerial Corporation** means the Electricity Tariff Equalisation Ministerial Corporation constituted by section 43EM.

**rule** means a rule approved under section 43EO.

**Snowy Hydro Limited** means the Snowy Hydro Limited, as referred to in section 4 of the [Snowy Hydro Corporatisation Act 1997](#).

**43EM Electricity Tariff Equalisation Ministerial Corporation**

- (1) There is constituted by this section a corporation with the corporate name of the Electricity Tariff Equalisation Ministerial Corporation.
- (2) The Ministerial Corporation has the following functions:
  - (a) the function of administering and controlling the Fund,
  - (b) without limiting paragraph (a), the function of administering the rules,
  - (c) the function of requiring the provision of information under sections 43EP and 43EQ,
  - (d) such other functions as are conferred on it by or under this or any other Act.
- (3) The affairs of the Ministerial Corporation are to be managed by the Treasurer.
- (4) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Treasurer, or with the authority of the Treasurer, is taken to have been done by the Corporation.
- (5) The Ministerial Corporation may not enter into a contract or arrangement that enables any of the following persons to carry out any of its functions relating to the Fund:
  - (a) the holder of a retail supplier's licence,
  - (b) an electricity generator,
  - (c) the holder of a distribution network service provider's licence,
  - (d) a person or class of persons prescribed by the regulations.
- (6) The Ministerial Corporation is, for the purposes of any Act, a statutory body representing the Crown.
- (7) The Ministerial Corporation may arrange for the use of the services of any staff or facilities of any government department or public or local authority.

**43EN Electricity Tariff Equalisation Fund**

- (1) There is established by this section an Electricity Tariff Equalisation Fund.
- (2) There is payable into the Fund:
  - (a) all money payable to the Fund under the rules, and
  - (b) all interest received in respect of the investment of the Fund, and
  - (c) all money required or permitted to be paid into the Fund by or under this or any other Act.

- (3) There is payable from the Fund:
- (a) all money payable from the Fund under the rules, and
  - (b) all money required to meet administrative expenses related to the Fund or the Ministerial Corporation, and
  - (c) all money required or permitted to be paid from the Fund by or under this or any other Act.
- (4) Despite the *Public Authorities (Financial Arrangements) Act 1987*, the Fund may not be used to effect a financial adjustment (within the meaning of that Act) related to electricity or the electricity industry.

**43EO Rules for payments to and from Fund**

- (1) The Treasurer, after consulting with the Minister, may approve rules for or with respect to payments to and from the Fund.
- (2) The rules may make provision for or with respect to the following matters:
- (a) payments to the Fund by standard retail suppliers,
  - (b) payments to standard retail suppliers from the Fund,
  - (c) payments to the Fund by electricity generators,
  - (d) payments to the Fund by Snowy Hydro Limited,
  - (e) payments to electricity generators from the Fund,
  - (f) payments to the Consolidated Fund from the Fund,
  - (g) payments to standard retail suppliers for reimbursement of costs payable by them under section 87A for audits by the Tribunal under section 87 (1A),
  - (h) the times at which, and manner in which, payments are to be made,
  - (i) the determination of payment amounts,
  - (j) the circumstances in which payments to or from the Fund are to be made by or to standard retail suppliers, electricity generators or the Consolidated Fund, having regard to the following matters:
    - (i) the wholesale costs of electricity to standard retail suppliers,
    - (ii) the level of regulated retail tariffs payable by small retail customers in comparison with those wholesale costs,
    - (iii) the general level of the Fund,

- (k) matters ancillary to or consequential on the matters set out in paragraphs (a)-(j).
- (3) For the purposes of the determination of payment amounts and other matters related to the administration of the rules, the rules may require a standard retail supplier or an electricity generator to provide to the Ministerial Corporation information, or access to information.
- (4) A rule with respect to the payment to the Fund of amounts by Snowy Hydro Limited may provide for the payment of an annual amount, to be deducted from the dividend payable to the eligible Ministers who hold Snowy Hydro Limited shares for and on behalf of the State of New South Wales, before the payment of that dividend to the Consolidated Fund.
- (5) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.
- (6) 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 any matter or thing to be from time to time determined, applied or regulated by any specified person or body.
- (7) The Treasurer, after consulting with the Minister, may from time to time approve amendments to the rules or the revocation of rules.
- (8) If a rule, or a rule amending or revoking a rule, is approved by the Treasurer:
- (a) written notice of the approval of the rule must be published in the Gazette, and
  - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
  - (c) the Ministerial Corporation must give a copy of the rule to each standard retail supplier and electricity generator.
- (9) A copy of the rules approved under this section, as in force for the time being, is to be published on the Government's Internet web page.

#### **43EP Obligations of standard retail suppliers**

- (1) A standard retail supplier must, in accordance with the rules, make payments to the Fund.
- (2) A standard retail supplier must, in accordance with the rules, provide such

information, or access to such information, as is required by the rules.

(3) A standard retail supplier must provide such information as is requested by the Ministerial Corporation for the purposes of the administration of the Fund and the rules.

(4) A standard retail supplier that refuses or fails to comply with subsection (1), (2) or (3) is guilty of an offence.

Maximum penalty: 1,000 penalty units.

(5) A standard retail supplier must not:

(a) give information for the purposes of the rules knowing that it is false or misleading in a material particular, or

(b) give to the Ministerial Corporation information knowing that it is false or misleading in a material particular.

Maximum penalty: 1,000 penalty units.

(6) This section has effect despite the provisions of any other Act or instrument.

#### **43EQ Obligations of electricity generators**

(1) An electricity generator must, in accordance with the rules, make payments to the Fund.

(2) An electricity generator must, in accordance with the rules, provide such information, or access to such information, as is required by the rules.

(3) An electricity generator must provide such information as is requested by the Ministerial Corporation for the purposes of the administration of the Fund and the rules.

(4) An electricity generator that refuses or fails to comply with subsection (1), (2) or (3) is guilty of an offence.

Maximum penalty: 1,000 penalty units.

(5) An electricity generator must not:

(a) give information for the purposes of the rules knowing that it is false or misleading in a material particular, or

(b) give to the Ministerial Corporation information knowing that it is false or misleading in a material particular.

Maximum penalty: 1,000 penalty units.

(6) This section has effect despite the provisions of any other Act or instrument.

#### **43ER Licence conditions relating to Fund**

It is a condition of a licence held by a standard retail supplier that:

- (a) the standard retail supplier must make payments to the Fund in accordance with the rules, and
- (b) the standard retail supplier must provide information, or access to information, in accordance with the rules, and
- (c) the standard retail supplier must provide such information as is requested by the Ministerial Corporation for the purposes of the administration of the Fund and the rules applying to payments to and from that Fund.

#### **43ES Division to cease to have effect**

- (1) This Division ceases to have effect on 30 June 2004 or on such earlier or later day as may be prescribed by the regulations.

**Editorial note—**

This Division ceases to have effect on 30.6.2011. See clause 121A of the [Electricity Supply \(General\) Regulation 2001](#).

- (2) Regulations containing provisions of a savings or transitional nature may be made consequent on the operation of subsection (1).

## **Part 4A Electricity supply by transmission operators to direct customers**

### **Division 1 Levy**

#### **43F Definitions**

In this Division:

**direct customer** of a transmission operator means a person (other than the holder of a distribution network service provider's licence or a generator but only in so far as the person acts in the capacity of the holder of a distribution network service provider's licence or a generator):

- (a) who is connected to the network otherwise than by means of the distribution system of the holder of a distribution network service provider's licence, and
- (b) who is in New South Wales.

**generator** means a person who owns, controls or operates a generator of electricity that supplies electricity to a network.

**network income** of a transmission operator means the income derived by the transmission operator from the use of the electricity network in the provision of electricity network services by the transmission operator with respect to the supply of electricity to its direct customers.

**43G Transmission operator's levy**

- (1) A transmission operator must pay to the Treasurer, in respect of each financial year, the levy determined in respect of that year by order of the Governor, on the recommendation of the Treasurer, applying to the transmission operator and published in the Gazette.
- (2) The Treasurer, in recommending the amount of a levy for a financial year payable by a transmission operator, must be satisfied that the amount reasonably represents the amount by which the network income (as estimated by the Treasurer) of the transmission operator in that year is likely to exceed the sum of the amounts (as estimated by the Treasurer) to be:
  - (a) the costs of deriving the income, and
  - (b) the taxes payable in deriving that income, and
  - (c) a reasonable return on the capital of the transmission operator used in deriving that income,having regard to:
  - (d) the likely consumption of electricity in that financial year by its direct customers, and
  - (e) such other matters as the Treasurer determines after consultation with the transmission operator.
- (3) The levy is payable for the financial year commencing on 1 July 1998 and later financial years.
- (4) Despite the other provisions of this section, no levy is to be determined in respect of the year commencing on 1 July 2001, or any subsequent year, unless the Treasurer, by order published in the Gazette, approves the determination of a levy.
- (5) An approval of the Treasurer under subsection (4):
  - (a) must be published in the Gazette before the beginning of a year to which it applies, and
  - (b) may apply to one or more years as specified or described in the approval.



#### **43H Variation of levy**

- (1) The amount of a levy payable by a transmission operator in respect of a financial year may be varied by order of the Governor applying to the transmission operator and published in the Gazette.
- (2) Such an order may be made before or during the financial year concerned or during the following financial year, but not later.
- (3) The Treasurer, in recommending a variation of a levy for a financial year payable by a transmission operator, must be satisfied of the matters referred to in section 43G (2).

#### **43I Becoming a transmission operator during a year**

- (1) If a person becomes a transmission operator during a financial year, a levy may be determined under this Division for the transmission operator in respect of the remaining part of that financial year.
- (2) The other sections of this Division apply to the transmission operator in respect of that financial year as if references in those sections to a financial year were references to the remaining part of that financial year.

#### **43J Ceasing to be a transmission operator during a year**

- (1) If a person ceases to be a transmission operator during a financial year, the amount of levy payable by the transmission operator may be adjusted by order of the Governor, applying to the transmission operator and published in the Gazette, having regard to the length of the portion of that financial year during which the person was a transmission operator.
- (2) Such a person is entitled to a refund of any money paid in excess of the amount of the levy as so adjusted.
- (3) However, a person does not, by ceasing to be a transmission operator, cease to be liable to a levy, or to a variation of a levy under section 43H, in respect of any period during which the person was a transmission operator.
- (4) Accordingly, a reference in this Division to a transmission operator includes a reference to a former transmission operator, but without making the former transmission operator liable to a levy in respect to any period after the person ceased to be a transmission operator.
- (5) The other sections of this Division apply for the purpose of calculating an adjustment referred to in subsection (1) or a variation referred to in subsection (3) as if references in those sections to a financial year were references to the portion of the financial year during which the person was a transmission operator.

#### **43K Payment and recovery of levy**

- (1) The levy in respect of a financial year is payable at such times (whether during or after that year) and in such manner as are:
  - (a) determined in the order imposing, varying or adjusting it (subject to any agreement referred to in paragraph (b)), or
  - (b) agreed on between the Treasurer and the transmission operator.
- (2) A levy under this Division is recoverable as a debt due to the Crown in any court of competent jurisdiction.

#### **43L Operation of Division**

Nothing in this Division affects the operation of section 59B of the *Public Finance and Audit Act 1983*.

### **Division 2 Pricing of electricity**

#### **43M Definitions**

In this Division:

**direct customer** of a transmission operator has the same meaning as in Division 1.

**electricity network pricing determination** means a determination of the transmission network service pricing in accordance with the *National Electricity Code* for the provision of electricity network services by a transmission operator.

#### **43N Pricing of electricity for direct customers**

- (1) The price for electricity network services that are the subject of an electricity network pricing determination and that are provided by a transmission operator with respect to the supply of electricity to its direct customers is increased by an amount determined by an order made by the Governor on the recommendation of the Treasurer and published in the Gazette that does not exceed 0.550 cents per kilowatt hour of the electricity supplied.
- (2) An electricity network pricing determination increased in accordance with this section has effect under the *National Electricity Code* as if the determination included the increase.
- (3) An electricity network pricing determination that includes an amount determined by an order made as referred to in subsection (1) is not to be further increased in accordance with this section.

### **430 Returns**

- (1) A transmission operator is, within such periods as are specified or described from time to time by the Treasurer by notice to the transmission operator or by notice published in the Gazette, required to furnish to the Treasurer a return setting out:
  - (a) such information relating to forecast and actual consumption of electricity by its direct customers as is specified or described in such a notice, and
  - (b) such other information as is specified or described in such a notice, being information that is relevant to the transmission operator's obligations under this Division.
- (2) The information in such a return is to be furnished in such manner and form as is specified or described in such a notice.
- (3) The Treasurer may, by notice to the transmission operator by notice published in the Gazette, require supplementary or further information from the transmission operator at any time.

### **43P Operation of Division**

- (1) The regulations may make provision for or with respect to phasing in the increase effected by section 43N (1) in relation to any class or classes of persons in cases where it is not practicable to ascertain the exact amount of electricity supplied for any period commencing with the commencement of this section.
- (2) This Division does not apply to electricity network services:
  - (a) provided to a person under a contract:
    - (i) that was entered into between a transmission operator and a direct customer before the commencement of this section, and
    - (ii) that contains a provision in force before that commencement that expressly precludes payment of additional charges for electricity network services provided under it, or
  - (b) provided to a person under a connection agreement that is entered into between a transmission operator and a person pursuant to an arrangement, being an arrangement:
    - (i) that was entered into between the transmission operator and the person before the commencement of this section, and
    - (ii) that contains a provision that expressly precludes payment of additional charges for electricity services provided under the connection agreement.
- (3) This Division does not apply in relation to electricity network services provided during

any period specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette.

- (4) This Division does not apply in relation to electricity network services provided to persons of a class specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette.
- (4A) This Division does not apply to distribution services within the meaning of the *National Electricity Code* that are regulated under Chapters 6 and 9 of that Code.
- (5) Nothing in this Division gives rise to any rights that are justiciable by a person to whom electricity network services are provided by a transmission operator or to any grounds that constitute a defence to proceedings for the recovery of any amount from such a person.

## **Part 5 Powers and duties of network operators and retail suppliers**

### **Division 1 Acquisition of land**

#### **44 Acquisition of land**

- (1) A network operator may acquire land (including an interest in land) for the purpose of exercising its functions under this or any other Act or law.
- (2) Land that a network operator is authorised to acquire under this section may be acquired by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) for the purposes of this Act.
- (3) A network operator may not give a proposed acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) without the approval of the Minister.
- (4) This section authorises a network operator that is an energy transmission operator within the meaning of the [Energy Services Corporations Act 1995](#) to acquire land by agreement or compulsorily for the purposes of the exercise of its principal functions under section 6C of that Act (whether or not the land acquired may also be used for the purposes of the telecommunications function within the meaning of that section). It does not authorise a network operator to acquire land compulsorily solely for the purposes of the exercise of the telecommunications function.

### **Division 2 Powers and duties relating to electricity works**

#### **45 Erection and placement of electricity works**

- (1) This section applies to work connected with the erection, installation, extension, alteration, maintenance and removal of electricity works.
- (2) For the purpose of exercising its functions under this or any other Act or law, a network operator:

- (a) may carry out work to which this section applies, and
  - (b) in particular, may carry out any such work on a public road or public reserve.
- (3) Work to which this section applies is exempt from the requirement for an approval under the *Local Government Act 1993* except in relation to buildings.
- (4) However, no such work (other than routine repairs or maintenance work) may be carried out unless:
- (a) notice of the proposal to carry out the work has been given to the local council, and
  - (b) the local council has been given a reasonable opportunity (being not less than 40 days from the date on which the notice was given) to make submissions to the network operator in relation to the proposal, and
  - (c) the network operator has given due consideration to any submissions so made.
- (5) Subsection (4) does not apply to the carrying out of work to cope with emergencies.

#### **46 Damage to be made good**

- (1) If a public road or public reserve is damaged by any work carried out by a network operator, the local council or roads authority may require the network operator to make good the damage without delay.
- (2) If the network operator fails to carry out appropriate work in accordance with any such requirement, the local council or roads authority may carry out the work itself.
- (3) The cost of carrying out the work may be recovered by the local council or roads authority in a court of competent jurisdiction as a debt owed to it by the network operator.

#### **47 Altering position of conduit**

- (1) A network operator may serve a written notice on a person if:
  - (a) the network operator needs an alteration to be made in the position of a conduit owned by the person, and
  - (b) the alteration would not permanently damage the conduit or adversely affect its operation.
- (2) The notice:
  - (a) must specify the work to be carried out, and
  - (b) must specify a reasonable time within which the work is to be carried out, and

(c) must include an undertaking by the network operator to pay the reasonable cost of carrying out the work.

(3) If the work is not carried out as required by the notice, the network operator may carry out the work in a manner that does not permanently damage the conduit or adversely affect its operation.

(4) In this section, **conduit** means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

#### **48 Interference with electricity works by trees**

(1) This section applies if a network operator has reasonable cause to believe that a tree situated on any premises:

(a) could destroy, damage or interfere with its electricity works, or

(b) could make its electricity works become a potential cause of bush fire or a potential risk to public safety.

(2) In those circumstances, a network operator:

(a) may serve a written notice on the owner or occupier of the premises requiring the owner to trim or remove the tree, or

(b) in an emergency, may, at its own expense, trim or remove the tree itself.

(3) A notice under subsection (2) (a):

(a) must specify the work to be carried out, and

(b) must specify a reasonable time within which the work is to be carried out, and

(c) must include an undertaking by the network operator to pay the reasonable cost of carrying out the work.

(4) Subsection (3) (c) does not apply in either of the following circumstances:

(a) if, after the electricity works were first laid or installed, an owner or occupier of the premises planted the tree, or caused or permitted the tree to be planted, in circumstances in which the owner or occupier ought reasonably to have known that destruction of, damage to or interference with the works would result,

(b) the land in or on which the tree is located, and on or over which the works are located, was the subject of an easement in favour of the network operator (or a predecessor of the network operator) when the tree was planted.

(5) If the work is not carried out as required by the notice, the network operator may

carry out the work itself.

- (6) The cost of carrying out the work may be recovered by the network operator in a court of competent jurisdiction as a debt owed to it by the owner of the premises on which the tree is situated, but only in the circumstances referred to in subsection (4).
- (7) This section applies despite the existence of a tree preservation order or environmental planning instrument (other than a State environmental planning policy), but does not apply to any tree within a protected area or to any tree that is the subject of or is within an area that is the subject of:
  - (a) an interim heritage order, or a listing on the State Heritage Register, under the *Heritage Act 1977*, or
  - (b) an order in force under section 136 of the *Heritage Act 1977*, or
  - (c) an interim protection order under the *National Parks and Wildlife Act 1974*, or
  - (d) a protection conferred by any similar law.
- (8) Nothing done for the purpose of carrying out the work required by a notice under this section constitutes an offence against any law under which a tree preservation order or environmental planning instrument (other than a State environmental planning policy) relating to the land is made.
- (9) In this section:

**protected area** means an area that is within:

  - (a) a national park or nature reserve within the meaning of the *National Parks and Wildlife Act 1974*, or
  - (b) land that is reserved or zoned for environmental protection purposes under the *Environmental Planning and Assessment Act 1979*, or
  - (c) a public reserve within the meaning of the *Local Government Act 1993*.

**tree** includes shrub and plant.

#### **49 Obstruction of electricity works**

- (1) This section applies if a network operator has reasonable cause to believe that any structure or thing situated in, on or near its electricity works:
  - (a) could destroy, damage or interfere with those works, or
  - (b) could make those works become a potential cause of bush fire or a potential risk to public safety.
- (2) In those circumstances, a network operator:

- (a) may serve a written notice on the person having control of the structure or thing requiring that person to modify or remove it, or
  - (b) in an emergency, may, at its own expense, modify or remove the structure or thing itself.
- (3) A notice under subsection (2) (a):
- (a) must specify the work to be carried out, and
  - (b) must specify a reasonable time within which the work is to be carried out.
- (4) If the person fails to carry out the work in accordance with the requirement, the network operator may carry out the work itself.
- (5) The costs of:
- (a) carrying out the work, and
  - (b) repairing any damage done to the network operator's electricity works by the structure or thing,
- may be recovered by the network operator in a court of competent jurisdiction as a debt owed to it by the person.
- (6) A network operator may apply for an injunction to prevent a structure or thing being placed in, on or near its electricity works.
- (7) A network operator may take action under this section even if the person having control of the structure or thing owns or occupies the land in, on or over which the network operator's electricity works are situated.
- (8) Subsection (5) does not enable the network operator to recover any costs referred to in that subsection from a person referred to in subsection (7):
- (a) where the electricity works are works to which section 53 applies, if the structure or thing had been lawfully placed in its present position:
    - (i) before the commencement of the *Electricity Supply Amendment (Protection of Electricity Works) Act 2006*, or
    - (ii) after the commencement of that Act, but with the agreement of the network operator, or
  - (b) in any other case, if the existence of the structure or thing in its present position does not contravene the terms of any easement, agreement or other authority that supports the presence of the electricity works in, on or over the land.
- (9) In the circumstances referred to in subsection (8):



- (a) the costs referred to in subsection (5) are to be borne by the network operator, and
- (b) the network operator is liable to the owner of the structure or thing for any loss or damage suffered by the owner as a consequence of the work referred to in subsection (4).

#### **50 Charges for placement of electricity works**

No annual or other periodic or special charge is payable by a network operator to a local council or roads authority in respect of any electricity works located in a public reserve or public road or in respect of the space in a public reserve or public road that is occupied by any such works.

#### **51 Ownership of electricity works**

- (1) A network operator or retail supplier is the owner of its electricity works, whether or not the land in, on or over which they are situated is owned by the network operator or retail supplier.
- (2) A network operator's or retail supplier's electricity works are not to be taken in execution of any judgment against a person other than the network operator or retail supplier under any process of a court.
- (3) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

#### **52 Interruption to electricity supply for maintenance**

A network operator or retail supplier may interrupt the supply of electricity to a customer, at such reasonable times as the network operator or retail supplier determines:

- (a) for the purpose of inspecting, testing or carrying out repairs or maintenance work on its electricity works, or
- (b) for such other purpose as the network operator or retail supplier considers necessary for the safe and efficient operation of its electricity works.

#### **53 Protection of certain electricity works**

- (1) This section applies to all electricity works that, immediately before the commencement of the *Electricity Supply Amendment (Protection of Electricity Works) Act 2006*, were situated in, on or over land not owned by the network operator having control of those works, whether or not their presence, operation or use is supported by an agreement or other authority:
  - (a) including any electricity works that, since that commencement, have been erected or installed on the same site for the purpose of repairing, replacing, modifying or upgrading those works, and

(b) excluding any electricity works whose presence in, on or over the land is supported by a registered easement in favour of the network operator.

(2) No action by the owner or occupier of the land lies against the network operator by reason of:

(a) the presence in, on or over the land of electricity works to which this section applies, or

(b) the operation or use of electricity works to which this section applies that are present in, on or over the land,

and, as between the owner or occupier of the land and the network operator, the presence of those works, and their operation and use, are taken to be lawful for all purposes.

(3) Nothing in subsection (2) relieves a person from any civil liability for negligence (as defined by section 5 of the *Civil Liability Act 2002*) to which the person becomes subject as a consequence of the way in which any electricity works to which this section applies are operated or used, are maintained, repaired, replaced, modified or upgraded or are removed.

(4) In this section, **registered easement** means an easement that is registered:

(a) in the Register kept under the *Real Property Act 1900*, in the case of land under the provisions of that Act, or

(b) in the General Register of Deeds kept under the *Conveyancing Act 1919*, in the case of any other land.

(5) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

## Division 3 Powers of entry

### 54 Powers of entry

(1) An authorised officer of a network operator may enter any premises for the purpose of exercising any function conferred or imposed on a network operator by or under this or any other Act or law, including:

(a) carrying out preliminary investigations in connection with the proposed installation or extension of electricity works, or

(b) installing, extending, maintaining, repairing or removing electricity works, or

(c) reading electricity meters, or

(d) checking if the network operator's conditions relating to tariffs and the use of

electricity are being complied with, or

- (e) ascertaining whether an offence against this Act or the regulations has been committed, or
- (f) inspecting or disconnecting an electrical installation that the network operator is required or permitted to inspect or disconnect by or under this or any other Act or law.

(1A) An authorised officer of a retail supplier may enter the premises of a customer for the following purposes in respect of electricity works prescribed by the regulations:

- (a) carrying out preliminary investigations in connection with the proposed installation or extension of electricity works,
- (b) installing, extending, maintaining, repairing or removing electricity works,
- (c) reading electricity meters,
- (d) checking if the retail supplier's conditions relating to tariffs and the use of electricity are being complied with,
- (e) ascertaining whether an offence against this Act or the regulations has been committed.

(2) Except in emergencies, a power of entry may be exercised only during daylight hours.

## **55 Notice of entry**

- (1) Before an authorised officer of a network operator or retail supplier exercises a power of entry under this Division, the network operator or retail supplier concerned must give the owner or occupier of the land written notice of the intention to enter the land.
- (2) The notice must specify the day on which the authorised officer intends to enter the land and must be given before that day.
- (3) This section does not require notice to be given:
  - (a) if entry to the land is made with the consent of the owner or occupier of the land, or
  - (b) if entry is required for the sole purpose of reading an electricity meter, or
  - (c) if entry is required in an emergency.

## **56 Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any land (other than such part of a building as is being used for residential purposes) under a power conferred by this Division, but only if authorised by the network operator or retail

supplier concerned in accordance with this section.

(2) The authority:

- (a) must be in writing, and
- (b) must be given in respect of the particular entry concerned, and
- (c) must specify the circumstances that must exist before force may be used.

#### **57 Notification of use of force or urgent entry**

(1) An authorised officer:

- (a) who uses force for the purpose of gaining entry to land, or
- (b) who enters land in an emergency without giving written notice to the owner or occupier of the land,

must promptly advise the network operator or retail supplier concerned of that fact.

(2) The network operator or retail supplier must give notice of the entry to such persons or authorities as appear to the network operator or retail supplier to be appropriate in the circumstances.

#### **58 Care to be taken**

- (1) In the exercise of a power under this Division, an authorised officer must do as little damage as possible.
- (2) As far as practicable, entry onto fenced land is to be made through an existing opening in the enclosing fence or, if entry through an existing opening is not practicable, through a new opening.
- (3) Any new opening is to be properly closed when the need for entry ceases.
- (4) If, in the exercise of a power under this Division, any pit, trench, hole or bore is made, the network operator or retail supplier concerned must, if the owner or occupier of the land so requires:
  - (a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down, and
  - (b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

#### **59 Recovery of cost of entry and inspection**

If an authorised officer enters any land for the purpose of making an inspection and, as a result of the inspection, the network operator or retail supplier concerned requires any work to be carried out on the land, the network operator or retail supplier may recover the

reasonable costs of the entry and inspection from the owner or occupier of the land.

## **60 Compensation**

The network operator or retail supplier concerned must pay compensation to the owner or occupier of any land in respect of which a power has been exercised under this Division for any loss or damage arising from the exercise of the power, but is not so liable to the extent to which the loss or damage arises from work done for the purposes of an inspection which reveals that there has been a contravention by the owner or occupier, as the case requires, of any provision of this Act or the regulations.

## **61 Certificates of authority to enter land**

- (1) A power of entry under this Division may not be exercised by an authorised officer unless the authorised officer:
  - (a) is in possession of a certificate of authority issued by the network operator or retail supplier concerned, and
  - (b) produces the certificate when required to do so by the owner or occupier of the land.
- (2) The certificate of authority:
  - (a) must state that it is issued under this Act, and
  - (b) must give the name of the person to whom it is issued, and
  - (c) must describe the nature of the powers conferred and the source of those powers, and
  - (d) must state the date (if any) on which it expires, and
  - (e) must describe the kind of land to which the power extends, and
  - (f) must be under the seal of the network operator or retail supplier or must bear the signature of the principal officer of the network operator or retail supplier, of a prescribed officer of the network operator or retail supplier or of an officer belonging to a prescribed class of officers of the network operator or retail supplier.

## **62 Entry to residential premises**

A power of entry conferred by this Division is not exercisable in relation to such part of a building as is used for residential purposes except:

- (a) with the consent of the occupier of that part of the premises, or
- (b) for the sole purpose of reading an electricity meter, or

(c) under the authority conferred by a warrant of entry.

### **63 Warrants of entry**

- (1) A network operator or retail supplier may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* if it is of the opinion that it is necessary for an authorised officer within the meaning of this Act to enter and inspect any land (including any building used for residential purposes) for the purposes of this Act.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant of entry authorising an authorised officer named in the warrant to enter and inspect the land for the purposes of this Act.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a warrant of entry under this section in the same way as it applies to a search warrant under that Act.
- (4) (Repealed)

### **63A Other powers of entry unaffected**

This Division does not apply to any power of entry that an authorised officer has apart from this Division, such as a power arising under a customer connection contract or customer supply contract.

## **Part 5A Market operations**

### **63B Definition**

In this Part:

**market operations rule** means a rule approved under section 63C.

### **63C Market operations rules**

- (1) The Minister may approve rules for or with respect to the following matters:
  - (a) obligations to enter into, and the form and content of, agreements between distribution network service providers and retail suppliers for the use by retail suppliers of the distribution network service providers' distribution systems,
  - (b) procedures for measuring electricity consumption of customers,
  - (c) procedures for processing customers' electricity consumption data for the purposes of the *National Electricity Code*,

- (d) provision of services and equipment relating to the measurement and control of customers' electricity consumption and persons who may or may not provide such services,
  - (e) requirements for equipment used to measure and control customers' electricity consumption,
  - (f) the circumstances in which ownership of any such equipment may be transferred and the procedures for the transfer,
  - (g) the making of arrangements on behalf of customers for the provision of customer connection services,
  - (h) the circumstances in which customers may be transferred between retail suppliers and the procedures for the transfer, including procedures relating to consent of and notice to customers and determination of time of transfer and costs as at transfer,
  - (i) any other matter prescribed by the regulations,
  - (j) matters ancillary to or consequential on the matters set out in paragraphs (a)-(i).
- (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.
- (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 any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.
- (4) The Minister may from time to time approve amendments to the rules or the revocation of rules.
- (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:
- (a) written notice of the approval of the rule must be published in the Gazette, and
  - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
  - (c) the Minister must make available a copy of the rule to each retail supplier or distribution network service provider.

- (6) A rule must be consistent with this Act and the regulations. A rule is unenforceable to the extent of any such inconsistency.
- (7) Subject to subsection (6), a rule may be approved for the purposes of both this Act and any other Act or law.

### **63D Obligations under rules**

- (1) A person must not contravene the market operations rules.  
Maximum penalty: 200 penalty units.
- (2) It is a condition of a retail supplier's licence that the retail supplier must comply with the market operations rules.
- (3) It is a condition of a distribution network service provider's licence that the distribution network service provider must comply with the market operations rules.
- (4) Subsection (1) does not apply to a person in the person's capacity as a customer of a retail supplier.

### **63E Metrology co-ordinator**

The regulations may make provision for or with respect to the following matters:

- (a) the appointment by the Minister of a metrology co-ordinator for the purposes of this Act, the market operations rules and the *National Electricity (NSW) Law*,
- (b) the functions of the metrology co-ordinator,
- (c) the terms and conditions of appointment of the metrology co-ordinator,
- (d) the termination of the appointment of the metrology co-ordinator.

## **Part 5B Marketing of electricity**

### **63F Definitions**

In this Part:

***electricity marketer*** means any of the following persons:

- (a) a person who is a retail supplier,
- (b) a person who acts as agent of a retail supplier for the purposes of obtaining new customers, or retaining existing customers, for the retail supplier,
- (c) a person who acts as agent of one or more customers in respect of the retail supply of electricity,
- (d) a person who acts as an intermediary in any other capacity between one or more



customers and a retail supplier in respect of the retail supply of electricity,

- (e) a person who engages in or carries on any other activity relating to electricity or the electricity industry prescribed by the regulations for the purposes of this definition.

**Marketing Code of Conduct** means the code of conduct approved by the Minister under section 63G.

### **63G Marketing Code of Conduct**

- (1) The Minister may approve a code of conduct as the Marketing Code of Conduct for the purposes of this Part.
- (2) An approval may be revoked.
- (3) If a Marketing Code of Conduct is approved by the Minister:
  - (a) the Code must be published in the Gazette, and
  - (b) the Code takes effect on the day on which it is so published or, if a later day is specified in the Code for commencement, on the later day so specified.
- (4) Subject to this section, the same code of conduct may be approved for the purposes of both this Act and any other Act or law.

#### **Editorial note—**

For approvals or revocations under this section see Gazette No 92 of 31.5.2002, p 3449.

### **63H Obligations under Marketing Code of Conduct**

An electricity marketer that contravenes a requirement of the Marketing Code of Conduct in relation to a small retail customer is guilty of an offence.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **63I Licence conditions relating to marketing activities relating to small retail customers**

It is a condition of a retail supplier's licence that:

- (a) the retail supplier must comply with the Marketing Code of Conduct, and
- (b) before entering into a negotiated customer supply contract with a small retail customer introduced to the retail supplier by an electricity marketer, or that is arranged or facilitated by an electricity marketer, the retail supplier must be satisfied that the electricity marketer has complied with the Marketing Code of Conduct (including any requirements relating to the customer's consent).

### **63J Non-licensed electricity marketers to provide statements**

- (1) An electricity marketer (other than the holder of a retail supplier's licence) must, if the marketer introduces a small retail customer to a retail supplier, or arranges or facilitates a customer supply contract between any such customer and a retail supplier, give to the retail supplier a written statement to the effect that the electricity marketer has complied with the Marketing Code of Conduct with respect to the customer (including any requirements relating to the customer's consent).
- (2) An electricity marketer must not give to a retail supplier a statement under this section knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

## **Part 5C Removal of electricity structures**

### **63K Director-General may direct distribution network service provider to remove structure**

- (1) The Director-General may, by notice in writing served on a distribution network service provider, direct the service provider to remove or relocate an electricity structure specified in the notice if:
  - (a) the structure is erected within the service provider's distribution district, and
  - (b) the structure is on or adjacent to a public road that is:
    - (i) a traffic route, or
    - (ii) a public road that the Director-General has, for the purpose of traffic safety and having regard to the volume and nature of the vehicular traffic carried on it, determined requires the removal or relocation of the structure.
- (2) A distribution network service provider must comply with a notice served on it under subsection (1).
- (3) In this section:

**electricity structure** means any structure erected or maintained by a distribution network service provider for the purpose of the transmission or distribution of electricity or for the purpose of public lighting.

## **Part 5D Electricity safety**

### **Division 1 General**

#### **63L Interpretation**

- (1) For the purposes of this Part, **place** includes land (whether or not covered with water),

premises, buildings and other structures.

- (2) For the purposes of this Part, a person or thing is ***in a place*** if the person or thing is located in, on, over or under the place.

## **Division 2 Inspectors**

### **63M Inspectors**

- (1) The Director-General may appoint any person as an inspector for the purposes of any or all of the provisions of this Act or the regulations.
- (2) The Director-General may at any time and for any reason revoke a person's appointment under subsection (1).
- (3) An inspector is to be provided by the Director-General with a certificate of identification.
- (4) An inspector must, when exercising in any place any function of the inspector under this Act or the regulations, produce the inspector's certificate of identification to any person apparently in charge of the place who requests its production.

### **63N Obstruction etc of inspectors**

- (1) A person must not:
  - (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an inspector under this Act or the regulations, or
  - (b) provide information or give evidence in purported compliance with a requirement made or question asked by an inspector under this Act or the regulations knowing the information or evidence to be false or misleading in a material particular, or
  - (c) wilfully delay, hinder or obstruct an inspector in the exercise of the inspector's functions under this Act or the regulations, or
  - (d) falsely represent himself or herself to be an inspector.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in any other case).

- (2) If an inspector makes a requirement under section 630 (2) (c) of a person who appears to the inspector to be doing electrical wiring work, that person is not guilty of the offence of failing to comply with that requirement if it is proved that the person was not actually doing the electrical wiring work.
- (3) It is sufficient defence to a prosecution for an offence arising under subsection (1) (a) by reason of the failure of a defendant to answer a question asked by an inspector

under a power conferred by this Act or the regulations if the defendant satisfies the court that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.

## Division 3 Electrical equipment

### 630 Inspection of certain electrical equipment

- (1) An inspector may enter any place at any reasonable time for the purpose of inspecting any electrical installation, corrosion protection system or stray current source (**relevant electrical equipment**) in the place.
- (2) An inspector may require:
  - (a) the relevant distribution network service provider for an electrical installation to disconnect the installation if the inspector reasonably believes that it is necessary for the installation to be disconnected in the interests of safety, or
  - (b) any person who claims to be an authorised electrician to produce for inspection by the inspector, within such time as the inspector specifies, the person's licence or other authority to do electrical wiring work, or
  - (c) any person who appears to the inspector to be doing electrical wiring work to satisfy the inspector, within such time as the inspector specifies, that the person is not prohibited under the [Home Building Act 1989](#) from doing that electrical wiring work.
- (3) If the Director-General believes on reasonable grounds that there are in any place documents evidencing conduct in connection with relevant electrical equipment in contravention of this Act or the regulations, an inspector may, with the written authority of the Director-General, enter the place, inspect any documents and make copies of them or take extracts from them.
- (4) An inspector may not exercise the inspector's functions under this section in relation to a part of any premises being used for residential purposes except:
  - (a) with the permission of the occupier of that part of the premises, or
  - (b) under the authority conferred by a search warrant issued under this Part.
- (5) In this section:

**relevant distribution network service provider**, in relation to an electrical installation, means the distribution network service provider that owns or controls the distribution system that is used to convey and control the conveyance of electricity to the installation.

### **63P Examination and testing of electricity delivery equipment**

- (1) The Director-General may from time to time cause any electricity delivery equipment to be examined and tested for the purpose of determining whether the equipment can be used safely.
- (2) An inspector may enter any place at any reasonable time for the purpose of examining or testing any electricity delivery equipment that is in the place.

### **63Q Orders prohibiting the use of unsafe electricity delivery equipment**

- (1) If the Minister is satisfied that electricity delivery equipment cannot be used safely, the Minister may, by order served on the network operator or retail supplier using or proposing to use the equipment, prohibit the use of the equipment.
- (2) An order under this section may permanently prohibit the use of the electricity delivery equipment concerned or prohibit the use of the equipment until such time as it is repaired or altered to the satisfaction of the Minister.
- (3) The Minister may make an order under this section only on the recommendation of the Director-General.
- (4) A person must not use any electricity delivery equipment in contravention of an order made under this section.

Maximum penalty (subsection (4)): 200 penalty units.

## **Division 4 Accident reporting and investigation**

### **63R Notification of serious electricity works accidents**

- (1) A serious electricity works accident must be notified in accordance with subsection (2) to the Director-General by the distribution network service provider or transmission operator that owns or controls the distribution system or transmission system of which the electricity works concerned forms part.

Maximum penalty: 500 penalty units.

- (2) A notice of an accident must be given within 7 days after the accident in such manner as may be prescribed by the regulations.
- (3) The regulations may exclude a person, or a person belonging to a class of persons, prescribed by the regulations from any requirement under this section to notify the Director-General of a serious electricity works accident.

### **63S Investigation of serious electricity works accidents**

The Director-General may arrange for an inspector to investigate and report to the Director-General concerning a serious electricity works accident, whether or not notice of

the accident is given to the Director-General.

### **63T Powers of inspectors**

- (1) For the purposes of this Division, an inspector may, in any place where a serious electricity works accident has or may reasonably be expected to have occurred do any one or more of the following:
  - (a) enter and inspect the place,
  - (b) examine and test any electrical installation or other electrical equipment,
  - (c) take photographs,
  - (d) take for analysis a sample of any substance or thing that in the inspector's opinion may relate to the accident,
  - (e) require any person in the place to produce any record that may be of relevance to the occurrence of the accident,
  - (f) take copies of, or extracts or notes from, any such record,
  - (g) require any person in the place to answer questions or otherwise furnish information relating to the accident,
  - (h) require the owner or occupier of the place to provide the inspector with such assistance and facilities as are reasonably necessary to enable the inspector to exercise the inspector's functions under this section.
- (2) If the Director-General believes on reasonable grounds that there are in any place documents evidencing conduct in connection with a serious electricity works accident in contravention of this Act or the regulations, an inspector may, with the written authority of the Director-General, enter the place, inspect any documents and make copies of them or take extracts from them.
- (3) An inspector may not exercise the inspector's functions under this section in relation to a part of any premises being used for residential purposes except:
  - (a) with the permission of the occupier of that part of the premises, or
  - (b) under the authority conferred by a search warrant issued under this Part.

### **63U Interference with site of serious electricity works accident**

A person must not disturb or interfere with the site of a serious electricity works accident before it has been inspected by an inspector except:

- (a) to make it safe, or
- (b) with the permission of an inspector, or

(c) as provided by the regulations.

Maximum penalty: 500 penalty units (in the case of corporations) and 250 penalty units (in any other case).

### **63V Publication of details of serious electricity works accidents**

- (1) The Director-General may publish such details of serious electricity works accidents as the Director-General considers necessary in the interests of public information and safety.
- (2) The Minister, the Director-General, a member of staff of the Director-General or an inspector is not liable to any claim or action arising from any matter published under this section.

## **Division 5 Enforcement**

### **63W Search warrants**

- (1) An inspector may apply to an authorised officer for a search warrant in respect of any place if the inspector has reasonable grounds for believing that:
  - (a) an unsafe electrical installation is in the place, or
  - (b) a serious electricity works accident has occurred in the place, or
  - (c) a provision of this Part or the regulations made for the purposes of this Part has been or is being contravened in the place.
- (2) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
  - (a) to enter the place, and
  - (b) to search the place for evidence of the occurrence of a serious electricity works accident.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

**authorised officer** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## Part 6 Offences

### Division 1 General offences

#### 64 Theft of electricity

- (1) A person must not abstract, cause to be wasted or diverted, consume or use any electricity from a generating, transmission or distribution system unless authorised to do so under a wholesale supply arrangement or customer supply contract.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
  - (b) in any other case—100 penalty units or 5 years imprisonment (or both).
- (2) An offence under this section that is committed by an individual is an indictable offence.
  - (3) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an indictable offence under this section.
  - (4) Section 185 does not apply to an indictable offence under this section.

**Note—**

Offences by corporations are to be dealt with summarily (see section 185 (1) and (2)).

#### 65 Interference with electricity works

A person must not interfere with a network operator's or retail supplier's electricity works unless authorised to do so by the network operator or retail supplier concerned.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for 2 years (or both).

#### 65A Entering, climbing or being on electricity works

- (1) A person must not enter, climb or be on a network operator's or retail supplier's electricity works unless authorised to do so by the network operator or retail supplier concerned.

Maximum penalty: 10 penalty units or 3 months imprisonment (or both).

- (2) A person is not guilty of an offence under this section if the person establishes that he or she had a reasonable excuse for entering, climbing or being on the electricity works or entered, climbed or was on the electricity works for a lawful purpose.



## **66 Interference with electricity meters**

A person must not alter or otherwise interfere with a meter that is connected to a distribution network service provider's distribution system unless authorised to do so by the distribution network service provider.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for 2 years (or both).

## **67 Interference with distribution network service provider's seals**

A person must not alter or otherwise interfere with any seal that has been attached to an electrical installation by a distribution network service provider unless authorised to do so by the distribution network service provider.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for 2 years (or both).

## **68 Unauthorised connections**

A person must not connect an electrical installation to a distribution network service provider's distribution system unless authorised to do so by the distribution network service provider.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for 2 years (or both).

## **69 Unauthorised increase in capacity of connections**

A person must not increase the capacity of an existing connection to a distribution network service provider's distribution system unless authorised to do so by the distribution network service provider.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for 2 years (or both).

## **70 Unauthorised alterations and additions to electrical installations**

A person must not alter or add to an electrical installation that is connected to a distribution network service provider's distribution system so as to cause the supply of

electricity to the installation or any part of it to be incorrectly metered unless authorised to do so by the distribution network service provider.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units, or
- (b) in any other case—100 penalty units or imprisonment for 2 years (or both).

#### **71 Obstruction of authorised officers**

A person must not:

- (a) prevent an authorised officer from exercising any function conferred or imposed on the authorised officer under this Act, or
- (b) hinder or obstruct an authorised officer in the exercise of any such function, or
- (c) impersonate an authorised officer.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **Division 2 Restrictions on resupply of electricity**

#### **72 Charges for the use of electricity prohibited**

- (1) A person to whose premises electricity is supplied under a wholesale supply arrangement or customer supply contract must not charge any other person for the use of electricity so supplied.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

- (2) This section does not prohibit a person from imposing a separate charge for the use of a specified service or facility as a result of the fact that the use of that service or facility involves the consumption of electricity.
- (3) This section does not prohibit a landlord from imposing a charge for electricity supplied to a tenant if:
  - (a) the quantity of electricity so supplied is measured by a separate electricity meter that complies with the regulations, and
  - (b) the charge imposed for the electricity so supplied is no greater than the maximum allowable amount.
- (4) A landlord who charges a tenant for electricity supplied to the tenant:
  - (a) must make such records relating to the electricity so supplied, and

(b) must keep those records for such period,  
as may be prescribed by the regulations.

(4A) The regulations may, either unconditionally or subject to conditions, exempt:

(a) any specified person or class of persons, or

(b) any specified matter or class of matters,

from the operation of subsection (1).

(5) The regulations may require the landlord to furnish the tenant with a copy of any records made under this section.

(6) In this section:

**landlord** means:

(a) the owner or lessor of any premises, whether business, residential or otherwise, or

(b) the proprietor or operator of the premises of any hotel, motel, inn, hostel, boarding or rooming house, holiday flats or cabins, manufactured home estate, caravan park or campsite or any other premises prescribed by the regulations.

**maximum allowable amount**, in relation to a quantity of electricity supplied during a specific period, means:

(a) the amount prescribed by or calculated in accordance with the regulations for a similar quantity of electricity supplied during the same period, or

(b) if no such regulations are in force, the amount that the relevant standard retail supplier would have charged under a standard form customer supply contract for a similar quantity of electricity supplied during the same period.

**tenant** includes any person who occupies premises in respect of which some other person is a landlord.

## Division 3 Supplementary orders

### 73 Local Court may order disconnection and discontinuance of electricity supply

(1) If the Local Court finds a person guilty of an offence under Division 1, the Local Court may make either or both of the following orders:

(a) an order that the premises to which the offence relates be disconnected from the distribution system of the distribution network service provider concerned, or

(b) an order that the supply of electricity to those premises be discontinued.

- (2) An order under this section has effect regardless of the provisions of any customer connection contract, customer supply contract or wholesale supply arrangement.

#### **74 Local Court may order payment for electricity unlawfully charged for**

If the Local Court finds a person guilty of an offence under Division 2 of unlawfully charging for the use of electricity, the Local Court may make an order directing the person to refund the whole, or such part as the Court considers appropriate, of any amount paid to the person in respect of that charge.

#### **75 Local Court may order payment for stolen electricity**

If the Local Court finds a person guilty of an offence under section 64 of unlawfully causing electricity to be abstracted, wasted, diverted, consumed or used, the Local Court may make an order directing the person to pay to the wholesale or retail supplier concerned such amount as the Court considers appropriate for the electricity so wasted, diverted, consumed or used.

#### **76 Orders for payment operate as judgments**

- (1) An order under this Division for the payment of money:
- (a) may be made by the Local Court on its own motion, or on the application of the wholesale or retail supplier concerned, at any time within 6 months after the date of the finding, and
  - (b) may be enforced in the Local Court in its exercise of jurisdiction under Part 3 of the *Local Court Act 2007*.
- (2) Part 8 of the *Civil Procedure Act 2005* applies to and in respect of an order under this Division as if:
- (a) the order were a judgment of the Local Court in civil proceedings, and
  - (b) the amount ordered to be paid were a judgment debt, and
  - (c) the person against whom the order is made were a judgment debtor, and
  - (d) the person in whose favour the order is made were a judgment creditor.
- (3) The remedy provided by this section is an alternative to any other remedy that may be available apart from this section.

## **Part 7 Administration**

### **Division 1 Regulatory functions of Tribunal**

## **77 Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are:
  - (a) the function of making recommendations under subsection (2), and
  - (b) the function of monitoring and reporting under section 87, and
  - (c) the function of imposing monetary penalties, or requiring other action to be taken, under clause 8A of Schedule 2, and
  - (d) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
  - (a) the granting, variation, transfer or cancellation of a licence, and
  - (b) the imposition, variation or cancellation of conditions in relation to a licence or an endorsement attached to a licence, and
  - (c) action to be taken, and sanctions to be applied, in respect of a contravention of the conditions of a licence or an endorsement attached to a licence, and
  - (d) any remedial action that may be warranted as a result of a contravention of the conditions of a licence or an endorsement attached to a licence.
- (3) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

## **78-82 (Repealed)**

## **Division 2 Distribution districts**

### **83 Distribution districts of distribution network service providers**

- (1) Each distribution network service provider listed in Schedule 3 has a distribution district comprising the local government areas, or parts of local government areas, described in that Schedule.
- (2) The boundaries of a distribution network service provider's distribution district are unaffected by any change in the boundaries of a local government area and, for that purpose, the boundaries of the local government area are taken to remain the same as they were when the reference to the local government area was included in Schedule 3.
- (3) A reference in Schedule 3 to a part of a local government area is (if that part is not described in that Schedule) a reference to such part of the local government area as is

described by the regulations for the purposes of that reference.

#### **84 Variation of distribution districts**

- (1) The Governor may, by regulation, amend Schedule 3 so as:
  - (a) to vary the boundaries of an existing distribution network service provider's distribution district, or
  - (b) to include the boundaries of the distribution district of an additional distribution network service provider.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the variation or inclusion of any such boundaries.
- (3) Any such provision may, if the regulations so provide, take effect from the day on which the variation or inclusion of boundaries occurs or a later day.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (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
  - (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.

#### **85 Transfer of staff, assets, rights and liabilities**

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of a distribution network service provider whose distribution district is varied be transferred to such other distribution network service provider as is specified in the order.
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 4 applies to the transfer of staff, assets, rights or liabilities under this section.

### **Division 3 Licence auditing**

#### **86 (Repealed)**

#### **87 Licence auditing functions of Tribunal**

- (1) The functions of the Tribunal under this Division are 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 and the endorsements attached to licences held by them.

- (1A) Without limiting subsection (1), the Tribunal must, if requested by the Treasurer, monitor and report to the Minister and the Treasurer on the extent to which standard retail suppliers or a specified standard retail supplier comply, or fail to comply, with the conditions set out in section 43ER.
- (1B) The Tribunal must prepare and forward to the Treasurer and the Minister a report requested under subsection (1A) within the period specified in the request.
- (2) For the purpose of enabling the Tribunal to exercise its functions, the Minister must furnish the Tribunal with such information in the possession of the Minister as the Tribunal may request in relation to the compliance by distribution network service providers and retail suppliers with the conditions imposed on the licences held by them and the endorsements attached to licences held by them.
- (3) This section does not apply to a condition referred to in section 32G or 43E.

#### **87A Cost of audit**

- (1) Each holder of a licence is required to pay to the Treasurer the cost (as certified by the Tribunal) involved in and in connection with carrying out the Tribunal's functions under section 87 in relation to the holder of the licence.
- (2) Without limitation, a licence may include terms and conditions relating to the determination of the cost of carrying out those functions.

#### **87B Provision and maintenance of information, documents and evidence**

- (1) For the purposes of monitoring and reporting under section 87 (1A) and (1B), the Chairperson of the Tribunal may, by notice in writing served on an officer of a standard retail supplier or any other person, require the officer or person to do any one or more of the following:
  - (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,
  - (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,
  - (c) to attend a meeting of the Tribunal to give evidence.
- (2) If documents are given to the Tribunal under this section, the Tribunal:
  - (a) may take possession of, and make copies of or take extracts from, the documents, and

- (b) may keep possession of the documents for such period as is necessary for those purposes, and
  - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.
- (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:
- (a) to keep specified records including any documents specified in the notice, and
  - (b) to furnish specified information to the Tribunal.
- (4) Nothing in subsection (3) limits the powers of the Tribunal under subsection (1).

### **87C Offences**

- (1) A person must not, without reasonable excuse:
- (a) refuse or fail to comply with a notice served under section 87B, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting of the Tribunal under section 87B.
- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
- (a) give to the Tribunal, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact), or
  - (b) at a meeting of the Tribunal, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions for the purposes of section 87 (1A) or (1B) or 87B as Chairperson or other member.
- (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.



### **87D Licence condition**

It is a condition of a licence held by a standard retail supplier that the standard retail supplier must comply with section 87C.

### **88 Annual reports**

- (1) As soon as practicable after 30 June (but on or before 31 October) in each year, the Tribunal must prepare and forward to the Minister a report on the extent to which distribution network service providers and retail suppliers have complied, or failed to comply, with the conditions imposed on the licences held by them and the endorsements attached to licences held by them during the 12 months ending on 30 June in that year.
- (2) 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.

## **Division 4 Customer consultative groups**

### **89 Appointment of customer consultative groups**

- (1) A distribution network service provider must appoint at least one customer consultative group to act as a forum for consultation between the distribution network service provider and its customers.
- (2) A standard retail supplier must appoint at least one customer consultative group to act as a forum for consultation between the retail supplier and its customers.
- (3) (Repealed)

### **90 Constitution of customer consultative groups**

- (1) Except to the extent to which the regulations otherwise provide, a customer consultative group must include members representing each of the following sections of the community:
  - (a) consumer groups,
  - (b) low-income households,
  - (c) persons living in rural and remote areas,
  - (d) domestic customers,
  - (e) industrial and commercial customers.
- (2) Except to the extent to which the regulations otherwise provide, a customer consultative group must meet at least twice a year.
- (3) In all other respects, the constitution and procedure of a customer consultative group

are to be as determined by the regulations.

### **91 Functions of customer consultative groups**

- (1) A customer consultative group has such functions as are conferred or imposed on it by this Act or the regulations.
- (2) Except to the extent to which the regulations otherwise provide, the function of a customer consultative group appointed by a distribution network service provider is to provide information and advice on the following matters to the service provider:
  - (a) the form and content of the service provider's standard form customer connection contracts, and any amendments to those contracts,
  - (b) the effect on retail customers within its distribution district of any proposed changes in the way in which the service provider operates,
  - (c) any improvements in the way in which the service provider operates that the customer consultative group believes would benefit retail customers within its distribution district,
  - (d) such other matters as the service provider and the customer consultative group agree should be the subject of such advice.
- (3) Except to the extent to which the regulations otherwise provide, the function of a customer consultative group appointed by a standard retail supplier is to provide information and advice on the following matters to the retail supplier:
  - (a) the form and content of the retail supplier's standard form customer supply contracts, and any amendments to those contracts,
  - (b) the effect on retail customers within its supply district of any proposed changes in the way in which the retail supplier operates,
  - (c) any improvements in the way in which the retail supplier operates that the customer consultative group believes would benefit retail customers within its supply district,
  - (d) such other matters as the retail supplier and the customer consultative group agree should be the subject of such advice.

## **Division 5 General**

### **92 Small retail customers**

- (1) For the purposes of this Act, a small retail customer is:
  - (a) a person who consumes or is expected to consume electricity at premises at a rate that is less than the prescribed rate, determined in accordance with any

relevant provisions of the regulations, or

(b) a person who consumes or is expected to consume electricity at premises used for a purpose prescribed by the regulations, or

(c) a person who is treated in accordance with any relevant provisions of the regulations as a small retail customer, even though the person is not a person described in paragraph (a) or (b).

(2) The regulations may make provision for or with respect to determining whether or not a person consumes or is expected to consume electricity at a rate that is less than the prescribed rate for the purposes of subsection (1) (a).

(3) The regulations may make provision for or with respect to:

(a) treating a person who consumes or may consume electricity at a rate that is the prescribed rate per year or more, or

(b) treating a person who consumes or may consume electricity at premises used for a purpose referred to in subsection (1) (b),

as a small retail customer.

(4) Subject to the regulations, this section applies separately in relation to each premises at which a person consumes or is expected to consume electricity.

(5) Without limiting any other provision of this section, a regulation made for the purposes of this section may apply to a person only in respect of the consumption of electricity at certain premises (in which case the regulation does not apply to that person in respect of the person's consumption of electricity at other premises).

(6) In this Act, a reference to a small retail customer extends only to the supply of electricity to premises in relation to which the person is such a customer and does not extend to the supply of electricity to any other premises for which the person is not a small retail customer.

(7) In this section:

**prescribed rate** means the rate, expressed as a number of megawatt hours (MWh) per year or in any other manner, specified in the regulations.

### 93 Transmission systems

(1) The Minister may, by order published in the Gazette, declare any specified electricity power lines and associated equipment and electricity structures to be a transmission system for the purposes of this Act.

(2) An order under this section takes effect on the day on which it is published in the Gazette or on such later day as is specified in the order.

#### **94 Authorised officers**

- (1) A network operator or retail supplier may, in accordance with any guidelines in force under this section, appoint authorised officers for the purposes of this Act.
- (2) An authorised officer appointed by a network operator has such of the functions of the network operator by which he or she is appointed as are specified in the authorised officer's instrument of appointment.
- (3) An authorised officer appointed by a distribution network service provider may exercise those functions only within the distribution district of the distribution network service provider by which he or she is appointed.
- (3A) If a distribution network service provider does not have a distribution district, an authorised officer appointed by the distribution network service provider may exercise those functions only on land that is occupied by the distribution network service provider's distribution system and on land on which premises connected to that distribution system are situated.
- (3B) An authorised officer appointed by a retail supplier:
  - (a) has the functions of an authorised officer under this Act specified in the authorised officer's instrument of appointment, and
  - (b) may exercise those functions only with respect to the premises of customers of the retail supplier.
- (4) The Minister may, by order published in the Gazette, establish guidelines for the appointment of authorised officers.
- (5) An order under this section takes effect on the day on which it is published in the Gazette or on such later day as is specified in the order.

### **Part 8 Appeals and resolution of disputes**

#### **95 Appeals against decisions concerning licences**

- (1) An applicant under Schedule 2 or the holder of a licence who is aggrieved by any of the following decisions of the Minister under that Schedule may appeal to the Supreme Court against the decision:
  - (a) a decision cancelling a licence,
  - (b) a decision imposing a condition on a licence (other than a condition imposed when the licence is granted),
  - (c) a decision varying the conditions of a licence,
  - (d) a decision refusing an application for the transfer of a licence,

- (e) a decision imposing a monetary penalty on the holder of a licence.
- (2) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made, may be given on the appeal.
- (3) For the purposes of an appeal, the Minister may certify in writing that a specified policy applies to the subject matter of the appeal.
- (4) In deciding an appeal to which such a certificate relates, the Supreme Court is required to apply the policy so certified, except to the extent to which the application of that policy would be contrary to law.
- (5) The decision of the Supreme Court in respect of an appeal is taken to be the decision of the Minister and is to be given effect to accordingly.

#### **95A Review of certain decisions concerning licences**

- (1) The holder of a licence who is aggrieved by a decision of the Tribunal to take action under clause 8A of Schedule 2 in relation to the holder of the licence may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Section 53 (Internal reviews) of the [Administrative Decisions Tribunal Act 1997](#) does not apply to such a decision of the Tribunal.

#### **96 Internal review of certain decisions disputed by customers**

- (1) A small retail customer may apply to a retail supplier for a review of a decision of the supplier in relation to any matter arising under the customer supply contract or any other matter prescribed by the regulations for the purposes of this subsection.
- (2) A small retail customer may apply to a distribution network service provider for a review of a decision of the service provider in relation to any matter arising under the customer connection contract or any other matter prescribed by the regulations.
- (3) Without limiting subsection (1), a person may apply to a licence holder for a review of a decision of the licence holder to classify the person as being or as not being a small retail customer.
- (4) The regulations may make provision for or with respect to the following matters:
  - (a) the procedures for making an application and for dealing with an application that are to be contained in standard form customer supply contracts,
  - (b) imposing conditions on retail suppliers' licences and distribution network service providers' licences relating to the provision and implementation of procedures for dealing with an application.
- (5) The regulations may treat a failure to make a decision within a specified period as a

decision of a particular kind.

- (6) An application made and dealt with under this section is to be free of charge to the applicant.

#### **96A Review of certain decisions under electricity industry ombudsman scheme**

- (1) A small retail customer, and any other person of a class prescribed by the regulations, may apply to an electricity industry ombudsman under an approved electricity industry ombudsman scheme for review of a decision in a dispute or complaint to which the scheme relates.
- (2) Except as provided by the scheme or by the regulations, a person does not have a right of review under this section in respect of a decision for which a review may be sought under section 96 unless the decision has been the subject of review under that section.
- (3) A review under this section is to be free of charge to small retail customers and to other persons of such classes as are prescribed by the regulations.
- (4) This section does not affect the jurisdiction of the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*.
- (5) The electricity industry ombudsman may decline to deal with a matter if it has been, is being or should be dealt with by another person or tribunal or there are, in the ombudsman's opinion, not sufficient grounds for further investigation.
- (6) Without limiting subsection (5), the electricity industry ombudsman may deal with a matter by making arrangements for it to be referred to another person or tribunal.

#### **96B Electricity industry ombudsman scheme**

- (1) The Minister may approve an electricity industry ombudsman scheme for the purposes of this Act, being a scheme that provides for the appointment of an electricity industry ombudsman to deal with:
- (a) disputes and complaints under customer connection contracts and customer supply contracts entered into with small retail customers, and
  - (b) disputes between small retail customers and electricity marketers (within the meaning of Part 5B) and complaints by small retail customers about electricity marketers, and
  - (c) any other disputes and complaints of such classes (whether or not under contracts referred to in paragraph (a)) as are prescribed by the regulations.
- (2) Before approving such a scheme, the Minister must be satisfied that the scheme meets the following objectives:

- (a) that all licence holders who are required to be members of the scheme are members of the scheme, have agreed to be bound by decisions of the electricity industry ombudsman under the scheme and, as members, are so bound,
  - (b) that the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in subsection (1),
  - (c) that the electricity industry ombudsman will be able to operate independently of all licence holders in exercising functions under the scheme,
  - (d) that the scheme will be accessible to small retail customers and other customers prescribed by the regulations,
  - (e) that membership of the scheme will be accessible to all potential members and will provide appropriate representation for all members in relation to the scheme's governing body,
  - (f) that, without limiting any other application of the scheme, the scheme will apply to all disputes and complaints arising under customer connection contracts and customer supply contracts relating to small retail customers,
  - (g) that the scheme will operate expeditiously and without cost to small retail customers and to other persons of such classes as are prescribed by the regulations,
  - (h) that the scheme will allow customers to choose whether or not they wish to be bound by determinations under the scheme,
  - (i) that the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations,
  - (j) that the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Minister,
  - (k) that the scheme will maintain the capacity of the electricity industry ombudsman, where appropriate, to refer disputes or complaints to other forums,
  - (l) that the scheme will require the electricity industry ombudsman to inform the Minister of substantial breaches of licence conditions, the Marketing Code of Conduct (within the meaning of Part 5B) or of the Act of which the ombudsman becomes aware,
  - (m) such other objectives as are prescribed by the regulations.
- (3) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.

- (4) The Minister may at any time revoke an approval under this section.
- (5) If a dispute or complaint involving an electricity marketer (within the meaning of Part 5B) or person other than the holder of the licence is prescribed as a dispute or complaint to which an approved scheme may apply, the regulations may make it an offence for the electricity marketer or person to fail to comply with a decision of the electricity industry ombudsman under the scheme.
- (6) Notice of any approval given by the Minister under this section, and of the revocation of any such approval, is to be published in the Gazette.
- (7) Subject to this section, the same scheme may be approved for the purposes of both this Act and any other Act or law.

#### **96C Licence conditions relating to approved electricity industry ombudsman schemes**

It is a condition of a distribution network service provider's licence and a retail supplier's licence under which a retail supplier supplies electricity to small retail customers that:

- (a) the licence holder must be a member of an approved electricity industry ombudsman scheme, and
- (b) the licence holder is bound by, and must comply with, any decision of the electricity industry ombudsman under the scheme relating to a dispute or complaint involving the licence holder and a small retail customer.

#### **96D Other kinds of review**

Nothing in this Act prevents provision being made in negotiated customer connection contracts and negotiated customer supply contracts for the resolution of disputes with persons not covered by either or both of sections 96 and 96A.

#### **97 Resolution of disputes between public authorities**

- (1) Any dispute arising under this Act between 2 or more public authorities may be resolved by agreement between the Ministers responsible for those authorities or, if agreement cannot be reached, by the Premier.
- (2) A public authority must comply with any direction arising out of the resolution of the dispute under this section.
- (3) This section does not apply while any other remedy is available under this Act for the resolution of the dispute.

## **Part 8A Reduction of greenhouse gas emissions**

### **Division 1 Preliminary**



### 97A Objects of Part

- (1) The objects of this Part are 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.
- (2) For those objects, this Part:
  - (a) establishes State greenhouse gas benchmarks and individual greenhouse gas benchmarks for the reduction of greenhouse gas emissions that are to be met by retail suppliers, market customers and certain other persons who supply or consume electricity, and
  - (b) provides for greenhouse gas benchmarks to be complied with by acquiring certificates relating to the carrying out of activities that promote the reduction of greenhouse gas emissions, and
  - (c) provides an economic incentive to undertake activities resulting in the reduction of greenhouse gas emissions by imposing a penalty on greenhouse gas emissions above the specified benchmark.

### 97AB Definitions

In this Part:

**abatement certificate** means an abatement certificate created under this Part, being a transferable abatement certificate or a non-transferable abatement certificate.

**accredited abatement certificate provider** means a person accredited as an abatement certificate provider under this Part and whose accreditation is in force.

**AEMO** means the Australian Energy Market Operator Limited ACN 072 010 327.

**benchmark participant** means a person referred to in section 97BB (1) who is subject to a greenhouse gas benchmark.

**carbon dioxide equivalent** of greenhouse gas emissions means the mass of carbon dioxide measured in tonnes that has the same global warming potential as the gas emissions.

**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.

**elective participant** means a benchmark participant referred to in section 97BB (1) (d) or (e).

**electricity sector benchmark** means the electricity sector benchmark referred to in section 97BC (1) (a).

**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.

**greenhouse gas** means carbon dioxide, methane, nitrous oxide, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.

**greenhouse gas benchmark** for a benchmark participant means the benchmark for a compliance period, in tonnes of carbon dioxide equivalent of greenhouse gas emissions, determined for the participant under this Part.

**greenhouse gas benchmark rule** means a rule approved under section 97K.

**greenhouse penalty** means the penalty payable under this Part by a benchmark participant who fails to comply with the participant's greenhouse gas benchmark for reduction of greenhouse gas emissions.

**greenhouse shortfall** means the amount, in tonnes of carbon dioxide equivalent, by which a benchmark participant fails to comply with the participant's greenhouse gas benchmark for a compliance period, as determined under this Part.

**large customer** means:

- (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:
  - (i) 100 gigawatt hours or more of electricity at a single site in this State in any year, or
  - (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
- (b) a related entity of a customer referred to in paragraph (a), whether or not the entity is a customer.

**market customer** means a customer that has classified any of its electricity loads as a market load and that is registered with AEMO as a market customer under the *National*

*Electricity Code.*

**NSW pool coefficient** means the average greenhouse gas emissions intensity of electricity sent out to customers in the State, expressed in tonnes of carbon dioxide equivalent per megawatt hour, as determined by the Tribunal under this Part.

**register** means a register required to be kept by the Scheme Administrator under this Part.

**register of abatement certificates** means the register of abatement certificates required to be kept by the Scheme Administrator under this Part.

**register of accredited abatement certificate providers** means the register of accredited abatement certificate providers required to be kept by the Scheme Administrator under this Part.

**related body corporate** of a person has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

**related entity** of a customer means a person (whether or not a customer) who is:

- (a) a related body corporate of the customer, or
- (b) a beneficiary of a trust of which the customer is or has at any time been a trustee, or
- (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
- (d) engaged in a joint venture with the customer or a related entity of a customer.

**renewable energy certificate** means a certificate created under the [Renewable Energy \(Electricity\) Act 2000](#) of the Commonwealth.

**Scheme Administrator** means the person or body on whom the functions of Scheme Administrator are conferred by or under this Part.

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

**State population** for a compliance period means the population of the State for the compliance period, as determined by the Tribunal under this Part.

**State significant development** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

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

## Division 2 Greenhouse gas benchmarks

**97B State greenhouse gas benchmark**

- (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.
- (2) The State greenhouse gas benchmark is to be the basis for the calculation of the greenhouse gas benchmark for each benchmark participant.

**97BA Greenhouse gas benchmarks to apply to benchmark participants**

- (1) A greenhouse gas benchmark for the reduction of greenhouse gas emissions applies, in accordance with this Part, the regulations and the greenhouse gas benchmark rules, to each benchmark participant.
- (2) The greenhouse gas benchmark for a benchmark participant is to be calculated in accordance with this Part, the regulations and the greenhouse gas benchmark rules.

**Note—**

Failure to comply with a greenhouse gas benchmark will result in a greenhouse penalty being payable (see Division 3).

**97BB Benchmark participants**

- (1) The following persons are benchmark participants for the purposes of this Part:
  - (a) a retail supplier,
  - (b) an electricity generator prescribed by the regulations or any other person prescribed by the regulations, being an electricity generator or other person that supplies electricity directly to a customer under an electricity supply arrangement and that is, in respect of that supply, exempted from the operation of section 179 or to which section 179 does not apply,
  - (c) a market customer (other than a retail supplier), but only in respect of an electricity load it has classified as a market load and that is electricity supplied for use in this State,
  - (d) a large customer who has made an election, that is in force, to be subject to a greenhouse gas benchmark,
  - (e) a person who is engaged in carrying out State significant development and who has made an election, that is in force, to be subject to a greenhouse gas benchmark.
- (2) Regulations may be made for or with respect to the following matters:
  - (a) the making of elections to be subject to greenhouse gas benchmarks,
  - (b) the circumstances in which an election to be subject to a greenhouse gas

benchmark takes effect or ceases to be in force,

- (c) the greenhouse penalty payable by a customer or person whose election to be subject to a greenhouse gas benchmark ceases to be in force,
- (d) the circumstances when a person is taken to be a large customer or a large customer who uses electricity at more than one site,
- (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,
- (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,
- (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.

**97BC Principles for determining greenhouse gas benchmarks for benchmark participants**

- (1) The greenhouse gas benchmark for a benchmark participant for a compliance period is to be determined as follows:
  - (a) by multiplying the State population for the compliance period by the State greenhouse gas benchmark to determine the electricity sector benchmark,
  - (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,
  - (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.
- (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.

**Note—**

The methodology for determining the matters set out in this section is set out in the greenhouse gas benchmark rules.

**97BD Principles for determining compliance with greenhouse gas benchmarks**

- (1) **General principle** The compliance of a benchmark participant with the participant's greenhouse gas benchmark in any compliance period is determined by subtracting the

participant's greenhouse gas benchmark from the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions in that compliance period for which the participant is responsible.

- (2) **Number of tonnes of emissions for which participant responsible** The number of tonnes of carbon dioxide equivalent of greenhouse gas emissions in that compliance period for which a benchmark participant is responsible is determined:
- (a) by multiplying the total number of megawatt hours of electricity supplied or purchased by the participant in that compliance period by the NSW pool coefficient for greenhouse gas emissions arising out of that electricity for that compliance period, and
  - (b) by subtracting from that number the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions abated by the participant in that compliance period.

**Note—**

The methodology provided by the greenhouse gas benchmark rules for determining electricity supplied or purchased by a benchmark participant may take into account electricity lost in transmission or distribution (see section 97K (1) (c)).

- (3) **Number of tonnes of emissions abated by participant** The number of tonnes of carbon dioxide equivalent of greenhouse gas emissions abated by a benchmark participant in a compliance period is the total number of tonnes attributable to any abatement certificates surrendered by the participant for that compliance period and any renewable energy certificates of the participant counted for that compliance period for the purposes of compliance with the participant's greenhouse gas benchmark.
- (4) If the result obtained under subsection (1) is more than zero (a **greenhouse shortfall**), the benchmark participant has failed to comply with the participant's greenhouse gas benchmark.
- (5) If the result obtained under subsection (1) is zero or less than zero, the benchmark participant has complied with the participant's greenhouse gas benchmark.
- (6) In determining the total megawatt hours of electricity supplied by a retail supplier or an electricity generator in each compliance period for the purposes of subsection (2), electricity supplied by the supplier or generator to another benchmark participant is not to be taken into account.

**Note—**

The methodology for applying the principles in this section is set out in the greenhouse gas benchmark rules.

**97BE Greenhouse shortfalls may be carried forward**

- (1) Despite any other provision of this Part, an amount of tonnes of carbon dioxide

equivalent of greenhouse gas emissions of greenhouse shortfall in any compliance period (other than the compliance period commencing 1 January 2007 or the final compliance period) may, subject to the greenhouse gas benchmark rules, be carried forward to the next compliance period.

- (2) If an amount of greenhouse shortfall is carried forward, the amount of that shortfall is, to the extent to which it is not abated by the benchmark participant, subject to the greenhouse penalty at the end of the next compliance period and greenhouse penalty is not payable for the shortfall amount at the end of the compliance period from which it was carried forward.
- (3) Any such penalty is payable at the same time as any greenhouse penalty for the next compliance period is payable (or would be payable, if owed).
- (4) A greenhouse shortfall that is carried forward may be abated at the end of the next compliance period by surrendering abatement certificates or counting renewable energy certificates.
- (5) For that purpose, the greenhouse shortfall after abatement is calculated by subtracting from the amount of the shortfall the total number of tonnes of carbon dioxide equivalent of greenhouse gas emissions attributable to any certificates surrendered or counted for the purpose of abating the greenhouse shortfall.
- (6) The amount of greenhouse shortfall carried forward in respect of a compliance period may not exceed 10% of the benchmark participant's greenhouse gas benchmark for that compliance period.
- (7) An amount of greenhouse shortfall may be carried forward whether or not a shortfall was carried forward in the previous compliance period.

**97BF Factors to be determined and published before commencement of each compliance period**

- (1) The Tribunal must, not later than 30 November in each year, determine and publish by notice in the Gazette the following matters for the purpose of determining greenhouse gas benchmarks for benchmark participants for the compliance period commencing on 1 January immediately following that notice (the **next compliance period**):
  - (a) the NSW pool coefficient for greenhouse gas emissions,
  - (b) the total State electricity demand for a year,
  - (c) the total State population,
  - (d) the electricity sector benchmark.
- (2) A determination under this section is to be made in accordance with any requirements of the greenhouse gas benchmark rules.

- (3) The matters determined under subsection (1) are to apply to the calculation of greenhouse gas benchmarks and the assessment of compliance with those benchmarks for the next compliance period.

### **97BG Evidentiary provisions relating to benchmarks**

A certificate of the Tribunal certifying that, on a date or during a period specified in the certificate:

- (a) a person was or was not a benchmark participant, or
- (b) the NSW pool coefficient, State electricity demand or State population for a compliance period or electricity sector benchmark was the value or amount specified in the certificate, or
- (c) the greenhouse gas benchmark for a benchmark participant was the amount specified in the certificate, or
- (d) the greenhouse shortfall for a benchmark participant for a compliance period, or an amount of greenhouse shortfall carried forward by a benchmark participant for a compliance period, was the amount specified in the certificate, or
- (e) the greenhouse penalty payable by a benchmark participant was the amount specified in the certificate,

is admissible in evidence in proceedings before any court or tribunal and is prima facie evidence of the matters stated in the certificate.

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

### **97C Licence conditions applying to retail suppliers**

- (1) It is a condition of each retail supplier's licence that the retail supplier comply with its greenhouse gas benchmark as determined under this Part.
- (2) Nothing in this section limits or affects any power of the Minister to impose conditions on the licence of a retail supplier under this Act, including conditions (not inconsistent with this Part) relating to greenhouse gas emissions, the provision of information to the Tribunal or Scheme Administrator about matters related to this Part and related matters.
- (3) A monetary penalty may not be imposed on a retail supplier under clause 8 or 8A of Schedule 2, or any other action taken against the licence of a retail supplier under Schedule 2, in respect of a greenhouse shortfall for which a greenhouse penalty is payable under this Part.

#### **Note—**

Under clauses 8 and 8A of Schedule 2, the Minister and the Tribunal may impose monetary penalties for



breaches of the requirements of this Act, the regulations and the greenhouse gas benchmark rules, as well as breaches of licence conditions. Other penalties may also be imposed under Schedule 2.

### **97CA Greenhouse penalties**

- (1) A benchmark participant who fails to comply with the participant's greenhouse gas benchmark for reduction of greenhouse gas emissions for a compliance period is liable to pay the greenhouse penalty in respect of the excess emissions.
- (2) The amount of the greenhouse penalty per tonne of carbon dioxide equivalent of greenhouse shortfall determined under this Part is the following amount, as adjusted in accordance with any regulations made under subsection (3):
  - (a) for the compliance period concerned before the compliance period commencing 1 January 2010—\$11.50,
  - (b) for the compliance period commencing 1 January 2010—\$12.50,
  - (c) for the compliance period commencing 1 January 2011—\$13.50,
  - (d) for the compliance period commencing 1 January 2012—\$14.50,
  - (e) for the compliance period commencing 1 January 2013 and each subsequent compliance period—\$15.50.
- (3) The regulations may provide for the adjustment of the amount of greenhouse penalty in accordance with movements in the consumer price index.
- (4) A greenhouse penalty payable for a compliance period (other than the final compliance period) by a benchmark participant is payable on 1 March in the following year or on any later date determined by the Tribunal for a benchmark participant.
- (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.
- (5) A greenhouse penalty imposed under this Part may be recovered in any court of competent jurisdiction as a debt due to the Crown.
- (6) It is the wish of the Parliament that any greenhouse penalties payable to the Crown under this Part be used for the promotion of greenhouse gas reduction activities and programs nominated from time to time by the Minister.
- (7) In this section:

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

**Note—**

Section 97BE sets out when a greenhouse penalty is payable for a greenhouse shortfall that is carried forward.

**97CB Annual greenhouse gas benchmark statements**

- (1) A benchmark participant must lodge with the Tribunal a greenhouse gas benchmark statement:
  - (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, or
  - (b) in respect of the final compliance period, not later than 3 months after the termination day.
- (1A) The Tribunal may permit a benchmark participant to lodge a greenhouse gas benchmark statement on a later day.
- (2) A greenhouse gas benchmark statement is to contain the following:
  - (a) an assessment of the benchmark participant's greenhouse gas benchmark for the previous compliance period,
  - (b) an assessment of the participant's liability (if any) for the greenhouse penalty for the previous compliance period,
  - (c) an assessment of the participant's liability (if any) for a greenhouse penalty payable in respect of a greenhouse shortfall carried forward from the compliance period before the previous compliance period,
  - (d) any other matters required by the Tribunal.
- (3) A greenhouse gas benchmark statement must be in the form approved by the Tribunal.
- (4) A greenhouse gas benchmark statement must be accompanied by details of all abatement certificates sought to be surrendered for that compliance period and all renewable energy certificates sought to be counted for that compliance period or sought to be surrendered or counted to abate a greenhouse shortfall carried forward from the previous compliance period.
- (5) A benchmark participant that fails to lodge a greenhouse gas benchmark statement in accordance with this section is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units,
- (b) in the case of an individual—100 penalty units.

**97CC Restrictions on surrender of abatement certificates for benchmark purposes**

- (1) An abatement certificate cannot be surrendered by a benchmark participant for the purposes of compliance with the participant's greenhouse gas benchmark unless:
  - (a) the certificate is registered under this Part and the registration is in force, and
  - (b) the certificate was created in relation to an activity that took place before the end of the compliance period to which the greenhouse gas benchmark statement relates, and
  - (c) the participant is recorded in the register of abatement certificates as the owner of the certificate.
- (2) The Tribunal may, by notice in writing to a benchmark participant, refuse to accept the surrender of an abatement certificate by the benchmark participant:
  - (a) if, in the opinion of the Tribunal, the certificate cannot be surrendered under this section, or
  - (b) if, in the opinion of the Tribunal, the certificate is surplus to the number required to be surrendered for compliance with the participant's greenhouse gas benchmark or to abate a greenhouse shortfall.
- (3) If the Tribunal accepts the surrender of an abatement certificate, and the Tribunal is not the Scheme Administrator, the Tribunal must give the Scheme Administrator notice in writing of the decision, including details of the abatement certificate surrendered.

**97CD Assessment of compliance with greenhouse gas benchmarks**

- (1) Regulations may be made for or with respect to the following matters:
  - (a) the circumstances in which a renewable energy certificate may or may not be counted by a benchmark participant towards a greenhouse gas benchmark or to abate a greenhouse shortfall that has been carried forward,
  - (b) the number of renewable energy certificates that may be counted for a compliance period (including for a greenhouse shortfall that was carried forward),
  - (c) the assessment of the greenhouse shortfall (if any) and of liability for greenhouse penalty of a benchmark participant, including self-assessment and assessment by the Tribunal,
  - (d) the date on which an assessment is taken to have been made and the date on which an assessment takes effect,
  - (e) default assessments where a greenhouse gas benchmark statement is not lodged by a benchmark participant,

- (f) amendment of assessments, at the request of a benchmark participant or on the Tribunal's own motion,
  - (g) revocation of the cancellation of abatement certificates in connection with amended assessments and the revival of the certificates,
  - (h) payments resulting from amended assessments,
  - (i) notice of assessments.
- (2) The regulations are to include provisions that limit the number of renewable energy certificates that may be counted towards a greenhouse gas benchmark by reference to relevant acquisitions that are attributable to sales of electricity in New South Wales.
- (3) In this section:

**relevant acquisition** has the meaning given by the [Renewable Energy \(Electricity\) Act 2000](#) of the Commonwealth.

#### **97CE Validity of assessment**

The validity of an assessment of a liability to pay a greenhouse penalty is not affected because any provision of this Act, the regulations or the greenhouse gas benchmark rules has not been complied with.

#### **97CF Waiver or suspension 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 benchmark participant to comply with the participant's greenhouse gas benchmark, but only if it appears to the Minister that a benchmark participant is or will be unable to comply with the benchmark because of:
- (a) a systems or other failure of the register of abatement certificates, or
  - (b) any other emergency affecting the integrity of the register or the abatement certificate scheme established under this Part.
- (2) An order may:
- (a) be made subject to conditions, and
  - (b) apply to all benchmark participants or to a specified class of participants, and
  - (c) specify the effect of the waiver or suspension on any other rights conferred or obligations imposed under this Part.
- (3) An order takes effect on the day on which it is published in the Gazette or, if a later day is specified in the order, on that day.
- (4) An order may be amended or revoked by a later order.

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

### **97D Accredited persons may create abatement certificates**

- (1) A person may create an abatement certificate under this Part only if the person is an accredited abatement certificate provider.
- (2) A person who is an accredited abatement certificate provider may create abatement certificates only in relation to those activities in relation to which the person has been accredited as an abatement certificate provider.

### **97DA Eligibility for accreditation**

- (1) The regulations and greenhouse gas benchmark rules may make provision for or with respect to the eligibility of a person for accreditation as an abatement certificate provider.
- (2) The regulations and greenhouse gas benchmark rules may make provision for accreditation as an abatement certificate provider in respect of any activities or class of activities that promote the reduction of greenhouse gas emissions.
- (3) Without limiting subsection (2), the regulations and the greenhouse gas benchmark rules may make provision for or with respect to eligibility for accreditation in respect of 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.
- (4) The regulations and greenhouse gas benchmark rules may make provision for or with respect to eligibility for accreditation in respect of carbon sequestration by the planting of forests or other means, but only if:
  - (a) the activity occurs in this State, or
  - (b) the activity occurs in another jurisdiction in which a mandatory scheme intended to promote the reduction of greenhouse gas emissions, approved by the Minister for the purposes of this subsection, is in operation.
- (5) The Minister may approve a scheme for the purposes of subsection (4) only if the Minister is satisfied that:
  - (a) the reduction of greenhouse gas emissions proposed to be achieved by the scheme is not less than the reduction proposed to be achieved by the scheme established under this Part, and

(b) the monitoring and enforcement of compliance with the scheme to be approved is no less stringent than that applicable to the scheme established under this Part.

(6) The regulations and greenhouse gas benchmark rules are to include provision for the recognition of the arrangements in place before the commencement of this Part relating to category A generation, under which energy in certain circumstances is deemed to be assigned to a retail supplier, so as to ensure that the retail supplier is entitled (subject to accreditation as an abatement certificate provider under this Part) to create abatement certificates in respect of any abatement of greenhouse gas emissions associated with that energy.

(7) (Repealed)

#### **97DB Application for accreditation**

(1) Any person who is eligible for accreditation as an abatement certificate provider in relation to any activity may apply to the Scheme Administrator for accreditation.

(1A) An application cannot be made on or after 1 January 2010 or such later day as may be prescribed by the regulations.

(2) The Scheme Administrator is to determine an application for accreditation as an abatement certificate provider:

(a) by accrediting the applicant as an abatement certificate provider in relation to specified activities, or

(b) by refusing the application.

(3) The Scheme Administrator may refuse an application for accreditation as an abatement certificate provider on such grounds as may be specified in the regulations.

(4) The regulations may make provision for or with respect to applications for accreditation, including by requiring an application fee to be paid to the Scheme Administrator.

(5) The Scheme Administrator may charge a fee (in addition to any application fee) in respect of the investigation and determination of an application for accreditation. The fee is to be determined by the Scheme Administrator on a cost recovery basis.

#### **97DC Duration of accreditation**

(1) Accreditation of a person as an abatement 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 as an abatement certificate provider on such grounds as may be specified in the regulations.

(3) The cancellation or suspension of the accreditation of a person as an abatement

certificate provider is subject to such conditions as the Scheme Administrator imposes. Any such conditions may include (but are not limited to) any condition to which the accreditation was subject immediately before it was suspended or cancelled.

- (4) The regulations may provide for the variation or revocation of any conditions that are imposed by the Scheme Administrator on the suspension or cancellation of accreditation as an abatement certificate provider.

**97DD Conditions of accreditation**

- (1) Accreditation as an abatement certificate provider is subject to the following conditions:
- (a) such conditions as may be imposed from time to time by the regulations,
  - (b) such conditions as may be 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) (Repealed)
- (3) The following are examples of the types of conditions that may be imposed on the accreditation of a person as an abatement certificate provider:
- (a) a condition that requires the person not to create an abatement certificate in respect of the greenhouse gas emissions abated by an activity if an abatement certificate or a renewable energy certificate has already been created in respect of that abatement or if that abatement has already been used for the purposes of compliance with another scheme (whether mandatory or voluntary and whether or not imposed by or under a law of this State or another jurisdiction or otherwise), or in accordance with any agreement, arrangement or undertaking of any kind, intended to promote the reduction of greenhouse gas emissions,
  - (b) a condition that requires the person not to create a renewable energy certificate in respect of the greenhouse gas emissions abated by an activity, or to use that abatement for the purposes of compliance with another scheme (whether mandatory or voluntary and whether or not imposed by or under a law of this State or another jurisdiction or otherwise), or in accordance with any agreement, arrangement or undertaking of any kind, intended to promote the reduction of greenhouse gas emissions, if an abatement certificate has already been created in respect of that abatement,
  - (c) a condition that requires the person to provide financial assurances to secure or guarantee the person's compliance with this Part,
  - (d) 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 abatement certificate provider,

- (e) a condition that requires the person to maintain the greenhouse gas abatement secured by carbon sequestration activities for 100 years,
  - (f) a condition that requires the person to enter into or arrange for a restriction or public positive covenant under section 88E of the *Conveyancing Act 1919*, and to arrange for its registration, for the purpose of ensuring that specified requirements of a condition run with the land concerned,
  - (g) 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.
- (4) Subsection (3) does not prevent other conditions being imposed on the accreditation of a person as an abatement certificate provider.
- (5) A person must not contravene any of the conditions of the person's accreditation as an abatement certificate provider.

Maximum penalty: 2,000 penalty units.

- (6) Subsection (5) extends to any conditions to which the suspension or cancellation of the accreditation of a person is subject under section 97DC.

#### **97DDA Variation or revocation of conditions of accreditation**

- (1) An accredited abatement certificate provider may apply to the Scheme Administrator for the variation or revocation of any condition of accreditation imposed by the Scheme Administrator under section 97DD (1) (b).
- (2) The regulations may make provision for or with respect to the variation or revocation of any conditions of accreditation that are imposed by the Scheme Administrator, including the fee (if any) to be paid to the Scheme Administrator in respect of an application under subsection (1).
- (3) The Scheme Administrator may charge a fee (in addition to any application fee) in respect of the investigation and determination of an application under subsection (1). The fee is to be determined by the Scheme Administrator on a cost recovery basis.

#### **97DE Accreditation not transferable**

Accreditation as an abatement certificate provider is not transferable.

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



**97E Accredited abatement certificate provider may create certificates**

- (1) A person who is an accredited abatement certificate provider may create abatement certificates in accordance with this Part, the regulations, the greenhouse gas benchmark rules and the conditions (if any) of the person's accreditation as an abatement certificate provider.
- (2) The regulations may make provision for or with respect to the form in which abatement certificates are to be created.

**97EA Value of certificate**

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.

**97EB Entitlement to create abatement certificates**

- (1) The regulations and greenhouse gas benchmark rules may make provision for or with respect to the entitlement of accredited abatement certificate providers to create abatement certificates in respect of the activities, or classes of activities, for which they are accredited as abatement certificate providers.
- (2) Without limiting subsection (1), the regulations and greenhouse gas benchmark rules may provide for the following:
  - (a) the number of abatement certificates that may be created in respect of any activity, or class of activities, on the basis of the carbon dioxide equivalent of greenhouse gas emissions abated or to be abated by the activity,
  - (b) the establishment of a point or level from which electricity generating activities give rise to an entitlement to create abatement certificates under this Part.
- (3) A regulation or rule made for the purposes of subsection (2) (b) is to establish the point or level from which electricity generating activities relating to a generator having a nameplate rating exceeding 30 megawatts that was commissioned before 1 January 2002 give rise to an entitlement to create abatement certificates in one or more of the following ways:
  - (a) the point or level may be the point or level that is equivalent to the usual level of output of the generator, as determined in accordance with the regulation or rule,
  - (b) the point or level may be the point or level which reflects the usual greenhouse gas emissions intensity, expressed in tonnes of carbon dioxide equivalent per megawatt hour, of the output of the generator, as determined in accordance with the regulation or rule.

**97EC When certificates may be created**

- (1) An abatement certificate may be created by an accredited abatement certificate

provider immediately after the activity in respect of which it was created takes place.

- (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.
- (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.
- (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.
- (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).
- (2D) An abatement certificate cannot be created in relation to an activity occurring on or after the termination day.
- (2E) An abatement certificate cannot be created later than 2 months after the termination day.
- (3) The regulations or greenhouse gas benchmark rules may specify when an activity is considered to have taken place for the purposes of this Part.
- (4) (Repealed)

**97ED Creation of certificate must be registered**

- (1) An abatement certificate has no force or effect until the creation of the certificate is registered by the Scheme Administrator under this Part.
- (2) An application for registration of the creation of an abatement certificate may be made to the Scheme Administrator by an accredited abatement certificate provider.
- (3) The Scheme Administrator is to determine an application for registration of the creation of an abatement certificate by:
  - (a) accepting the application and registering the creation of the certificate in the register of abatement certificates in accordance with this Part, or
  - (b) refusing the application.
- (4) The Scheme Administrator registers the creation of a certificate by creating an entry for the certificate in the register of abatement certificates and recording the name of the person who created the certificate as the owner of the certificate.

- (5) The Scheme Administrator may refuse an application for registration of the creation of an abatement certificate on such grounds as may be specified in the regulations.
- (6) The regulations may make provision for or with respect to applications for registration of the creation of an abatement certificate, including by requiring an application fee to be paid to the Scheme Administrator.

**97EE Duration of certificate**

- (1) An abatement certificate, when registered by the Scheme Administrator, remains in force until it is cancelled by the Scheme Administrator.
- (2) An abatement certificate may be cancelled by the Scheme Administrator in the following circumstances:
  - (a) if the person registered as the owner of the abatement certificate surrenders the certificate to the Tribunal, by indicating in the person's greenhouse gas benchmark statement that the certificate is sought to be surrendered, and the Tribunal accepts the surrender of the certificate,
  - (b) in the circumstances set out in section 97EF,
  - (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.
- (3) The Scheme Administrator cancels an abatement certificate by altering the entry relating to the abatement certificate in the register of abatement certificates to show that the certificate is cancelled.

**97EF Scheme Administrator may require surrender of certificates**

- (1) The Scheme Administrator may, by order in writing to a person, require the person to surrender to the Scheme Administrator, within a period specified in the order, a number of abatement certificates specified in the order.
- (2) An order may be made against a person under this section only if the person is found guilty of:
  - (a) an offence against section 97DD (5), or
  - (b) an offence against section 97J (1).
- (3) In the case of an order made against a person found guilty of an offence against section 97J (1), the Scheme Administrator is to require the surrender of a number of certificates that is equivalent to the number of abatement certificates that, in the opinion of the Scheme Administrator, were created by the person in contravention of section 97J and registered under this Part.

**Note—**

The purpose of the order is to remove from circulation a number of abatement certificates that is equivalent to the number of certificates improperly created by a person, so that the improper creation of those certificates does not result in the State greenhouse gas benchmarks being exceeded.

- (4) In any other case where an order is made under this section, the Scheme Administrator is to determine the number of certificates to be surrendered in accordance with the regulations.
- (5) Abatement certificates surrendered by the person for the purpose of compliance with an order under this section are to be cancelled by the Scheme Administrator.
- (6) A certificate surrendered under an order under this section is not to be counted toward compliance with a person's greenhouse gas benchmark or greenhouse shortfall. Accordingly, sections 97BD and 97BE do not apply in respect of certificates surrendered for the purpose of compliance with an order under this section.
- (7) A person must not fail to comply with an order under this section.  
  
Maximum penalty: 1,000 penalty units, and an additional 1 penalty unit for each certificate the person fails to surrender in accordance with the order.
- (8) If a person fails to comply with an order under this section, the Scheme Administrator may cancel any abatement certificates in respect of which the person is registered under this Part as the owner.
- (9) For avoidance of doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of abatement certificates to comply with the order.

**Note—**

If the person who is the subject of the order does not hold a sufficient number of certificates to comply with the order, the person may obtain the required number by purchasing them.

- (10) The regulations may make provision for or with respect to orders under this section.

**97EG Records to be kept by accredited abatement certificate providers**

The regulations may make provision for or with respect to the records to be kept by accredited abatement certificate providers and the information required to be provided to the Scheme Administrator in connection with the creation of abatement certificates.

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

**97F Types of abatement certificate**

- (1) Two types of abatement certificate may be created:

- (a) transferable abatement certificates, and
  - (b) non-transferable abatement certificates.
- (2) The regulations and greenhouse gas benchmark rules may make provision for or with respect to the entitlement of accredited abatement certificate providers to create transferable or non-transferable abatement certificates.
- (3) Subject to the regulations and greenhouse gas benchmark rules, an elective participant is entitled to create non-transferable abatement certificates only in respect of any activities of the elective participant, associated with production processes that use electricity in this State, that give rise to an entitlement to accreditation as an abatement certificate provider.

**97FA Transferability of certificates**

- (1) A transferable abatement certificate may be transferred to any person.
- (2) A non-transferable abatement certificate is not transferable, except as provided by this Division.

**97FB Application for registration of transfer**

- (1) The transfer of an abatement certificate does not have effect until the transfer is registered by the Scheme Administrator under this Part.
- (2) An application for registration of a transfer of an abatement certificate is to be made to the Scheme Administrator by the parties to the transfer.
- (3) The Scheme Administrator must:
  - (a) accept the application by registering the transfer of the certificate in the register of abatement certificates, or
  - (b) refuse the application.
- (4) The Scheme Administrator registers the transfer of an abatement certificate by altering the entry relating to that certificate in the register of abatement certificates so as to record the new owner of the certificate.
- (5) The Scheme Administrator may refuse an application for registration of a transfer of an abatement certificate on such grounds as may be specified in the regulations.
- (6) The Scheme Administrator must refuse an application for registration of a transfer of a non-transferable abatement certificate unless:
  - (a) the Scheme Administrator is satisfied that the transfer is associated with the sale of the business, or part of the business, in connection with which the abatement certificate was created to the person to whom the certificate is to be transferred,

or

(b) the Scheme Administrator is authorised by the regulations to register the transfer.

(7) The regulations may make provision for or with respect to applications for the registration of transfers of abatement certificates, including by requiring an application fee to be paid to the Scheme Administrator.

#### **97FC Other dealings in certificates**

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

#### **97FD Holder of certificate may deal with certificate**

- (1) The person registered as the owner of an abatement certificate may, subject to this Part, deal with the certificate as its absolute owner and give good discharges for any consideration for any such dealing.
- (2) Subsection (1):
  - (a) is subject to any rights appearing in the register of abatement certificates to belong to another person, being rights that are registered in accordance with any regulations made under section 97FC, and
  - (b) only protects a person who deals with the person registered as the owner of the abatement certificate as a purchaser in good faith for value and without notice of any fraud on the part of the registered owner.
- (3) Despite subsection (2) (b), a person who purchases an abatement certificate in good faith for value does not lose the protection provided by subsection (1) because the person has notice that a person has been found guilty of an offence against section 97J in respect of the abatement certificate.

#### **Note—**

Section 97J makes it an offence to improperly create an abatement certificate. Section 97EF allows the Scheme Administrator to require a person who has been convicted of an offence against section 97J to “make good” the improper creation of the abatement certificates by surrendering an equivalent number of abatement certificates to those improperly created to the Scheme Administrator. It is not necessary for those certificates to be the actual certificates improperly created (as those certificates may already have been sold).

#### **97FE Scheme Administrator not concerned as to legal effect of transaction**

The Scheme Administrator is not concerned with the effect in law of any transaction registered under this Part or the regulations and the registration of the transaction does not give to the transaction any effect that it would not have if this Division had not been enacted.

## **Division 7 Registers**

**97G Establishment and keeping of registers**

- (1) The Scheme Administrator is required to establish and keep the following registers for the purposes of this Part:
  - (a) a register of accredited abatement certificate providers,
  - (b) a register of abatement certificates.
- (2) A register may be kept wholly or partly by electronic means.

**97GA Register of accredited abatement certificate providers**

- (1) The register of accredited abatement certificate providers is to contain the following information in relation to each accredited abatement certificate provider:
  - (a) the name of the accredited abatement certificate provider,
  - (b) the type of certificates the accredited abatement certificate provider is entitled to create under this Part,
  - (c) any other information required to be included in the register by this Part or the regulations.
- (2) The register of accredited abatement certificate providers may also contain such information as the regulations may prescribe in relation to a person whose accreditation as an abatement certificate provider is suspended or cancelled.
- (3) Copies of the register of accredited abatement certificate providers are to be made available for public inspection (free of charge) at the principal office of the Scheme Administrator during ordinary business hours.
- (4) Only the following information in the register of accredited abatement certificate providers is to be made available for public inspection under subsection (3):
  - (a) the information referred to in subsection (1) (a) and (b), and
  - (b) any other information in the register that is required by the regulations to be made available for public inspection.

**97GB Register of abatement certificates**

- (1) The register of abatement certificates is to contain the following information in relation to each abatement certificate that is created under this Part:
  - (a) the name of the person who created the abatement certificate,
  - (b) the name of the current registered owner, and any previous registered owners, of the abatement certificate,

- (c) whether the certificate is a transferable certificate or a non-transferable certificate,
  - (d) any other information required to be included in the register by this Part or the regulations.
- (2) Copies of the register of abatement certificates are to be made available for public inspection (free of charge) at the principal office of the Scheme Administrator during ordinary business hours.
- (3) Only the following information in the register of abatement certificates is to be made available to the public under subsection (2):
- (a) the information referred to in subsection (1) (a), (b) and (c), and
  - (b) any other information in the register that is required by the regulations to be made available for public inspection.

#### **97GBA Information from registers**

- (1) The Scheme Administrator may compile information concerning the following from the register of accredited abatement certificate providers and the register of abatement certificates:
- (a) the creation or cancellation of abatement certificates under this Part,
  - (b) current and previous registered owners of abatement certificates,
  - (c) the transfer of abatement certificates,
  - (d) other information of a kind prescribed by the regulations.
- (2) The Scheme Administrator may make information compiled under subsection (1) available for public inspection (free of charge) in such form as the Administrator thinks fit.

#### **97GC Evidentiary provisions**

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

#### **97GD Correction of register**

The Scheme Administrator may correct any error in or omission from a register.

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



## **97H Functions of Tribunal**

- (1) The Tribunal has the following functions:
  - (a) to determine, in accordance with the greenhouse gas benchmark rules, the NSW pool coefficient for greenhouse gas emissions, the State population, the estimated total electricity demand in each year for the State and the electricity sector benchmark,
  - (b) to assess and determine, in accordance with this Act, the regulations and the greenhouse gas benchmark rules, the greenhouse gas benchmark for a benchmark participant and whether or not the benchmark has been complied with,
  - (c) if appropriate, to assess and determine, in accordance with this Act, the regulations and the greenhouse gas benchmark rules, the greenhouse shortfall and any liability for greenhouse penalty payable by a benchmark participant,
  - (d) to conduct audits, or require the conduct of audits, for the purposes of this Part,
  - (e) to monitor, and report to the Minister on, the extent to which retail suppliers comply, or fail to comply, with conditions imposed under this Part on licences held by them,
  - (f) such other functions as are conferred or imposed on it by or under this Act.
- (2) For the purpose of enabling the Tribunal to exercise its functions, the Minister must furnish the Tribunal with such information in the possession of the Minister as the Tribunal may request in relation to the compliance by retail suppliers and other benchmark participants with this Part.
- (3) The Tribunal may, with the approval of the Minister, delegate the exercise of its functions under this Part, other than this power of delegation, to any other person or body.
- (4) Section 10 of the *Independent Pricing and Regulatory Tribunal Act 1992* does not apply to the Tribunal's functions under this Part.

## **97HA Scheme Administrator**

- (1) The functions of the Scheme Administrator under this Part are to be exercised by a person or body appointed by the Minister to exercise those functions or, in the absence of such an appointment, the Tribunal.
- (2) In determining whether to appoint a person or body to exercise the functions of Scheme Administrator, the Minister must consider the following matters:
  - (a) the efficient costs of any such appointment,

- (b) the efficiency of administrative arrangements relating to the abatement certificate scheme,
  - (c) ability to meet greenhouse objectives,
  - (d) proposed governance arrangements,
  - (e) arrangements proposed to manage liabilities associated with carrying out the Scheme Administrator's functions.
- (3) The Scheme Administrator has the following functions:
- (a) the functions conferred by this Act relating to the abatement certificate scheme established by this Part,
  - (b) to monitor, and to report to the Minister on, the extent to which accredited abatement certificate providers comply with this Act, the regulations, the greenhouse gas benchmark rules and any conditions of accreditation,
  - (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
  - (d) such other functions as are conferred or imposed on it by or under this Act or any other Act or law.
- (4) If the Scheme Administrator is appointed by the Minister, the Scheme Administrator also has such other functions as are conferred or imposed on it by the Minister under the terms of its appointment as Scheme Administrator.
- (5) For the purpose of enabling the Scheme Administrator to exercise its functions, the Minister must furnish the Scheme Administrator with such information in the possession of the Minister as the Scheme Administrator may request in relation to the compliance by accredited abatement certificate providers with this Part.
- (6) The Scheme Administrator may, with the approval of the Minister, delegate the exercise of its functions under this Part, other than this power of delegation, to any other person or body.
- (7) The Scheme Administrator, and any person acting under the direction of the Scheme Administrator, is not liable in any civil proceedings for anything done or omitted to be done in good faith in the exercise or purported exercise of any function conferred or imposed by or under this Act.
- (8) The regulations may make provision for or with respect to the appointment of a Scheme Administrator by the Minister.
- (9) The Minister may appoint more than one person or body to exercise the functions of the Scheme Administrator and may appoint different persons or bodies to exercise particular functions of the Scheme Administrator. In such a case, a reference in this

Act to the Scheme Administrator, in relation to any functions of the Scheme Administrator, is a reference to the person or body appointed to exercise those functions (or, in the absence of such an appointment, the Tribunal).

**97HB Conduct of audits**

- (1) The regulations may make provision for or with respect to the conduct of audits by the Tribunal, the Scheme Administrator or other persons for the purposes of this Part.
- (2) Without limiting subsection (1), the regulations may provide for the following matters:
  - (a) the matters that may be the subject of an audit,
  - (b) the persons who may conduct an audit,
  - (c) the functions that may be exercised by persons who conduct an audit,
  - (d) offences relating to obstructing or hindering persons, or refusing or failing to comply with requirements made by persons, who conduct audits.
- (3) Each benchmark participant or accredited abatement certificate provider is liable to pay to the Treasurer the cost (as certified by the Tribunal or Scheme Administrator) involved in and in connection with carrying out the Tribunal's or Scheme Administrator's audit functions in relation to the participant or provider.
- (4) Without limitation, a licence or accreditation may include terms and conditions relating to the determination of the cost of carrying out those functions.

**97HC Provision of information, documents and evidence**

- (1) For the purposes of exercising the Tribunal's functions under this Part (whether as the Tribunal or the Scheme Administrator), the Chairperson of the Tribunal may, by notice in writing served on an officer of a benchmark participant, an accredited abatement certificate provider or any other person, require the officer or person to do any one or more of the following:
  - (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out the information specified in the notice,
  - (b) to send to the Tribunal, on or before a day specified in the notice, the documents specified in the notice,
  - (c) to attend a meeting of the Tribunal to give evidence.
- (2) For the purposes of exercising the Scheme Administrator's functions under this Part, the Scheme Administrator (not being the Tribunal) may, by notice in writing served on an officer of a benchmark participant or an accredited abatement certificate provider, require the officer to do any one or more of the following:

- (a) to send to the 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 Administrator, on or before a day specified in the notice, the documents specified in the notice.
- (3) If documents are given to the Tribunal or Scheme Administrator under this section, the Tribunal 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 them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal or Scheme Administrator.

#### **97HD Cabinet documents and proceedings**

- (1) This Part does not enable the Tribunal or Scheme Administrator:
- (a) to require any person to give any statement of information or answer any question that relates to confidential proceedings of Cabinet, or
  - (b) to require any person to produce a Cabinet document, or
  - (c) to inspect a Cabinet document.
- (2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.
- (3) In this section:

**Cabinet** includes a committee of Cabinet or a subcommittee of such a committee.

**Cabinet document** means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the [Freedom of Information Act 1989](#).

#### **97HE Confidential information**

- (1) If a person provides information to the Tribunal or Scheme Administrator in connection with the Tribunal's or Scheme Administrator's functions under this Part on the understanding that the information is confidential and will not be divulged, the Tribunal or Scheme Administrator is required to ensure that the information is not divulged by it to any person, except:
- (a) with the consent of the person who provided the information, or

- (b) in the case of information provided to the Tribunal (whether or not acting as Scheme Administrator), to the extent that the Tribunal is satisfied that the information is not confidential in nature, or
  - (c) to a member or officer of the Tribunal or to an officer of the Scheme Administrator, as the case requires.
- (2) If the Tribunal or Scheme Administrator is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Tribunal or Scheme Administrator in connection with its functions under this Part, it may give directions prohibiting or restricting the divulging of the information.
- (3) A person must not contravene a direction given under subsection (2).  
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (4) A reference in this section to information includes information given at a meeting of the Tribunal and information contained in any documents given to the Tribunal or Scheme Administrator.

#### **97HF Annual report by Tribunal**

- (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.
- (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.
- (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 occurring 3 months after the termination day (but on or before the day occurring 7 months after the termination day).
- (2) Without limiting subsection (1), the report is to contain the following:
- (a) the identity of each benchmark participant and the performance of the participant in relation to the participant's greenhouse gas benchmark,
  - (b) the total number of abatement certificates surrendered in each category of certificate.
- (3) The report must also set out the functions delegated by the Tribunal under section 97H (3) and the person or body to whom they were delegated.
- (4) 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.

## **Division 9 Reviews**

### **971 Appeals to Administrative Decisions Tribunal about certificates and related matters**

- (1) A benchmark participant or former benchmark participant who is aggrieved by any of the following decisions of the Tribunal may apply to the Administrative Decisions Tribunal for a review of the decision:
  - (a) a determination as to the greenhouse gas benchmark for the participant or former participant for a compliance period,
  - (b) a decision to refuse to accept the surrender of an abatement certificate for the purposes of complying with the participant's or former participant's greenhouse gas benchmark or abating a greenhouse shortfall,
  - (c) a decision to refuse to count a renewable energy certificate for the purposes of complying with the participant's or former participant's greenhouse gas benchmark or abating a greenhouse shortfall,
  - (d) an assessment of the amount of greenhouse penalty payable by the participant or former participant for a compliance period,
  - (e) any other decision of the Tribunal of a kind prescribed by the regulations.
- (2) A person who is or was accredited, or who has applied to be accredited, under this Part as an abatement certificate provider and who is aggrieved by any of the following decisions of the Scheme Administrator may apply to the Administrative Decisions Tribunal for a review of the decision:
  - (a) a decision to refuse accreditation of the person as an abatement certificate provider,
  - (b) a decision to cancel or suspend the accreditation of the person as an abatement certificate provider,
  - (c) a decision to refuse registration of the creation of an abatement certificate,
  - (d) any other decision of the Scheme Administrator of a kind prescribed by the regulations.
- (3) A person who has applied for the registration of a transfer of an abatement certificate under this Part and who is aggrieved by a decision of the Scheme Administrator to refuse registration of the transfer may apply to the Administrative Decisions Tribunal for a review of the decision.
- (4) A person who is the subject of an order by the Scheme Administrator under this Part requiring the person to surrender abatement certificates to the Scheme Administrator and who is aggrieved by a decision of the Scheme Administrator to impose that order

may apply to the Administrative Decisions Tribunal for a review of the decision.

## **Division 10 Offences**

### **Note—**

Under section 184 directors and managers of corporations that commit offences may be proceeded against if they knowingly authorise or permit the commission of the offence.

### **97J Improper creation of certificates**

- (1) A person must not create or purport to create an abatement certificate in contravention of this Act, the regulations or the greenhouse gas benchmark rules, or the conditions (if any) of the person's accreditation as an abatement certificate provider.

Maximum penalty: 100 penalty units, and an additional 1 penalty unit in respect of each certificate created.

- (2) For avoidance of doubt, a person may be found guilty of an offence against subsection (1) whether or not the abatement certificate concerned is registered in the register of abatement certificates.

### **97JA Obstruction of Tribunal or Scheme Administrator**

- (1) A person must not, without reasonable excuse:
  - (a) refuse or fail to comply with a notice served under section 97HC, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting of the Tribunal under section 97HC.
- (2) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions for the purposes of this Part as Chairperson or other member.
- (3) A person must not hinder, obstruct or interfere with the Scheme Administrator in the exercise of functions for the purposes of this Part.
- (4) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units,
- (b) in the case of an individual—100 penalty units or 6 months imprisonment, or both.

**97JB False or misleading information**

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

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

Maximum penalty: 2,000 penalty units or 6 months imprisonment, or both.

**97JC Licence condition relating to offences**

It is a condition of a retail supplier's licence that the retail supplier must comply with this Part.

**Division 11 Greenhouse gas benchmark rules**

**97K Greenhouse gas benchmark rules**

- (1) The Minister may approve rules for or with respect to the following matters:
  - (a) the methodology for calculating the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions abated or to be abated by an activity, including activities the subject of renewable energy certificates,
  - (b) the methodology for determining the greenhouse gas benchmark for a benchmark participant,
  - (c) the methodology for determining the total number of megawatt hours of electricity supplied or purchased by a benchmark participant in a compliance period, including allowances for electricity losses from transmission or distribution to the point of use and allowances where a participant is responsible for a specified electricity load,
  - (d) the methodology for determining the NSW pool coefficient for greenhouse gas emissions,
  - (e) the methodology for determining the estimated State demand for electricity for a year and the proportion of that demand applicable to a benchmark participant,
  - (f) the methodology for determining the State population for a compliance period,
  - (g) the methodology for determining whether a benchmark participant has complied with the participant's greenhouse gas benchmark in any compliance period,
  - (h) any other matter for which a greenhouse gas benchmark rule may be made under



this Part,

- (i) any other matter prescribed by the regulations.
- (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.
- (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 any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.
- (4) The Minister may from time to time approve amendments to the rules or a revocation of rules.
- (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:
  - (a) written notice of the approval of the rule must be published in the Gazette, and
  - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
  - (c) the Minister must make available a copy of the rule to each benchmark participant and make copies available to the public.
- (6) A rule must be consistent with this Act and the regulations.

**Editorial note—**

For notices of approval of rules under this section see Gazettes No 161 of 3.10.2003, pp 9738, 9765, 9819, 9876, 9907; No 95 of 11.6.2004, pp 3562, 3651; No 154 of 9.12.2005, p 10316; No 164 of 23.12.2005, p 11541; No 106 of 25.8.2006, p 6726; No 155 of 5.12.2008, p 11790 and No 93 of 26.6.2009, p 3621.

**97KA Obligations under greenhouse gas benchmark rules**

- (1) A benchmark participant or an accredited abatement certificate provider must not contravene a greenhouse gas benchmark rule.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units,
  - (b) in the case of an individual—100 penalty units.
- (2) It is a condition of a retail supplier's licence that the retail supplier must comply with

the greenhouse gas benchmark rules.

## **Division 12 Termination of operation of Part**

### **97KB Termination of scheme**

- (1) The Governor may, by proclamation published on the NSW legislation website, do either or both of the following:
  - (a) prescribe a termination day for the scheme set out in this Part,
  - (b) repeal any or all of the provisions of this Part.
- (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:
  - (a) has been or will be established (either nationally or in this State and at least one or more other States or Territories), and
  - (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.
- (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.
- (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.
- (5) If the termination day is on 1 January in any year there is no final compliance period.
- (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.
- (7) Without limiting subsection (6), the regulations may specify conditions that must be complied with in respect of the repeal of a provision.

## **Part 9 Energy savings scheme**

### **Division 1 Preliminary**

#### **98 Objects of Part**

- (1) The principal object of this Part is to create a financial incentive to reduce the consumption of electricity by encouraging energy saving activities.

(2) The other objects of this Part are:

- (a) to assist households and businesses to reduce electricity consumption and electricity costs, and
- (b) to complement any national scheme for carbon pollution reduction by making the reduction of greenhouse gas emissions achievable at a lower cost, and
- (c) to reduce the cost of, and the need for, additional energy generation, transmission and distribution infrastructure.

## 99 Definitions

(1) In this Part:

**accredited certificate provider** means a person accredited as an energy savings certificate provider under this Part and whose accreditation is in force.

**base penalty rate**—see section 113.

**carbon dioxide equivalent** of greenhouse gas emissions means the mass of carbon dioxide measured in tonnes that has the same global warming potential as those greenhouse gas emissions.

**carried forward shortfall**—see section 116.

**certificate conversion factor**—see section 130.

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

**direct supplier of electricity** has the meaning given by section 101.

**end user** of electricity means a person who acquires, or proposes to acquire, electricity for consumption purposes.

**energy conversion factor**—see section 108.

**energy savings certificate** means an energy savings certificate created under this Part.

**energy savings scheme** or **scheme** means the energy savings scheme established by this Part.

**energy savings scheme target**—see section 103.

**energy savings shortfall**—see section 111.

**energy savings shortfall penalty**—see section 112.

**energy savings statement**—see section 123.

**greenhouse gas** means carbon dioxide, methane, nitrous oxide, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.

**individual energy savings target**—see section 106.

**liable acquisition**—see section 107.

**Market Operator** means the entity that has the function of operating and administering the wholesale exchange under the *National Electricity (NSW) Law*.

**penalty conversion factor**—see section 113.

**recognised energy saving activity** means an activity in respect of which an energy savings certificate may be created under this Part.

**register** means a register kept by the Scheme Administrator under this Part.

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

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

**scheme participant** means a person who is required by this Part to participate in the energy savings scheme.

**scheme penalty rate**—see section 113.

**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 Division 13 of this Part.

- (2) In this Part, a reference to a particular **year** is a reference to the period of 12 months commencing on 1 January of that year, except in relation to the year 2009. A reference to the year 2009 is a reference to the period of 6 months commencing on 1 July 2009.

## Division 2 Energy savings scheme

### 100 Establishment of scheme

There is established by this Part an energy savings scheme.

### 101 Persons required to participate in scheme

- (1) The following persons are required to participate in the energy savings scheme:

- (a) a retail supplier,
- (b) a direct supplier of electricity,
- (c) a market customer.

(2) In this section:

**direct supplier of electricity** means an electricity generator prescribed by the regulations, or any other person prescribed by the regulations, who supplies electricity directly to a customer under an electricity supply arrangement to which section 179 does not apply.

**market customer** means a customer that has classified any of its electricity loads as a market load and that is registered with the Market Operator as a market customer under the *National Electricity Rules* (within the meaning of the *National Electricity (NSW) Law*).

## **102 Scheme participants required to meet individual energy savings targets**

Each scheme participant is required to meet its individual energy savings target for each year, in accordance with this Part.

**Note—**

Failure to meet an individual energy savings target will result in a penalty being payable.

## **Division 3 Energy savings scheme targets**

### **103 Energy savings scheme targets**

- (1) The energy savings scheme targets are to be used as the basis for the calculation of each scheme participant's individual energy savings target.
- (2) The energy savings scheme targets are set out in Schedule 5.
- (3) The energy savings scheme target for a year specified in column 1 of Schedule 5 is the amount specified for that year in column 2 of that Schedule.

**Note—**

The energy savings scheme target is applied to the liable acquisitions made by a scheme participant to calculate an individual energy savings target for the scheme participant. This is explained in Division 4.

### **104 Changes to energy savings scheme targets**

- (1) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5 to change the energy savings scheme target for a specified year or years.
- (2) Accordingly, any such regulation may omit an amount specified in column 2 of

Schedule 5 and substitute a new amount.

- (3) Any such regulation does not affect the energy savings scheme target for any year that commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

**Note—**

For example, a regulation to change the energy savings scheme target for the year 2011 would have to be made on or before 31 December 2009.

### **105 Conditions under which energy savings scheme targets may be changed**

The Minister may recommend the making of a regulation to change the energy savings scheme target for a year or years only if the Minister has certified in writing to the Governor that, in the Minister's opinion:

- (a) the change to the energy savings scheme target is appropriate to achieve greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the energy savings scheme, or for the purposes of implementing a national scheme with similar objectives to the energy savings scheme, or
- (b) the change to the energy savings scheme target is appropriate because of a sustained under supply of energy savings certificates, as evidenced by scheme participants being required to pay a substantial energy savings shortfall penalty for 2 or more consecutive years, or
- (c) the change to the energy savings scheme target is appropriate because of a sustained over supply of energy savings certificates, as evidenced by the total number of certificates created substantially exceeding the total number of certificates required to meet all individual energy savings targets for 2 or more consecutive years, or
- (d) the change to the energy savings scheme target is appropriate because of significant changes to the rules governing the creation of energy savings certificates, or
- (e) the change to the energy savings scheme target is otherwise appropriate because of significant changes to the policy or regulatory framework, or the market conditions, in which the energy savings scheme operates.

## **Division 4 Individual energy savings targets**

### **106 Individual energy savings targets**

- (1) The **individual energy savings target** of a scheme participant for a year is the amount (expressed in tonnes of carbon dioxide equivalent of greenhouse gas emissions) calculated as follows:

(a) **Step 1**

Multiply the energy savings scheme target for the year by the total value of all

liable acquisitions made by the scheme participant during that year to obtain an individual energy savings target expressed in megawatt hours (***the megawatt hours target***).

(b) **Step 2**

Multiply the megawatt hours target by the energy conversion factor for that year.

- (2) If the result obtained at the end of Step 2 includes a fraction of a tonne, the fractional amount is to be rounded up or down to the nearest whole tonne (and, if the amount to be rounded is half a tonne, is to be rounded up).

**Note—**

For example, a retail supplier has liable acquisitions in the year 2010 of 75,000 megawatt hours.

To calculate the individual energy savings target, 75,000 must first be multiplied by 0.015, the energy savings scheme target for the year 2010 (this is Step 1).

Accordingly, the retail supplier has a megawatt hours target of 1,125.

Next, at Step 2, 1,125 must be multiplied by the energy conversion factor for the year 2010, which is 1.01.

The result is 1,136.25, which is then rounded down to 1,136.

The retail supplier has an individual energy savings target for the year 2010 of 1,136 tonnes of carbon dioxide equivalent.

As will be explained further below, the retail supplier can meet this target by surrendering 1,136 energy savings certificates to the Scheme Regulator.

## **107 Liable acquisitions**

- (1) For the purposes of this Part, a ***liable acquisition*** is any purchase of electricity by a scheme participant, from the Market Operator or from a person who is not a registered participant under the *National Electricity (NSW) Law*, where the electricity is purchased for consumption by, or onsale to, end users in this State, or for use in this State.
- (2) A supply of electricity generated by a scheme participant is also to be treated as a liable acquisition under this Part if:
- (a) the scheme participant is a retail supplier and the electricity is supplied by the retail supplier for consumption by, or onsale to, end users in this State, or for use in this State, or
- (b) the scheme participant is a direct supplier of electricity and the supply is of a kind specified by the regulations to be a liable acquisition under the scheme.
- (3) For the purposes of this Part:
- (a) a liable acquisition is ***made*** by a scheme participant on the date the electricity is

purchased by the scheme participant or, in the case of a supply of electricity treated as a liable acquisition, supplied by the scheme participant, and

(b) the **value** of a purchase or supply of electricity is the amount of electricity purchased or supplied, expressed in megawatt hours.

(4) Electricity is taken to be purchased by a scheme participant on the date the electricity is physically delivered to the scheme participant (regardless of when the contract or other arrangement for purchase of the electricity was entered into or made).

(5) This section is subject to Division 5 (which provides for exemptions).

### **108 Energy conversion factors**

(1) Energy conversion factors are set out in Schedule 5.

(2) The energy conversion factor for a year specified in column 1 of Schedule 5 is the amount specified for that year in column 3 of that Schedule.

(3) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5 to change the energy conversion factor for a specified year or years.

(4) Accordingly, any such regulation may omit an amount specified in column 3 of Schedule 5 and substitute a new amount.

(5) Any such regulation does not affect the energy conversion factor for any year that commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

### **109 How does a scheme participant meet an individual energy savings target?**

(1) A scheme participant meets an individual energy savings target for a year if the energy savings attributable to the scheme participant for the year are equivalent to, or exceed, the individual energy savings target of the scheme participant for that year.

(2) A scheme participant fails to meet an individual energy savings target for a year if the energy savings attributable to the scheme participant for the year are less than the individual energy savings target of the scheme participant for that year.

### **110 What are the energy savings attributable to a scheme participant?**

For the purposes of this Part, the energy savings attributable to a scheme participant for a year is the total value of all energy savings certificates that the scheme participant elects to surrender, in accordance with this Part, for the purpose of meeting its individual energy savings target for that year.

**Note—**



Energy savings certificates may be created in respect of activities that reduce the consumption of electricity. See Division 7.

### **111 Failure to meet individual energy savings target—energy savings shortfalls**

- (1) If a scheme participant fails to meet its individual energy savings target for a year, the scheme participant has an **energy savings shortfall** for that year.
- (2) The amount of the energy savings shortfall is the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions by which the individual energy savings target of the scheme participant for the year exceeds the energy savings attributable to the scheme participant for that year.

### **112 Penalties for energy savings shortfalls**

- (1) A scheme participant who has an energy savings shortfall for a year is liable to pay a penalty in respect of that year (an **energy savings shortfall penalty**).
- (2) The amount of the energy savings shortfall penalty is the amount (in dollars) calculated by multiplying the amount of the energy savings shortfall by the scheme penalty rate.
- (3) If the result obtained from that calculation is not a whole number of dollars, it is to be rounded down to the nearest whole number of dollars.

### **113 Penalty rates**

- (1) The **scheme penalty rate** is the amount (expressed in dollars per tonne of carbon dioxide equivalent of greenhouse gas emissions) calculated by multiplying the base penalty rate for the year in respect of which the energy savings shortfall penalty is payable by the penalty conversion factor for that year.
- (2) Base penalty rates and penalty conversion factors are set out in Schedule 5A.
- (3) The base penalty rate for a year specified in column 1 of Schedule 5A is the amount (expressed in dollars per megawatt hour) specified for that year in column 2 of that Schedule.
- (4) The penalty conversion factor for a year specified in column 1 of Schedule 5A is the amount specified for that year in column 3 of that Schedule.

**Note—**

For example, the scheme penalty rate for 2009 would be calculated by multiplying \$24.50 (the base penalty rate for that year) by 0.94. Accordingly, the scheme penalty rate would be \$23.03 per tonne of carbon dioxide equivalent of greenhouse gas emissions. A scheme participant who has an energy savings shortfall of 100 tonnes of carbon dioxide equivalent of greenhouse gas emissions in 2009 would be liable for an energy savings shortfall penalty of \$2,303.

- (5) The regulations may provide for the adjustment of base penalty rates in accordance with movements in the consumer price index.

- (6) If the regulations provide for the adjustment of a base penalty rate in accordance with movements in the consumer price index, the scheme penalty rate is to be calculated using the relevant base penalty rate specified in Schedule 5A adjusted in the manner provided for by the regulations.
- (7) If a base penalty rate specified in Schedule 5A is adjusted for movements in the consumer price index, the Scheme Regulator is to cause notice of the adjusted rate to be published on its website before the beginning of the year to which the adjusted rate applies.

#### **114 Changes to base penalty rates and penalty conversion factors**

- (1) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5A to change the base penalty rate or the penalty conversion factor (or both) for a specified year or years.
- (2) Accordingly, any such regulation may omit an amount specified in column 2 or 3 of Schedule 5A and substitute a new amount.
- (3) Any such regulation does not affect the base penalty rate or penalty conversion factor for any year that commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

**Note—**

For example, a regulation to prescribe a different base penalty rate or penalty conversion factor for the year 2011 and subsequent years would have to be made on or before 31 December 2009.

- (4) The Minister may recommend the making of a regulation to amend Schedule 5A to change the base penalty rate for a year or years only if the Minister has certified in writing to the Governor that, in the Minister's opinion:
  - (a) the change to the base penalty rate is appropriate to achieve greater uniformity or harmonisation with a scheme in another jurisdiction with similar objectives to the energy savings scheme, or for the purposes of implementing a national scheme with similar objectives to the energy savings scheme, or
  - (b) the change to the base penalty rate is appropriate because of a sustained under supply of energy savings certificates, as evidenced by scheme participants being required to pay a substantial energy savings shortfall penalty for 2 or more consecutive years, or
  - (c) the change to the base penalty rate is appropriate because of a sustained over supply of energy savings certificates, as evidenced by the total number of certificates created substantially exceeding the total number of certificates required to meet all individual energy savings targets for 2 or more consecutive years, or
  - (d) the change to the base penalty rate is appropriate because of significant changes

to the rules governing the creation of energy savings certificates, or

(e) the change to the base penalty rate is otherwise appropriate because of significant changes to the policy or regulatory framework, or the market conditions, in which the energy savings scheme operates.

- (5) To avoid doubt, subsection (4) does not apply to a regulation that changes the penalty conversion factor for a year or years.
- (6) This section does not apply to a regulation that provides for the adjustment of base penalty rates for movements in the consumer price index.

**Note—**

The penalty rates specified in Schedule 5A are base rates only. Adjustments for movements in the consumer price index do not necessitate any change to Schedule 5A.

**115 Payment of energy savings shortfall penalties**

- (1) An energy savings shortfall penalty payable by a scheme participant in respect of a year is payable on 1 March in the following year or on any later date determined by the Scheme Regulator for the scheme participant.
- (2) An energy savings shortfall penalty is payable to the Scheme Regulator, for payment into the Consolidated Fund as public money.
- (3) An energy savings shortfall penalty payable by a scheme participant may be recovered in any court of competent jurisdiction as a debt due to the Crown.

**116 Energy savings shortfalls may be carried forward**

- (1) A scheme participant may elect to carry forward an energy savings shortfall, or part of an energy savings shortfall, for a year to the next year in accordance with this section.
- (2) If a scheme participant elects to carry forward an energy savings shortfall, or part of an energy savings shortfall, the amount carried forward is not subject to an energy savings shortfall penalty for the year to which the shortfall relates.
- (3) The maximum amount of an energy savings shortfall that may be carried forward to the year 2010 by a scheme participant is 20% of the scheme participant's individual energy savings target for the year 2009 or, if the regulations prescribe another amount as the maximum amount that may be carried forward to year 2010, the amount so prescribed.
- (4) The maximum amount of an energy savings shortfall that may be carried forward to any other year by a scheme participant is 10% of the scheme participant's individual energy savings target in the previous year or, if the regulations prescribe another amount as the maximum amount that may be carried forward to the relevant year, the amount so prescribed.

- (5) An energy savings shortfall, or part of an energy savings shortfall, may be carried forward to the next year only.
- (6) However, an energy savings shortfall, or part of an energy savings shortfall, for the year 2020 cannot be carried forward to the next year.

**Note—**

The scheme automatically terminates at the end of the year 2020. It is also possible for the scheme to be terminated earlier under Division 14, in which case the regulations may prohibit scheme participants from carrying forward an energy savings shortfall to the next year if the termination takes effect in that next year.

- (7) The fact that a scheme participant elects to carry forward an energy savings shortfall, or part of an energy savings shortfall, to the next year does not prevent the scheme participant from electing to carry forward an energy savings shortfall, or part of an energy savings shortfall, for that next year to the following year.
- (8) For the purposes of this Part, an energy savings shortfall, or part of an energy savings shortfall, for a year that is carried forward to the next year is a **carried forward shortfall** for that next year.

### **117 Carried forward shortfalls must be remedied**

- (1) A scheme participant who has a carried forward shortfall for a year must remedy the carried forward shortfall in that year.
- (2) A scheme participant remedies a carried forward shortfall if the additional energy savings attributable to the scheme participant for the year to which the energy savings shortfall is carried forward are equivalent to, or exceed, the amount of the carried forward shortfall.
- (3) A scheme participant fails to remedy a carried forward shortfall if the additional energy savings attributable to the scheme participant for the year to which the energy savings shortfall is carried forward are less than the amount of the carried forward shortfall.
- (4) For the purposes of this Part, the additional energy savings attributable to a scheme participant for a year is the total value of all energy savings certificates that the scheme participant elects to surrender, in accordance with this Part, for the purpose of remedying its carried forward shortfall for that year.
- (5) If a scheme participant fails to remedy a carried forward shortfall, the scheme participant is liable for a penalty in respect of the non-remedied amount (that is, the amount by which the carried forward shortfall exceeds the additional energy savings attributable to the scheme participant for the year).
- (6) The penalty is to be calculated as if the non-remedied amount were an energy savings shortfall for the year to which the energy savings shortfall is carried forward.

- (7) The penalty is payable in the same manner as, and is taken to be, an energy savings shortfall penalty.
- (8) To avoid doubt, a penalty payable by a scheme participant in respect of a failure to remedy a carried forward shortfall in a year is additional to any penalty payable by the scheme participant in respect of the participant's energy savings shortfall (if any) for that year.

### **118 Elections by scheme participants**

- (1) An election by a scheme participant to surrender an energy savings certificate for the purpose of meeting its individual energy savings target or remedying a carried forward shortfall, or to carry forward an energy savings shortfall, must be made to the Scheme Regulator in accordance with this Part.
- (2) An election has no effect unless it is accepted by the Scheme Regulator.

**Note—**

The election must accompany the scheme participant's annual energy savings statement. See Division 6.

## **Division 5 Exemptions**

### **119 Exemptions**

- (1) The Minister may, by order published in the Gazette, grant an exemption from the scheme in respect of any electricity load:
  - (a) used by a specified person, or class of persons, or
  - (b) used 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 respect of whom the exemption applies.
- (3) The Minister may grant an exemption under this section only if satisfied that:
  - (a) the electricity load is used in connection with an industry or activity that is both emissions intensive and trade exposed, and
  - (b) the exemption is otherwise generally consistent with the objects of this Part.
- (4) An exemption is to specify whether it is a full exemption or a partial exemption.
- (5) If the exemption is a full exemption, the electricity load to which the exemption applies is, for the purposes of this Part, **fully exempt electricity load**.
- (6) If the exemption is a partial exemption, the electricity load to which the exemption applies is, for the purposes of this Part, **partially exempt electricity load**.

- (7) If an exemption is a partial exemption, the order granting the exemption is to specify (as a percentage or otherwise) the proportion of electricity load used by the relevant person or class of persons, or in connection with the relevant activity or class of activities, that is exempt from the scheme. The proportion specified is referred to in this Division as the ***exempt proportion***.

#### **120 Effect of exemption**

- (1) A scheme participant is entitled to deduct from the total value of its liable acquisitions the value of any purchase of electricity that is to be used by a person or in connection with an activity and which, when so used, is fully exempt electricity load.
- (2) A scheme participant is entitled to deduct from the total value of its liable acquisitions a proportion of the value of any purchase of electricity that is to be used by a person or in connection with an activity and which, when so used, is partially exempt electricity load. The proportion that may be deducted is the exempt proportion.
- (3) An order granting an exemption may specify any allowances that may be made by scheme participants, in applying the exemption, for electricity losses occurring between the purchase of the electricity by the scheme participant and its use by an end user.
- (4) Electricity the subject of such an allowance may also be deducted from the total value of liable acquisitions made by a scheme participant, in accordance with the exemption.
- (5) An order granting an exemption may authorise the Scheme Regulator to make rules with respect to the exemption (including rules relating to assessment of deductions under this Division).
- (6) Any deductions made by scheme participants under this Division must be made in accordance with the provisions of the relevant exemption, and any such rules.
- (7) In any proceedings under this Act involving a scheme participant, the burden of establishing that the scheme participant was entitled to deduct any particular amount of electricity purchased by it from the total value of its liable acquisitions lies on the scheme participant.
- (8) In this section, a reference to a purchase of electricity includes a reference to a supply of electricity that is treated as a liable acquisition under this Part.

#### **121 Determination of whether industry or activity is emissions intensive and trade exposed**

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

## **122 General provisions with respect to exemptions**

- (1) An exemption does not take effect until the beginning of the year after the order granting the exemption is made.
- (2) An exemption may be revoked by order of the Minister published in the Gazette.
- (3) If an exemption is revoked, the revocation does not take effect until the beginning of the year after the order revoking the exemption is made.
- (4) The Minister is to provide a copy of any order made under this Division to the Scheme Regulator.
- (5) The Scheme Regulator is to make particulars of any exemption under this Division, and any rules it makes with respect to an exemption, available to scheme participants, including by publishing particulars of the exemptions and rules on its website.

## **Division 6 Assessment of compliance of scheme participants**

### **123 Annual energy savings statements**

- (1) A scheme participant must lodge with the Scheme Regulator a statement (an **energy savings statement**) on or before 1 March in each year or on or before any later day specified in respect of the scheme participant by the Scheme Regulator.
- (2) An energy savings statement is to contain the following:
  - (a) an assessment of the scheme participant's individual energy savings target for the previous year, including particulars of liable acquisitions made by the scheme participant during the previous year and of any deductions made in respect of fully exempt or partially exempt electricity load,
  - (b) an assessment of the participant's liability (if any) for an energy savings shortfall penalty for the previous year, including liability for an energy savings shortfall penalty in respect of a carried forward shortfall,
  - (c) any other matters required by the Scheme Regulator.
- (3) If the scheme participant seeks to elect to surrender one or more energy savings certificates for the purposes of meeting its individual energy savings target for the year to which the energy savings statement relates, or to remedy a carried forward shortfall for the year, the election is to accompany the energy savings statement and is to contain details of the energy savings certificates proposed to be surrendered.
- (4) If a scheme participant seeks to elect to carry forward an energy savings shortfall for

the year to which the statement relates, or any part of that shortfall, the election is to accompany the statement.

- (5) An energy savings statement, and any election that accompanies the statement, must be in a form approved by the Scheme Regulator.
- (6) A scheme participant that fails to lodge an energy savings statement in accordance with this section is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—100 penalty units.

#### **124 Restrictions on surrender of energy savings certificates**

- (1) An energy savings certificate cannot be surrendered by a scheme participant for the purposes of meeting its individual energy savings target or remedying a carried forward shortfall unless:
  - (a) the certificate is registered in the register of energy savings certificates kept under this Part and the registration is in force, and
  - (b) the participant is recorded in the register of energy savings certificates as the owner of the certificate, and
  - (c) the certificate was created in relation to energy savings that occurred before the end of the year to which the energy savings statement relates.
- (2) The Scheme Regulator may, by notice in writing to a scheme participant, refuse to accept an election to surrender an energy savings certificate:
  - (a) if, in the opinion of the Scheme Regulator, the certificate cannot be surrendered under this section, or
  - (b) if, in the opinion of the Scheme Regulator, the certificate is surplus to the number required to be surrendered for the purpose of meeting the participant's individual energy savings target or to remedy a carried forward shortfall.
- (3) If the Scheme Regulator accepts the surrender of an energy savings certificate, and the Scheme Regulator is not the Scheme Administrator, the Scheme Regulator must give the Scheme Administrator notice in writing of the decision, including details of the certificates surrendered.

#### **125 Regulations relating to assessments**

Regulations may be made for or with respect to the following matters:

- (a) the assessment of the liability of a scheme participant for an energy savings shortfall



- penalty, including self-assessment or assessment by the Scheme Regulator,
- (b) the date on which an assessment is taken to have been made and the date on which an assessment takes effect,
  - (c) default assessments where an energy savings statement is not lodged by a scheme participant,
  - (d) amendment of assessments, at the request of a scheme participant or on the Scheme Regulator's own motion,
  - (e) revocation of the cancellation of energy savings certificates in connection with amended assessments and the revival of the certificates,
  - (f) payments resulting from amended assessments,
  - (g) notice of assessments.

#### **126 Validity of assessment**

The validity of an assessment of a liability to pay an energy savings shortfall penalty is not affected by any failure to comply with a provision of this Act, the regulations or the scheme rules.

### **Division 7 Creation of energy savings certificates**

#### **127 Activities in respect of which energy savings certificates may be created**

- (1) The scheme rules may make provision for or with respect to the creation of energy savings certificates in respect of any activity, or class of activities, that reduces the consumption of electricity in this State.
- (2) The scheme rules may also make provision for or with respect to the creation of energy savings certificates in respect of any activity, or class of activities, that reduces the consumption of electricity in another jurisdiction, if an approved corresponding scheme is in operation in that jurisdiction.
- (3) An **approved corresponding scheme** is a scheme approved by the Minister for the purposes of this section, by order in writing.
- (4) The Minister may approve a scheme for the purposes of this section only if the Minister is satisfied that:
  - (a) the scheme is intended to promote the reduced consumption of electricity and the objectives of the scheme are consistent with the objectives of the energy savings scheme established by this Part, and
  - (b) the monitoring and enforcement of compliance with the scheme to be approved is no less stringent than that applicable to the energy savings scheme established by

this Part.

- (5) An energy savings certificate cannot be created in respect of an activity unless the activity commenced or commences on or after 1 July 2008.

**Note—**

However, energy savings certificates may be created only in respect of energy savings occurring on or after 1 July 2009. For example, a project that results in energy savings that commenced in September 2008 may be eligible for accreditation under the scheme, but energy savings certificates may be created only in respect of energy savings arising from the project that occur on or after 1 July 2009.

- (6) An activity in respect of which an energy savings certificate may be created under this Part is a **recognised energy saving activity**.

### **128 Energy savings represented by certificates**

- (1) An energy savings certificate may be created for each whole tonne of carbon dioxide equivalent of greenhouse gas emissions attributable to energy savings arising from a recognised energy saving activity.
- (2) Accordingly, each energy savings certificate has a value of 1 tonne of carbon dioxide equivalent of greenhouse gas emissions.

### **129 Calculation of energy savings attributable to recognised energy saving activities**

- (1) The number of tonnes of carbon dioxide equivalent of greenhouse gas emissions attributable to energy savings arising from a recognised energy saving activity is to be calculated by multiplying the number of megawatt hours of energy savings arising from that activity by the certificate conversion factor for the year in which the energy savings for which that certificate is created occurred.
- (2) The scheme rules may provide for the methodology for calculating the number of megawatt hours of energy savings arising from a recognised energy saving activity.

### **130 Certificate conversion factor**

- (1) Certificate conversion factors are set out in Schedule 5B.
- (2) The certificate conversion factor for a year specified in column 1 of Schedule 5B is the amount specified for that year in column 2 of that Schedule.
- (3) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 5B to change the certificate conversion factor for a specified year or years.
- (4) Accordingly, any such regulation may omit an amount specified in column 2 of Schedule 5B and substitute a new amount.
- (5) Any such regulation does not affect the certificate conversion factor for any year that

commences on or before the date the regulation is made or within 12 months after the date the regulation is made.

### **131 When energy savings certificates may be created**

- (1) An energy savings certificate may be created by an accredited certificate provider in respect of the energy savings arising from a recognised energy saving activity immediately after those energy savings occur.
- (2) An energy savings certificate may be created in respect of energy savings only if the energy savings occur on or after 1 July 2009.
- (3) An energy savings certificate may be created in respect of energy savings that occur during a particular year no later than 6 months after the end of that year.
- (4) The regulations or scheme rules may specify when the energy savings arising from a recognised energy saving activity are considered to have occurred for the purposes of this Part.
- (5) Without limiting the above, the regulations or scheme rules may provide that energy savings are taken to have occurred on the date on which the recognised energy saving activity is first commenced. Accordingly, energy savings certificates may be created in respect of the energy savings arising from the activity immediately after the activity is first commenced.

#### **Note—**

Subsection (5) makes it clear that the regulations or scheme rules may allow certificates to be created in respect of an activity that has ongoing energy saving effects as soon as the activity is commenced. It will not be necessary to wait until all the energy savings arising from the activity actually occur before creating a certificate in respect of the activity. Such provisions may apply, for example, if the regulations or scheme rules allow for the creation of certificates in respect of the installation of energy efficient lighting, which has ongoing energy savings.

### **132 No double counting of energy savings**

An energy savings certificate cannot be created in respect of energy savings arising from a recognised energy saving activity if an abatement certificate under Part 8A has already been created in respect of those energy savings.

### **133 Improper creation of energy savings certificates**

- (1) A person must not create or purport to create an energy savings certificate in contravention of this Act, the regulations or the scheme rules (including any conditions of accreditation imposed by or under this Act).

Maximum penalty: 2,000 penalty units.

- (2) For avoidance of doubt, a person may be found guilty of an offence against this section whether or not the certificate concerned is registered in the register of energy

savings certificates kept under this Part.

## **Division 8 Accreditation of certificate providers**

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

- (1) Energy savings certificates may be created by accredited certificate providers only.
- (2) A person who is an accredited certificate provider may create energy savings certificates 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 energy savings certificates only in relation to those activities in relation to which the person has been accredited as a certificate provider.

### **135 Eligibility for accreditation**

- (1) The regulations and scheme rules may make provision for or with respect to the eligibility of a person for accreditation as a certificate provider.
- (2) Without limiting the above, a person who is engaged in an industry, or carries out an activity, that benefits from a full exemption from the scheme, or is a related body corporate of such a person, is not eligible for accreditation as a certificate provider in respect of an activity that reduces the consumption of electricity used in that industry or activity.
- (3) For the purposes of this section, an industry or activity benefits from a full exemption from the scheme if the electricity load used in that industry or activity is fully exempt electricity load.

### **136 Application for accreditation**

- (1) Any 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 is to determine an application for accreditation as a certificate provider:
  - (a) by accrediting the applicant as a certificate provider in relation to specified activities, or
  - (b) by refusing the application.
- (3) The Scheme Administrator may refuse an application for accreditation as a certificate provider on such grounds as may be specified in the regulations.
- (4) The regulations may make provision for or with respect to applications for accreditation, including by requiring an application fee to be paid to the Scheme

Administrator.

- (5) The Scheme Administrator may charge a fee (in addition to any application fee) in respect of the investigation and determination of an application for accreditation. The fee is to be determined by the Scheme Administrator on a cost recovery basis.

### **137 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 as a certificate provider on such grounds as may be specified in the regulations.
- (3) The suspension or cancellation of the accreditation of a person as a certificate provider is subject to such conditions as the Scheme Administrator imposes. Any such conditions may include (but are not limited to) any condition to which the accreditation was subject immediately before it was suspended or cancelled.
- (4) The regulations may provide for the variation or revocation of any conditions that are imposed by the Scheme Administrator on the suspension or cancellation of accreditation as a certificate provider.

### **138 Conditions of accreditation**

- (1) Accreditation as a certificate provider is subject to the following conditions:
  - (a) such conditions as may be imposed from time to time by the regulations,
  - (b) such conditions as may be 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 above, 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 an energy savings certificate in respect of the energy savings arising from an activity if an energy savings certificate has already been created in respect of that energy saving or if that energy saving has already been used for the purposes of compliance with a scheme or arrangement with similar objectives to the scheme established by this Part,
  - (b) a condition that requires the person not to use the energy savings arising from a recognised energy saving activity for the purposes of compliance with a scheme or arrangement with similar objectives to the scheme established by this Part, if an energy savings certificate has already been created in respect of those energy savings,

- (c) a condition that requires the person to provide financial assurances to secure or guarantee the person's compliance with this Part,
- (d) 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,
- (e) 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 any of the conditions of the person's accreditation as a certificate provider.

Maximum penalty: 2,000 penalty units.

- (4) Subsection (3) extends to any conditions to which the suspension or cancellation of the accreditation of a person is subject under this Part.

### **139 Variation or revocation of conditions of accreditation**

- (1) An accredited certificate provider may apply to the Scheme Administrator for the variation or revocation of any condition of the certificate provider's accreditation imposed by the Scheme Administrator (not being a condition imposed by this Act or the regulations).
- (2) The regulations may make provision for or with respect to the variation or revocation of any conditions of accreditation that are imposed by the Scheme Administrator, including the fee (if any) to be paid to the Scheme Administrator in respect of an application for variation or revocation of a condition.
- (3) The Scheme Administrator may charge a fee (in addition to any application fee) in respect of the investigation and determination of an application for variation or revocation of a condition of accreditation. The fee is to be determined by the Scheme Administrator on a cost recovery basis.

### **140 Transfer of accreditation**

- (1) Accreditation as a certificate provider is not transferable, except as otherwise provided by this section.
- (2) A person who is accredited as a certificate provider may, with the approval of the Scheme Administrator, transfer that 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 is or will be eligible for accreditation and will fulfil the obligations that the accredited certificate

provider is required to fulfil in respect of the recognised energy saving activity or activities for which accreditation is to be transferred.

- (4) The regulations may make further provision with respect to the transfer of accreditation, including by requiring a fee to be paid to the Scheme Administrator in connection with an application for approval of a transfer of accreditation.

#### **141 Records to be kept by accredited certificate providers**

The regulations may make provision for or with respect to the records to be kept by accredited certificate providers and the information required to be provided to the Scheme Administrator in connection with the creation of energy savings certificates.

#### **142 Scheme Administrator may require surrender of certificates**

- (1) The Scheme Administrator may, by order in writing to a person, require the person to surrender to the Scheme Administrator, within a period specified in the order, a number of energy savings certificates specified in the order.
- (2) An order may be made against a person under this section only if:
  - (a) the person is found guilty of an offence of contravening any condition of the person's accreditation as a certificate provider, or
  - (b) the person is found guilty of an offence involving the improper creation of energy savings certificates (that is, an offence under section 133).
- (3) In the case of an order made against a person found guilty of an offence involving the improper creation of energy savings certificates, the Scheme Administrator is to require the surrender of a number of certificates that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were improperly created by the person and registered under this Part.

#### **Note—**

The purpose of the order is to remove from circulation a number of energy savings certificates that is equivalent to the number of certificates improperly created by a person, so that the improper creation of those certificates does not result in energy savings that have not actually been achieved from being attributed to a scheme participant.

- (4) In any other case, the Scheme Administrator is to determine the number of energy savings certificates to be surrendered in accordance with the regulations.
- (5) A person must not fail to comply with an order under this section.

Maximum penalty: 1,000 penalty units, and an additional 1 penalty unit for each energy savings certificate the person fails to surrender in accordance with the order.

- (6) The value of any energy savings certificates surrendered for the purposes of compliance with an order under this section cannot be counted towards meeting a

scheme participant's individual energy savings target or remedying a carried forward shortfall.

- (7) If a person fails to comply with an order under this section, the Scheme Administrator may cancel any energy savings certificates in respect of which the person is registered under this Part as the owner.
- (8) For avoidance of doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of energy savings certificates to comply with the order.

**Note—**

If the person who is the subject of the order does not hold a sufficient number of certificates to comply with the order, the person may obtain the required number by purchasing them.

- (9) The regulations may make further provision for or with respect to orders under this section.

## **Division 9 Registration, form and duration of energy savings certificates**

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

- (1) An energy savings certificate has no force or effect until the creation of the certificate is registered by the Scheme Administrator in the register of energy savings certificates kept under this Part.
- (2) An application for registration of the creation of an energy savings certificate may be made to the Scheme Administrator by an accredited certificate provider.
- (3) The Scheme Administrator is to determine an application for registration of the creation of an energy savings certificate by:
  - (a) granting the application and registering the creation of the energy savings certificate in the register of energy savings certificates kept under this Part, or
  - (b) refusing the application.
- (4) The Scheme Administrator registers the creation of an energy savings certificate by creating an entry for the certificate in the register of energy savings certificates and recording the name of the person who created the certificate as the owner of the certificate.
- (5) The Scheme Administrator may refuse an application for registration of the creation of an energy savings certificate on such grounds as may be specified in the regulations.
- (6) The regulations may make provision for or with respect to applications for registration



of the creation of an energy savings certificate, including by requiring an application fee to be paid to the Scheme Administrator.

#### **144 Form of certificate**

The regulations may make provision for or with respect to the form in which energy savings certificates are to be created.

#### **145 Duration of certificate**

- (1) An energy savings certificate, when registered by the Scheme Administrator, remains in force until it is cancelled by the Scheme Administrator.
- (2) An energy savings certificate may be cancelled by the Scheme Administrator:
  - (a) if the person registered as the owner of the energy savings certificate is a scheme participant who elects to surrender the certificate for the purpose of meeting its individual energy savings 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 energy savings certificate, by notice in writing, surrenders the certificate to the Scheme Administrator, and the Scheme Administrator accepts the surrender of the certificate, or
  - (c) in any other circumstances authorised by this Part.
- (3) The Scheme Administrator must cancel any energy savings 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 under this Part by the Scheme Administrator requiring the person to surrender energy savings certificates.
- (4) The Scheme Administrator cancels an energy savings certificate by altering the entry relating to the certificate in the register of energy savings certificates kept under this Part to show that the certificate is cancelled.

### **Division 10 Transfers and other dealings in certificates**

#### **146 Certificates are transferable**

An energy savings certificate is transferable in accordance with this Division.

#### **147 Application for registration of transfer**

- (1) The transfer of an energy savings certificate does not have effect until the transfer is registered by the Scheme Administrator under this Part.
- (2) An application for registration of a transfer of an energy savings certificate is to be made to the Scheme Administrator by the parties to the transfer.

(3) The Scheme Administrator must:

- (a) grant the application by registering the transfer of the energy savings certificate in the register of energy savings certificates kept under this Part, or
- (b) refuse the application.

(4) The Scheme Administrator registers the transfer of an energy savings certificate by altering the entry relating to that certificate in the register of energy savings certificates so as to record the new owner of the certificate.

(5) The Scheme Administrator may refuse an application for registration of a transfer of an energy savings certificate on such grounds as may be specified in the regulations.

(6) The regulations may make provision for or with respect to applications for the registration of transfers of energy savings certificates, including by requiring an application fee to be paid to the Scheme Administrator.

#### **148 Other dealings in certificates**

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

#### **149 Holder of certificate may deal with certificate**

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

#### **Note—**

This Part makes it an offence to improperly create an energy savings certificate. The Scheme Administrator may require a person who has been convicted of such an offence to “make good” the improper creation of the certificates by surrendering to the Scheme Administrator an equivalent number of certificates to those improperly created. It is not necessary for those certificates to be the actual certificates improperly created (as those certificates may already have been sold).

### **150 Scheme Administrator not concerned as to legal effect of transaction**

The Scheme Administrator is not concerned with the effect in law of any transaction registered under this Part or the regulations and the registration of the transaction does not give to the transaction any effect that it would not have if this Division had not been enacted.

## **Division 11 Administration of scheme**

### **151 Scheme Regulator**

- (1) The Minister may, by order in writing, 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 such an appointment, the Tribunal.
- (3) The regulations may make provision for or with respect to the appointment of a Scheme Regulator by the Minister.

### **152 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 energy savings targets,
  - (b) if appropriate, to assess and determine, in accordance with this Part, the regulations and the scheme rules, any energy savings 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) such other functions as are 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 such other functions as are conferred or imposed on it by the Minister under the terms of its appointment as Scheme Regulator.
- (3) For the purpose of enabling the Scheme Regulator to exercise its functions, the Minister must furnish the Scheme Regulator with such information in the possession of the Minister as the Scheme Regulator may request in relation to the compliance by scheme participants with this Part.

- (4) The Scheme Regulator may, with the approval of the Minister, delegate the exercise of its functions under this Part, other than this power of delegation, to any other person or body.
- (5) If the Tribunal is the Scheme Regulator, section 10 of the *Independent Pricing and Regulatory Tribunal Act 1992* does not apply to its functions as Scheme Regulator.

### **153 Scheme Administrator**

- (1) The Minister may, by order in writing, 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 such 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 any such appointment,
  - (b) the efficiency of administrative arrangements relating to the energy savings scheme,
  - (c) ability to meet objectives of the energy savings scheme,
  - (d) proposed governance arrangements,
  - (e) arrangements proposed to manage liabilities associated with carrying out the Scheme Administrator's functions.
- (4) The regulations may make provision for or with respect to the appointment of a Scheme Administrator by the Minister.
- (5) The Minister may limit the appointment of a person or body as Scheme Administrator to particular specified functions of the Scheme Administrator. In such a case, a reference in this Act to the Scheme Administrator, in relation to any functions of the Scheme Administrator, is a reference to the person or body appointed to exercise those functions (or, in the absence of such an appointment, the Tribunal).

### **154 Functions of Scheme Administrator**

- (1) The Scheme Administrator has the following functions:
  - (a) the functions conferred by this Part relating to the energy savings 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 any conditions of accreditation,

- (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
  - (d) such other functions as are conferred or imposed on it by or under this Act or any other Act or law.
- (2) If the Scheme Administrator is appointed by the Minister, the Scheme Administrator also has such other functions as are conferred or imposed on it by the Minister under the terms of its appointment as Scheme Administrator.
- (3) For the purpose of enabling the Scheme Administrator to exercise its functions, the Minister must furnish the Scheme Administrator with such information in the possession of the Minister as the Scheme Administrator may request in relation to the compliance by accredited certificate providers with this Part.
- (4) The Scheme Administrator may, with the approval of the Minister, delegate the exercise of its functions under this Part, other than this power of delegation, to any other person or body.
- (5) If the Tribunal is the Scheme Administrator, section 10 of the *Independent Pricing and Regulatory Tribunal Act 1992* does not apply to its functions as Scheme Administrator.

#### **155 Conduct of audits**

- (1) The regulations may make provision for or with respect to the conduct of audits by the Scheme Regulator, the Scheme Administrator or other persons for the purposes of this Part.
- (2) Without limiting the above, the regulations may provide for the following matters:
- (a) the matters that may be the subject of an audit,
  - (b) the persons who may conduct an audit,
  - (c) the functions that may be exercised by persons who conduct an audit,
  - (d) offences relating to obstructing or hindering persons, or refusing or failing to comply with requirements made by persons, who conduct audits.
- (3) Each scheme participant and accredited certificate provider is liable to pay to the Treasurer the reasonable cost (as certified by the Scheme Regulator or Scheme Administrator) involved in and in connection with carrying out the audit functions of the Scheme Regulator or Scheme Administrator in relation to the participant or provider.
- (4) Without limitation, a licence or accreditation may include terms and conditions relating to the determination of the cost of carrying out those functions.

### **156 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 notice in writing served on any relevant person, require the person to do any 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, any document or type of document specified in the notice.
- (2) If the Tribunal is the Scheme Regulator or Scheme Administrator, the Tribunal may, in such a notice, in addition to or instead of requiring any of the above, require a 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 section, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson of the Tribunal at any meeting of the Tribunal, acting as Scheme Regulator or Scheme Administrator, that the person is required to attend under this section.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
  - (b) in the case of an individual—100 penalty units or 6 months imprisonment, or both.
- (4) It is a reasonable excuse for the purposes of subsection (3) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
  - (5) If documents are given to the Scheme Regulator or Scheme Administrator under this section, 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 them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Scheme Regulator or Scheme Administrator.

(6) This section does not affect the law relating to client legal privilege (or other legal professional privilege).

(7) In this section, a **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) any other person whom the Scheme Regulator or Scheme Administrator (as the case requires) has reason to believe is able to provide information relevant to its functions as Scheme Regulator or Scheme Administrator.

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

A person must not hinder, obstruct or interfere with the Scheme Regulator, the Scheme Administrator or any member or officer of the Scheme Regulator or the Scheme Administrator in the exercise of functions under this Part.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—100 penalty units or 6 months imprisonment, or both.

### **158 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 of that fact), 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 or 6 months imprisonment, or both.

### **159 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 is required to ensure that the information is not divulged by it to any person, except:

- (a) with the consent of the person who provided the information, or

- (b) in the case of 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) to a member or officer of the Scheme Regulator or Scheme Administrator, as the case requires, or
  - (d) as required by any other law.
- (2) If the Scheme Regulator or Scheme Administrator is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Scheme Regulator or Scheme Administrator in connection with its functions under this Part, it may give directions prohibiting or restricting the divulging of the information.
- (3) A person must not contravene a direction given under subsection (2).  
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (4) A reference in this section to information includes information given at a meeting of the Scheme Regulator or Scheme Administrator and information contained in any documents given to the Scheme Regulator or Scheme Administrator.

#### **160 Cabinet documents and proceedings**

- (1) This Part does not enable the Scheme Regulator or Scheme Administrator:
- (a) to require any person to give any statement of information or answer any question that relates to confidential proceedings of Cabinet, or
  - (b) to require any person to produce a Cabinet document, or
  - (c) to inspect a Cabinet document.
- (2) For the purposes of this section, a certificate of the Director-General of the Department of Premier and Cabinet, or the Deputy Director-General (General Counsel) of that Department, that any information or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.

- (3) In this section:

**Cabinet** includes a committee of Cabinet or a subcommittee of such a committee.

**Cabinet document** means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the [Freedom of Information Act 1989](#).

### **Division 12 Registers**



### **161 Establishment and keeping of registers**

- (1) The Scheme Administrator is required to establish and keep the following registers for the purposes of this Part:
  - (a) a register of accredited certificate providers,
  - (b) a register of energy savings certificates.
- (2) A register is to be kept in such form as the Scheme Administrator considers appropriate.
- (3) A register may be kept wholly or partly by electronic means.

### **162 Register of accredited certificate providers**

- (1) The register of accredited certificate providers is to contain the following information in relation to each accredited certificate provider:
  - (a) the name of the accredited certificate provider,
  - (b) any other information required to be included in the register by this Part or the regulations.
- (2) The register of accredited certificate providers may also contain such information as the regulations may prescribe in relation to a person whose accreditation as a certificate provider is suspended or cancelled.
- (3) Copies of the register of accredited certificate providers are to be made available for public inspection (free of charge) at the principal office of the Scheme Administrator during ordinary business hours.
- (4) However, the information required to be included in the register by the regulations is required to be made available to the public under this section only if the regulations require it to be made so available.

### **163 Register of energy savings certificates**

- (1) The register of energy savings certificates is to contain the following information in relation to each energy savings certificate that is created under this Part:
  - (a) the name of the person who created the energy savings certificate,
  - (b) the name of the current registered owner, and any previous registered owners, of the energy savings certificate,
  - (c) whether the certificate is in force, or has been cancelled,
  - (d) any other information required to be included in the register by this Part or the regulations.

- (2) Copies of the register of energy savings certificates are to be made available for public inspection (free of charge) at the principal office of the Scheme Administrator during ordinary business hours.
- (3) However, the information required to be included in the register by the regulations is required to be made available to the public under this section only if the regulations require it to be made so available.

#### **164 Information from registers**

The Scheme Administrator may compile the following information from a register and make that information available for public inspection (free of charge) in such form as the Scheme Administrator thinks fit:

- (a) information concerning the creation or cancellation of energy savings certificates under this Part,
- (b) information concerning current and previous registered owners of energy savings certificates,
- (c) information concerning the transfer of energy savings certificates,
- (d) other information of a kind prescribed by the regulations.

#### **165 Evidentiary provisions**

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

#### **166 Correction of register**

The Scheme Administrator may correct any error in, or omission from, a register.

### **Division 13 Scheme rules**

#### **167 Scheme rules**

- (1) The Minister may approve rules for or with respect to the following matters:
  - (a) any matter for which a scheme rule may be made under this Part,
  - (b) any other matter prescribed by the regulations.

**Note—**

Under Division 7, the scheme rules may make provision for:

- (a) the activities in respect of which energy savings certificates may be created, and
  - (b) the methodology for calculating the number of megawatt hours of energy savings arising from a recognised energy saving activity.
- (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.
- (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 any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.
- (4) The Minister may from time to time approve amendments to the rules or a revocation of rules.
- (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:
- (a) written notice of the approval of the rule must be published in the Gazette, and
  - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
  - (c) the Minister must make available a copy of the rule to each scheme participant and make copies available to the public.
- (6) A rule must be consistent with this Act and the regulations.

**Editorial note—**

For approved rules published in the Gazette under this section, see Gazette No 99 of 3.7.2009, p 3897.

**168 Obligations under scheme rules**

A person who is a scheme participant or an accredited certificate provider must not contravene a provision of a scheme rule.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—100 penalty units.

**Division 14 Miscellaneous**

### **169 Licence condition for retail suppliers**

- (1) It is a condition of a retail supplier's licence that the retail supplier comply with this Part, the regulations under this Part and the scheme rules.
- (2) This section does not limit the power of the Minister to impose conditions on the licence of a retail supplier under this Act, including conditions (not inconsistent with this Part) relating to greenhouse gas emissions, energy efficiency, the provision of information to the Scheme Regulator or Scheme Administrator about matters related to this Part and other matters related to the scheme.
- (3) A monetary penalty cannot be imposed on a retail supplier under clause 8 or 8A of Schedule 2, and no other action can be taken against a retail supplier under Schedule 2, in respect of an energy savings shortfall or carried forward shortfall if an energy savings shortfall penalty is payable in respect of the relevant shortfall under this Part.

**Note—**

Under clauses 8 and 8A of Schedule 2, the Minister and the Tribunal may impose monetary penalties for breaches of the requirements of this Act and the regulations, as well as breaches of licence conditions. Other penalties may also be imposed under Schedule 2.

### **170 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 under this Part continue to apply to the person in respect of the period during which the person was a scheme participant and, for that purpose, a reference to a scheme participant includes a reference to a former scheme participant.
- (2) In particular, the former scheme participant continues to be required to lodge an energy savings statement in respect of the year during which the person ceased to be a scheme participant, and the requirements of this Part with respect to the conduct of audits and the provision of information, documents and evidence to the Scheme Regulator or Scheme Administrator continue to apply in respect of the person as if the person were a scheme participant.
- (3) The Minister may, by notice in writing to the former scheme participant, bring forward the date on which the person would otherwise be required to lodge an energy savings statement with the Scheme Regulator in respect of the year during which the person ceased to be a scheme participant.
- (4) The notice may specify a date (a **submission date**) on which the former scheme participant is required to lodge the energy savings statement with the Scheme Regulator, being a date that is earlier than the date on which the person would otherwise be required to lodge the statement.
- (5) The submission date must not be earlier than 28 days after the person ceased to be a scheme participant.

- (6) If the Minister brings forward the date for submission of an energy savings statement under this section, the provisions of this Act regarding the lodgment of an energy savings statement and the payment of an energy savings shortfall penalty apply as if a reference to the date of 1 March were a reference to the submission date.

### **171 Appeals to Administrative Decisions Tribunal**

- (1) A scheme participant or former scheme participant who is aggrieved by any of the following decisions of the Scheme Regulator may apply to the Administrative Decisions Tribunal for a review of the decision:
- (a) a determination as to the individual energy savings target for the scheme participant or former scheme participant for a year,
  - (b) a decision to refuse to accept the surrender of an energy savings certificate for the purposes of meeting the scheme participant's or former scheme participant's individual energy savings target or remedying a carried forward shortfall,
  - (c) an assessment of the amount of any energy savings shortfall penalty payable by the scheme participant or former scheme participant for a year,
  - (d) any other decision 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, under this Part as a certificate provider and who is aggrieved by any of the following decisions of the Scheme Administrator may apply to the Administrative Decisions Tribunal for a review 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 an energy savings certificate,
  - (d) any other decision of the Scheme Administrator of a kind prescribed by the regulations.
- (3) A person who has applied for the registration of a transfer of an energy savings certificate under this Part and who is aggrieved by a decision of the Scheme Administrator to refuse registration of the transfer may apply to the Administrative Decisions Tribunal for a review of the decision.
- (4) A person who is the subject of an order by the Scheme Administrator under this Part requiring the person to surrender energy savings certificates to the Scheme Administrator and who is aggrieved by a decision of the Scheme Administrator to impose that order may apply to the Administrative Decisions Tribunal for a review of

the decision.

### **172 Certificate evidence**

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 energy savings target for a scheme participant was the amount specified in the certificate, or
- (c) the energy savings shortfall for a scheme participant for a year, or the carried forward shortfall for a year, was the amount specified in the certificate, or
- (d) the energy savings shortfall penalty payable by a scheme participant was the amount specified in the certificate,

is admissible in evidence in proceedings before any court or tribunal and is prima facie evidence of the matters stated in the certificate.

### **173 Personal liability**

A matter or thing done or omitted to be done by the Scheme Regulator, the Scheme Administrator, or a member or officer of, or a person acting under the direction of, the Scheme Regulator or Scheme Administrator does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member, officer or person so acting personally to any action, liability, claim or demand.

### **174 Annual report by Scheme Regulator**

- (1) As soon as practicable after 1 March (but on or before 31 July) in each year, the Scheme Regulator must prepare and forward to the Minister a report on the extent to which scheme participants have complied, or failed to comply, with individual energy savings targets during the previous year.
- (2) Without limiting the above, the report is to contain the following:
  - (a) the name of each scheme participant and the performance of the participant in relation to the participant's individual energy savings target in the year to which the report relates,
  - (b) the total number of energy savings certificates surrendered in the year to which the report relates,
  - (c) the total number of energy savings certificates created in the year to which the report relates,
  - (d) an estimate, prepared by the Scheme Administrator, of the actual energy savings

that have been realised under the scheme in the year to which the report relates (having regard to the number of energy savings certificates that have been created),

(e) an estimate, prepared by the Scheme Administrator, of the actual energy savings that will be realised under the scheme in the next 10 years (having regard to the number of energy savings certificates that have been created).

- (3) The report must also set out the functions delegated by the Scheme Regulator or Scheme Administrator and the person or body to whom they were delegated.
- (4) 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.
- (5) For the purposes of enabling the Scheme Regulator to compile a report under this section, the Scheme Administrator must furnish the Scheme Regulator with:
  - (a) the estimates the Scheme Administrator is required to prepare for inclusion in the report, and
  - (b) such other information as the Scheme Regulator reasonably requires to complete the report.
- (6) The first report under this section is to be made in the year 2010.

#### **175 Five-yearly reviews of scheme**

- (1) The Minister is to review the operation of the scheme to determine whether the policy objectives of the scheme remain valid and whether the terms of this Part remain appropriate for securing those objectives.
- (2) The first review is to be undertaken as soon as possible after the end of the period of 5 years from 1 July 2009.
- (3) After that, a review is to be undertaken at the end of each subsequent period of 5 years.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period to which the review relates.

#### **176 Waiver or suspension 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 energy savings target or remedy a carried forward shortfall, but only if it appears to the Minister that a scheme participant is or will be unable to meet the individual energy savings target or remedy the carried forward shortfall because of:
  - (a) a systems or other failure of the register of energy savings certificates kept under

this Part, or

(b) any other emergency affecting the integrity of the register or the energy savings scheme.

(2) 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 any other rights conferred or obligations imposed under this Part.

(3) An order takes effect on the day on which it is published in the Gazette or, if a later day is specified in the order, on that day.

### **177 Termination of scheme on establishment of national scheme**

(1) The Governor may, by proclamation published on the NSW legislation website, terminate the operation of any or all of the provisions of this Part.

(2) A proclamation may be made only if the Minister has certified to the Governor that the Minister is satisfied that New South Wales is, or will be, a participant in a scheme that:

(a) has been or will be established either nationally or in this State and at least one or more other States or Territories, and

(b) is designed to achieve outcomes that include a reduction in the consumption of electricity and the encouragement of participation in activities that result in energy savings.

(3) The termination of the operation of the provisions concerned takes effect on the day (not being a day earlier than the day on which the proclamation is published on the NSW legislation website) specified in the proclamation.

(4) The day specified in the proclamation must not be a day that is earlier than the day on which New South Wales becomes, or will become, a participant in the scheme concerned.

(5) Regulations may be made for or with respect to the effect of the termination of any provisions on rights conferred or obligations imposed under this Part.

(6) Without limiting the above, the regulations may:

(a) prohibit scheme participants from carrying forward an energy savings shortfall, or part of an energy savings shortfall, for a year to the following year as a consequence of the termination of the operation of all or any of the provisions of this Part in respect of that following year, and



- (b) specify any other conditions that must be complied with respect to termination of all or any of the provisions of this Part.

**178 Automatic termination of scheme at end of year 2020**

- (1) The scheme terminates at the end of the year 2020.
- (2) This Part continues to have effect with respect to matters arising (including obligations incurred) before the termination of the scheme.
- (3) In particular, persons who are scheme participants in the year 2020 continue to be required to lodge an energy savings statement in respect of that year in accordance with this Part, and 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 scheme is terminated.
- (4) A reference in this Part to a scheme participant includes, after the scheme is terminated, a reference to a former scheme participant.

**Part 10 Miscellaneous**

**179A Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
  - (a) because of the enactment, making or operation of any of the following:
    - (i) Part 8A,
    - (ii) the *Electricity Supply Amendment (GGAS) Act 2009* or any other Act that amends Part 8A,
    - (iii) any instrument under Part 8A, or
  - (b) because of any consequence of any such enactment, making or operation, or
  - (c) because of any statement or conduct relating to any such enactment, making or operation, or
  - (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.
- (2) This section extends to statements, conduct and any other matter occurring before the commencement of this section.
- (3) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

### **179 Unauthorised electricity supply arrangements unenforceable**

- (1) An electricity supply arrangement is unenforceable by any person (other than a retail customer under a customer supply contract) unless, at the time the person entered into the arrangement, the person was authorised by a licence to enter into the arrangement.
- (2) This section does not apply to an electricity supply arrangement entered into (or taken to have been entered into) under the *National Electricity (NSW) Law*.

### **180 One document may serve several purposes**

- (1) Nothing in this Act prevents a customer connection contract and a customer supply contract from being embodied in a single document.
- (2) Nothing in this Act or the *Gas Supply Act 1996* prevents a contract under this Act and a contract under that Act from being embodied in a single document.

### **181 Electricity network pricing determinations**

An electricity network pricing determination referred to in Division 4 of Part 4 or Division 2 of Part 4A is to be made under the *National Electricity Code* as if Division 5 of Part 3, Division 4 of Part 4 and Part 4A of this Act had not been enacted.

### **182 Agreement with licensed distribution network service providers**

The Treasurer, on behalf of the Government, may enter into an agreement in writing with one or more of the licensed distribution network service providers relating to distribution network service providers' levies and such other matters as the Treasurer determines.

### **183 Delegation of Minister's and Electricity Tariff Equalisation Ministerial Corporation's functions**

- (1) The Minister may delegate to any eligible person any of the functions conferred or imposed on the Minister by or under this Act, other than this power of delegation.
- (1A) The Electricity Tariff Equalisation Ministerial Corporation may delegate to any person the exercise of any of its functions, other than this power of delegation.

(2) In this section, **eligible person** means:

- (a) any public authority, or
- (b) any person prescribed by the regulations or belonging to a class of persons prescribed by the regulations.

#### **184 Directors and managers liable for offences committed by corporations**

(1) If a corporation contravenes a provision of this Act or the regulations, each person who:

- (a) is a director of the corporation, or
- (b) is concerned in the management of the corporation,

is to be treated as having contravened that provision if the person knowingly authorised or permitted the contravention.

(2) A person may, under this section, be proceeded against and convicted for a contravention of that provision whether or not the corporation has been proceeded against or convicted for a contravention of that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

#### **185 Proceedings for offences**

(1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

(2) Proceedings for an offence against this Act or the regulations may instead be dealt with summarily before the Supreme Court in its summary jurisdiction.

(3) Proceedings for an offence against this Act or the regulations may be instituted at any time within 2 years after the commission of the offence.

(4) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act or the regulations is 100 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

(5) The maximum penalty that may be imposed by the Supreme Court in proceedings for an offence against this Act or the regulations is the maximum penalty specified by the relevant section of this Act, or relevant clause of the regulations, in respect of the offence.

#### **186 Recovery of fees and penalties**

Any fee payable under a condition of a licence or payable under Part 8A or 9, and any

monetary penalty imposed by the Minister on the holder of a licence, may be recovered in any court of competent jurisdiction as a debt due to the Crown.

### **187 Penalty notices for certain offences**

- (1) An authorised officer or a police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **188 Recovery of charges by network operators and wholesale or retail suppliers**

Any money due to a network operator or a wholesale or retail supplier may be recovered by it as a debt in any court of competent jurisdiction.

### **189 Application of Act outside local government areas**

- (1) This Act applies to the unincorporated area as if:

- (a) references to a local government area were references to the unincorporated area, and
  - (b) references to a local council were references to the Western Lands Commissioner.
- (2) This Act applies to Lord Howe Island as if:
- (a) references to a local government area were references to Lord Howe Island, and
  - (b) references to a local council were references to the Lord Howe Island Board.
- (3) The regulations may exempt the Lord Howe Island Board, and any matter relating to this Act in its application to Lord Howe Island, from the operation of any specified provision of this Act.

### **190 Provision of information to Minister**

- (1) The Minister may, by notice in writing, require AEMO to provide to the Minister the information specified in the notice.
- (2) The Minister may only require information to be provided if satisfied that it is required for the following purposes:
  - (a) notification of circumstances that may result in retailer of last resort arrangements being required to be made,
  - (b) determination of whether to implement any such arrangements,
  - (c) the exercise by the Minister of functions under this Act or the regulations.
- (3) AEMO must provide information if requested to do so by the Minister in accordance with this section.
- (4) The Minister must consult with AEMO before disclosing information obtained under this section.

### **191 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following matters:
  - (a) (Repealed)
  - (b) the functions of customer consultative groups,
  - (c) the form and content of standard form customer connection contracts and standard form customer supply contracts,

- (c1) the procedures for preparing and advertising standard form customer connection contracts and standard form customer supply contracts,
- (c2) requirements for customer connection contracts,
- (c3) the obligations of persons who obtain or receive information about customers or prospective customers with respect to the collection, keeping, disclosure or other use of that information and the inclusion of such obligations in customer connection contracts and customer supply contracts,
- (d) the conditions that may be imposed on licences,
- (e) the functions of authorised officers,
- (e1) requirements for the marking or labelling of the point of supply in relation to the premises of wholesale or retail customers,
- (f) the obligations of an electricity industry ombudsman under an approved electricity industry ombudsman scheme to provide copies of reports to the Minister and to report to the Minister on the operation of the scheme,
- (f1) facilitating the Government's social programs for electricity, including:
  - (i) the giving, and enforcement, of directions by the Minister, or agreements, with respect to implementation of any such program in relation to a specified class or specified classes of customers,
  - (ii) the payment and assessment of the costs of giving effect to any such directions,
  - (iii) the publication of directions and agreements,
- (g) the procedures to be observed by network operators in connection with calling for tenders and the matters in respect of which network operators must call for tenders,
- (g1) the development and implementation by network operators of plans designed to ensure the safe operation of their transmission or distribution systems (including plans relating to the provision of safe electrical installations for connection to distribution systems),
- (g2) the development and implementation by network operators of plans designed to ensure that their transmission or distribution systems are adequate for the demand placed on them and that the supply of electricity by those systems is of an appropriate quality and level of reliability,
- (h) the removal or trimming of trees by distribution network service providers,

- (h1) information and returns to be provided by benchmark participants under Part 8A and scheme participants under Part 9,
  - (h2) fees for audits and other monitoring or accreditation activities or services provided by the Tribunal or Scheme Administrator under Part 8A or by the Minister, the Scheme Regulator or the Scheme Administrator under Part 9,
  - (i) matters of a savings or transitional nature consequent on the making of an order under section 92,
  - (j) permitting electricity prepayment meters for small retail customers and requirements relating to any such prepayment meters.
- (1A) Without limiting subsection (1), regulations may be made for or with respect to any of the following matters:
- (a) the installation, use, maintenance and removal of corrosion protection systems and stray current sources, including but not limited to the following matters:
    - (i) the examination or testing of such systems or sources,
    - (ii) the approval or registration of such systems or sources,
    - (iii) the stamping or labelling of such systems or sources,
    - (iv) standards for such systems or sources,
    - (v) fees for the approval, registration, examination or testing of such systems or sources,
    - (vi) the provision of documents, reports or other information concerning such systems or sources,
  - (b) the keeping by network operators of books, accounts or other records,
  - (c) interference by persons with electrical installations or other electrical equipment,
  - (d) standards for the voltages to be maintained at the terminals of consumers of electricity,
  - (e) safety in connection with the generation, transmission or distribution of electricity,
  - (f) the fees to be charged by network operators for the inspection and testing of an electrical installation,
  - (g) the connection and disconnection of an electrical installation to a supply of electricity,
  - (h) the carrying out of work to remove a danger or to remedy a defect relating to the

distribution or transmission of electricity,

- (i) standards for electrical installations and other equipment used for or in connection with the generation or supply of electricity and for materials used in the manufacture of such equipment, and the adoption of engineering standards for such installations, equipment and materials.
- (2) The regulations may, either unconditionally or subject to conditions, exempt:
- (a) any specified person or class of persons, or
  - (b) any specified matter or class of matters,
- from the operation of any one or more of sections 13, 16 and 179.
- (2A) The regulations may exempt Rail Corporation New South Wales, Transport Infrastructure Development Corporation, Sydney Metro or Rail Infrastructure Corporation from the operation of any one or more of sections 18, 19, 34, 39, 40 and 89-91 and any mandatory conditions imposed pursuant to clause 6 of Schedule 2.
- (3) A regulation may create an offence punishable by a penalty not exceeding 250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).
- (3A) The regulations may apply, adopt or incorporate (with or without modification) any publication as in force at a particular time or from time to time.
- (3B) A regulation made for the purposes of subsection (1A) prevails over a regulation made under the *Local Government Act 1993*, to the extent of any inconsistency.
- (3C) A regulation made for the purposes of subsection (1A) binds the Crown if expressed so to do.
- (4) Regulations may not be made with respect to any of the matters referred to in subsection (1) (b), (c) or (c1) unless the Minister certifies to the Governor that the Minister has consulted with the Minister for Fair Trading and the Tribunal in connection with those regulations.

## 192 Repeals

- (1) The *Sydney Electricity Act 1990* is repealed.
- (2) The following regulations are repealed:
  - (a) *Sydney Electricity (Amalgamation of Electricity Distributors) (Transitional) Regulation 1995*,
  - (b) *Sydney Electricity (Supply) Regulation 1992*.



### **193 Savings, transitional and other provisions**

Schedule 6 has effect.

### **194 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Electricity Supply Amendment Act 2000*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 (Repealed)**

## **Schedule 2 Licences**

(Sections 14 and 33)

### **1 Licences**

- (1) Subject to any conditions imposed by or under this Act, a distribution network service provider's licence authorises its holder, and any other person specified in the licence, to operate the distribution system so specified for the purpose of conveying electricity for or on behalf of retail suppliers.
- (2) Subject to any conditions imposed by or under this Act, a retail supplier's licence authorises its holder, and any other person specified in the licence, to enter into arrangements for the supply of electricity to retail customers.

### **2 Applications**

An application for a licence or for the transfer of a licence:

- (a) must be accompanied by such fee as may be determined by the Minister, and
- (b) must contain such information as may be determined by the Minister, and
- (c) must be lodged at the office of the Tribunal.

### **3 Public consultation**

- (1) Before determining an application for a licence or for the transfer of a licence, the Minister must cause notice of the application to be published in the Gazette and in a daily newspaper circulating throughout the State.
- (2) The notice must indicate:

- (a) the nature of the licence to which the application relates, and
  - (b) the identity of the proposed holder of the licence, and
  - (c) the area in which the licence, if granted or transferred, would operate, and
  - (d) where submissions on the application should be lodged, and
  - (e) the time (being not less than 40 days from the date on which the notice is published) within which any such submissions should be lodged, and
  - (f) such other matters as may be prescribed by the regulations.
- (3) The Minister must give due consideration to matters arising from any submissions under this clause.
- (4) The Minister must cause a report summarising the substance of any submissions received with respect to an application for a licence to be prepared.
- (5) The report:
- (a) must indicate the Minister's decision with respect to the application, and
  - (b) must contain such other information as may be prescribed by the regulations, and
  - (c) must be kept available at the office of the Tribunal for inspection by members of the public, free of charge, during normal office hours.

#### **4 Determination of applications**

- (1) The Minister may determine an application for a licence or for the transfer of a licence by granting or transferring the licence (either unconditionally or subject to conditions of the kind referred to in clause 6) or by refusing the application.
- (2) An application may be refused on the following grounds:
- (a) that the proposed holder of the licence fails to satisfy such technical or prudential criteria as have been adopted by the Minister to determine whether a person is able to operate a viable business as a distribution network service provider or retail supplier, as the case may be,
  - (b) such grounds as may be prescribed by the regulations,
  - (c) such grounds as the Minister considers relevant, having regard to the need to promote a competitive retail market for electricity, to prevent misuse of market power and to ensure the security and reliability of the State electricity supply system.
- (3) The Minister must consult with the Minister administering the *Protection of the Environment Administration Act 1991* before granting a licence under this clause.

## **5 Duration of licences**

Subject to the conditions imposed on it, a licence remains in force until it is cancelled.

## **6 Conditions of licences**

(1) A licence is subject to the following conditions:

- (a) the conditions imposed by this Act and the regulations or by or under any other Act,
- (b) such other conditions (not inconsistent with those imposed by this Act and the regulations) as the Minister may from time to time impose in relation to the licence.

(2) Without limitation, the Minister may impose the following kinds of conditions on a licence:

- (a) a condition specifying the period for which the licence is to remain in force,
- (b) a condition requiring the holder of the licence to exercise its functions under this Act in accordance with specified guidelines or subject to specified restrictions,
- (c) a condition requiring the holder of the licence to continue to satisfy such technical or prudential criteria as have been adopted by the Minister to determine whether a person is able to operate a viable business as a distribution network service provider or retail supplier, as the case may be,
- (d) a condition requiring the holder of the licence to maintain specified insurance cover in respect of specified risks,
- (e) a condition requiring the affairs of the holder of the licence in relation to the operation of a distribution system to be kept separate, to the extent specified in the condition, from the affairs of the holder of the licence in relation to the supply of electricity,
- (f) a condition requiring the holder of the licence:
  - (i) to prepare, and submit to the Minister, a plan setting out (in accordance with guidelines established by the Minister) the holder's policies, practices and procedures with respect to the conduct of its affairs under the licence, and
  - (ii) to conduct its affairs under the licence in accordance with the plan so prepared,
- (g) a condition requiring the holder of the licence to furnish to the Minister (at such times and in respect of such periods as the Minister may determine) such information as the Minister may determine to enable the Minister to ascertain whether or not the holder is complying with the other conditions of the licence,

- (h) a condition requiring the holder of the licence to pay an annual licence fee of such amount as may be determined by the Minister.
- (3) A condition referred to in subclause (2) (e) may require separate affairs to be conducted by separate divisions of the same legal entity or by separate legal entities.
- (4) Without limitation, the Minister must impose a condition on each retail supplier's licence requiring the holder of the licence to prepare and publish annual reports in relation to its performance in meeting the minimum standards of service required under its standard form customer supply contracts.
- (5) Without limitation, the Minister must impose the following conditions on each distribution network service provider's licence:
  - (a) a condition requiring the holder of the licence, before expanding its distribution system or the capacity of its distribution system, to carry out investigations (being investigations to ascertain whether it would be cost-effective to avoid or postpone the expansion by implementing demand management strategies) in circumstances in which it would be reasonable to expect that it would be cost-effective to avoid or postpone the expansion by implementing such strategies,
  - (b) a condition requiring the holder of the licence to prepare and publish annual reports in relation to the investigations carried out by it as referred to in paragraph (a).
- (6)–(8) (Repealed)
- (9) The Minister must consult with the Minister administering the *Protection of the Environment Administration Act 1991* before imposing conditions on a licence under this clause.

## **7 Variation of conditions of licences**

- (1) The Minister may vary the conditions of a licence.
- (2) The Minister must consult with the Minister administering the *Protection of the Environment Administration Act 1991* before varying the conditions of a licence under this clause.

## **8 Enforcement of licences by the Minister**

- (1) The Minister may do either or both of the following:
  - (a) the Minister may impose a monetary penalty not exceeding \$100,000 on the holder of a licence,
  - (b) the Minister may cancel a licence.
- (2) A retail supplier's licence held by a distribution network service provider must not be

cancelled unless the distribution network service provider's licence held by the distribution network service provider is also cancelled.

- (3) Action may be taken under this clause only if the holder of the licence has knowingly contravened:
  - (a) the requirements of this Act or the regulations, or
  - (b) the conditions of the licence, or
  - (c) an endorsement attached to the licence.
- (4) Nothing in this clause prevents a licence from being cancelled at the request of its holder.

#### **8A Enforcement of licences by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the holder of a licence.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the holder of the licence to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subclause (2) by the holder of a licence if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this clause on the holder.
- (4) If the Tribunal requires information to be sent to a customer under subclause (2), the holder of the licence may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the holder or, if the holder is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this clause only if the holder of the licence has knowingly contravened the conditions of, or an endorsement attached to, the licence.
- (6) The monetary penalty that the Tribunal may impose under this clause must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this clause unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this clause, and
  - (b) the Tribunal has considered the action that the holder of the licence has taken or

is likely to take in respect of the contravention and the cost to the holder in taking that action, and is satisfied that it is nevertheless appropriate to take action under this clause.

- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this clause.
- (9) The Tribunal must not take action under this clause in respect of a contravention if the Minister has already taken action under clause 8 in respect of the contravention.
- (10) Nothing in this clause affects the Minister's powers under clause 8 in respect of a contravention, whether or not the Tribunal has already taken action under this clause in respect of the contravention.

### **9 Holder of licence to be notified of proposed action**

- (1) The Minister must not take action under clause 6, 7 or 8, or the Tribunal must not take action under clause 8A, unless:
  - (a) notice of the proposed action has been given to the holder of the licence, and
  - (b) the holder of the licence has been given a reasonable opportunity to make submissions with respect to the proposed action, and
  - (c) the Minister or Tribunal has given due consideration to any such submissions.
- (2) This clause does not apply to action taken at the request of the holder of the licence.

### **10 Register of licences**

- (1) A register of licences is to be kept at the office of the Tribunal.
- (2) The register is to be kept available for inspection by members of the public, free of charge, during normal office hours.
- (3) Copies of entries in the register are to be made available to members of the public, at cost, during normal office hours.

## **Schedule 3 Distribution districts**

(Sections 83 and 84)

<b>Name</b>	<b>Distribution district</b>
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	Albury	Inverell
	Armidale Dumaresq	Jerilderie
	Ballina	Junee
	Balranald	Kempsey
	Barraba	Kyogle
	Bathurst	Lachlan
	Bega Valley	Leeton
	Bellingen	Lismore
	Berrigan	Lockhart
	Bingara	Maclean
	Bland	Manilla
	Blayney	Merriwa (part)
	Bogan	Moree Plains
	Bombala	Mudgee
	Boorowa	Mulwaree
	Bourke	Murray
	Brewarrina	Murrumbidgee
	Broken Hill	Murrurundi
	Byron	Nambucca
	Cabonne	Narrabri
	Carrathool	Narrandera
	Central Darling	Narromine
	Cobar	Nundle
	Coffs Harbour	Oberon
	Conargo	Orange
	Coolah	Parkes
Country Energy	Coolamon	Parry
	Cooma-Monaro	Pristine Waters
	Coonabarabran	Queanbeyan
	Coonamble	Quirindi
	Cootamundra	Richmond Valley
	Copmanhurst	Severn
	Corowa	Snowy River
	Cowra	Tallaganda
	Crookwell	Tamworth
	Culcairn	Temora
	Deniliquin	Tenterfield
	Dubbo	Tumbarumba
	Dungog	Tumut
	Eurobodalla	Tweed
	Evans	Uralla
	Forbes	Urana
	Gilgandra	Wagga Wagga
	Glen Innes	Wakool
	Gloucester	Walcha
	Goulburn	Walgett
	Grafton	Warren
	Great Lakes	Weddin
	Greater Taree	Wellington
	Griffith	Wentworth
	Gundagai	Windouran
	Gunnedah	Yallaroi
	Gunning	Yarrowlumla

	Guyra	
	Harden	Yass
	Hastings	Young
	Hay	Unincorporated area
	Holbrook	
	Hume	
	Ashfield	Merriwa (part)
	Auburn	Mosman
	Bankstown	Muswellbrook
	Botany	Newcastle
	Burwood	North Sydney
	Canterbury	Pittwater
	Cessnock	Port Stephens
	Concord	Randwick
	Drummoyne	Rockdale
	Gosford	Ryde
EnergyAustralia	Hornsby	Scone
	Hunters Hill	Singleton
	Hurstville	South Sydney
	Kogarah	Strathfield
	Ku-ring-gai	Sutherland
	Lake Macquarie	Sydney
	Lane Cove	Warringah
	Leichhardt	Waverley
	Maitland	Willoughby
	Manly	Woollahra
	Marrickville	Wyang
	Baulkham Hills	Liverpool
	Blacktown	Parramatta
	Blue Mountains	Penrith
	Camden	Rylstone
Integral Energy Australia	Campbelltown	Shellharbour
	Fairfield	Shoalhaven
	Greater Lithgow	Wingecarribee
	Hawkesbury	Wollondilly
	Holroyd	Wollongong
	Kiama	
Lord Howe Island Board	Lord Howe Island	

## Schedule 4 Transfer of staff, assets, rights and liabilities

(Section 85)

### 1 Application and interpretation

- (1) This Schedule applies to any transfer of staff, assets, rights or liabilities under section 85.
- (2) In this Schedule, the person or body from which any staff, assets, rights or liabilities are transferred is called the transferor and the person or body to whom they are



transferred is called the transferee.

## **2 Transfer of staff**

A member of staff who is transferred by a transfer to which this Schedule applies is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not been transferred but remained a member of staff of the transferor.

## **3 Vesting of undertaking in transferee**

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule applies, the following provisions have effect:
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this clause is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this clause is not to be regarded as an event of default under any

contract or other instrument.

- (4) No attornment to the transferee by a lessee from the transferor is required.
- (5) A transfer is subject to the terms and conditions of the order by which it is effected.
- (6) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which the order giving rise to the transfer so provides.
- (7) Subclause (6) does not affect the rights of any member of staff who is the subject of a transfer to which this Schedule applies.

#### **4 Date of vesting**

A transfer to which this Schedule applies takes effect on the date specified in the order by which it is effected.

#### **5 Consideration for vesting**

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

#### **6 Stamp duty**

Stamp duty is not chargeable for or in respect of:

- (a) a transfer to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

#### **7 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

#### **8 Definitions**

In this Schedule:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

## Schedule 5 Energy savings scheme—targets and energy conversion factors

(Sections 103, 104 and 108)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Year</b>	<b>Energy savings scheme target</b>	<b>Energy conversion factor</b>
2009	0.01	1.01
2010	0.015	1.01
2011	0.025	1.01
2012	0.035	1.01
2013	0.045	1.01
2014	0.05	1.01
2015	0.05	1.01
2016	0.05	1.01
2017	0.05	1.01
2018	0.05	1.01
2019	0.05	1.01
2020	0.05	1.01

## Schedule 5A Energy savings scheme—calculation of penalties

(Sections 113 and 114)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Year</b>	<b>Base penalty rate (\$) per megawatt hour</b>	<b>Penalty conversion factor</b>
2009	24.50	0.94
2010	24.50	0.94
2011	24.50	0.94
2012	24.50	0.94
2013	24.50	0.94
2014	24.50	0.94
2015	24.50	0.94

2016	24.50	0.94
2017	24.50	0.94
2018	24.50	0.94
2019	24.50	0.94
2020	24.50	0.94

**Note—**

The base penalty rates set out in column 2 are the base penalty rates prior to any adjustment for movements in the consumer price index. If the regulations provide for the adjustment of the base penalty rate for movements in the consumer price index, the scheme penalty rate is to be calculated using the base penalty rate as so adjusted.

**Schedule 5B Energy savings scheme—certificate conversion factors**

(Section 130)

<b>Column 1</b>	<b>Column 2</b>
<b>Year</b>	<b>Certificate conversion factor</b>
2009	1.06
2010	1.06
2011	1.06
2012	1.06
2013	1.06
2014	1.06
2015	1.06
2016	1.06
2017	1.06
2018	1.06
2019	1.06
2020	1.06

**Schedule 6 Savings, transitional and other provisions**

(Section 193)

**Part 1 Preliminary****1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Electricity Supply Act 1995*

*Electricity Legislation Amendment (TransGrid) Act 2000*, but only to the extent it amends this Act

*Electricity Supply Amendment Act 2000*

*Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002*

*Electricity (Consumer Safety) Act 2004*, but only in relation to the amendments made to this Act

*Energy Administration Amendment (Water and Energy Savings) Act 2005*, but only to the extent that it amends this Act

*Electricity Supply Amendment (Protection of Electricity Works) Act 2006*

*Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Act 2006*

*Electricity Supply Amendment (Energy Savings) Act 2009*

*Electricity Supply Amendment (GGAS) Act 2009*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (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
  - (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.

#### **1A Regulations on repeal of provisions of Part 8A**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the repeal of a provision of Part 8A.
- (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:
  - (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

- (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.

## **Part 2 Provisions consequent on enactment of [Electricity Supply Act 1995](#)**

### **Division 1 Provisions relating to [Electricity Safety Act 1945](#)**

#### **2 Definitions**

In this Division:

**amended Act** means the [Electricity Safety Act 1945](#), as amended by this Act.

#### **3 Action taken under Division 7 of Part 2A of the amended Act**

Any action taken by an electricity distributor under Division 7 of Part 2A of the amended Act in relation to any premises is deemed to have been taken by the electricity distributor within whose distribution district those premises are situated.

#### **4 Requirements of statutory bodies under section 7J of the amended Act**

Any requirement of a statutory body under section 7J of the amended Act that applied to an electricity distributor immediately before its repeal in relation to anything done by the electricity distributor in, on or over a public road or public reserve is taken to apply to the electricity distributor within whose distribution district the relevant part of the public road or public reserve is situated.

#### **5 Approvals by an electricity distributor under section 7K of the amended Act**

Any approval by an electricity distributor under section 7K of the amended Act that had effect immediately before its repeal in relation to the erection or placement of anything is taken to be an approval by the electricity distributor within whose distribution district the relevant part of that thing is situated.

#### **6 Requirements of an electricity distributor under section 7M of the amended Act**

Any requirement of an electricity distributor under section 7M of the amended Act that applied to a person immediately before its repeal in relation to a conduit owned by that person is taken to be a requirement of the electricity distributor within whose distribution district the relevant part of the conduit is situated.

#### **7 Action by an electricity distributor under section 7N of the amended Act**

Any action taken by an electricity distributor under section 7N of the amended Act before its repeal in relation to:

- (a) the demolition or removal of a structure or thing, or

(b) the repair of a work,

is deemed to have been taken by the electricity distributor within whose distribution district the relevant part of the work is situated.

#### **8 Documents served on an electricity distributor under section 7V of the amended Act**

Any document served on an electricity distributor in accordance with section 7V of the amended Act before its repeal in relation to a matter concerning a particular place is taken to have been duly served on the electricity distributor within whose distribution district that place is situated.

#### **9 Continuation of Part 3C of the amended Act**

Part 3C of the amended Act continues to apply to and in respect of any charges for electricity supplied by an electricity supply authority within the meaning of that Act in relation to an accounting period that commenced before its repeal.

#### **10 Conditions of electricity connection and supply**

Until a customer connection contract or customer supply contract comes into force with respect to a customer of an electricity distributor, the conditions on which customer connection services and electricity supply are provided to the customer are to be the same as those that applied to the customer under section 26D of the amended Act immediately before its repeal.

### **Division 2 Provisions relating to [Sydney Electricity Act 1990](#)**

#### **11 Definitions**

In this Division:

**former Act** means the [Sydney Electricity Act 1990](#).

#### **12 Dissolution of Sydney Electricity**

Sydney Electricity (being the corporation constituted by section 4 of the former Act) is dissolved.

#### **13 Abolition of board of directors**

- (1) The board of directors for Sydney Electricity (being the body established by section 8 of the former Act) is abolished.
- (2) Part 8 of the [Public Sector Management Act 1988](#) applies to each member of the board of directors for Sydney Electricity as if the member had been removed from office by the Governor under section 90 of that Act.

#### **14 Removal from office of chief executive officer**

- (1) The office of chief executive officer of Sydney Electricity is abolished.
- (2) Part 2A of the *Public Sector Management Act 1988* applies to the chief executive officer of Sydney Electricity as if the chief executive officer had been removed from office by the Governor under section 42Q of that Act.

### **Division 3 General**

#### **15 Regulations**

The *Electricity (Tree Preservation) Regulation 1995* is taken to be a regulation under this Act and may be amended and repealed accordingly.

#### **16 Certain persons taken to hold authorisations and licences**

- (1) TransGrid is taken to hold:
  - (a) a network operator's authorisation authorising it to operate its transmission system for the purpose of conveying electricity for or on behalf of wholesale traders, and
  - (b) a wholesale trader's authorisation authorising it to enter into any kind of wholesale supply arrangement.
- (2) Pacific Power, and each electricity generator (within the meaning of the *Energy Services Corporations Act 1995*) that was in existence when this clause commenced, is taken to hold a wholesale trader's authorisation authorising it to enter into any kind of wholesale supply arrangement.
- (3), (4) (Repealed)
- (5) Schedule 2 applies to authorisations and licences that are taken to be held as referred to in subclauses (1), (2), (3) and (4) in the same way as it applies to authorisations and licences granted in accordance with that Schedule.

#### **17 Review of distribution district boundaries to be carried out within 2 years**

- (1) Within 2 years after the commencement of this clause, the Minister must cause a review to be undertaken for the purpose of ascertaining whether it is appropriate for the boundaries of electricity distributors' distribution districts to be varied.
- (2) The review is to be undertaken by a committee of at least 3 persons appointed by the Minister, of whom:
  - (a) one is to be a public servant employed within the Treasury, and
  - (b) one is to be a public servant employed within the Department of Energy, and



(c) the remainder (of whom one is to be appointed as chairperson) are such persons (whether or not public servants) as the Minister may determine.

(3) Subject to any directions given by the Minister, the procedures of the committee are to be determined by the committee.

## **18 Existing electricity supply arrangements**

Section 179 does not apply to electricity supply arrangements (including any covenants, promises, guarantees, obligations, undertakings, liabilities and other agreements in relation to the supply of electricity) entered into before the commencement of that section.

## **19 Water supply functions of certain energy distributors**

(1) An energy distributor that was exercising water supply functions under section 6FB of the *Electricity Safety Act 1945* immediately before the repeal of that section may continue to exercise those functions as if that section had not been repealed.

(2) For the purposes of this clause, the following provisions (as in force immediately before their repeal) continue to have effect, and are taken to have had effect at all times since their repeal, as if they had not been repealed:

(a) section 6FB (subsection (5) excepted) of the *Electricity Safety Act 1945*,

(b) section 750 of, and Schedule 9 to, the *Local Government Act 1993*.

(3) Schedule 3 to the *Energy Services Corporations Act 1995* applies to the transfer of staff, assets, rights or liabilities under section 6FB of the *Electricity Safety Act 1945*, as applied by subclause (2).

(4) For the purpose of the application of the exercise of the water supply functions conferred by section 6FB of the *Electricity Safety Act 1945*, as applied by subclause (2):

(a) the reference in subsection (1) (a) of that section to Northern Riverina Electricity is taken to be a reference to Great Southern Energy, and

(b) the reference in subsection (1) (c) of that section to Southern Riverina Electricity is taken to be a reference to Great Southern Energy, and

(c) the distribution district of Great Southern Energy is taken to be the same as the combined distribution districts of Northern Riverina Electricity and Southern Riverina Electricity, as they were immediately before 1 October 1995.

(5) For the purpose of the application of the exercise of the water supply functions conferred by section 6FB of the *Electricity Safety Act 1945*, as applied by subclause (2):

- (a) the reference in subsection (1) (b) of that section to Oxley Electricity is taken to be a reference to NorthPower, and
  - (b) the distribution district of NorthPower is taken to be the same as the distribution district of NorthPower, as it was immediately before 1 October 1995.
- (6) This clause ceases to have effect on 1 July 1998 or on such later date as may be prescribed by the regulations.

### **Part 3 Miscellaneous**

#### **20 Existing licences**

The amendments made to Schedule 2 to this Act by Schedule 1 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1999* extend to a licence in force immediately before the commencement of those amendments.

### **Part 4 Provisions consequent on enactment of Electricity Supply Amendment Act 2000**

#### **21 Definitions**

In this Part:

**amending Act** means the *Electricity Supply Amendment Act 2000*.

**instrument** means any other Act or statutory instrument.

#### **22 Change of nomenclature: electricity distributor**

- (1) A reference in any instrument (other than this Act) to an electricity distributor (in its capacity as the operator of a distribution system) is to be construed as a reference to a distribution network service provider.
- (2) A reference in any instrument (other than this Act) to an electricity distributor's licence is to be construed as a reference to a distribution network service provider's licence.
- (3) An electricity distributor's licence is taken to be a distribution network service provider's licence and the provisions of this Act as amended by the amending Act apply accordingly.

#### **23 Distribution network service provider holding retail supplier's licence**

- (1) This clause applies to a distribution network service provider that held a retail supplier's licence immediately before the commencement of Schedule 1 [4] to the amending Act.
- (2) The Minister may impose a condition on the licence of a distribution network service

provider requiring the distribution network service provider to take all such steps as are necessary to effect the transfer of a retail supplier's licence held by the distribution network service provider.

- (3) The Minister may impose such conditions on the licence of the person to whom the licence is transferred as the Minister thinks fit.
- (4) It is a condition of the distribution network service provider's licence or the licence of a person to whom a licence is transferred under this clause that the holder of the licence must comply with a condition imposed under this clause.
- (5) Nothing in this clause affects the generality of any provision of Schedule 2.

#### **24 Retail suppliers' licences**

- (1) A retail supplier's licence held by a distribution network service provider immediately before the commencement of Schedule 1 [10] to the amending Act is taken to be a licence held by a standard retail supplier and the provisions of this Act as amended by the amending Act apply accordingly.
- (2) The supply district of such a standard retail supplier is, until altered in accordance with this Act, taken to be the distribution district of the distribution network service provider immediately before the commencement of Schedule 1 [10] to the amending Act.
- (3) A retail supplier's licence (other than a licence referred to in subclause (1)) in force immediately before the commencement of Schedule 1 [10] to the amending Act is taken to have been granted under this Act as amended and the provisions of this Act, as so amended, apply accordingly.

#### **25 Franchise customers**

- (1) For the purposes of this Part, a customer who would be a franchise customer but for the amending Act is taken to be a transitional retail customer.
- (2) However, a person who, immediately before the repeal of section 43 by the amending Act, was supplied electricity under an arrangement made under section 43 (1) (b) is not taken to be a transitional retail customer.
- (3) Subject to this Part, this Act applies to a transitional retail customer in the same way as it applies to a small retail customer who has elected to be supplied with electricity under a standard form customer supply contract.
- (4) A retail supplier must not supply electricity to a transitional retail customer under a negotiated customer supply contract.
- (5) A customer ceases to be a transitional retail customer if the customer becomes the subject of an order under clause 26 or makes an election under subclause (6).

- (6) A transitional retail customer who was the subject of an order in force under section 92 (as in force immediately before its substitution by the amending Act) enabling the customer to elect to become a non-franchise customer may elect to cease to be a transitional retail customer.
- (7) The election is to be made in the same manner as an election under the order to become a non-franchise customer.
- (8) This clause ceases to have effect when there are no transitional retail customers.

## **26 Orders relating to transitional retail customers**

- (1) The Minister may, by order published in the Gazette, declare that any specified person, or any specified class of persons, ceases to be a transitional retail customer.
- (2) An order under this clause 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.
- (3) In particular, an order under this clause may apply to a person only in respect of the consumption of electricity at certain premises (in which case the order does not apply to that person in respect of the person's consumption of electricity at other premises).
- (4) An order under this clause takes effect on the day on which it is published in the Gazette or on such later day as is specified in the order.
- (5) Subject to the regulations, the Minister may not make an order under this clause unless:
  - (a) notice of the proposal to make the order has been published in a daily newspaper circulating throughout New South Wales, and
  - (b) a report on any submissions received with respect to the proposed order has been prepared.
- (6) The notice referred to in subclause (5) (a) must indicate:
  - (a) the nature of the proposed order, and
  - (b) where submissions on the proposed order should be lodged, and
  - (c) the time (being not less than 21 days from the date on which the notice is published) within which any such submission should be lodged, and
  - (d) such other matters as may be prescribed by the regulations.
- (7) The report referred to in subclause (5) (b):

- (a) must summarise the substance of the submissions received by the Minister in connection with the proposed order, and
- (b) must contain such other information as may be prescribed by the regulations, and
- (c) must be kept available at the head office of the Ministry of Energy for inspection by members of the public, free of charge, during normal office hours.

## **27 Election to take supply under standard form customer supply contract**

- (1) This clause applies to a person who ceases to be a transitional retail customer and who, on so ceasing, becomes a small retail customer.
- (2) The person is, unless the person applies to a retail supplier to be supplied under a negotiated customer supply contract, taken to have elected to be supplied with electricity under a standard form customer supply contract.
- (3) Nothing in this clause prevents the person from subsequently applying to a retail supplier to be supplied under a negotiated customer supply contract.

## **28 Supply of electricity to franchise customers**

- (1) It is a condition of a retail supplier's licence that the retail supplier must not supply electricity to the premises of a transitional retail customer otherwise than:
  - (a) in the case of a standard retail supplier, for the purpose of supplying electricity to the customer under the obligation imposed on the retail supplier by section 34, or
  - (b) in the case of any other retail supplier, for the purpose of providing electricity to the customer on behalf of a standard retail supplier under the obligation imposed on the retail supplier by section 34.
- (2) This clause does not affect any arrangements approved by the Minister under which standard retail suppliers with adjoining supply districts supply electricity to transitional retail customers in each others' supply districts.

## **29 Standard form customer supply contracts**

- (1) Any standard form customer supply contract prepared under section 39 before the substitution of that section by the amending Act is taken to have been prepared under and in accordance with that section as substituted, for a period of 3 months after that substitution or for a longer or shorter period determined by the Minister by order published in the Gazette.
- (2) Except where expressly provided, nothing in the amending Act affects any agreement (in force immediately before the commencement of Schedule 1 [10] to the amending Act) taken to have been entered into under section 41 (5) for the provision of electricity on the conditions set out in a standard form customer supply contract, for a

period of 3 months after that commencement or for a longer or shorter period determined by the Minister by order published in the Gazette. Any such agreement is taken to continue in force for that period.

- (3) Despite subclause (2), the regulations may provide for the application of provisions of this Act, as amended by the amending Act, to any such standard form customer supply contract.
- (4) Subclause (2) does not prevent a customer from entering into a new customer supply contract at any time after that commencement.
- (5) Anything done under or for the purposes of Division 2 of Part 4 before its repeal by the amending Act is taken to have been done under or for the purposes of Division 3 of that Part as inserted by the amending Act.

### **30 Negotiated customer supply contracts**

- (1) Except where expressly provided, nothing in the amending Act affects a negotiated customer supply contract in force immediately before the commencement of Schedule 1 [10] to the amending Act.
- (2) Despite subclause (1), the regulations may provide for the application of provisions of this Act, as amended by the amending Act, to any such negotiated customer supply contract.

### **31 Appeals**

- (1) Any person may appeal against the decision of a retail supplier (made before the commencement of Schedule 1 [56] to the amending Act) as to:
  - (a) the supplier's classification of the person as a franchise or non-franchise customer, or
  - (b) a charge payable by the person under a standard form customer supply contract.
- (2) Subject to any regulations expressed to be made for the purposes of this subclause, the regulations in force under section 96 (2) and (3) immediately before the commencement of Schedule 1 [56] to the amending Act apply to such an appeal, despite the repeal of section 96 by the amending Act.
- (3) Anything done under or for the purposes of section 96 before its repeal by the amending Act and in connection with such an appeal or an appeal made but not determined before that repeal is taken to have been done under or for the purposes of this clause and in connection with an appeal under this clause. However, this subclause does not confer any additional right to appeal in circumstances where an appeal was finally determined before that repeal.

### **32 Reviews relating to transitional retail customers**

- (1) A person may apply to a licence holder for a review of the decision of the licence holder as to the licence holder's classification of the person as a transitional retail customer or as not being such a customer.
- (2) Section 96, as inserted by the amending Act, and the regulations, apply to any such review in the same way as they apply to a review under section 96 (3) as so substituted.

### **33 Reviews (see former clause 39A of [Electricity Supply \(General\) Regulation 1996](#))**

- (1) Subject to any regulations expressed to be made for the purposes of this subclause, clause 39A of the [Electricity Supply \(General\) Regulation 1996](#) as in force immediately before the commencement of Schedule 1 [56] to the amending Act continues to apply to any matter pending under the electricity industry ombudsman scheme referred to in that clause immediately before that commencement.
- (2) Subclause (1) ceases to have effect at the end of the period of 3 months after the commencement of Schedule 1 [56] to the amending Act.

### **34 Customer consultative groups**

A customer consultative group appointed by an electricity distributor and in existence immediately before the commencement of the amendment of section 89 by the amending Act is taken to be:

- (a) a customer consultative group appointed to act as a forum for consultation between the distribution network service provider (in its capacity as such a provider) and its customers, and
- (b) a customer consultative group appointed to act as a forum for consultation between the distribution network service provider (in its capacity as a retail supplier) and its customers.

### **35 Requirements to pay contributions**

- (1) Section 25, as in force immediately before its amendment by the amending Act, continues to apply in respect of customer connection services provided, or agreed to be provided:
  - (a) before the commencement of the amendment, or
  - (b) on or after that commencement and before a determination by the Tribunal, as referred to in section 25 as so amended, is in force for the purposes of that section.
- (2) For the purposes of making its initial determination under section 11 (3) of the [Independent Pricing and Regulatory Tribunal Act 1992](#), the Tribunal is not required to

comply with section 21 of that Act.

### **37 Initial determination of regulated retail tariffs and regulated retail charges**

For the purposes of the initial determination of regulated retail tariffs and regulated retail charges under section 43EB, a recommendation contained in a final report of the Tribunal under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* under an arrangement entered into between the Premier and the Tribunal on 14 July 2000 is taken to be a determination under section 43EB.

### **38 Initial payments to Electricity Tariff Equalisation Fund**

- (1) The Electricity Tariff Equalisation Ministerial Corporation may obtain financial accommodation for the purposes of an initial amount or amounts to be paid to the Electricity Tariff Equalisation Fund.
- (2) The initial amount or amounts are to be paid to the Electricity Tariff Equalisation Fund and may be used for the purposes of that Fund.
- (3) Amounts may be paid from that Fund for the purposes of repayments and payments of interest payable in respect of the financial accommodation.
- (4) The financial accommodation is to be obtained under, and in accordance with, any other Act applying to the obtaining of financial accommodation by the Electricity Tariff Equalisation Ministerial Corporation.
- (5) In this clause:

**financial accommodation** has the same meaning as it has in the *Public Authorities (Financial Arrangements) Act 1987*.

### **39 Initial operation of Divisions 5 and 6 of Part 4 and Parts 5A and 5B**

- (1) The regulations may, for the purposes of the commencement or initial operation of Division 5 or 6 of Part 4, or Part 5A or 5B, impose conditions on licences and provide for the transitional application of provisions of those Divisions or Parts.
- (2) Nothing in this clause limits the operation of any other provision of this Act.

## **Part 5 Provisions consequent on enactment of *Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002***

### **40 First benchmark figures**

Despite section 97BF, the Tribunal may, for the year commencing 1 January 2003, determine the matters specified in section 97BF (1) before, on or after 1 January 2003.



#### 41 Abatement certificates

- (1) For the purposes of accrediting persons as abatement certificate providers and enabling the creation, registration and transfer of abatement certificates, the Scheme Administrator may determine any matter for or with respect to which regulations may be made under Division 4, 5 or 6 of Part 8A in accordance with such guidelines (if any) as may be approved by the Minister.
- (2) This clause ceases to have effect when regulations are made for the purposes of Division 4 of Part 8A, or 6 months after the date of commencement of this clause, whichever is the earlier.

### Part 6 Provisions consequent on enactment of **Electricity (Consumer Safety) Act 2004**

#### 42 Definitions

In this Part:

**repeal date** means the date on which the repealed Act is repealed by the *Electricity (Consumer Safety) Act 2004*.

**repealed Act** means the *Electricity Safety Act 1945* as in force immediately before its repeal by the *Electricity (Consumer Safety) Act 2004*.

#### 43 Continuation of certain Regulations made under repealed Act

- (1) The *Electricity Safety (Corrosion Protection) Regulation 2003*, as in force immediately before the repeal date, continues in force and is taken to be a regulation made under this Act.
- (2) The Regulation continued in force by subclause (1) may be amended and repealed in the same way as any other regulation made under this Act.

#### 44 Appointments of existing inspectors etc continue under new provisions of this Act

- (1) Any person authorised under section 25 (1) of the repealed Act in respect of the examination of cathodic protection systems or stray current sources (within the meaning of that Act) whose authorisation was in force immediately before the repeal date is taken to have been appointed as an inspector by the Director-General under section 63M of this Act in respect of the provisions of this Act and the regulations relating to corrosion protection systems or stray current sources.
- (2) Any person authorised under section 26 (2) of the repealed Act whose authorisation was in force immediately before the repeal date is taken to have been appointed as an inspector by the Director-General under section 63M of this Act for the purposes of section 63P of this Act.

- (3) Any person authorised under section 27F (1) of the repealed Act to carry out inspections in respect of serious electrical accidents that do not involve electrical installations or electrical articles (within the meaning of that Act) whose authorisation was in force immediately before the repeal date is taken to have been appointed as an inspector by the Director-General under section 63M of this Act in respect of the provisions of this Act and the regulations relating to serious electricity works accidents.

#### **45 Delegations under section 28 of repealed Act**

Any delegation under section 28 of the repealed Act in force immediately before the repeal date in respect of any function under a provision of that Act (other than a function concerning electrical installations or electrical articles within the meaning of that Act) is taken to be a delegation duly given by the Minister under section 183 of this Act in respect of a function of the Minister under a corresponding provision (if any) of this Act.

#### **46 Effect of this Part**

Nothing in this Part prevents the amendment or revocation of any delegation, authorisation or appointment.

### **Part 7 Provisions consequent on enactment of [Electricity Supply Amendment \(Protection of Electricity Works\) Act 2006](#)**

#### **47 Definitions**

In this Part:

**the 2006 amending Act** means the [Electricity Supply Amendment \(Protection of Electricity Works\) Act 2006](#).

**the relevant time** means the time the Bill for the 2006 amending Act was first introduced into Parliament.

#### **48 Pending proceedings commenced before relevant time**

In proceedings commenced before the relevant time in respect of a cause of action of the kind referred to in section 53 (2), as inserted by the 2006 amending Act, the court before which the proceedings are being heard may not make any order requiring modification or removal of works to which section 53 applies.

#### **49 Pending proceedings commenced after relevant time**

Section 53, as inserted by the 2006 amending Act, applies for the purposes of legal proceedings commenced since the relevant time, and so applies as if it had commenced at that time.

### **Part 8 Provisions consequent on enactment of [Electricity Supply](#)**

## Amendment (Greenhouse Gas Abatement Scheme) Act 2006

### 50 Greenhouse penalties

The amount of greenhouse penalty determined in accordance with section 97CA and clause 73C of the *Electricity Supply (General) Regulation 2001*, as in force immediately before the commencement of Schedule 1 [2] to the *Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Act 2006*, is the amount of greenhouse penalty for the year commencing 1 January 2006.

### 51 Variation or revocation of conditions of accreditation

Section 97DDA, as inserted by Schedule 1 [5] to the *Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Act 2006*, extends to the variation or revocation of a condition of accreditation imposed before the commencement of that item.

## Part 9 Provisions consequent on enactment of Electricity Supply Amendment (Energy Savings) Act 2009

### 52 Definitions

(1) In this Part:

**abatement certificate** means an abatement certificate under Part 8A.

**demand side abatement activity** means an activity that, immediately before the commencement of the energy savings scheme:

- (a) is a demand side abatement activity under the greenhouse gas benchmark rules for Part 8A, and
- (b) is an activity in respect of which abatement certificates can be created under Part 8A.

**energy savings scheme** means the energy savings scheme established by Part 9.

**recognised energy saving activity** has the same meaning as it has in Part 9.

(2) In this Part, a reference to the commencement of the energy savings scheme is a reference to the commencement of Part 9, as inserted by the *Electricity Supply Amendment (Energy Savings) Act 2009*.

### 53 Accreditation of abatement certificate providers as energy savings certificate providers

(1) A person who, immediately before the commencement of the energy savings scheme, was an accredited abatement certificate provider under Part 8A in respect of a demand side abatement activity, or an applicant for accreditation under Part 8A in respect of a demand side abatement activity, is eligible for accreditation as a

certificate provider under the energy savings scheme in respect of that activity if:

- (a) the activity is a recognised energy saving activity, and
  - (b) the Scheme Administrator under Part 9 is satisfied the person is otherwise eligible for accreditation as a certificate provider in respect of the activity concerned under Part 9.
- (2) A person to whom this clause applies is eligible for accreditation in respect of an activity and, on accreditation, may create energy savings certificates in respect of an activity, even if the activity commenced before 1 July 2008 (despite section 127 (5)).
  - (3) The Scheme Administrator under Part 9 may grant such accreditation without requiring the person to apply for accreditation under Part 9.
  - (4) If the person is engaged in an industry or activity that benefits from a full exemption under the energy savings scheme, or is a related body corporate of a person who is so engaged, the Scheme Administrator may grant accreditation to the person as a certificate provider in respect of an activity that reduces consumption of electricity in the industry or activity concerned (despite section 135) subject to a condition that the person must not create energy savings certificates in respect of the relevant activity if the activity commences on or after 1 January 2013.
  - (5) Section 171 (Appeals to Administrative Decisions Tribunal) does not apply in respect of the condition of accreditation referred to in subclause (4).

#### **54 Creation of abatement certificates in respect of demand side abatement activities**

- (1) On the commencement of the energy savings scheme, an abatement certificate cannot be created in respect of a demand side abatement activity that is a recognised energy saving activity, unless the activity took place before the commencement of the energy savings scheme.
- (2) On the commencement of the energy savings scheme, the accreditation of any person as an abatement certificate provider under Part 8A is taken to be subject to a condition that the person must not create abatement certificates in respect of a demand side abatement activity that is a recognised energy saving activity, unless the activity took place before the commencement of the energy savings scheme.
- (3) The Scheme Administrator under Part 8A may, by notice in writing to an accredited abatement certificate provider, cancel the accreditation of the person as an abatement certificate provider in respect of any demand side abatement activity that, on the commencement of the energy savings scheme, is a recognised energy saving activity.
- (4) The regulations and greenhouse gas benchmark rules under Part 8A apply in relation to this clause in the same way as they apply to Part 8A.

**Note—**

The regulations and greenhouse gas benchmark rules under Part 8A can specify when an activity is considered to have “taken place”.

**55 Exemptions for year 2009**

- (1) An exemption for the year 2009 may be granted under Division 5 of Part 9 at any time before the beginning of the year 2010.
- (2) Any such exemption is taken to have effect in respect of the whole of the year 2009.
- (3) This clause has effect despite section 122.

**56 Amendments by other Acts to renumbered provisions**

- (1) An amendment made by another Act to a provision of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009* has effect as if the amendment were referring to the provision of this Act as renumbered.
- (2) If an amendment made by another Act to this Act inserts a provision in a Part of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009*, the inserted provision is to be appropriately renumbered.
- (3) If an amendment made by another Act to this Act contains a reference to a provision of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009*, the reference to the provision is also to be appropriately renumbered.
- (4) This clause applies only in respect of an amendment enacted, but not commenced, before the commencement of Schedule 1 [6] to the *Electricity Supply Amendment (Energy Savings) Act 2009*.

**57 References in other Acts to renumbered provisions**

- (1) A reference in any provision of another Act to a provision of this Act that is renumbered by the *Electricity Supply Amendment (Energy Savings) Act 2009* is, from the commencement of Schedule 1 [6] to the *Electricity Supply Amendment (Energy Savings) Act 2009*, to be read as a reference to the provision as renumbered.
- (2) This clause applies only in respect of a provision of another Act that commenced before the commencement of Schedule 1 [6] to the *Electricity Supply Amendment (Energy Savings) Act 2009*.

**Dictionary**

(Section 4)

**AEMO** has the same meaning as it has in Part 8A.

**approved electricity industry ombudsman scheme** means a scheme approved under section 96B.

**authorised electrician** has the same meaning as it has in the [Electricity \(Consumer Safety\) Act 2004](#).

**authorised officer** means an authorised officer appointed under section 94.

**corrosion protection system** means any appliances, wires, fittings or other apparatus designed, intended or used for the protection, by means of electrical currents, of metallic structures in contact with land, including water, from external corrosion and includes cathodic protection systems, drainage bonds, boosted drainage bonds and cross bonds.

**council** means the council of a local government area.

**customer** means a wholesale customer or a retail customer.

**customer connection contract** means a standard form customer connection contract or a negotiated customer connection contract.

**customer connection services** means any of the following services:

- (a) the connection of any premises to a distribution network service provider's distribution system,
- (b) an increase in the maximum capacity of any premises' existing connection to a distribution network service provider's distribution system,
- (c) the maintenance of the capability for electricity to be supplied to any premises from a distribution network service provider's distribution system,

and includes services of a kind prescribed by the regulations as being within this definition, but does not include services of a kind prescribed by the regulations as not being within this definition.

**customer consultative group** means a customer consultative group referred to in section 89.

**customer supply contract** means a standard form customer supply contract or a negotiated customer supply contract.

**Department** means the Department of Industry and Investment.

**Director-General** means the Director-General of the Department.

**distribution district** of a distribution network service provider specified in Schedule 3 means the distribution district described in that Schedule in relation to the service provider.

**distribution network service provider** means a person who owns or controls a distribution system.

**distribution network service provider's licence** means a licence referred to in section 14.

**distribution system** means the electricity power lines and associated equipment and electricity structures that are used to convey and control the conveyance of electricity:

- (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
- (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.

**electrical installation** means the electrical wiring and associated equipment that are used to convey and control the conveyance of electricity within premises to which electricity is supplied from a distribution system, but does not include anything connected to and extending or situated beyond an electrical outlet socket.

**electrical wiring work** has the same meaning as it has in the [Electricity \(Consumer Safety\) Act 2004](#).

**electricity delivery equipment** means any machinery, apparatus, appliances, material or other equipment used or intended to be used by any network operator or retail supplier for or in connection with the generation, transmission or distribution of electricity.

**electricity generator** means a person who owns or controls a generating system.

**electricity network services** means transmission services, and distribution services, within the meaning of the *National Electricity Code* that are regulated under Chapters 6 and 9 of that Code.

**electricity structure** means any structure (other than a building) that is used to carry overhead lines or associated equipment, and includes any structure that is used for the purposes of street lighting.

**Electricity Tariff Equalisation Fund** means the Fund constituted under section 43EN.

**Electricity Tariff Equalisation Ministerial Corporation** means the Corporation of that name constituted under section 43EM.

**electricity works** means any electricity power lines or associated equipment or electricity structures that form part of a transmission or distribution system.

**exercise** a function includes perform a duty.

**financial year** means a period of 12 months commencing on 1 July.

**function** includes a power, authority or duty.

**generating system** means the electrical equipment and associated electricity structures that are used to generate electricity for supply to a transmission or distribution system.

**health care professional** means a person registered under a health registration Act within the meaning of the [Health Care Complaints Act 1993](#).

**inspector** means any person appointed under section 63M by the Director-General as an inspector for the purposes of the provision in which the expression is used.

**interstate wholesale market agreement** means any arrangement, agreement or understanding entered into or agreed between the Market and System Operator and an interstate wholesale market operator for the operation of a wholesale market for electricity within New South Wales and some other State or Territory.

**interstate wholesale market operator** means an interstate body that operates a wholesale market for electricity in some other State or Territory.

**licence** means a distribution network service provider's licence or a retail supplier's licence.

**National Electricity Code** means the *National Electricity Code*, as in force from time to time, referred to in the *National Electricity (NSW) Law*.

**National Electricity (NSW) Law** means the provisions applying because of section 6 of the *National Electricity (New South Wales) Act 1997*, and includes the *National Electricity Code*, as in force from time to time, referred to in that Law.

**negotiated customer connection contract** means a contract entered into under Division 3 of Part 3.

**negotiated customer supply contract** means a contract entered into under Division 2 of Part 4.

**network operator** means a transmission operator or distribution network service provider.

**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.

**premises** includes any building or part of a building, any structure or part of a structure, any land (whether built on or not) and any river, lake or other waters.

**public authority** means a public or local authority constituted by or under an Act or a statutory body representing the Crown, and includes a Minister and a statutory State owned corporation and its subsidiaries.

**public reserve** has the same meaning as it has in the *Local Government Act 1993*.

**public road** has the same meaning as it has in the *Roads Act 1993*.

**rail network electricity system** means the rail network electricity system operated by Rail Corporation New South Wales or Rail Infrastructure Corporation or Sydney Metro.

**regulated retail charge** means a security deposit, late payment fee or fee for a dishonoured bank cheque of an amount specified in a determination in force under Division 5 of Part 4.

**regulated retail tariff** means a tariff for or in relation to the supply of electricity required to be charged to a small retail customer under a standard form customer supply contract, being a tariff specified in a determination in force under Division 5 of Part 4.

**retail customer** means a person to whose premises electricity is supplied under a customer supply contract.

**retail supplier** means a person who holds a retail supplier's licence.

**retail supplier's licence** means a licence referred to in section 33.

**roads authority** has the same meaning as it has in the *Roads Act 1993*.

**serious electricity works accident** means an accident:

(a) in which electricity works are involved, and



(b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a health care professional or is unable to attend work for any period of time.

**small retail customer**—see section 92.

**standard form customer connection contract** means a contract entered into under Division 2 of Part 3.

**standard form customer supply contract** means a contract entered into under Division 3 of Part 4.

**standard retail supplier** means a retail supplier to whose retail supplier's licence is attached a standard retail supplier's endorsement as referred to in section 33A.

**stray current source** means any appliance, equipment, fitting or other apparatus:

- (a) that operates on direct electrical current or is designed or used to generate or transmit direct electrical current, and
- (b) that is attached, whether directly or indirectly, to a metallic structure in contact with land, including water.

**supply**, in relation to electricity, means the supply of electricity by means of a transmission or distribution system.

**supply district** of a standard retail supplier means the supply district described in a condition of the standard retail supplier's licence.

**traffic route** has the same meaning as it has in section 45E of the [Transport Administration Act 1988](#).

**transmission operator** means a person who owns or controls a transmission system.

**transmission system** means any electricity power lines and associated equipment and electricity structures that are a transmission system by virtue of an order in force under section 93.

**Tribunal** means the Independent Pricing and Regulatory Tribunal established under the [Independent Pricing and Regulatory Tribunal Act 1992](#).

**unincorporated area** means such part of the land within the Western Division of the State as is not within a local government area.

**wholesale customer** means a person to whose premises electricity is supplied under a wholesale supply arrangement.

**wholesale market access regime** means a regime established under the *National Electricity (NSW) Law* for the granting of access to a transmission system or distribution system.

**wholesale supply arrangement** means an arrangement (other than a customer supply contract) for the supply of electricity, and includes any such arrangement entered into (or taken to have been entered into) under the *National Electricity (NSW) Law*.

**wholesale trader** means a person:

- (a) who enters into wholesale supply arrangements, or

- (b) who buys, sells or otherwise deals in rights to the supply of electricity arising under wholesale supply arrangements.