

Electricity Supply Act 1995 No 94

[1995-94]



New South Wales

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Notes—

- **Does not include amendments by**

[Energy Legislation Amendment \(Retail Electricity and Gas Pricing\) Act 2015 No 36](#), Sch 6.2 (not commenced — to commence on 1.7.2017)

[Transport Administration Amendment \(Transport Entities\) Act 2017 No 12](#) (not commenced)

[Gas and Electricity \(Consumer Safety\) Act 2017 No 15](#) (not commenced)

[Crown Land Legislation Amendment Act 2017 No 17](#) (not commenced)

[Statute Law \(Miscellaneous Provisions\) Act 2017 No 22](#), Sch 3.18 (not commenced — to commence on 7.7.2017)

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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 promote the efficient and environmentally responsible production and use of electricity and to deliver a safe and reliable supply of electricity, and

Note—

Customer choice and rights in relation to electricity connections and electricity supply are provided for by the *National Energy Retail Law (NSW)*.

- (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- (c) (Repealed)
- (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.
- (3) Words and expressions used in this Act have the same meaning as they have in the

National Energy Retail Law (NSW) but (unless otherwise expressly provided) have that meaning only in relation to the supply of electricity.

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 retailers, otherwise than under the authority of a distributor's licence.

Maximum penalty: 5,000 penalty units.

14 Licences

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

15, 15A (Repealed)

16 Distributors to convey electricity for certain persons only

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

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- (c), (d) (Repealed)

17, 18 (Repealed)

Divisions 2, 3

19-23 (Repealed)

Division 4 Requirements relating to customer connection services

24 Application

- (1) This Division applies to any person who applies to a distributor for the provision of customer connection services or to whom customer connection services are provided.
- (2) A distributor may refuse to provide customer connection services to a person who fails to comply with a requirement under this Division.
- (3) In this Division, **customer connection services** means connection services within the meaning of Chapter 5A of the *National Electricity Rules*, except as may be provided by the regulations.

25 (Repealed)

26 Service lines

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

27 Service equipment

- (1) A distributor 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 or from a customer.
- (2) The position and standards of installation of service equipment are to be as determined by the distributor.

28 Transformers

- (1) This section applies if, in the opinion of the distributor, 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 distributor may require the customer to provide for use by the

distributor, free of cost, a place within those premises to accommodate the transformers, switchgear or other equipment that the distributor considers should be installed.

- (3) The place provided must be approved by, and must be enclosed in a manner approved by, the distributor.

29 (Repealed)

30 Requirements as to installation and use of apparatus

- (1) A distributor:
 - (a) may impose such requirements as to the installation and use of electrical appliances and equipment by the customer as the distributor considers necessary to prevent or minimise adverse effects on the supply of electricity to or from 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 distributor'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, a customer may elect:
 - (a) to have any required electrical or other goods provided by the distributor (in the case of goods that are available from the distributor) or by any other person, and
 - (b) to have any required electrical or other services provided by the distributor (in the case of services that are available from the distributor) or by an accredited service provider.
- (2) (Repealed)

31A Accredited service providers

- (1) A person must not provide a contestable network service unless the person is accredited to provide services in accordance with the regulations (an **accredited**

service provider) and the person's accreditation authorises the person to provide the contestable network service concerned.

Maximum penalty: 500 penalty units.

- (2) The regulations may exempt the provision of specified, or a specified class of, contestable network services from the requirement that the services must be provided by an accredited service provider.
- (3) The exemption may be unconditional or subject to conditions.
- (4) The regulations may make provision for or with respect to the following:
 - (a) the accreditation of accredited service providers (including the imposition of conditions on accreditation),
 - (b) different classes of accredited service providers,
 - (c) the payment of fees in connection with the accreditation of accredited service providers (including the imposition of fees for applications for accreditation and renewal of accreditation).

- (5) In this section:

contestable network service means:

- (a) a service provided for the purpose of complying with a requirement imposed by a distributor under this Division, and
- (b) any other distribution service (within the meaning of the *National Electricity Rules*) prescribed by the regulations.

32 (Repealed)

Division 5 Levy

32A Definitions

In this Division:

licensee means the holder of a distributor'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.

32AA Exemption for transacted distribution system

This Division does not apply to a licensee in respect of a transacted distribution system under the [Electricity Network Assets \(Authorised Transactions\) Act 2015](#).

32B Distributor's levy

- (1) A licensee must pay to the Treasurer, in respect of each financial year during which the licensee holds a distributor'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 distributor'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 distributor'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 distributor'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 distributor'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 Retail pricing for electricity

Divisions 1-3A

33-43 (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 Rules* for the provision of electricity network services by a licensee.

licensee means the holder of a distributor's licence but does not include an authorised distributor under the *Electricity Network Assets (Authorised Transactions) Act 2015*.

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 Rules* 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 distributor'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 Rules*.

(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 Determinations by Tribunal

43EA, 43EB (Repealed)

43EC Publication of determinations

- (1) A determination of the Tribunal under this Division 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.

43ECA Referrals for determinations relating to solar bonus scheme

- (1) The Minister may refer to the Tribunal, for investigation and report, the determination of the following:
 - (a) the retailer benefit component payable by a retailer to a customer for electricity produced by a complying generator and supplied to the distribution network by the customer under the scheme established under section 15A,
 - (b) the benchmark range for feed-in tariffs paid by retailers for electricity produced by complying generators and supplied to the distribution network.
- (2) 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.
- (3) The Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal.
- (4) A report is to include any minority report by a member of the Tribunal who wishes to make such a report.
- (5) The Tribunal is to conduct an investigation and make a determination in a report to the Minister in accordance with this Division.
- (6) In this section:

complying generator has the same meaning as it has in section 15A.

43ECB Tribunal to determine retailer benefit component and feed-in tariff

- (1) The Tribunal may in a report to the Minister determine a matter specified in section 43ECA if a referral is made under that section. Any such report may be combined with any other report given under this Division.
- (2) The retailer benefit component determined by the Tribunal is to be determined having regard to the financial benefit to retailers as a result of the supply of electricity by customers under the scheme established under section 15A.
- (3) Before determining a matter specified in section 43ECA, 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.
- (4) A determination of any such matter may:
 - (a) specify the amount of the retailer benefit component or the range for the feed-in tariff, or
 - (b) specify the methodology for determining the amount or range.
- (5) 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.

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 special reviews

- (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 retailers 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 retailer 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) (Repealed)

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 information 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 disclose Cabinet information, or
 - (c) to inspect Cabinet information.
- (2) For the purposes of this section, a certificate of the Secretary or General Counsel of the Department of Premier and Cabinet that:
- (a) any information or question relates to confidential proceedings of Cabinet, or
 - (b) information is Cabinet information,
- is conclusive of that fact.

- (3) In this section:

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

Cabinet information means information that is Cabinet information under the [Government Information \(Public Access\) Act 2009](#).

43EJ Provisions to cease to have effect

- (1) (Repealed)
- (2) This Division ceases to have effect on 31 December 2016 or on such earlier or later

day as may be prescribed by the regulations.

Editorial note—

This Division ceases to have effect on 31.12.2016. See clause 71 of the [Electricity Supply \(General\) Regulation 2014](#).

- (3) Regulations of a savings or transitional nature may be made consequent on the operation of this section.

Division 6

43EK-43ES (Repealed)

Part 4A

43F-43P (Repealed)

Part 5 Powers and duties of network operators and retailers

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) (Repealed)

Division 2 Powers and duties relating to electricity works

45 Erection and placement of electricity works

- (1) For the purpose of exercising its functions under this or any other Act or law, a network operator may carry out any of the following work:
 - (a) work comprising the erection, installation or extension of electricity works on public land,
 - (b) work on any land comprising or connected with the alteration, maintenance or removal of existing electricity works on any land,
 - (c) work on public land that is connected with the erection, installation, extension, alteration, maintenance or removal of electricity works on any land.

- (2) Work carried out by a network operator for the purpose of exercising its functions under this or any other Act or law and comprising the erection, installation, extension, alteration, maintenance or removal of electricity works on any land is exempt from the requirement for an approval under the [Local Government Act 1993](#), except in relation to buildings.
- (3) (Repealed)
- (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.
- (6) In this section:

public land means:

 - (a) a public road, or
 - (b) a public reserve, or
 - (c) Crown land within the meaning of the [Crown Lands Act 1989](#) or land within a reserve as defined in Part 5 of that Act, or
 - (d) State forest, or
 - (e) land under the control and management of a public or local authority,

but does not include:

 - (f) any land (other than State forest) that is occupied under any lease or other arrangement for private purposes that confers a right to exclusive possession of the land, or
 - (g) any land leased under the [Western Lands Act 1901](#).

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 for the benefit 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).

49A Excavation work affecting electricity works

- (1) This section applies if a network operator has reasonable cause to believe that the carrying out or proposed carrying out of excavation work 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 may serve a written notice on the person carrying out or proposing to carry out the excavation work requiring the person:
 - (a) to modify the excavation work, or
 - (b) not to carry out the excavation work, but only if the network operator is of the opinion that modifying the excavation work will not be effective in preventing the destruction or damage of, or interference with, the electricity works concerned or in preventing those works becoming a potential cause of bush fire or a potential

risk to public safety.

- (3) A notice under subsection (2) must specify the excavation work that is to be modified or not carried out.
- (4) A network operator may recover the following costs in a court of competent jurisdiction as a debt owed to it by a person who carried out excavation work the subject of a notice under subsection (2):
 - (a) the costs incurred in replacing any of the network operator's electricity works destroyed by the excavation work,
 - (b) the costs incurred in repairing any damage to the network operator's electricity works caused by the excavation work,
 - (c) the costs incurred in remedying or mitigating any interference with the network operator's electricity works caused by the excavation work.
- (5) A network operator may apply for an injunction to prevent the carrying out of excavation work in, on or near its electricity works.
- (6) A network operator may take action under this section even if the person carrying out the excavation work owns or occupies the land in, on or over which the network operator's electricity works are situated.

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) Electricity works are owned separately from the land in, on or over which they are situated and ownership of land in, on or over which electricity works are situated does not constitute ownership of those works.
- (2) Electricity works are not to be taken in execution of any judgment against a person under any process of a court other than a judgment against the owner of those works.
- (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 retailer may interrupt the supply of electricity to a customer, at such reasonable times as the network operator or retailer 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 retailer 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 for the benefit 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 2A Special powers for bush fire prevention

53A Definitions

In this Division:

aerial consumers mains means that part of an electrical installation consisting of overhead conductors and support structures between the main switchboard of an electrical installation and a support structure that is the connection point with the distribution system.

bush fire prone land means land that is bush fire prone land under the [Environmental Planning and Assessment Act 1979](#) in any area of the State.

private land means any land that is not:

- (a) dedicated, or acquired for the purpose of dedication, under the [Forestry Act 2012](#) or in respect of which the Forestry Corporation has obtained the benefit of a forestry right within the meaning of Division 4 of Part 6 of the [Conveyancing Act 1919](#), or
- (b) dedicated or reserved, or acquired for the purpose of dedication or reservation, under the [National Parks and Wildlife Act 1974](#), or
- (c) vested in, or under the control of, Rail Corporation New South Wales, Transport for NSW or Roads and Maritime Services, or
- (d) within the catchment area of a water authority, or
- (e) unoccupied Crown land (being Crown land that is not held under a lease or licence or not vested in, or under the control of, trustees), or
- (f) land prescribed by the regulations as public land for the purposes of this definition.

vegetation means a tree, shrub or plant.

53B Application of Division

This Division applies only to bush fire prone land but does not prevent the taking of action under section 48 in relation to premises on bush fire prone land.

53C Power to give directions for bush fire risk mitigation work on private land

- (1) A network operator may by a written notice given to the owner or occupier of any premises on bush fire prone land that is private land direct the owner of the premises to do bush fire risk mitigation work on vegetation or aerial consumers mains on the premises if the network operator has determined that:

- (a) the vegetation could make the network operator's electricity works become a potential cause of bush fire, or
 - (b) the vegetation fails to satisfy the requirements of any standard (adopted by the network operator for the purposes of reducing the risk of bush fire) as to required clearances between vegetation and electricity works or aerial consumers mains, or
 - (c) the vegetation could make aerial consumers mains on the premises become a potential cause of bush fire, or
 - (d) a fault or defect in the aerial consumers mains could make them become a potential cause of bush fire.
- (2) The work that can be directed to be done as bush fire risk mitigation work is:
- (a) for vegetation, the trimming or removal of the vegetation, or
 - (b) for a fault or defect in aerial consumers mains, the repair of the fault or defect.

53D Responsibility for cost of bush fire risk mitigation work under direction

- (1) The owner of premises is responsible for the cost of bush fire risk mitigation work that is the subject of a direction to the owner under this Division unless the network operator is responsible for the cost of the work.
- (2) The network operator is responsible for the cost of the following bush fire risk mitigation work that is the subject of a direction under this Division:
 - (a) work on vegetation that the network operator has determined could make the network operator's electricity works become a potential cause of bush fire,
 - (b) work on vegetation that the network operator has determined fails to satisfy the requirements of any standard (adopted by the network operator for the purposes of reducing the risk of bush fire) as to required clearances between vegetation and the network operator's electricity works.
- (3) The network operator is not responsible for the cost of work 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 vegetation, or caused or permitted the vegetation 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 vegetation is located, and on or over which the works are located, was the subject of an easement for the benefit of the network operator (or a predecessor of the network operator) when the vegetation was

planted.

53E Contents of direction

- (1) A direction under this Division to the owner of premises to do bush fire risk mitigation work is to specify the following:
 - (a) the particular work required to be done (the **required work**) and a statement of the reason the work is required to be done,
 - (b) that the owner must do the required work within 60 days after the direction is given and must within 30 days after the direction is given notify the network operator (in the manner required by the direction) that the required work will be done within that 60 days,
 - (c) that the owner may (as an alternative to doing the required work) comply with the direction by requesting the network operator within 30 days after the direction is given to disconnect the supply of electricity to the premises,
 - (d) that the network operator is authorised to enter the premises and do the required work on behalf of the owner if the direction is not complied with,
 - (e) if the network operator is responsible for the cost of the work—that the network operator undertakes to pay the reasonable cost of doing the work,
 - (f) if the network operator is not responsible for the cost of the work—that the network operator can recover the reasonable cost of doing the work if it is not done by the owner.
- (2) The direction must also include the following:
 - (a) to the extent that any standard adopted by the network operator is relevant to the required work—information sufficient to identify the standard and facilitate access to its contents,
 - (b) a statement that the network operator has a policy for assisting persons who are experiencing difficulties due to hardship in connection with payment of the cost of doing the work required by the direction,
 - (c) information that explains how a dispute or complaint about the direction can be referred to the Energy and Water Ombudsman NSW.
- (3) The regulations can make provision for or with respect to the form and contents of a direction, including provision for or with respect to:
 - (a) prescribing a standard form of direction, or
 - (b) specifying standard wording for any aspect of the direction, or

- (c) requiring the inclusion in a direction of matter in addition to the matter required by this section.

53F Compliance with direction

- (1) To comply with a direction under this Division, the owner of the premises must:
 - (a) within 30 days after the direction was given either notify the network operator that the required work will be done within 60 days after the direction was given or request the network operator to disconnect the supply of electricity to the premises, and
 - (b) (having notified the network operator that the work will be done within 60 days after the direction was given) do the required work within that 60 days.

Note—

The owner must within 30 days after the direction is given either notify the network operator that the required work will be done or request disconnection. If the owner does neither of those things within that 30 days, the network operator can take action immediately for a failure to comply with the direction.

- (2) If the owner of premises does not comply with the direction, the network operator may do the required work and (unless the network operator is responsible for the cost of the work) may recover as a debt owed by the owner the reasonable cost of doing the work in an efficient and competent manner.
- (3) Any dispute about the reasonable cost of doing the work may be referred to the Energy and Water Ombudsman NSW for resolution.
- (4) A network operator can by notice in writing to the owner or occupier of premises, increase any period for compliance with a direction.

53G Compensation

No compensation is payable by a network operator for or in connection with the exercise in good faith and without negligence of a function under this Division.

53H Effect of other laws

- (1) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict the doing on any land of work that is required to be done by a direction under this Division.
- (2) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of the doing on any land of work that is required to be done by a direction under this Division.
- (3) Work that is required to be done by a direction under this Division may be done on

land despite any requirement for an approval, consent or other authorisation for the work made by the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *National Parks and Wildlife Act 1974* or any other Act or instrument made under an Act.

53I Hardship policy for cost recovery

- (1) A network operator must have and implement a hardship policy that has been approved by the Tribunal for assisting persons who are experiencing difficulties due to hardship in connection with payment of the cost of works done by the network operator when the person fails to comply with a direction under this Division.
- (2) The policy must provide flexible payment options for the payment of the cost of works that the network operator is entitled to recover from a person under this Division.
- (3) The policy must be publicly available on the network operator's website.

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, or
 - (g) monitoring any excavation work in accordance with regulations under section 63Z, or
 - (h) exercising any function conferred on the network operator by section 48, 49 or 49A or Division 2A.
- (1A) An authorised officer of a retailer may enter the premises of a customer for the

following purposes:

- (a) reading, testing, maintaining, inspecting or altering any meter installed at the premises,
 - (b) calculating or measuring energy supplied or taken at the premises,
 - (c) checking the accuracy of metered consumption at the premises,
 - (d) replacing meters,
 - (e) any other purpose prescribed by the regulations relating to metering.
- (2) A power of entry to premises under this section may be exercised only during daylight hours except:
- (a) in an emergency, or
 - (b) in the case of an authorised officer of a retailer—if there is a problem with a meter on the premises that poses a risk to safety.

55 Notice of entry

- (1) Before an authorised officer of a network operator or retailer exercises a power of entry under this Division, the network operator or retailer 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, or
 - (d) if entry is for the purpose of doing work in the exercise of a function under Division 2A.

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 retailer 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 retailer concerned of that fact.
- (2) The network operator or retailer must give notice of the entry to such persons or authorities as appear to the network operator or retailer 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 retailer 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 retailer concerned requires any work to be carried out on the land, the network operator or retailer may recover the reasonable costs of the entry and inspection from the owner or occupier of the land.

60 Compensation

The network operator or retailer 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:

- (a) 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, or
- (b) work done in the exercise of a function under Division 2A.

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 retailer 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 retailer or must bear the signature of the principal officer of the network operator or retailer, of a prescribed officer of the network operator or retailer or of an officer belonging to a prescribed class of officers of the network operator or retailer.

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 retailer 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 retail 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) (Repealed)
 - (b) procedures for measuring electricity consumption or generation of customers,
 - (c) (Repealed)
 - (d) provision of services and equipment relating to the measurement and control of customers' electricity consumption or generation and persons who may or may not provide such services,

- (e) requirements for equipment used to measure and control customers' electricity consumption or generation,
 - (f) the circumstances in which ownership of any such equipment may be transferred and the procedures for the transfer,
 - (g), (h) (Repealed)
 - (i) any other matter prescribed by the regulations,
 - (j) matters ancillary to or consequential on the matters set out in paragraphs (b), (d)–(f) and (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 retailer or distributor.
- (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) (Repealed)
- (3) It is a condition of a distributor's licence that the distributor 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 retailer.

63E (Repealed)

Part 5B

63F-63J

Part 5C Removal of electricity structures

63K Secretary may direct distributor to remove structure

- (1) The Secretary may, by notice in writing served on a distributor, direct the distributor to remove or relocate an electricity structure specified in the notice if:
 - (a) the structure is erected within the distributor'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 Secretary 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 distributor 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 distributor 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 Tribunal may appoint any person as an inspector for the purposes of any or all of the provisions of this Act or the regulations.
- (1A) (Repealed)
- (2) The Tribunal 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 Tribunal 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 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) (Repealed)
- (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 (Repealed)

63P Examination and testing of electricity delivery equipment

- (1) The Tribunal may from time to time cause any electricity delivery equipment, and the operation of that equipment, to be examined and tested by an inspector for the purpose of determining whether the equipment can be, and is being, operated:
 - (a) safely, and
 - (b) in accordance with any relevant safety management system.
- (2) A **relevant safety management system** is any system of the network operator concerned that is for the purpose of ensuring the safe operation of the network operator's transmission or distribution system.
- (3) An inspector may enter any place at any reasonable time for the purpose of exercising functions under this section in connection with electricity delivery equipment that is in the place.

63Q Orders prohibiting the unsafe operation of electricity delivery equipment

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

Maximum penalty: 7,500 penalty units (in the case of a corporation) and 5,000 penalty units (in any other case).

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 Tribunal by the distributor or transmission operator that owns, controls or operates 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 Tribunal of a serious electricity works accident.

63S Investigation of serious electricity works accidents

The Tribunal may arrange for an inspector to investigate and report to the Tribunal concerning a serious electricity works accident, whether or not notice of the accident is given to the Tribunal.

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 Tribunal 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 Tribunal, 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 Tribunal may publish such details of serious electricity works accidents as the Tribunal considers necessary in the interests of public information and safety.
- (2) The Minister, the Tribunal, a member or officer of the Tribunal 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) (Repealed)
 - (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 5E Protection of underground electricity power lines

63X Definitions

In this Part, **designated information provider** means:

- (a) Dial Before You Dig NSW/ACT Incorporated, or
- (b) if another person or body is prescribed by the regulations for the purposes of this definition, that other person or body.

63Y Provision of information on underground electricity power lines by network operators

- (1) It is a condition of a distributor's licence that the distributor must:
 - (a) be a member of the designated information provider, and
 - (b) comply with any obligations imposed by that membership.
- (2) The regulations may make provision for or with respect to the provision of information by network operators in respect of underground electricity power lines, including (but not limited to) the provision of such information in connection with a request for information under section 63Z.

63Z Requirements in relation to carrying out of certain excavation work

- (1) A person must not commence to carry out excavation work to which this section applies, or authorise such excavation work to be commenced, unless the person has first:
 - (a) contacted the designated information provider and requested information as to the location and type of any underground electricity power lines in the vicinity of the proposed work, and
 - (b) complied with any reasonable procedures of the designated information provider as to the manner of contacting the designated information provider and the information to be provided by the person in connection with the person's request for information, and
 - (c) allowed a reasonable period for the requested information to be provided.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not require a person to whom that subsection applies to comply with the requirements of that subsection in relation to excavation work if another person to whom that subsection applies has already complied with those requirements in relation to that excavation work.
- (3) A person must not carry out excavation work to which this section applies, or authorise such excavation work to be carried out, unless the person has ensured that any requirements of the regulations in relation to the carrying out of the work are complied with.

Maximum penalty: 20 penalty units.

- (4) The regulations may make provision for or with respect to the following:
 - (a) prescribing requirements in relation to the carrying out of excavation work to which this section applies,
 - (b) requiring notification to be given to a specified person or body, or person or body of a specified class, in relation to the carrying out of excavation work to which this section applies,
 - (c) the monitoring of excavation work to which this section applies,
 - (d) what constitutes reasonable procedures for the purposes of subsection (1),
 - (e) what constitutes a reasonable period for requested information to be provided for the purposes of subsection (1).
- (5) This section applies to excavation work in an area, and of a kind, prescribed by the regulations.

63ZA Notification of damage to underground electricity power lines

- (1) A person must, as soon as practicable after becoming aware that any action of the person or any action authorised by the person has damaged an underground electricity power line, notify the network operator that owns the power line of the damage.

Maximum penalty: 20 penalty units.

- (2) The regulations may make provision for the manner in which a person must notify for the purposes of subsection (1).
- (3) Subsection (1) does not require a person to notify the network operator of the damage concerned if another person to whom that subsection applies has already notified the network operator of the damage.

63ZB Orders for costs, expenses and compensation at time offence proved

- (1) This section applies where a court convicts a person of an offence against this Part or section 65.
- (2) The court may, if it appears to the court that a network operator has, by reason of the commission of the offence:
 - (a) suffered loss or damage to its electricity works, or
 - (b) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,order the offender to pay to the network operator the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (3) A court may not make an order under subsection (2) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#). An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.
- (4) Orders may be made under this section in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence concerned.
- (5) Orders may be made under this section regardless of whether any penalty is imposed, or other action taken, in relation to the offence concerned.

- (6) In this section:

the court means the court that convicts a person of the offence concerned.

the offender means the person who is convicted of the offence.

63ZC Civil liability of designated information provider

- (1) This section applies to the following persons:
 - (a) the designated information provider, any officer or employee of the designated information provider or any person acting on behalf of the designated information provider,
 - (b) a network operator, any officer or employee of the network operator or any person acting on behalf of the network operator.
- (2) A person to whom this section applies does not incur any civil monetary liability for any act or omission in connection with a request for information under section 63Z or the provision of information in compliance or purported compliance with the

regulations under section 63Y unless the act or omission is done or made in bad faith or through negligence.

- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (2) done or made through negligence may not exceed the maximum amount prescribed by the regulations.
- (4) For the purposes of subsection (3), the regulations may:
 - (a) prescribe maximum amounts that are limited in their application to persons, events, circumstances, losses or periods specified in the regulations, and
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply, and
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (5) A person to whom this section applies may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.
- (6) This section does not apply to any liability of an officer or employee of a person to whom this section applies to the person.
- (7) In this section:

civil monetary liability means liability to pay damages or compensation or any other amount in a civil proceeding, but does not include the costs of proceedings.

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 retail 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

(1) A person must not interfere with a network operator's or retailer's electricity works unless authorised to do so by the network operator or retailer concerned.

Maximum penalty:

(a) in the case of a corporation—4,000 penalty units, or

(b) in any other case—200 penalty units or imprisonment for 5 years (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)).

65A Entering, climbing or being on electricity works

(1) A person must not enter, climb or be on a network operator's or retailer's electricity works unless authorised to do so by the network operator or retailer 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 distributor's distribution system unless authorised to do so under this Act, the regulations or any other energy laws (within the meaning of the *National Energy Retail Law (NSW)*).

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 distributor’s seals

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

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 distributor’s distribution system unless authorised to do so by the distributor.

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 distributor’s distribution system unless authorised to do so by the distributor.

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 distributor’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 distributor.

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

72 (Repealed)

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 distributor 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 retail contract or wholesale supply arrangement.
- (3) An order under this section has effect despite any other law.

74 (Repealed)

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 supplier or retailer 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 supplier or retailer 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 6A Step-in rights—Network Administration Orders

76A Definition

In this Part:

network operations means any activity carried on for or in connection with the operation, or control of the operation, of a distribution or transmission system.

76B Grounds for issue of Network Administration Order

- (1) The Minister may issue a Network Administration Order for a network operator's distribution or transmission system if:
 - (a) the network operator's licence has been cancelled, or
 - (b) the Minister is satisfied that the network operator has contravened a provision of this Act or the regulations or a condition of the network operator's licence and the contravention requires the issue of a Network Administration Order.
- (2) A contravention by a network operator of a provision of this Act or the regulations or a condition of the network operator's licence is considered to require the issue of a Network Administration Order only if the Minister is satisfied that:
 - (a) the contravention threatens the safe, secure or reliable supply of electricity and it is necessary to take control of the distribution or transmission system concerned under such an Order to ensure the continued safe, secure and reliable supply of electricity, and
 - (b) alternative action to remedy the contravention that could reasonably be taken by or at the direction of the Minister either would not adequately remedy the contravention or has been taken but has failed to adequately remedy the contravention.

76C What a Network Administration Order authorises

- (1) A Network Administration Order authorises the Tribunal to take control, in accordance with the terms of the Order, of the operation of the distribution or transmission system concerned for the purpose of ensuring the continued safe, secure and reliable supply of electricity.
- (2) The Tribunal is to appoint a step-in operator on terms and conditions determined by the Tribunal to operate the distribution or transmission system concerned in accordance with the terms and conditions of the step-in operator's appointment and the directions of the Tribunal.
- (3) Neither the Tribunal nor the step-in operator is required to hold a licence to operate a distribution or transmission system under the authority of a Network Administration Order.
- (4) The Tribunal or the Minister may revoke the appointment of a step-in operator at any time.

76D Powers of step-in operator

- (1) The step-in operator of a distribution or transmission system has power to do all things that are necessary or convenient for the exercise of the step-in operator's functions under this Part.
- (2) Without limitation, the step-in operator may enter and remain on any land or premises where network operations are carried on.
- (3) A relevant person must provide all reasonable assistance to the step-in operator for the purpose of facilitating the exercise of the functions of the step-in operator.

Maximum penalty: 7,500 penalty units (in the case of a corporation) and 5,000 penalty units (in any other case).

- (4) A person must not hinder or obstruct the step-in operator in the exercise of functions under this Part.

Maximum penalty: 10,000 penalty units (in the case of a corporation) and 5,000 penalty units (in any other case).

- (5) In this section:

relevant person means a person who is an occupier of land or premises where network operations are carried on or who in their capacity as an officer or employee of the network operator concerned has functions in connection with network operations.

76E Obligations of network operator

- (1) A network operator of the distribution or transmission system for which a Network

Administration Order is in force must co-operate with the Tribunal and step-in operator to facilitate the exercise of functions under the Order.

- (2) In particular, the network operator must:
- (a) provide all reasonable assistance to the Tribunal and its officers and step-in operator to facilitate the carrying on of network operations under the Order, and
 - (b) facilitate access by the Tribunal and its officers and step-in operator to any land or premises where network operations are carried on, and
 - (c) provide any information requested by the Tribunal or step-in operator and that is reasonably required to facilitate the carrying on of network operations under the Order.

Maximum penalty: 5,000 penalty units (in the case of a corporation) and 2,500 penalty units (in any other case).

76F Costs of administration

- (1) Costs reasonably incurred by or on behalf of the Tribunal and the step-in operator in the exercise of functions under a Network Administration Order are payable by a network operator of the distribution or transmission system concerned and are recoverable from a network operator by the Tribunal as a debt due to the Crown.
- (2) Those costs may also be recovered by being deducted by the step-in operator from the revenues from network operations.
- (3) Revenues from network operations by the step-in operator are (after deduction of any amount authorised by this section) payable to the person who would be entitled to the revenues arising from operation by the network operator.
- (4) A certificate of the Minister as to the amount of the costs recoverable from a network operator under this section is evidence of the matters certified.

76G Liability under Network Administration Order

- (1) A person concerned in the operation of a distribution or transmission system under a Network Administration Order is not liable for any act or omission of the Tribunal or step-in operator in the exercise or purported exercise in good faith of functions under the Order.
- (2) A liability that this section prevents from attaching to a person attaches instead to the network operator.
- (3) Each of the following is a person concerned in the operation of a distribution or transmission system under a Network Administration Order:
 - (a) the Minister,

- (b) the Tribunal,
- (c) the step-in operator,
- (d) a person acting under the direction or control of the Tribunal or step-in operator.

76H Procedure for Network Administration Order

- (1) A Network Administration Order is to be issued in writing and the Minister is to notify the Tribunal and the network operator of the issuing of the Order.
- (2) A Network Administration Order may include directions to the Tribunal as to the exercise of the Tribunal's functions under the Order.
- (3) A Network Administration Order remains in force until it is revoked.
- (4) The Minister may revoke a Network Administration Order at any time by notice in writing to the Tribunal and the network operator concerned.
- (5) This Part can apply to part of a distribution or transmission system and for that purpose a Network Administration Order can be issued for part of a distribution or transmission system.

Part 7 Administration

Division 1 Regulatory functions of Tribunal

77 Regulatory functions of Tribunal

- (1) The regulatory functions of the Tribunal under this Act (including under the regulations) are:
 - (a) the function of making recommendations under subsection (2), and
 - (a1) the functions relating to electricity safety conferred by Part 5D, 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 (including under the regulations) 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, and

- (c) action to be taken, and sanctions to be applied, in respect of a contravention of the conditions of a licence, and
 - (d) any remedial action that may be warranted as a result of a contravention of the conditions of 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.
- (4) The Tribunal may establish one or more committees to assist the Tribunal in the exercise of its regulatory functions, and the following provisions apply in respect of such a committee:
- (a) a committee may consist of members of the Tribunal, officers of the Tribunal or other persons,
 - (b) section 26 (Personal liability) of the *Independent Pricing and Regulatory Tribunal Act 1992* extends to a member of a committee as if the member were acting under the direction of the Tribunal.
- (5) The Tribunal may delegate any regulatory function of the Tribunal to:
- (a) any member or officer of the Tribunal, or
 - (b) any committee of the Tribunal but only if at least one member of the committee is a member of the Tribunal and despite section 10 (Delegation of Tribunal's functions) of the *Independent Pricing and Regulatory Tribunal Act 1992*.

78-82 (Repealed)

Division 2 Distribution districts

83 Distribution districts of distributors

- (1) Each distributor listed in Schedule 3 has a distribution district comprising the local government areas, or parts of local government areas, described in that Schedule.
- (1A) When network infrastructure assets that form part of the distribution system of a distributor are leased for the purposes of an authorised transaction under the *Electricity Network Assets (Authorised Transactions) Act 2015*, a reference to the distributor in Schedule 3 is to be read (after completion of the authorised transaction) as a reference to the entity that operates that distribution system after completion.
- (2) The boundaries of a distributor'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 distributor's distribution district, or
 - (b) to include the boundaries of the distribution district of an additional distributor.
- (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 distributor whose distribution district is varied be transferred to such other distributor 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 network operators comply, or fail to comply, with the

conditions imposed on licences held by them.

- (1A) The regulations may make provision for or with respect to conferring functions on network operators in connection with the Tribunal's functions under this Division, including provision for or with respect to:
- (a) conferring functions (***licence auditing functions***) requiring a network operator to monitor and report to the Tribunal on any matter that the Tribunal is required to monitor and report on under this section in connection with the conditions of the network operator's licence, and
 - (b) regulating the selection and appointment of persons to exercise functions in connection with the licence auditing functions of a network operator.
- (1B) (Repealed)
- (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 distributors with the conditions imposed on the licences held by them.
- (2A) (Repealed)
- (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, the Chairperson of the Tribunal may, by notice in writing served on a relevant person, require the person to do any one or more of the following:
 - (a) to furnish specified information to the Tribunal within a period specified in the notice,
 - (b) to provide specified documents to the Tribunal within a period specified in the notice,
 - (c) to keep specified records including any documents specified in the notice,
 - (d) to attend a meeting of the Tribunal to give evidence.

- (2) Each of the following is a **relevant person** for the purposes of this section:
- (a) the holder of a licence,
 - (b) an officer of the holder of a licence,
 - (c) any other person (except in relation to a requirement to keep records).
- (3) If documents are provided 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.

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 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: 2,000 penalty units in the case of a corporation and 500 penalty units or imprisonment for 6 months, or both, in any other case.

87D (Repealed)

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 network operators have complied, or failed to comply, with the conditions imposed on the 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 distributor must appoint at least one customer consultative group to act as a forum for consultation between the distributor and its customers.
- (2), (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 distributor is to provide information and advice on the following matters to the distributor:
 - (a) (Repealed)
 - (b) the effect on retail customers within its distribution district of any proposed changes in the way in which the distributor operates,
 - (c) any improvements in the way in which the distributor operates that the customer consultative group believes would benefit retail customers within its distribution district,
 - (d) such other matters as the distributor and the customer consultative group agree should be the subject of such advice.
- (3) (Repealed)

Division 5 General

92 Enforceable undertakings

- (1) The Tribunal may accept a written undertaking given by the holder of a licence for the purposes of this section in connection with the contravention by the holder of a requirement of this Act, the regulations under this Act or the conditions of the licence.
- (2) A person may withdraw or vary the undertaking at any time, but only with the consent of the Tribunal.
- (3) A person must not breach any term of an undertaking given by the person for the purposes of this section.

Maximum penalty: 5,000 penalty units.

- (4) If the Tribunal considers that a person has breached any term of an undertaking given by the person for the purposes of this section, the Tribunal may apply to the Supreme Court for an order under this section.
- (5) If the Supreme Court is satisfied that the person has breached a term of the undertaking, the Court may make any or all of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking,
 - (b) an order directing the person to pay the State an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is attributable to the breach,
 - (c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,

(d) any other order that the Court considers appropriate.

- (6) A person may be proceeded against and convicted for an offence under this section whether or not an order under this section has been applied for or made in connection with the breach concerned.
- (7) The Tribunal must keep a register on its website of undertakings given for the purposes of this section.

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.

93A Operation of transacted transmission system

- (1) A person must not operate a transmission system that is a transacted transmission system under the [Electricity Network Assets \(Authorised Transactions\) Act 2015](#) otherwise than under the authority of a transmission operator's licence.

Maximum penalty: 5,000 penalty units.

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

94 Authorised officers

- (1) A network operator or retailer 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 distributor may exercise those functions only within the distribution district of the distributor by which he or she is appointed.
- (3A) If a distributor does not have a distribution district, an authorised officer appointed by the distributor may exercise those functions only on land that is occupied by the distributor's distribution system and on land on which premises connected to that distribution system are situated.

(3B) An authorised officer appointed by a retailer:

- (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 retailer.
- (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 Administrative 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

Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.

- (2) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply to such a decision of the Tribunal.

96 (Repealed)

96A Review of certain decisions under energy ombudsman scheme

- (1) A small customer or regulated offer customer, and any other person of a class prescribed by the regulations, may apply to an energy ombudsman under an approved energy ombudsman scheme for review of a decision in a dispute or complaint to which the scheme relates.
- (2) (Repealed)
- (3) A review under this section is to be free of charge to small customers or regulated offer customers and to other persons of such classes as are prescribed by the regulations.
- (4) This section does not affect the jurisdiction of the Civil and Administrative Tribunal.
- (5) The energy 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 energy ombudsman may deal with a matter by making arrangements for it to be referred to another person or tribunal.
- (7) In this section:

regulated offer customer has the same meaning as in the *Gas Supply Act 1996*.

small customer includes a small customer within the meaning of the *Gas Supply Act 1996*.

96B Energy ombudsman scheme

- (1) The Minister may approve an energy ombudsman scheme for the purposes of this Act, the *National Energy Retail Law (NSW)*, the *Gas Supply Act 1996*, regulations or rules under those Acts or that Law and any other law prescribed by the regulations for the purposes of this section.
- (1A) The scheme may provide for the appointment of an energy ombudsman to deal with the following:
- (a) matters that are to be dealt with by the energy ombudsman under the *National Energy Retail Law (NSW)*,

- (b) disputes and complaints between small customers and exempt sellers or other persons exempted from the *National Energy Retail Law (NSW)*, this Act or the *Gas Supply Act 1996* in relation to the supply of electricity or gas,
 - (c) disputes and complaints between small customers and retailers or distributors under this Act,
 - (d) disputes and complaints between small customers or regulated offer customers and reticulators under the *Gas Supply Act 1996*,
 - (e) without limiting paragraph (d), disputes and complaints between regulated offer customers and retailers or reticulators relating to regulated offer prices or pricing agreements under the *Gas Supply Act 1996* or the *National Energy Retail Law (NSW)*,
 - (f) any other disputes and complaints of such classes as are prescribed by the regulations or specified under any other Act or law.
- (2) Before approving such a scheme, the Minister must be satisfied that the scheme meets the following objectives:
- (a) that all licence holders, exempt sellers and retailers who are required to be members of the scheme are members of the scheme, have agreed to be bound by decisions of the energy 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 (1A),
 - (c) that the energy ombudsman will be able to operate independently of all licence holders, exempt sellers and retailers in exercising functions under the scheme,
 - (d) that the scheme will be accessible to small customers, regulated offer 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 retail contracts relating to small customers and regulated offer customers,
 - (g) that the scheme will operate expeditiously and without cost to small customers, regulated offer 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 energy ombudsman, where appropriate, to refer disputes or complaints to other forums,
 - (l) that the scheme will require the energy ombudsman to inform the Minister of substantial breaches of licence or other authorisation conditions under, or breaches of, this or any other Act or other law covered by the scheme,
 - (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 a person other than the holder of the licence or retailer is prescribed as a dispute or complaint to which an approved scheme may apply, the regulations may make it an offence for the person to fail to comply with a decision of the energy 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.
- (8) In subsections (2) and (5):

regulated offer customer has the same meaning as in the [Gas Supply Act 1996](#).

retailer includes a regulated offer retailer or a reticulator within the meaning of the [Gas Supply Act 1996](#).

small customer includes a small customer within the meaning of the [Gas Supply Act 1996](#).

96C Licence conditions relating to approved energy ombudsman scheme

It is a condition of a distributor's licence that:

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

96D Obligations of retailers under energy ombudsman scheme

- (1) This section applies to the following decisions by an energy ombudsman under an approved energy ombudsman scheme of which a retailer or other exempt person is a member:
 - (a) a decision relating to a matter concerning the retailer's or exempt person's functions under this Act or the *Gas Supply Act 1996*, or under any instrument under those Acts,
 - (b) a decision relating to a dispute or complaint involving the retailer or exempt person and a small customer or regulated offer customer, if that dispute or complaint arises under any such Act or instrument.
- (2) A retailer or exempt person is bound by a decision to which this section applies and must not fail to comply with any such decision.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
 - (b) in any other case—25 penalty units.
- (3) In this section:

exempt person means an exempt seller under the *National Energy Retail Law (NSW)* or a person exempted (under section 3B of that Law) from the requirement to hold a retailer authorisation.

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 retailers, 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 retailer) 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 Rules*.

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 retailer,
 - (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,
 - (c) a market customer (other than a retailer), 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 retailer or an electricity generator in each compliance period for the purposes of subsection (2), electricity supplied by the retailer 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 a 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 (Repealed)

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 retailer, so as to ensure that the retailer 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) (Repealed)
 - (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 retailers 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 information 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 disclose Cabinet information, or
 - (c) to inspect Cabinet information.
- (2) For the purposes of this section, a certificate of the Secretary or General Counsel of the Department of Premier and Cabinet that:
 - (a) any information or question relates to confidential proceedings of Cabinet, or
 - (b) information is Cabinet information,is conclusive of that fact.
- (3) In this section:

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

Cabinet information means information that is Cabinet information under the [Government Information \(Public Access\) Act 2009](#).

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

97I Administrative review by Civil and Administrative Tribunal of decisions 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 Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act](#)

1997 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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 (Repealed)

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; No 93 of 26.6.2009, p 3621; No 66 of 21.5.2010, p 2235 (see also No 69 of 28.5.2010, p 2281) and No 111 of 3.9.2010, p 4362.

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) (Repealed)

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,

Editorial note—

For proclamation prescribing a termination day see 2012 (179) LW 11.5.2012.

(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 energy by encouraging energy saving activities.

(2) The other objects of this Part are:

(a) to assist households and businesses to reduce energy consumption and energy 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.

carried forward shortfall—see section 116.

certificate conversion factors—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.

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*.

notional megawatt hours—see section 106 (1).

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 retailer,
- (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.

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 an under supply or over supply of energy savings certificates that may be surrendered under this Part, as evidenced in the manner set out in the regulations, or
- (c) (Repealed)
- (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 units referred to as **notional megawatt hours**) calculated as follows:
 - (a) **Step 1**

Multiply the total value of all liable acquisitions made by the scheme participant during that year (expressed in megawatt hours) by the energy savings scheme target for the year (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 notional megawatt hour, the fractional amount is to be rounded up or down to the nearest whole notional megawatt hour (and, if the amount to be rounded is half a notional megawatt hour, is to be rounded up).

Note—

For example, if a scheme participant has liable acquisitions in the year 2016 of 75,050 megawatt hours, to calculate the scheme participant's individual energy savings target under subsection (1):

- (a) Step 1 requires the 75,050 megawatt hours to be multiplied by 0.07 (the energy savings scheme target for

2016), resulting in a megawatt hours target of 5,253.5, and

- (b) Step 2 requires the figure of 5,253.5 to be multiplied by 1.00 (the energy conversion factor for 2016), resulting in an individual energy savings target of 5,253.5 notional megawatt hours.

The result is then rounded up to 5,254 in accordance with subsection (2).

The scheme participant has an individual energy savings target for the year 2016 of 5,254 notional megawatt hours.

The scheme participant can meet this target by surrendering energy savings certificates to the Scheme Regulator in accordance with this Part. Since each certificate has a value of 1 notional megawatt hour (see section 128), the scheme participant can meet this target by surrendering 5,254 certificates.

Energy savings certificates may be created in respect of activities that involve the consumption of electricity or gas or both electricity and gas. Certificate conversion factors are applied to the actual energy savings of end users resulting from an energy saving activity to produce energy savings expressed in notional megawatt hours for the purposes of energy savings targets. See Division 7.

Consequently, the number of notional megawatt hours of individual energy savings targets of scheme participants will not be the same as the number of actual megawatt hours saved by end users as a result of energy saving activities for which energy savings certificates are created.

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 any other person, whether or 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 retailer and the electricity is supplied by the retailer 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.
- (2A) However, if a scheme participant purchases electricity from another scheme participant, the purchase is not a liable acquisition if the purchase of the electricity is, or the supply of the electricity is to be treated as, a liable acquisition for that other scheme participant or for a scheme participant who is further up the chain of supply of the electricity.
- (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 or gas or both electricity and gas. 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 notional megawatt hours 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 notional megawatt hour) 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) Subject to section 114:
 - (a) the base penalty rate is as follows:
 - (i) for 2009 and 2010—\$24.50 per notional megawatt hour,
 - (ii) for each subsequent year—the base penalty rate for a previous year specified in the regulations and adjusted for movements in the consumer price index in accordance with the regulations, and
 - (b) the penalty conversion factor for a year is 0.94.
- (3) The Scheme Regulator is to cause notice of the adjusted base penalty rate for a year to be published on its website before the beginning of that year.
- (4)–(7) (Repealed)

114 Changes to base penalty rates and penalty conversion factors

- (1) The Governor may, by regulation made on the recommendation of the Minister, change the base penalty rate or the penalty conversion factor (or both) for a specified

year or years.

(2) (Repealed)

(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 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 an under supply or over supply of energy savings certificates that may be surrendered under this Part, as evidenced in the manner set out in the regulations, or

(c) (Repealed)

(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.

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 2025 cannot be carried forward to the next year.

Note—

The scheme automatically terminates at the end of the year 2025. 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 takes effect on the day the order granting the exemption is published in the Gazette or, if a later day is specified in the order, on that later day.
- (2) An exemption may be revoked by order of the Minister published in the Gazette.
- (3) If an exemption is revoked, the revocation takes effect on the day the order revoking the exemption is published in the Gazette or, if a later day is specified in the order, on that later day.
- (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, and
 - (d) in the case of a certificate that relates to an energy saving activity that occurred in a State or Territory for which there is an approved corresponding scheme under section 127—the Minister has, by the order approving the corresponding scheme or by a subsequent order published in the Gazette, approved the surrender of such certificates by a scheme participant for those purposes.
- (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 or gas 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 or gas 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 published in the Gazette.
- (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 or gas 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 notional megawatt hour attributable to energy savings arising from a recognised energy saving activity.

- (2) Accordingly, each energy savings certificate has a value of 1 notional megawatt hour.

129 Calculation of energy savings attributable to recognised energy saving activities

- (1) The number of notional megawatt hours attributable to energy savings arising from a recognised energy savings activity is to be calculated by applying the certificate conversion factor or factors for the year in which the energy savings for which the certificate is created occurred to the number of megawatt hours of energy savings arising from the activity.
- (2) Depending on the nature of the energy saving activity and the scheme rules, the calculation may require the application of the certificate conversion factor for electricity or the certificate conversion factor for gas or both the certificate conversion factor for electricity and the certificate conversion factor for gas.
- (3) 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 and for applying the certificate conversion factors.

130 Certificate conversion factor

- (1) Subject to this section, the certificate conversion factors for a year are as follows:
 - (a) for electricity—1.06,
 - (b) for gas—0.39.
- (2) (Repealed)
- (3) The Governor may, by regulation made on the recommendation of the Minister, change a certificate conversion factor for a specified year or years.
- (4) (Repealed)
- (5) Any such regulation does not affect a 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 or gas 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 the Scheme Administrator is satisfied (on the balance of probabilities on the basis of an audit conducted under this Act or the regulations or of information otherwise obtained by the Administrator under this Act or the regulations) that:
 - (a) the person is guilty of an offence involving the improper creation of energy savings certificates (that is, an offence under section 133), or
 - (b) the person is guilty of an offence of contravening a condition of the person's accreditation as a certificate provider (that is, an offence under section 138).
- (3) In the case of an order made against a person on grounds 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.
- (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 (adjusted for movements in the consumer price index for each year in accordance with the regulations) to be paid to the Scheme Administrator.
- (7) The Scheme Administrator is to cause notice of any adjusted application fee to be published on its website before the beginning of the year to which the application fee applies.

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,
 - (d1) to provide advice to the Minister on request about the extent of any under supply or over supply of energy savings certificates that may be surrendered 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,
 - (c1) to provide advice to the Minister on request about the extent of any under supply or over supply of energy savings certificates that may be surrendered under 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 at any meeting of the Tribunal 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 Cabinet information, or
 - (c) to inspect Cabinet information.
- (2) For the purposes of this section, a certificate of the Secretary of the Department of Premier and Cabinet, or the General Counsel of that Department, that any information or question relates to confidential proceedings of Cabinet or that information is Cabinet information is conclusive of the matter certified.

- (3) In this section:

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

Cabinet information means information that is Cabinet information under the [Government Information \(Public Access\) Act 2009](#).

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,
 - (b1) if the Minister has approved a corresponding scheme for a State or Territory for the purposes of section 127 and the energy saving activity to which the certificate relates occurred in such a State or Territory—the State or Territory in which the activity occurred,
 - (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 and for applying the certificate conversion factors.
- (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 Gazettes No 99 of 3.7.2009, p 3897; No 140 of 24.12.2010, p 6178; No 49 of 30.5.2014, pp 1851, 1854; No 50 of 19.6.2015, p 1703; No 66 of 7.8.2015, p 2376 (and see errata in Gazettes No 84 of 29.9.2015, p 3042 and No 88 of 9.10.2015, p 3171); No 26 of 8.4.2016, p 603 (and see erratum in Gazette No 35 of 13.5.2016, p 1048); No 80 of 30.9.2016, p 2700 and No 42 of 31.3.2017, p 831.

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 (Repealed)

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 Administrative reviews by Civil and Administrative 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 Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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,
 - (c1) the total number of energy savings certificates created in previous years and not surrendered under this Part before the beginning of the year to which the report relates,
 - (c2) an assessment of the extent of any under supply or over supply of energy savings certificates that may be surrendered under this Part in the year to which the report relates,
 - (d) an estimate, prepared by the Scheme Administrator, of the actual electricity and gas savings that have been realised by end users 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 electricity and gas savings that will be realised by end users under the scheme in the next 10 years (having regard to the number of energy savings certificates that have been created).
- (2A) For the purposes of subsection (2), any energy savings certificates created under an approved corresponding scheme that are not able to be surrendered by a scheme participant for the purpose of meeting its annual energy savings target or remedying a

carried forward shortfall are to be disregarded.

- (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 2025

- (1) The scheme terminates at the end of the year 2025.

- (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 2025 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.
- (1A) Compensation is not payable by or on behalf of the State:
 - (a) because of the enactment, making or operation of the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009* or the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2010* (including a provision inserted in this Act by either of those Acts and an instrument made under any such provision), 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 the rate at which a credit would

be recorded under the solar bonus scheme (being the scheme for the payment of electricity supplied to the network by former regulated offer customers using complying generators within the meaning of section 15A), the persons who would be eligible to receive a credit under the scheme or the duration of the scheme.

(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 Exercise of functions where more than one network operator

When a distribution system or transmission system has more than one network operator, any function of the network operator under this Act or the regulations (including a function conferred on a distributor or transmission operator) may be exercised by any one of the network operators (subject to any agreement between the network operators) and when exercised by any one of them is taken to have been exercised by each of them.

180 Confidentiality of information provided to Tribunal

(1) If a person provides information to the Tribunal in connection with the functions of the Tribunal under this Act 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, or
- (d) as required by any other law.

(2) If the Tribunal is satisfied that it is desirable to do so because of the confidential

nature of any information provided to the Tribunal in connection with its functions under this Act, it may give directions prohibiting or restricting the divulging of the information.

- (3) A person must not contravene a direction given under this section.

Maximum penalty: 1000 penalty units or imprisonment for 6 months, or both.

- (4) A reference in this section to information includes information furnished in compliance with a requirement under this Act, information given in evidence to the Tribunal and information contained in any documents provided to the Tribunal.

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 Rules* as if Division 5 of Part 3, Division 4 of Part 4 and Part 4A of this Act had not been enacted.

181A (Repealed)

182 Agreement with licensed distributors

The Treasurer, on behalf of the Government, may enter into an agreement in writing with one or more of the licensed distributors relating to distributors' levies and such other matters as the Treasurer determines.

183 Delegation of Minister'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) (Repealed)

- (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.

183A Personal liability of authorised officers

- (1) A matter or thing done or omitted to be done by an authorised officer appointed by a network operator or retailer does not, if the matter or thing was done or omitted in good faith for the purpose of exercising a function under this Act, subject any such officer personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the network operator or retailer concerned.

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 or a director or person concerned in the management of 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 enforcement 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.
- (9) In this section, **enforcement officer** means an employee of a government sector agency (within the meaning of the [Government Sector Employment Act 2013](#)) authorised in writing by the Minister to act as an enforcement officer for the purposes of this section.

188 Recovery of charges by network operators, wholesale suppliers and retailers

Any money due to a network operator or a wholesale supplier or retailer 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 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.

190A Reports to Parliament

- (1) If a House of Parliament is not sitting when the Minister seeks to table a report required by this Act to be laid before the House, the Minister may present copies of the report to the Clerk of the House.
- (2) The report:
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

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)-(c3) (Repealed)
 - (d) the conditions that may be imposed on licences,
 - (e) the functions of authorised officers,
 - (e1) requirements for the marking or labelling of the connection point in relation to the premises of wholesale or retail customers,
 - (e2) distributor service standards for distributors, including enforcement of such standards,
 - (f) the obligations of an energy ombudsman under an approved energy 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 adoption of Codes with respect to the implementation of any such program in relation to a specified class or specified classes of customers, and
 - (ii) the payment and assessment of implementation and enforcement costs, and
 - (iii) the publication of Codes, and
 - (iv) the application of such programs to distributors, retailers, exempt sellers and other persons, and
 - (v) the enforcement of Codes, in particular the giving and enforcement of undertakings with respect to compliance with Codes, and
 - (vi) the conferral of jurisdiction on the Local Court with respect to the enforcement of undertakings,

- (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 distributors,
 - (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) (Repealed)
 - (j) the manner in which a notice or other document that is authorised or required to be given by or under this Act is to be given.
- (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,
 - (j) the supply of electricity to the distribution network by customers using renewable energy generators, including but not limited to, requiring retailers to acquire such electricity from customers or classes of customers,
 - (k) any additional criteria that may have to be satisfied before a credit can be recorded under section 15A.
- (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, 63Y and 63Z.
- (2A) The regulations may exempt Rail Corporation New South Wales or Transport for NSW (or any person who operates a distribution system for or on behalf of either of those entities) from the operation of any one or more of sections 89–91.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10,000 penalty units (in the case of a corporation) and 5,000 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) unless the Minister certifies to the Governor that the Minister has consulted with the Minister for Innovation and Better Regulation and the Tribunal in connection with those regulations.

192 (Repealed)

193 Savings, transitional and other provisions

Schedule 6 has effect.

194 (Repealed)

195 Review of solar bonus scheme by Minister

(1) The Minister is to review the solar bonus scheme (being the scheme for the payment of electricity supplied to the network by former regulated offer customers using complying generators) to determine whether the policy objectives of the scheme 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 1 July 2012.

(3) The Minister is also to conduct a final review of the scheme as soon as possible after 31 December 2016 to consider whether the scheme achieved its policy objectives.

(4) A report on the outcome of a review under this section is to be tabled in each House of Parliament.

196 Power of entry by metering provider

(1) A metering provider may enter the premises of a customer for the following purposes:

(a) reading, testing, maintaining, inspecting or altering any metering installation at the premises,

(b) calculating or measuring energy supplied or taken at the premises,

(c) checking the accuracy of metered consumption at the premises,

(d) replacing meters.

(2) A power of entry to premises under this section may be exercised only during daylight hours except:

(a) in an emergency, or

- (b) if there is a problem with a meter on the premises that poses a risk to safety.
- (3) Sections 55, 58-60 and 62 apply to the power of entry conferred on a metering provider under this section in the same way as they apply to a power of entry conferred on an authorised officer under Division 3 of Part 5.
- (4) In this section, **metering provider** has the same meaning as it has in the *National Electricity Rules*.

Schedule 1 (Repealed)

Schedule 2 Licences

(Sections 14 and 33)

1 Licences

- (1) Subject to any conditions imposed by or under this Act, a distributor'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 retailers.
- (2) Subject to any conditions imposed by or under this Act, a transmission operator's licence authorises its holder, and any other person specified in the licence, to operate the transmission system so specified.

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 for a distributor's licence 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 distributor,
 - (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.
- (2A) An application for a transmission operator's licence may be refused on the following grounds:
- (a) such grounds as may be prescribed by the regulations,
 - (b) such grounds as the Minister considers relevant, having regard to the need to ensure the security and reliability of the State electricity supply system.
- (3) The Minister must consult with such other Ministers as the Minister considers

appropriate 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 distributor or transmission operator,
- (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) (Repealed)
- (5) Without limitation, the Minister must impose the following conditions on each licence:
 - (a) conditions that impose specified performance standards for the reliability of operation of a transmission system and provide for reliability performance monitoring and reporting,
 - (b) conditions for ensuring that a network operator has arrangements in place to identify, assess and manage business continuity risks and manage business disruptions,
 - (c) conditions for ensuring that a network operator maintains a substantial operational presence in Australia.
- (6)–(8) (Repealed)
- (9) The Minister must consult with such other Ministers as the Minister considers appropriate before imposing conditions on a licence under this clause.

6A Condition requiring compliance with environmental assessment obligations

It is a condition of a licence that the licensee must, in the exercise of functions under section 111 (Duty to consider environmental impact) of the *Environmental Planning and Assessment Act 1979*, comply with requirements imposed by or under regulations made pursuant to section 111A of that Act.

7 Variation of conditions of licences

- (1) The Minister may vary the conditions of a licence.
- (2) The Minister must consult with such other Ministers as the Minister considers appropriate before varying the conditions of a licence under this clause.

8 Enforcement of Act and licences by the Minister

- (1) If the Minister is satisfied that the holder of a licence has contravened a requirement of this Act, the regulations or the conditions of the licence, the Minister may do any one or more of the following things:

- (a) notify the licensee of the contravention and direct the licensee to take specified action, within a period specified in the notice, to remedy or mitigate the consequences of the contravention or to prevent the continuance or recurrence of the contravention,
 - (b) impose a monetary penalty not exceeding \$250,000 on the licensee, but only if the Minister is satisfied that the licensee knowingly contravened the requirement concerned,
 - (c) impose a monetary penalty not exceeding \$50,000 on a person who is a director of or concerned in the management of the licensee, but only if the Minister is satisfied that the person knowingly authorised or permitted the contravention,
 - (d) cancel the licence.
- (2) The holder of a licence must comply with a direction of the Minister under this clause.
Maximum penalty: 5,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).
- (3) Nothing in this clause prevents a licence from being cancelled at the request of the licensee.

8A Enforcement of licences by Tribunal

- (1) If the Tribunal is satisfied that the holder of a licence has contravened a requirement of the conditions of the licence, the Tribunal may do any one or more of the following things:
- (a) notify the licensee of the contravention and direct the licensee to take specified action, within a period specified in the notice, to remedy or mitigate the consequences of the contravention or to prevent the continuance or recurrence of the contravention,
 - (b) impose a monetary penalty on the licensee not exceeding \$20,000 for the first day on which the contravention occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues, but only if the Tribunal is satisfied that the licensee knowingly contravened the requirement concerned,
 - (c) impose a monetary penalty on a person who is a director of or concerned in the management of the licensee not exceeding \$20,000 for the first day on which the contravention occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues, but only if the Tribunal is satisfied that the person knowingly authorised or permitted the contravention,
 - (d) cancel the licence.

- (2) Without limiting the power to give a direction under this clause requiring the taking of specified action, such a direction may:
 - (a) require the licensee to publish notice of any matter, or
 - (b) require an audit and compliance program to be undertaken, or
 - (c) require a training program to be undertaken.
- (3) The holder of a licence must comply with a direction of the Tribunal under this clause.
Maximum penalty: 5,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).
- (4) 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 licensee has taken or is likely to take in respect of the contravention and the cost to the licensee in taking that action, and is satisfied that it is nevertheless appropriate to take action under this clause.
- (5) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this clause.
- (6) 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.
- (7) 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.

11 Review of licences

- (1) The Tribunal must, within 6 months after the end of each successive 5-year period (a **review period**), report to the Minister on whether the results of the Tribunal's compliance monitoring during the review period indicate that a review of the licences in force under this Act should be conducted.
- (2) The Minister is to consider the Tribunal's report and may direct the Tribunal to conduct a review of the licences in force under this Act.
- (3) The first review period under this clause commences on the commencement of this clause.

Schedule 3 Distribution districts

(Sections 83 and 84)

Note—

Section 83 (1A) provides for a reference in this Schedule to Ausgrid or Endeavour Energy to be read as a reference to the entity that operates the distribution system concerned after completion of an authorised transaction under the [Electricity Network Assets \(Authorised Transactions\) Act 2015](#).

Name	Distribution district
------	-----------------------

Essential Energy	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
	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
Ausgrid	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
Endeavour Energy	Campbelltown	Shellharbour
	Fairfield	Shoalhaven
	Greater Lithgow	Wingecarribee
	Hawkesbury	Wollondilly
	Holroyd	Wollongong
	Kiama	
Lord Howe Island Board	Lord Howe Island	

Schedule 3A Transferred provisions—variation of distribution districts

1 Electricity Supply (Country Energy) Regulation 2005

(1) On and from 1 July 2005, Essential Energy:

- (a) may act for and on behalf of Australian Inland Energy Water Infrastructure, and
- (b) may exercise any of the functions of Australian Inland Energy Water Infrastructure, in relation to the transfer of any staff, assets, rights and liabilities under section 85

arising from the variation of distribution districts effected by clause 4 of the *Electricity Supply (Country Energy) Regulation 2005*.

Note—

The name of Country Energy was changed to Essential Energy by the *Energy Services Corporations Amendment (Change of Name) Regulation 2011*.

- (2) Subclause (1) applies for all purposes, including for the purpose of the rules of private international law.
- (3) Without limiting subclause (1), Essential Energy may act in the name of Australian Inland Energy Water Infrastructure if it is necessary to do so under the law of any country:
 - (a) to perfect the transfer of any asset, right or liability of Australian Inland Energy Water Infrastructure, or
 - (b) to take, defend or maintain legal proceedings in connection with any such asset, right or liability.
- (4) For the purposes of this clause, Essential Energy is authorised to use the seal of Australian Inland Energy Water Infrastructure.
- (5) In this clause, **asset**, **right** and **liability** have the same meanings as they have in Schedule 4.
- (6) Subclauses (1)–(5) re-enact (with minor modifications) clause 5 of the *Electricity Supply (Country Energy) Regulation 2005* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

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)

Column 1

Column 2

Column 3

Year	Energy savings scheme target	Energy conversion factor
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	0.070	1.00
2017	0.075	1.00
2018	0.080	1.00
2019	0.085	1.00
2020	0.085	1.00
2021	0.085	1.00
2022	0.085	1.00
2023	0.085	1.00
2024	0.085	1.00
2025	0.085	1.00

Schedules 5A, 5B (Repealed)

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

Electricity Supply Amendment (Solar Bonus Scheme) Act 2009

Energy Legislation Amendment (Infrastructure Protection) Act 2009

Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Act 2010, but only to the extent that it amends this Act

Electricity Supply Amendment (Solar Bonus Scheme) Act 2010

State Revenue and Other Legislation Amendment (Budget Measures) Act 2012, but only to the extent that it amends this Act

National Energy Retail Law (Adoption) Act 2012

any other Act that amends this Act

- (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 8A Provisions consequent on enactment of Energy Legislation Amendment (Infrastructure Protection) Act 2009

51A Application of certain provisions

- (1) In this clause, **amending Act** means the *Energy Legislation Amendment (Infrastructure Protection) Act 2009*.
- (2) Section 63Y (1) (as inserted by the amending Act) applies to licences whether or not granted before, on or after the commencement of that subsection.
- (3) A provision of section 63ZB or 65 (2)-(4) (as inserted by the amending Act) applies to offences committed on or after the commencement of that provision.
- (4) Section 63ZC (as inserted by the amending Act) applies to acts or omissions done or made on or after the commencement of that section.

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 (Administrative reviews by Civil and Administrative 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*.

Part 10 Provisions consequent on enactment of *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009*

58 Credits not to be recorded before commencement of scheme

A distribution network service provider is not to record a credit under section 15A in respect of electricity supplied before the commencement of that section.

59 Existing generator may be complying generator

A generator installed before the commencement of section 15A may be a complying generator.

60 Existing net metering schemes to continue until transition day

- (1) The gross feed-in credit provided for by section 15A is to operate and be applied as a net feed-in credit for electricity supplied by a small retail customer before the transition day in the following transitional cases:
 - (a) electricity supplied to the distribution network of Integral Energy by a net feed-in generator that was first connected to that distribution network before the commencement of section 15A, or
 - (b) electricity supplied to the distribution network of Country Energy or EnergyAustralia by a net feed-in generator or a complying generator (whether connected to the distribution network before or after the commencement of section 15A).
- (2) This means that, in those transitional cases, the obligation under section 15A of a distribution network service provider to record a credit at a rate per kilowatt hour for electricity produced by a complying generator and supplied to the distribution network

of Country Energy, EnergyAustralia or Integral Energy is an obligation to record a credit at that rate for the net electricity supplied by the small retail customer (that is, for electricity supplied in excess of that being used by the customer).

- (3) Until the transition day, Country Energy or EnergyAustralia are not required to provide customer connection services to a small retail customer under section 15A in respect of a generator unless the generator is installed and connected in a manner that enables Country Energy or EnergyAustralia to record a credit for the net electricity supplied by the small retail customer (that is, for electricity supplied in excess of that being used by the customer).
- (4) For the purposes of the operation of this clause (and the operation of section 15A in accordance with this clause), a net feed-in generator is taken to be a complying generator.
- (5) In this clause:

net feed-in generator means a generator that would be a complying generator but for the fact that it is installed and connected in a manner that provides for some or all of the electricity generated by the generator to be used by the small retail customer (rather than being supplied to the distribution network).

transition day means 1 July 2010, or if another day is prescribed by the regulations, that day.

- (6) Different days may be prescribed under subclause (4) in respect of Country Energy, EnergyAustralia or Integral Energy so that the provisions of this clause apply differently in respect of each of those bodies.

Part 11 Provisions consequent on enactment of Electricity Supply Amendment (Solar Bonus Scheme) Act 2010

61 Complying generators connected before scheme closed

- (1) The rate at which a credit is to be recorded by a distribution network service provider in respect of electricity generated by a small retail customer is to be \$0.60 per kilowatt hour if the electricity is generated by a complying generator (including a generator that is taken to be a complying generator because of clause 60) that:
 - (a) was first connected to the distribution network before the commencement of the amending Act, or
 - (b) was first connected to the distribution network after that commencement and complies with the transitional requirements of subclause (2) for the \$0.60 per kilowatt hour rate, or
 - (c) is connected in circumstances prescribed by the regulations, or

- (d) replaces a generator referred to in paragraphs (a)–(c) at the same premises and is of no greater capacity than the generator that is replaced.
- (2) The following requirements are the transitional requirements for the \$0.60 per kilowatt hour rate for a generator first connected to a distribution network after the commencement of the amending Act:
- (a) before that commencement, the small retail customer concerned must have purchased or leased, or have entered into a binding agreement to purchase or lease, the generator,
- (b) no later than 21 days after that commencement, the distribution network service provider must have received an application made by or on behalf of the small retail customer for the connection of the generator to the distribution network,
- (c) any requirements of the regulations as to evidence to be provided in connection with the requirements of paragraphs (a) and (b) have been complied with.
- (3) This clause ceases to apply in respect of a complying generator if the capacity of the generator is increased after the commencement of the amending Act.
- (4) Subject to the regulations, this clause ceases to apply in respect of a complying generator (including a generator that replaces that generator) if there is a change, after the commencement of the amending Act, in the person in respect of whom the credit is recorded for electricity produced by the generator.
- (5) An agreement entered into by a small retail customer to purchase or lease a generator is a binding agreement for the purposes of this clause even if the agreement permits the small retail customer to terminate the agreement without penalty.
- (6) In this clause:

amending Act means the [Electricity Supply Amendment \(Solar Bonus Scheme\) Act 2010](#).

62 Continuation of net metering schemes

- (1) The obligation under section 15A of a distribution network service provider to record a credit for electricity produced by a complying generator and supplied to the distribution network is an obligation to record a credit for the net electricity supplied by the small retail customer (that is, for electricity supplied in excess of that being used by the customer) if the small retail customer elects to have the credit recorded in that way.
- (2) For the purposes of the operation of this clause (and the operation of section 15A in accordance with this clause), a net feed-in generator (within the meaning of clause 60) is taken to be a complying generator.

(3) Nothing in this clause limits the operation of clause 60.

Part 12 Provisions consequent on enactment of [Electricity Network Assets \(Authorised Transactions\) Act 2015](#)

63 Meaning of “amending Act”

In this Part:

amending Act means the [Electricity Network Assets \(Authorised Transactions\) Act 2015](#).

64 Transfer of functions

(1) Any act, matter or thing done or omitted to be done by the Secretary relating to a transferred function that had effect immediately before the commencement of the provision of the amending Act that transferred the function continues to have effect as if it had been done or omitted to be done by the Tribunal.

(2) In this clause:

transferred function means a function of the Secretary under this Act that, as a result of amendments made by the amending Act, is conferred on the Tribunal.

Part 13 Provisions consequent on enactment of [Electricity Supply Amendment \(Energy Savings Scheme\) Act 2015](#)

65 Units in which energy savings certificates and energy savings shortfalls are expressed

(1) On and after the date of commencement of Schedule 1 [12] to the [Electricity Supply Amendment \(Energy Savings Scheme\) Act 2015](#), an energy savings shortfall, or a carried forward energy savings shortfall, of a number of tonnes of carbon dioxide equivalent of greenhouse gas emissions, is to be regarded as an energy savings shortfall or a carried forward energy savings shortfall (as the case requires) of the same number of notional megawatt hours.

(2) On and after the date of commencement of Schedule 1 [25] to the [Electricity Supply Amendment \(Energy Savings Scheme\) Act 2015](#), the value of each registered energy savings certificate is one notional megawatt hour rather than one tonne of carbon dioxide equivalent of greenhouse gas emissions.

Part 14 Provisions consequent on enactment of [Energy Legislation Amendment \(Retail Electricity and Gas Pricing\) Act 2015](#)

66 Definition

In this Part:

amending Act means the [Energy Legislation Amendment \(Retail Electricity and Gas](#)

Pricing) Act 2015.

67 Licence auditing

The Tribunal is to continue to carry out its functions under sections 87 (1) (b) and 88 (1) (b), as in force before the repeal of those paragraphs by the amending Act, in respect of any period before those repeals and this Act applies to those functions as if the amending Act had not commenced.

68 Review of decisions

- (1) A person who was a regulated offer customer for the supply of electricity immediately before 1 July 2014 may make an application under section 96A in respect of any decision made before that day for which an application could have been made under an energy ombudsman scheme before that day. Section 96A continues to apply to any such application.
- (2) The provisions of an energy ombudsman scheme approved under section 96B and applicable to regulated offer customers for the supply of electricity immediately before 1 July 2014 continue to apply to a dispute or complaint between the regulated offer customer and a retailer about a matter that occurred before that day.

Part 15 Provisions consequent on enactment of [Electricity Supply Amendment \(Advanced Meters\) Act 2016](#)

69 Definitions

In this Part:

advanced meter means a meter that is a type 4 metering installation referred to in Chapter 7 of the *National Electricity Rules*.

amending Act means the [Electricity Supply Amendment \(Advanced Meters\) Act 2016](#).

basic meter means a meter that is a type 5 or 6 metering installation referred to in Chapter 7 of the *National Electricity Rules*.

interim period means the period commencing on the amendment of section 31 by the amending Act and ending on 1 December 2017 (or such later day as may be prescribed by the regulations).

metering provider has the same meaning as it has in the *National Electricity Rules*.

retailer has the same meaning as it has in the [National Energy Retail Law \(NSW\)](#).

70 Basic meters during interim period

- (1) Division 4 of Part 3 of this Act, as in force before the repeal of section 29 by the amending Act, continues to apply during the interim period in respect of:

- (a) any requirement to install a basic meter imposed under Division 4 of Part 3 of this Act before that repeal, and
 - (b) a meter installed by a distributor before that repeal, and
 - (c) a basic meter installed during the interim period.
- (2) A distributor who installed a meter before the repeal of section 29 by the amending Act, or installed a basic meter during the interim period, remains responsible for the maintenance of that meter.

71 Interim provisions for installation of advanced meters by retailers and metering providers

- (1) A retailer or metering provider who provides, installs or replaces an advanced meter during the interim period, or maintains an advanced meter installed during the interim period, must ensure that:
- (a) any person engaged to install an advanced meter is a qualified person (within the meaning of the *Electricity (Consumer Safety) Regulation 2015*) and has undertaken appropriate training in the installation of advanced meters (including de-energisation and re-energisation of electrical installations), and
 - (b) safety and compliance testing is carried out in relation to each installation as required by Part 1 of Chapter 3 of the *Electricity (Consumer Safety) Regulation 2015*.
- (2) (Repealed)
- (3) A retailer or metering provider must not, during the interim period, install an advanced meter in relation to premises at which 1 or more persons require life support equipment unless the occupier of the premises is given at least 4 business days notice of the proposed installation (or such shorter period as may be agreed, in writing, between the occupier and retailer or metering provider).
- (4) Clauses 8 (except for clause 8 (1) (d)) and 9 of Schedule 2 apply to a retailer or metering provider who contravenes this clause, clause 71A, or regulations made under this Schedule consequent on the enactment of the amending Act, in the same way as they apply to a licensee who contravenes a requirement of this Act.
- (5) In this clause:
- life support equipment** has the same meaning as it has in the *National Energy Retail Rules*.

71A Metering safety management system requirements

- (1) Without limiting clause 71, a metering provider who provides, installs or replaces an

advanced meter during the interim period, or maintains an advanced meter installed during the interim period, must have a safety management system in place that ensures compliance with clause 71 (1) and satisfies the requirements of the Code for Safe Meter Installation.

Maximum penalty: 40 penalty units (in the case of a corporation) or 20 penalty units (in the case of an individual).

- (2) A retailer must ensure that a metering provider engaged by the retailer to install or replace an advanced meter, or maintain an advanced meter installed during the interim period, has a safety management system in place that complies with this clause.
- (3) The Secretary may, by notice in writing, direct a metering provider to amend a safety management system if, in the opinion of the Secretary, the safety management system does not comply with this clause.
- (4) A metering provider must comply with a direction given under subclause (3).

Maximum penalty: 20 penalty units.

- (5) Before providing, installing or replacing an advanced meter, or maintaining an advanced meter installed during the interim period, a metering provider must:
 - (a) have previously provided documentation relating to the provider's safety management system to the Secretary, and
 - (b) ensure that the safety management system is brought to the attention of, and a copy of documentation relating to the system is made readily available to, the persons engaged by the metering provider to install, replace or maintain an advanced meter.

Maximum penalty: 20 penalty units.

- (6) The Secretary may delegate the exercise of any function of the Secretary under this clause (other than this power of delegation) to any person employed in the Department of Finance, Services and Innovation.
- (7) In this clause:

Code for Safe Meter Installation means the *Code for safe installation of direct-connected whole current electricity metering in NSW—Minimum requirements for safety management systems*, published in the Gazette by the Department of Planning and Environment, as in force from time to time.

Secretary means the Secretary of the Department of Finance, Services and Innovation.

72 Continuation of accreditation

A person accredited for the provision of services for the purposes of section 31 immediately before the insertion of section 31A by the amending Act, is taken to be an accredited service provider and the accreditation of the person is subject to any terms and conditions that applied to the person's accreditation immediately before that insertion.

73 Meaning of "customer connection services"

For the purposes of Division 4 of Part 3 of this Act, **customer connection services** does not include the provision, installation or maintenance of advanced meters during the interim period.

74 Regulations

- (1) Regulations made under this Schedule consequent on the enactment of the amending Act may make separate savings and transitional provisions, or amend this Part to consolidate the savings and transitional provisions.
- (2) The regulations made under this Schedule consequent on the enactment of the amending Act have effect despite anything to the contrary in this Part.

Dictionary

(Section 4)

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

accredited service provider—see section 31A.

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

approved energy 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.

complying generator—see section 15A (2).

connection point, in relation to the premises of a customer or a class of customers, means the point of connection to an electrical installation supplying electricity to the premises as determined in accordance with the *Service and Installation Rules of New South Wales*, as in force from time to time, published by the Department of Planning and Environment.

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 includes a wholesale customer.

customer consultative group means a customer consultative group referred to in section 89.

Department means the Department of Planning and Environment.

distribution district of a distributor specified in Schedule 3 means the distribution district described in that Schedule in relation to the distributor.

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 connection point in relation to the premises (which may or may not be situated on the building or land comprising the premises), or
- (a1) from the premises of former regulated offer customers or small customers that have a complying generator installed and connected from the connection point to the premises, or
- (b) to, from and along the rail network electricity system operated by, for or on behalf of Rail Corporation New South Wales or Transport for NSW,

but does not include a transmission system or any lines, equipment and structures prescribed by the regulations.

distributor means a person who owns, controls or operates a distribution system.

distributor's licence means a licence referred to in section 14.

electrical installation means the electrical wiring and electrical equipment 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 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 Rules*.

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 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 but, subject to the regulations, does not include a complying generator.

health care professional means a person registered under the Health Practitioner Regulation National Law.

inspector means any person appointed under section 63M by the Tribunal 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 distributor's licence or a transmission operator's licence.

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 Rules*.

National Electricity Rules has the same meaning as it has in the [National Electricity \(NSW\) Law](#).

network controller means a person who controls a distribution system or transmission system.

network operator means a transmission operator or distributor.

network owner means a person who owns a distribution system or transmission system or any part of a distribution system or transmission system.

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](#).

roads authority has the same meaning as it has in the [Roads Act 1993](#).

Secretary means the Secretary of the Department.

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.

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.

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, controls or operates 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 retail 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.