

# Electricity Supply (General) Regulation 2014

[2014-523]



New South Wales

## Status Information

### Currency of version

Current version for 15 December 2023 to date (accessed 19 May 2024 at 17:30)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2024

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 15 December 2023

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New South Wales

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# Electricity Supply (General) Regulation 2014



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Electricity Supply (General) Regulation 2014*.

### 2 Commencement

This Regulation commences on 1 September 2014 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Electricity Supply (General) Regulation 2001* which is repealed on 1 September 2014 by section 10(2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation—

***approved auditor***—

- (a) for Part 6, see clause 28, and
- (b) for Part 7, see clause 59B.

***assessment***—

- (a) for Part 6, Division 3, see clause 31, and
- (b) for Part 7, Division 2, see clause 62A.

***biodiesel*** has the same meaning as it has in the *Biofuels Act 2007*.

***biofuel*** means a liquid fuel derived from biomass and includes biodiesel and ethanol.

***biogas*** means gaseous fuel derived or recovered from biomass.

***biomass*** means organic matter other than fossilised organic matter.

***business day*** means a day that is not a Saturday or a Sunday or a day that is wholly

or partly a public holiday.

**close associate** means—

(a) for a corporation—

- (i) a director or officer of the corporation, or
- (ii) a related body corporate of the corporation, or

(b) for an individual—a corporation of which the individual is a director or an officer.

**corresponding scheme**—

- (a) for Part 6, see clause 28, and
- (b) for Part 7, see clause 59B.

**diesel fuel** has the same meaning as it has in the [Biofuels Act 2007](#).

**energy ombudsman** means the energy ombudsman appointed under an approved energy ombudsman scheme.

**ethanol** has the same meaning as it has in the [Biofuels Act 2007](#).

**insolvency official** has the same meaning as it has in the [National Energy Retail Law \(NSW\)](#), Part 6.

**liquefied petroleum gas** has the same meaning as it has in the [Gas and Electricity \(Consumer Safety\) Act 2017](#).

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

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

**natural gas** has the same meaning as it has in the [National Gas \(NSW\) Law](#).

**onsite renewable energy** means energy generated at the site at which it is used from a recognised energy saving activity using 1 or more of the following renewable energy sources—

- (a) solar,
- (b) wind,
- (c) geothermal aquifer,
- (d) hot dry rock,

- (e) hydro,
- (f) wave,
- (g) tide,
- (h) ocean.

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

**residential premises** means any premises or part of premises used or intended to be used as a place of residence, including a moveable dwelling (within the meaning of the *Local Government Act 1993*) or site on which a moveable dwelling is situated or intended to be situated (or both the moveable dwelling and the site), if the moveable dwelling is used or intended to be used as a place of residence.

**Secretary** means the Secretary of the Department.

**the Act** means the *Electricity Supply Act 1995*.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Customer consultation and service**

### **Division 1 Customer consultation**

#### **4 Customer consultative groups**

- (1) A customer consultative group appointed by a distributor is to be constituted in accordance with a charter approved by the Minister and, if it is so constituted, is not required to comply with section 90(1) or (2) of the Act.
- (2) Any such charter may also provide for other matters relating to the customer consultative group, including the procedure of the group (including meeting intervals), funding of the group and access to information by the group.

### **Division 2 Distributor service standards**

#### **5 Distributor service standards**

The requirements set out in this Division are distributor service standards.

**Note—**

The requirements of this Division are enforceable under the National Energy Retail Rules and are applicable to

distributors within the meaning of the *National Energy Retail Law (NSW)*.

## **6 Connection on agreed date**

A distributor who fails to provide a customer connection service (other than a connection service under Chapter 5A of the National Electricity Rules) on or before the date agreed between the distributor and a small customer or a small customer's representative must pay to the customer, as compensation for the delay, not less than \$60 for each day that elapses between the agreed date and the date on which the service is actually provided (up to a maximum total of \$300).

## **7 Time limit for energisation or re-energisation**

- (1) This clause applies if a small customer is entitled to be provided with an energisation or re-energisation service by a distributor.
- (2) The distributor must energise or re-energise the small customer's premises—
  - (a) if the energisation or re-energisation request is made before 3pm on a business day, by not later than the end of the next business day, or
  - (b) if the energisation or re-energisation request is made after 3pm on a business day, by not later than the end of the second business day following the day the request is made.
- (3) The distributor and the small customer may agree on a period longer than the period specified in subclause (2) as the period within which the premises are to be energised or re-energised.
- (4) The distributor is not required to energise or re-energise premises within a period specified by this clause if the relevant equipment is not in place to do so.
- (5) (Repealed)

## **8 Mandatory periods for de-energisation**

- (1) If a retailer notifies a distributor that a small customer of the retailer wishes to arrange for de-energisation of the customer's premises, the distributor must de-energise the premises within 2 days of the notice or within such further period as the customer requests.
- (2) If a retailer notifies a distributor that the retailer wishes to arrange for de-energisation of the small customer's premises on a ground permitted under the National Energy Retail Rules, the distributor must de-energise the premises within 2 days (not including any day that is a protected period within the meaning of Part 6 of those Rules).

### **8A (Repealed)**

## 9 Disconnection notices

- (1) A distributor must issue a notice to a small customer when the distributor de-energises the customer's premises at the request of a retailer on a ground permitted under the National Energy Retail Rules.
- (2) The notice must be in writing and contain the following information—
  - (a) the matter for which premises were de-energised,
  - (b) details of the telephone number of a contact person for the retailer,
  - (c) the arrangements that are required to be made by the small customer for re-energisation of the premises, including any related costs payable by the customer,
  - (d) the dispute resolution procedures available to the small customer, including contact details for the energy ombudsman.

## 10 Repair of faulty street lights

- (1) A distributor who fails to repair faulty street lighting on or before the date agreed between a small customer and the distributor as the date by which the repair is to be completed must pay to the customer, as compensation for the loss of illumination, not less than \$15.
- (2) This clause applies to street lighting that is owned by the distributor or that the distributor is under a legally enforceable obligation to maintain, but does not apply to street lighting to which the distributor merely supplies electricity or connection services.
- (3) This clause only applies to or in respect of a small customer if the customer's premises abut the part of the street that (but for the fault) would ordinarily be illuminated by the street lighting.

## Division 3 Remote de-energisation and remote re-energisation of premises of small customers by metering providers and retailers

### 10A Definitions

In this Division—

**metering provider** means—

- (a) a metering provider within the meaning of the *National Electricity Rules*, and
- (b) for an embedded network within the meaning of those Rules—the metering coordinator for the embedded network within the meaning of those rules.

**premises** means the premises of a small customer.

**remote de-energisation** means the de-energisation of premises from a place other than the premises concerned using an electricity meter.

**remote re-energisation** means the re-energisation of premises from a place other than the premises concerned using an electricity meter.

**10B Retailer to arrange remote de-energisation or remote re-energisation of premises after small customer request**

(1) This clause applies if—

- (a) a small customer has requested that a retailer arrange the de-energisation or re-energisation of the small customer's premises, and
- (b) the retailer intends to request or has requested a metering provider to carry out the remote de-energisation or remote re-energisation of the premises.

(2) The retailer must take steps to ensure that a metering provider carries out the remote re-energisation—

- (a) if the customer's request is made before 3 pm on a business day—by not later than the end of the next business day following the day the customer's request is made, or
- (b) if the customer's request is made after 3 pm on a business day—by not later than the end of the second business day following the day the customer's request is made.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

(3) A request to a retailer by a small customer may specify a date or a time and date, not less than 2 business days after the date of the request, on which the small customer and retailer agree that the remote de-energisation or remote re-energisation of the premises is to take place.

(4) If a retailer and small customer agree on a specified date or a time and date under subclause (3), the retailer must take steps to ensure that a metering provider carries out the remote de-energisation or remote re-energisation by not later than the end of the specified date or at the time and date.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

(5) A retailer must, after requesting that a metering provider remotely re-energise premises, but before the following date or time and date, give the metering provider a copy of the statement or notice the retailer is required to obtain under clause 38D(2) of the *Gas and Electricity (Consumer Safety) Regulation 2018*—

- (a) if the small customer and retailer have agreed a specified date on which the remote re-energisation is to take place—the end of the specified date,
- (b) if the small customer and retailer have agreed a specified time and date on which the remote re-energisation is to take place—the specified time and date.

Maximum penalty—10 penalty units.

- (6) Nothing in this clause requires a retailer to request the remote re-energisation of premises if the retailer would be permitted, were the premises energised, to de-energise the premises under the *National Energy Retail Rules*.

### **10C Metering provider to re-energise small customer's premises**

- (1) This clause applies if a retailer requests a metering provider to remotely re-energise premises under clause 10B in response to a request by a small customer.
- (2) If the retailer requests a metering provider to remotely re-energise premises at the request of a small customer, the metering provider must re-energise the premises not later than the end of the day required by clause 10B(2).

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

- (3) If the retailer requests a metering provider to remotely re-energise premises at the request of a small customer on a day more than 2 business days after the date of the request as referred to in clause 10B(3), the metering provider must re-energise the premises by not later than the end of the requested day.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

- (4) Despite subclauses (2) and (3), a metering provider must not remotely re-energise premises if a statement or notice is required under clause 38D(2) of the *Gas and Electricity (Consumer Safety) Regulation 2018* unless—

- (a) in relation to a statement or notice referred to in clause 38D(2)(a) or (b)—the retailer has given the metering provider a copy of the statement or notice, or
- (b) in relation to the statement referred to in clause 38D(2)(c)—the retailer informs the metering provider that the statement has been given to the retailer.

#### **Note—**

Clause 38D(3) of the *Gas and Electricity (Consumer Safety) Regulation 2018* provides that if a statement or notice is required under clause 38D(2), the request for the remote re-energisation is taken not to have been made until the statement or notice has been provided by the customer.

### **10D Compensation for failure to re-energise premises**

If the premises of a small customer are not re-energised before the end of the day required by clause 10B(2), the retailer must pay to the customer, as compensation for the delay, not less than \$60 for each day between—

- (a) the day on which the premises were required to be re-energised under clause 10B, and
- (b) the date on which the service is actually provided up to a maximum total of \$300.

#### **Note—**

Clause 38D(3) of the *Gas and Electricity (Consumer Safety) Regulation 2018* provides that if a statement or notice is required under clause 38D(2), the request for the remote re-energisation is taken not to have been made until the statement or notice has been provided by the customer.

### **10E De-energisation by metering provider at request of retailer**

- (1) If a retailer requests a metering provider to remotely de-energise premises, the retailer must, as soon as practicable after making the request, notify the distributor of the proposed de-energisation of the premises by a communications method specified by the distributor to the retailer, if any.
- (2) If a retailer requests a metering provider to remotely de-energise premises at the request of a small customer, the metering provider must de-energise the premises—
  - (a) by the end of the second business day after the customer's request, or
  - (b) if the retailer informs the metering provider that the retailer and small customer have agreed to the de-energisation occurring on a later day—by the end of the later day.
- (3) If a retailer requests that a metering provider carry out the remote de-energisation of premises on a ground permitted under the *National Energy Retail Rules*, the metering provider must de-energise the premises within 2 business days after the retailer's request, not including any day that is a protected period within the meaning of Part 6 of those Rules.
- (4) If a metering provider carries out the remote de-energisation of premises, the metering provider must inform the retailer, within 2 business days after carrying out the de-energisation, that the de-energisation has been carried out.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

### **10F Retailer to give notice of remote de-energisation of small customer's premises**

A retailer must, within 1 business day after being informed by a metering provider that



the remote de-energisation of the premises of a small customer has taken place, give the customer a written notice containing the following information—

- (a) the grounds on which the premises were de-energised,
- (b) the retailer's telephone number,
- (c) the arrangements that are required to be made by the small customer for re-energisation of the premises, including any related costs payable by the customer,
- (d) the dispute resolution procedures available to the small customer, including contact details for the energy ombudsman.

Maximum penalty—10 penalty units.

**Note—**

The *National Energy Retail Rules* set out grounds on which a retailer may request the de-energisation of premises.

**10G Exempt sellers prohibited from remote de-energisation and remote re-energisation of premises**

An exempt seller must not request, arrange for or carry out the remote de-energisation or remote re-energisation of premises.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

## **Part 3 Energy ombudsman scheme**

### **11 Persons who may apply to energy ombudsman**

- (1) For the purposes of section 96A(1) of the Act, the following persons may apply to an energy ombudsman under an approved energy ombudsman scheme for a review of a decision—
  - (a) a small customer in respect of a matter arising between the customer and an exempt person concerning a contract for the supply of electricity or gas (including charges for electricity or gas) or any other matter relating to the supply of electricity or gas by the exempt person to the customer,
  - (b) a small customer in respect of a matter arising between the customer and a retailer or distributor concerning the obligations of the retailer or distributor under the Act or this Regulation,
  - (c) a small customer in respect of a matter arising between the customer and a retailer concerning the obligations of the retailer under the [Gas Supply Act 1996](#) or regulations under that Act,

(d) a regulated offer customer in respect of a matter arising between the regulated offer customer and a retailer concerning regulated offer prices or a regulated pricing agreement under the *Gas Supply Act 1996* or the *National Energy Retail Law (NSW)*.

(2) For the purposes of section 96A(3) of the Act, a review of a decision on an application made by a person referred to in subclause (1) is to be free of charge to the person.

(3) In this clause—

**exempt person** means—

(a) an exempt seller or a person who is exempt (under section 3B of the *National Energy Retail Law (NSW)*) from the requirement to hold a retailer's authorisation in respect of the sale of electricity or gas, or

(b) a person exempted from section 13 of the Act.

(4) In subclause (1)(a), a reference to a small customer is a reference to a person who would be a small customer of an exempt person if the exempt person were a retailer.

(5) A dispute or complaint in respect of a matter referred to in subclause (1)(a) is prescribed for the purposes of section 96B(1A)(f) of the Act.

## 12 Solar bonus disputes

(1) An energy ombudsman scheme may deal with a dispute between a customer and a distributor or a retailer arising out of the solar bonus scheme.

(2) In this clause—

**solar bonus scheme** means the scheme established under section 15A of the Act for credits for electricity supplied to the network by customers using complying generators.

## 13 Reports by energy ombudsman

(1) An energy ombudsman—

(a) must cause copies of all public reports issued by the energy ombudsman to be given to the Minister, and

(b) must cause notice to be given to the Minister of changes in the policies and procedures to be adopted in connection with the relevant approved energy ombudsman scheme.

(2) Without limiting subclause (1), the Minister may from time to time require an energy ombudsman appointed under an approved energy ombudsman scheme to provide the Minister with reports on the operation of the scheme, including—

- (a) particulars as to the extent to which the scheme is meeting the objectives referred to in section 96B of the Act, and
- (b) particulars as to the extent to which the scheme has met relevant best practice benchmarks, and
- (c) particulars as to the extent to which licence holders or specified licence holders and other persons bound by the scheme have complied with their obligations under the scheme.

## **Part 4 Exemptions relating to distributors and supply arrangements**

### **14 Exemption from section 13**

- (1) The object of this clause is to exempt certain persons from a provision of the Act that prohibits the operation of distribution systems for retail trading in electricity otherwise than by licensed distributors.
- (2) Any person who owns or controls a distribution system (other than a distributor listed in Schedule 3 to the Act or an authorised transmission operator under the *Electricity Network Assets (Authorised Transactions) Act 2015*) is exempt from the operation of section 13 of the Act.

**Note—**

Clause 16 exempts the Lord Howe Island Board from the operation of section 13 of the Act.

**Note—**

Under section 83(1A) of the Act, a reference to a distributor listed in Schedule 3 to the Act includes a reference to the entity that operates the distribution system after completion of an authorised transaction under the *Electricity Network Assets (Authorised Transactions) Act 2015*.

### **15 Exemption from section 16**

- (1) The object of this clause is to exempt certain matters from a provision of the Act that prohibits the operation of distribution systems for retail trading in electricity otherwise than for retailers.
- (2) The operation of a distribution system by a licensed distributor, for the purpose only of conveying electricity in accordance with an electricity supply arrangement for which an exemption is in force under the *National Energy Retail Law (NSW)* or the *National Energy Retail Law (Adoption) Act 2012*, is exempt from the operation of section 16 of the Act.

### **16 Exemption for Lord Howe Island Board**

The Lord Howe Island Board is exempt from the operation of sections 13 and 15A of the Act.

## 17 Exemption for ActewAGL

- (1) ActewAGL Distribution (**ActewAGL**) is exempt from the operation of section 15A of the Act.
- (2) The terms of any electricity supply arrangement (including any feed-in tariff arrangement) that is entered into by ActewAGL with a customer in New South Wales must comply with the *Utilities Act 2000*, and the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, of the Australian Capital Territory as if the customer were in the Australian Capital Territory.

## 18 Conditions applying to exemptions relating to residential premises

- (1) The exemption of a person (the **exempt person**) from section 13 of the Act (under clause 14) is subject to the conditions set out in this clause if the person in respect of whom the connection services are provided occupies residential premises and the person's electricity consumption is measured by a separate electricity meter.
- (2) The following conditions apply—
  - (a) the exempt person must provide connection services to the premises in accordance with any agreement relating to occupation of the premises between the exempt person and the person to whom the electricity is supplied,
  - (b) the exempt person is bound by, and must comply with, any decision of the energy ombudsman in relation to a complaint or dispute relating to the provision of connection services.

## 19 Conditions on exemptions for certain residential premises relating to disconnection from distribution system

- (1) The exemption of a person (the **exempt person**) from section 13 of the Act (under clause 14) is subject to the condition that the exempt person comply with this clause, if the person in respect of whom the connection services are provided occupies residential premises and the person's electricity consumption is measured by a separate electricity meter.
- (2) An exempt person must not disconnect premises from the exempt person's distribution system—
  - (a) while any application made by the occupier of the premises for assistance under any Government funded rebate or relief scheme, or under any payment plan operated by the exempt person, is pending, or
  - (b) while any life support system that relies on electricity for its operation is in use at the premises.
- (3) If the exempt person becomes authorised (under an agreement with the person in

respect of whom the connection services are provided) to disconnect premises from a distribution system, the exempt person must not do so—

- (a) on a Friday, Saturday or Sunday, or
  - (b) on a public holiday or day immediately preceding a public holiday, or
  - (c) after 3pm on any other day.
- (4) The exempt person must not take action to disconnect premises from the exempt person's distribution system unless the exempt person has given at least 14 days written notice of the exempt person's intention to do so.
- (5) The notice—
- (a) must specify the grounds on which the exempt person is taking the action proposed, and
  - (b) must indicate the date on or after which the supply to the customer's premises may be disconnected if those grounds are not removed, being a date occurring not earlier than 14 days after the notice is sent, and
  - (c) must advise the customer of the customer's rights under subclause (2).
- (6) An exempt person must, if the grounds on which the supply was disconnected are remedied by the occupier of the premises concerned, reconnect premises within a reasonable time.
- (7) An exempt person must, on receiving notice that the exempt person's premises are to be disconnected from the distribution system, immediately give written notice of the disconnection to any person to whom the exempt person provides connection services or supplies electricity under an electricity supply arrangement and who will be affected by the disconnection.
- (8) Nothing in this clause affects any right or obligation to disconnect premises arising from the operation of the *Electricity Supply (Safety and Network Management) Regulation 2014* or *Gas and Electricity (Consumer Safety) Act 2017*.

## **20 Effect of conditions**

For the avoidance of doubt, a person is exempt from a provision of the Act under this Part only to the extent that the person complies with any condition of the exemption concerned.

## **Part 5 Social programs for energy**

### **21 Social Programs for Energy Codes**

- (1) The Minister may, with the concurrence of the Treasurer, prepare and adopt a Social

Programs for Energy Code for the purpose of facilitating the delivery of any aspect of the Government's social programs for electricity.

- (2) A Code may require a distributor or retailer, or an exempt person, to take any action that the Minister thinks appropriate for that purpose.
- (3) The Minister may adopt or amend a Code by publishing the Code or amendment in the Gazette. A Code or an amendment takes effect on the day the Code or amendment is published in the Gazette or on a later day that is specified in the Code or amendment.
- (4) Before adopting or amending a Code, the Minister must consult with the distributors, retailers or exempt persons proposed to be made subject to the Code.
- (5) The Minister may revoke a Code by publishing a notice of revocation in the Gazette. A revocation takes effect on the day the notice is published in the Gazette or on a later day that is specified in the notice.
- (6) In this Part—

**exempt person** means an exempt seller or other person who is exempt from the application of the [National Energy Retail Law \(NSW\)](#).

## 22 Code requirements and compliance

- (1) A Social Programs for Energy Code—
  - (a) may specify that particular services of distributors, retailers or exempt persons are to be provided to particular classes of persons free of charge, at specified charges or subject to specified discounts or rebates, and
  - (b) may require specified classes of customers to be supplied with electricity at discounted charges or to be given rebates on the charges paid by them for the supply of electricity, and
  - (c) may require a retailer or exempt person to establish and maintain facilities to ensure that Government payments that are provided to finance the supply of electricity at discounted charges are applied in accordance with the Code, and
  - (d) may require a retailer or exempt person to establish and maintain trust accounts in which Government payments that are provided to finance the supply of electricity at discounted charges are to be held pending their application in accordance with the Code, and
  - (e) may require a distributor, retailer or exempt person to furnish the Minister with periodic reports as to compliance with the Code, and
  - (f) may require a distributor, retailer or exempt person to establish and maintain

accounting procedures to enable the reports to be prepared, and

(g) must specify—

(i) the amount assessed by the Minister as the estimated cost to a distributor or retailer or exempt person of efficiently complying with the Code, or

(ii) a methodology by which that cost may be assessed by the Minister, and

(h) must specify arrangements for the payment to the distributor, retailer or exempt person of an amount equivalent to the estimated efficient costs assessed by the Minister, as referred to in paragraph (g), or, if the distributor or retailer or exempt person disputes that assessment, the costs assessed on a re-assessment under this Part.

(2) If a Code adopted under this Part applies to a distributor, it is a condition of the distributor's licence that the distributor must take the action required by the Code in accordance with the Code.

(3) A distributor, retailer or exempt person must not fail to comply with a Social Programs for Energy Code that is applicable to the distributor, retailer or exempt person.

Maximum penalty—100 penalty units (in the case of a corporation) or 25 penalty units (in any other case).

### **23 Re-assessment of costs of compliance with Code**

(1) Any dispute between a distributor, retailer or exempt person and the Minister (being a dispute as to the cost to the distributor, retailer or exempt person of complying with the Social Programs for Energy Code) is to be referred to a committee constituted by one or more assessors.

(2) The assessor or assessors to constitute any such committee are to be suitably qualified persons appointed by agreement between the distributor, retailer or exempt person and the Minister.

(3) In determining a dispute that has been referred to it under this clause, a committee—

(a) must consider any representations made by the parties to the dispute, and

(b) must determine, on the basis of those representations and any other information available to it—

(i) the amount that is the efficient cost to the distributor, retailer or exempt person of complying with the provision of the Code to which the dispute relates, or

(ii) a methodology by which that cost may be assessed.

- (4) A committee may conduct proceedings under this clause in the manner that it considers appropriate.
- (5) The committee's decision on a dispute binds the parties to the dispute, but does not prevent the provision to which it relates from being withdrawn (by an amendment to, or a revocation of, the Code).
- (6) The committee's decision as to the efficient costs to a party to the dispute is taken, for the purposes of applying the Code to the party, to be the relevant amount or the methodology (as the case may be) specified in the Code.
- (7) The Code, as it applies to the party, is accordingly taken to be varied from the date specified in the decision.
- (8) A committee may determine 2 or more disputes in the same proceedings if it considers that it is appropriate to do so.

#### **24 Costs of proceedings**

- (1) The costs of any proceedings under clause 23, including the costs of the committee, are to be borne by the parties in equal proportions unless the committee determines otherwise.
- (2) The committee may determine the proportion of the costs to be borne by each of the parties, having regard to the merits of the case, and, in that event, the costs are to be borne by the parties according to the committee's determination.

#### **25 Market operations rules**

Market operations rules may be made for or with respect to the administrative arrangements for delivery of social programs for energy.

#### **26 Enforceable undertakings**

- (1) The Minister may accept a written undertaking given by a distributor, retailer or exempt person in connection with compliance with a Social Programs for Energy Code.
- (2) The distributor, retailer or exempt person may, with the consent of the Minister, withdraw or vary the undertaking at any time.
- (3) If the Minister considers that a distributor, retailer or exempt person that gave the undertaking has breached any of its terms, the Minister may apply to the Local Court for an order under this clause.
- (4) If the Local Court is satisfied that the distributor, retailer or exempt person has breached a term of the undertaking, the Court may make all or any of the following orders—
  - (a) an order directing the distributor, retailer or exempt person to comply with the



undertaking,

- (b) an order directing the distributor, retailer or exempt person to pay to the State an amount up to the amount of any financial benefit that the distributor, retailer or exempt person has obtained directly or indirectly and that is reasonably attributable to the breach,
- (c) any order that the Court considers appropriate directing the distributor, retailer or exempt person to compensate any person who has suffered loss or damage as a result of the breach,
- (d) any other order that the Court considers appropriate.

## **27 Auditing of Code compliance**

- (1) The Minister may at any time conduct or require an audit to be conducted to determine whether a distributor, retailer or exempt person has complied with a Social Programs for Energy Code.
- (2) The Minister may require the audit to be conducted by—
  - (a) a person nominated by the Minister, or
  - (b) a person chosen by the distributor, retailer or exempt person from a panel of persons nominated by the Minister, or
  - (c) a person nominated by the distributor, retailer or exempt person and approved by the Minister.
- (3) The reasonable costs of an audit of a distributor, retailer or exempt person under this clause are payable by the distributor, retailer or exempt person.
- (4) A person must not impersonate an auditor who is required to carry out an audit under this clause.

Maximum penalty—250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

## **Part 6 Energy savings scheme**

### **Division 1 Interpretation**

#### **28 Definitions**

- (1) In this Part—

***approved auditor*** means a person required to conduct an audit under Division 8.

***corresponding scheme*** means a scheme or arrangement with similar objectives to

the energy savings scheme.

(2) (Repealed)

## 29 Direct suppliers of electricity

(1) For the purposes of the definition of **direct supplier of electricity** in the Act, Schedule 4A, clause 4(2), the following electricity generators are prescribed as direct suppliers of electricity—

- (a) AGL Macquarie Pty Limited (ACN 167 859 494),
- (b) Sunset Power International Pty Ltd (ACN 162 696 335).

(2) For the purposes of the Act, Schedule 4A, clause 10(2)(b), the following are liable acquisitions—

- (a) the supply of electricity by AGL Macquarie Pty Limited (ACN 167 859 494) to Tomago Aluminium Company Pty Ltd (ACN 001 862 228),
- (b) the supply of electricity by Sunset Power International Pty Ltd (ACN 162 696 335) to BlueScope Steel (AIS) Pty Ltd (ACN 000 019 625), or BHP Billiton Limited (ACN 004 028 077), under an electricity supply arrangement.

## 29A Recognised form of energy

For the Act, Schedule 4A, clause 2, definition of **recognised form of energy**, paragraph (c), the following forms of energy are prescribed—

- (a) biofuel,
- (b) biogas,
- (c) biomass,
- (d) diesel fuel,
- (e) liquefied petroleum gas,
- (f) natural gas,
- (g) onsite renewable energy.

## 29B Relevant agency

For the Act, Schedule 4A, clause 69A(3), definition of **relevant agency**, paragraph (b), the following are prescribed—

- (a) the person appointed as the administrator under the *Energy Efficiency (Cost of Living) Improvement Act 2012* of the Australian Capital Territory, section 23,

- (b) the Australian Energy Regulator established by the *Competition and Consumer Act 2010* of the Commonwealth, section 44AE,
- (c) the Australian Transaction Reports and Analysis Centre established by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth, section 209,
- (d) the Clean Energy Regulator established by the *Clean Energy Regulator Act 2011* of the Commonwealth, section 11,
- (e) the Essential Services Commission established by the *Essential Services Commission Act 2002* of South Australia, section 4(1),
- (f) the Essential Services Commission established by the *Essential Services Commission Act 2001* of Victoria, section 7(1),
- (g) AEMO,
- (h) the Australian Federal Police,
- (i) the NSW Police Force.

## **Division 2 CPI adjustment to base penalty rates**

### **30 CPI adjustment to base penalty rates**

Under the Act, Schedule 4A, clause 16(2)(a)(ii)—

- (a) for 2011, 2012, 2013, 2014 and 2015—the base penalty rates that applied under section 113 of the Act, and regulations made under the Act for the purposes of section 113(5) of the Act, as then in force (calculated as the base penalty rate for 2009 adjusted for movements in the consumer price index) continue to apply, and
- (b) for 2016—the base penalty rate is \$28.76 per notional megawatt hour (being the base penalty rate for 2009 adjusted for movements in the consumer price index between the March quarter 2009 and the September quarter 2015), and
- (c) for 2017, 2018, 2019, 2020, 2021 and 2022—the base penalty rate for the year is the amount per notional megawatt hour calculated as follows (if necessary, rounded up to the nearest cent)—

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

**Base penalty rate<sub>year</sub>** is the base penalty rate for the year concerned.

**Base penalty rate<sub>year-1</sub>** is the base penalty rate for the immediately preceding year.

**CPI<sub>year-1</sub>** is the Consumer Price Index for the September quarter of the immediately preceding year.

**CPI<sub>year-2</sub>** is the Consumer Price Index for the September quarter of the year before the immediately preceding year.

, and

- (d) for 2023 and each subsequent year—the base penalty rate for the year is the amount per notional megawatt hour calculated as follows, rounded up to the nearest cent—

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

**Base penalty rate<sub>year</sub>** means the base penalty rate for the year concerned.

**CPI<sub>year-1</sub>** means the Consumer Price Index for the September quarter of the immediately preceding year.

**CPI<sub>Sep 21</sub>** means the Consumer Price Index for the September quarter 2021.

## Division 3 Assessment of compliance of scheme participants

### 31 Definition of “assessment”

In this Division—

**assessment**, in relation to a scheme participant, means—

- (a) an assessment of the participant’s individual energy savings target in respect of a year, or
- (b) an assessment of the participant’s liability (if any) for an energy savings shortfall penalty in respect of a year, including liability for an energy savings shortfall penalty in respect of a carried forward shortfall.

### 32 Self-assessment provided in energy savings statement

- (1) An assessment provided by a scheme participant in an energy savings statement is taken to have been made on 1 March in the year after the year to which the statement relates, or on the day on which the energy savings statement is lodged, whichever is the later.
- (2) The liability of a scheme participant for an energy savings shortfall penalty (if any) for

a year is the assessment of the liability provided by the participant in the energy savings statement for the year (unless another assessment is or has been made by the Scheme Regulator).

### **33 Default assessments where energy savings statement not lodged**

- (1) The Scheme Regulator may make an assessment in respect of a year if the scheme participant concerned fails to lodge an energy savings statement for the year in accordance with the Act.
- (2) In making an assessment under this clause, the Scheme Regulator—
  - (a) may base its assessment on its best estimate of the scheme participant's liable acquisitions, verified by the Market Operator where possible, and
  - (b) may take into account any other matters the Scheme Regulator considers appropriate.
- (3) As soon as practicable after the assessment is made by the Scheme Regulator, the Scheme Regulator must give written notice of the assessment to the scheme participant.
- (4) The assessment is taken to have been made on 1 March in the year after the year to which the assessment relates or on any later date specified by the Scheme Regulator in the notice of assessment given to the scheme participant.

### **34 Amendment of assessments generally**

- (1) The Scheme Regulator may, at any time, amend an assessment by making any alterations or additions that the Scheme Regulator thinks necessary to correct the assessment.
- (2) The Scheme Regulator may amend an assessment in respect of a year whether or not the scheme participant concerned has paid an energy savings shortfall penalty for the year.
- (3) The Scheme Regulator may revoke the cancellation of and revive energy savings certificates surrendered in connection with the unamended assessment if, in the opinion of the Scheme Regulator, the scheme participant surrendered a greater number of certificates in connection with that assessment than was required—
  - (a) for the purpose of meeting the participant's individual energy savings target, or
  - (b) to remedy a carried forward shortfall.
- (4) The number of certificates that may be revived is equal to the number of certificates that, in the opinion of the Scheme Regulator, is surplus to the number required to be surrendered in connection with the amended assessment for the purpose of meeting

the scheme participant's individual energy savings target or to remedy a carried forward shortfall.

- (5) As soon as practicable after an assessment is amended, the Scheme Regulator must give written notice of the amended assessment to the scheme participant.
- (6) An assessment may be amended under this clause no later than one year after the date on which the assessment is taken to have been made under this Division.
- (7) The one-year time limit does not apply to—
  - (a) an amendment that, in the opinion of the Scheme Regulator, is required because of fraud or the provision of false or misleading information by a scheme participant, or
  - (b) an amendment that is made on the application of the scheme participant concerned.

### **35 Application for amended assessment**

- (1) A scheme participant may apply to the Scheme Regulator for an amendment to an assessment relating to the participant.
- (2) An application may be made no later than one year after the day on which the assessment is taken to have been made under this Division.
- (3) An application by a scheme participant must be in the form approved by the Scheme Regulator and state the grounds on which the amendment is sought.
- (4) A scheme participant may, in an application under this clause, elect to surrender additional energy savings certificates for the purposes of the amended assessment.
- (5) Any such election is to contain details of the energy savings certificates proposed to be surrendered.
- (6) The Scheme Regulator may deal with any such election as if the election had accompanied the energy savings statement to which the assessment relates.

### **36 Changes to liability for energy savings shortfall penalty as result of amended assessment**

- (1) An energy savings shortfall penalty payable as a result of an amendment to an assessment is taken to be payable on the later of the following dates—
  - (a) the date that is 7 days after the date notice of the amended assessment is given to the scheme participant concerned by the Scheme Regulator, or
  - (b) the date on which an energy savings shortfall penalty would have been payable under the original assessment.

- (2) The Scheme Regulator may extend the period for payment of any energy savings shortfall penalty that becomes payable as a result of an amendment to an assessment.
- (3) A scheme participant whose liability for an energy savings shortfall penalty is reduced as a result of an amended assessment is entitled to a refund of any excess energy savings shortfall penalty paid under the previous assessment.
- (4) If an assessment has been amended in any particular, the Scheme Regulator may, within one year after the day on which an energy savings shortfall penalty became payable under the amended assessment, make any further amendment of the assessment that (in the Scheme Regulator's opinion) is necessary to effect any just reduction in the scheme participant's liability under the assessment.

### **37 Effect on appeals**

Nothing in this Division prevents the amendment of an assessment to give effect to a decision on any review or appeal under the Act.

## **Division 4 Creation of certificates and accreditation of providers**

### **37A Certificate conversion factor—forms of energy other than electricity**

For the Act, Schedule 4A, clause 33A(1), the certificate conversion factor for the following forms of energy is—

- (a) for biofuel—0.21,
- (b) for biogas—0.17,
- (c) for biomass—0.08,
- (d) for diesel fuel—0.47,
- (e) for natural gas and liquefied petroleum gas—0.47,
- (f) for onsite renewable energy—0.

### **38 Eligibility for accreditation**

- (1) A person is eligible for accreditation as an energy savings certificate provider in respect of an activity if—
  - (a) the activity is a recognised energy saving activity under the scheme rules, and
  - (b) the person has record keeping arrangements with respect to the activity that are approved by the Scheme Administrator or (in the case of a proposed activity) the Scheme Administrator is satisfied that the person will, when the activity is carried out, have appropriate record keeping arrangements in respect of that activity, and

(c) in the case of a proposed activity—the Scheme Administrator is satisfied that the activity will be undertaken substantially as described in the person’s application for accreditation.

(2) A reference in this Division to an activity includes a reference to an existing or proposed activity.

### **39 Application for accreditation**

An application for accreditation as an energy savings certificate provider for an activity must—

(a) be made in the way approved by the Scheme Administrator, and

(b) be accompanied by the information relating to the activity the Scheme Administrator requires, and

(c) be accompanied by the fee set out in Schedule 3.

#### **Note—**

The Act, Schedule 4A, clause 39(5) allows the Scheme Administrator to charge a fee for investigating and determining an application for accreditation, in addition to the application fee.

### **40 Undertakings**

(1) The Scheme Administrator may require an applicant to give an undertaking to not claim a benefit under a corresponding scheme if claiming the benefit would result in a benefit being obtained under more than 1 scheme for the same energy savings.

(2) The Scheme Administrator may require an applicant to give an undertaking that, if the applicant is granted accreditation subject to an audit condition, the applicant will withhold from transfer a proportion of the energy savings certificates created by the applicant pending the result of the audit.

(3) The Scheme Administrator may require an accredited energy savings certificate provider whose accreditation is subject to an audit condition to give an undertaking to withhold from transfer a proportion of the energy savings certificates created by the provider pending the result of the audit.

(4) The Scheme Administrator must not require a person to give an undertaking to withhold from transfer more than 20% of the energy savings certificates created by the person.

(5) An undertaking must be given in the form approved by the Scheme Administrator.

(6) In this clause—

**applicant** means a person who applies for accreditation as an energy savings certificate provider.



**audit condition** means a condition requiring an audit under clause 56 of the creation of energy savings certificates.

#### **41 Grounds for refusal of application for accreditation**

- (1) The Scheme Administrator may refuse an application for accreditation as an energy savings certificate provider for an activity if—
  - (a) the Scheme Administrator is not satisfied that the applicant is eligible for accreditation as an energy savings certificate provider for the activity, or
  - (b) the application for accreditation is not properly made, or
  - (c) the applicant fails to give the Scheme Administrator an undertaking required to be given under clause 40, or
  - (d) the Scheme Administrator is not satisfied the applicant is competent to be an energy savings certificate provider for the activity, or
  - (e) the Scheme Administrator is satisfied the applicant is not a fit and proper person.
- (2) If the Scheme Administrator refuses an application for accreditation as an energy savings certificate provider, the Scheme Administrator must advise the applicant in writing of the grounds on which the application was refused.
- (3) An individual may not be a fit and proper person if the individual—
  - (a) has, in the previous 10 years, been found guilty of an offence involving fraud or dishonesty, whether in New South Wales or elsewhere, or
  - (b) has been found guilty of an offence under the Act or this Regulation.
- (4) A corporation may not be a fit and proper person if a person who is a director of the corporation or otherwise involved in the management of the corporation is not a fit and proper person under this clause.
- (5) Subclauses (3) and (4) do not limit the grounds on which the Scheme Administrator may be satisfied an applicant is not a fit and proper person.

#### **42 Suspension or cancellation of accreditation**

- (1) The Scheme Administrator may suspend or cancel the accreditation of a person as an energy savings certificate provider in respect of an activity on any of the following grounds—
  - (a) the Scheme Administrator is satisfied that the person has ceased to be eligible for accreditation as an energy savings certificate provider in respect of the activity,
  - (b) the person has requested the suspension or cancellation,

- (c) the Scheme Administrator is satisfied that the person, or a close associate of the person, has contravened a provision of the Act, the regulations, the scheme rules or a condition to which the accreditation is subject,
  - (d) the person has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
  - (e) the person is a corporation that is the subject of a winding up order or for which an insolvency official has been appointed,
  - (f) the Scheme Administrator is satisfied the person is not competent to be an energy savings certificate provider for the activity,
  - (g) the Scheme Administrator is satisfied the person is not a fit and proper person.
- (2) If the Scheme Administrator suspends or cancels the accreditation of a person, the Scheme Administrator is required to notify the person in writing of the suspension or cancellation and the grounds on which the accreditation is suspended or cancelled.
- (3) A suspension or cancellation takes effect when notice of the suspension or cancellation is given to the person by the Scheme Administrator, or on any later date specified by the Scheme Administrator in the notice.
- (4) An individual may not be a fit and proper person if the individual—
- (a) has, in the previous 10 years, been found guilty of an offence involving fraud or dishonesty, whether in New South Wales or elsewhere, or
  - (b) has been found guilty of an offence under the Act or this Regulation.
- (5) A corporation may not be a fit and proper person if a person who is a director of the corporation or otherwise involved in the management of the corporation is not a fit and proper person under this clause.
- (6) Subclauses (4) and (5) do not limit the grounds on which the Scheme Administrator may be satisfied an applicant is not a fit and proper person.

### **43 Transfer of accreditation**

An application for transfer of accreditation as an energy savings certificate provider must—

- (a) be made in the way approved by the Scheme Administrator, and
- (b) be accompanied by any information relating to the activity that the Scheme Administrator requires, and
- (c) be accompanied by the fee set out in Schedule 3.

#### **43A Application to amend accreditation**

- (1) An accredited certificate provider may apply to the Scheme Administrator to amend the activities for which the provider is accredited.
- (2) An application must be—
  - (a) made in the way approved by the Scheme Administrator, and
  - (b) accompanied by information required by the Scheme Administrator.

**Note—**

The Act, Schedule 4A, clause 42(6) allows the Scheme Administrator to charge a fee for investigating and determining an application to amend a provider's accreditation.

### **Division 5 Prescribed conditions of accreditation**

#### **44 Conditions of accreditation**

For the purposes of the Act, Schedule 4A, clause 41(1)(a), it is a condition of the accreditation of a person as an energy savings certificate provider that the person must not contravene any of the provisions of this Division.

#### **45 Contravention of undertaking**

An accredited certificate provider must not contravene any undertaking, of a kind referred to in clause 40, given to the Scheme Administrator in connection with the person's application for accreditation.

#### **46 Record keeping**

- (1) An accredited certificate provider in respect of a recognised energy saving activity must keep a record of the following—
  - (a) the location in which the activity occurred,
  - (b) the energy savings (calculated in accordance with the scheme rules) arising from that activity,
  - (c) the methodology, data and assumptions used to calculate those energy savings.
- (2) An accredited certificate provider must keep any other records that the Scheme Administrator, by notice in writing to the accredited certificate provider, requires the accredited certificate provider to keep.
- (3) A record required to be kept by a person by or under this clause must be retained by the person for at least 6 years after the record is made.
- (4) Records are to be kept in a way approved by the Scheme Administrator.

#### **47 Co-operation with audits**

- (1) An accredited certificate provider must provide the information and assistance required for an audit conducted under Division 8.
- (2) Without limiting subclause (1), an accredited certificate provider must give a person conducting an audit access to the provider's premises that the person reasonably requires for the purpose of the audit.

### **Division 6 Imposition of conditions by Scheme Administrator**

#### **48 Imposition of conditions by Scheme Administrator**

- (1) If the Scheme Administrator intends to impose a condition on the accreditation of a person as an energy savings certificate provider under the Act, Schedule 4A, clause 41(1)(b), either at the time of accreditation or any time during the period in which the accreditation remains in force, the Scheme Administrator must give notice in writing of that fact to the person.
- (2) The condition takes effect on the date on which the notice is given to the person, or a later date specified in the notice, subject to subclause (3).
- (3) In the case of a condition to be imposed at the time of accreditation, the condition does not take effect until the date on which the person is accredited as an energy savings certificate provider.
- (4) The Scheme Administrator may, at any time (by notice in writing given to a person), revoke or vary a condition imposed on the accreditation of the person by the Scheme Administrator.
- (5) If the Scheme Administrator imposes or varies a condition of accreditation of a person, the Scheme Administrator must advise the person in writing of the reasons for the decision to impose or vary the condition.

#### **49 Financial assurances**

- (1) This clause applies if the Scheme Administrator imposes a condition on the accreditation of a person as an energy savings certificate provider requiring the person to provide a financial assurance to the Scheme Administrator to secure or guarantee the person's compliance with any order that may be made against the person under the Act, Schedule 4A, clause 45.
- (2) The amount of any financial assurance required by the Scheme Administrator is to be determined by the Scheme Administrator having regard to the following—
  - (a) the activities in respect of which the person is accredited or to be accredited,
  - (b) the number of energy savings certificates that the person has created or is likely

to create,

- (c) the frequency of audits conducted or to be conducted in respect of the person,
  - (d) any other matters the Scheme Administrator considers relevant.
- (3) A financial assurance is to be in the form that the Scheme Administrator considers appropriate (such as a bank guarantee or bond).
- (4) A financial assurance provided to the Scheme Administrator may be claimed or realised by the Scheme Administrator only if—
- (a) an order is made against the person under the Act, Schedule 4A, clause 45, and
  - (b) the person who gave the financial assurance fails to comply with the order.
- (5) The Scheme Administrator must give to the person who provided the financial assurance written notice of its intention to make a claim on or realise the financial assurance (or any part of it) at least 21 days before doing so.
- (6) The maximum amount that the Scheme Administrator may claim or recover under the financial assurance is the compliance cost in respect of the person's failure to comply with the order under the Act, Schedule 4A, clause 45.
- (7) For the purposes of this clause, the **compliance cost** in respect of a person's failure to comply with an order under the Act, Schedule 4A, clause 45 is to be determined by the Scheme Administrator by multiplying the number of certificates that the person failed to surrender in compliance with the order by the scheme penalty rate for the year in which the financial assurance is claimed on or realised.

## **50 Application to vary or revoke conditions of accreditation**

- (1) An accredited certificate provider may apply to the Scheme Administrator to vary or revoke a condition of the provider's accreditation.
- (2) An application must—
- (a) be made in the way approved by the Scheme Administrator, and
  - (b) be accompanied by the information the Scheme Administrator requires.

### **Note—**

The Act, Schedule 4A, clause 42(6) allows the Scheme Administrator to charge a fee for investigating and determining an application to amend a provider's accreditation.

## **Division 7 Energy savings certificates**

### **51 Registration of creation of certificates**

- (1) An application for registration of the creation of an energy savings certificate must be made to the Scheme Administrator in the way approved by the Scheme Administrator.
- (2) The application must be accompanied by the fee set out in Schedule 3 for each certificate created.
- (3) The Scheme Administrator may refuse an application for registration of the creation of an energy savings certificate on any of the following grounds—
  - (a) the applicant is not an accredited certificate provider or the accreditation of the person as an energy savings certificate provider is suspended at the time of application,
  - (b) the application for registration was not properly made or is incomplete,
  - (c) the Scheme Administrator is not satisfied the applicant was entitled to create the certificate,
  - (d) the Scheme Administrator is satisfied the accredited certificate provider who created the energy savings certificate has contravened a provision of the Act, the regulations, the scheme rules or the conditions of the accredited certificate provider's accreditation.
- (4) If the Scheme Administrator refuses an application for registration of the creation of an energy savings certificate, the Scheme Administrator must notify the applicant in writing of the refusal and the reasons for the refusal.

### **52 Form of energy savings certificates**

- (1) Energy savings certificates are to be created in a form approved by the Scheme Administrator.
- (2) Each energy savings certificate is to include the following—
  - (a) a statement of the activity in respect of which the energy savings certificate is created, including any information relating to that activity that the Scheme Administrator, by notice in writing to an accredited certificate provider, requires to be included in the certificate,
  - (b) the year in which the energy savings arising from the activity occurred,
  - (b1) in the case of a certificate that relates to an energy savings activity that occurred in a State or Territory for which there is an approved corresponding scheme under the Act, Schedule 4A, clause 30—the State or Territory in which the

activity occurred,

(c) the name of the person who created the certificate.

### **53 Order requiring surrender of energy savings certificates**

(1) This clause applies if—

- (a) an order is made or proposed to be made under the Act, Schedule 4A, clause 45 against a person, and
- (b) the order is made or proposed to be made because the Scheme Administrator is satisfied the person is guilty of an offence of contravening a condition of the person's accreditation as a certificate provider referred to in clause 44, and
- (c) the condition was contravened because the person did not comply with an undertaking given under clause 40.

**Note—**

see clauses 44 and 45.

(2) For the purposes of the Act, Schedule 4A, clause 45(4), the number of energy savings certificates to be surrendered under the order is—

- (a) if the contravention relates to an undertaking under clause 40(1)—the number that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were created in respect of energy savings for which a benefit was obtained under a corresponding scheme, and
- (b) if the contravention relates to an undertaking under clause 40(2) or (3)—the number that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were not withheld from transfer in accordance with the undertaking.

### **54 Registration of transfer of certificates**

(1) An application for registration of the transfer of an energy savings certificate is to be made to the Scheme Administrator in the way approved by the Scheme Administrator.

(2) The Scheme Administrator may refuse an application for registration of the transfer of an energy savings certificate on any of the following grounds—

- (a) the application for registration is not duly made,
- (b) the Scheme Administrator is of the opinion that the proposed transfer of the energy savings certificate contravenes the Act, the regulations or the scheme rules.

(3) If the Scheme Administrator refuses an application for registration of the transfer of

an energy savings certificate, the Scheme Administrator must notify the applicant in writing of the reasons for the determination.

## **Division 8 Audits**

### **55 Audits of scheme participants**

- (1) The Scheme Regulator may, at any time, conduct audits (or require audits to be conducted) of a scheme participant in relation to the scheme participant's compliance with the energy savings scheme.
- (2) An audit may be conducted for the purpose of—
  - (a) substantiating information provided to the Scheme Regulator, or
  - (b) determining whether the scheme participant has complied with the Act, the regulations or the scheme rules.
- (3) In the case of an audit required by the Scheme Regulator, the Scheme Regulator may require the audit to be conducted by—
  - (a) a person nominated by the Scheme Regulator, or
  - (b) a person chosen by the scheme participant from a panel of persons nominated by the Scheme Regulator, or
  - (c) a person nominated by the scheme participant and approved by the Scheme Regulator.
- (4) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Scheme Regulator.

### **56 Audits of accredited certificate providers**

- (1) The Scheme Administrator may, at any time, conduct audits (or require audits to be conducted) of accredited certificate providers in relation to the following matters—
  - (a) the creation of energy savings certificates,
  - (b) eligibility for accreditation,
  - (c) compliance with any conditions of accreditation.
- (2) An audit may be conducted for the purpose of—
  - (a) substantiating information provided to the Scheme Administrator, or
  - (b) determining whether the provider has complied with the Act, the regulations, the scheme rules or the conditions of the provider's accreditation.



- (3) In the case of an audit required by the Scheme Administrator, the Scheme Administrator may require the audit to be conducted by—
  - (a) a person nominated by the Scheme Administrator, or
  - (b) a person chosen by the accredited certificate provider from a panel of persons nominated by the Scheme Administrator, or
  - (c) a person nominated by the accredited certificate provider and approved by the Scheme Administrator.
- (4) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Scheme Administrator.

### **57 Impersonating approved auditor**

A person must not impersonate an approved auditor.

Maximum penalty—250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

## **Division 9 Registers**

### **58 Register of accredited certificate providers**

- (1) The register of accredited certificate providers is to include the following information in relation to each accredited certificate provider, in addition to the information specified in the Act, Schedule 4A, clause 65(1)(a)—
  - (a) the activity or activities in respect of which the accredited certificate provider is accredited as an energy savings certificate provider,
  - (b) the total number of energy savings certificates created by the accredited certificate provider in respect of each of those activities and registered in the register of energy savings certificates in the previous calendar year,
  - (c) the States or Territories in which those activities took place,
  - (d) any other information relating to the provider's accreditation that the Scheme Administrator considers appropriate.
- (2) The register of accredited certificate providers is to include the following information in relation to a person whose accreditation as an energy savings certificate provider is suspended or cancelled—
  - (a) the name of the person,
  - (b) the reason or reasons why the accreditation was suspended or cancelled,
  - (c) the date on which the accreditation was suspended or cancelled and, in the case

of a suspension, the period of the suspension,

(d) any other information relating to the person that the Scheme Administrator considers appropriate.

(3) The information required to be included in the register by this clause is to be made available to the public under the Act, Schedule 4A, clause 65, in addition to the information referred to in the Act, Schedule 4A, clause 65(1)(a).

#### **58AA Register of persons refused accreditation**

For the Act, Schedule 4A, clause 65A(c), the register of persons refused accreditation as accredited certificate providers must include the following information about each person refused accreditation—

- (a) the date the person's application for accreditation was made,
- (b) the date the person's application for accreditation was refused,
- (c) the activities for which the person applied for accreditation.

#### **58AB Information from registers**

For the Act, Schedule 4A, clause 67(d), the following information is prescribed in relation to a person refused accreditation as an accredited certificate provider—

- (a) the name of the person,
- (b) the date the person's application for accreditation was made,
- (c) the date the person's application for accreditation was refused,
- (d) the activities for which the person applied for accreditation,
- (e) the reasons the person was refused accreditation.

### **Division 10 Miscellaneous**

#### **58A Conditions under which energy savings scheme targets may be changed**

- (1) For the purposes of the Act, Schedule 4A, clauses 8(b) and 17(4)(b)—
  - (a) the evidence of an under supply of energy savings certificates must comprise evidence that, in each of 2 or more consecutive years, the total number of certificates required to meet all individual energy savings targets in the year exceeded, by at least 10%, the sum of the total number of certificates created in that year and the total number of certificates created in a previous year and not surrendered by the beginning of the year, and
  - (b) the evidence of an over supply of energy savings certificates must comprise

evidence that the sum of the total number of certificates created in a year and the total number of certificates created in a previous year and not surrendered by the beginning of the year exceeded, by at least 20%, the total number of certificates required to meet all individual energy savings targets in the year.

- (2) For the purposes of subclause (1), any energy savings certificates created under an approved corresponding scheme that are not able to be surrendered by a scheme participant for the purposes of meeting its individual energy savings target or remedying a carried forward shortfall are to be disregarded.

## **59 Decisions reviewable by Civil and Administrative Tribunal**

For the purposes of the Act, Schedule 4A, clause 73(2)(d), the following decisions are prescribed—

- (a) a decision of the Scheme Administrator to impose or vary a condition of the accreditation of an accredited certificate provider,
- (a1) a decision of the Scheme Administrator to refuse to vary the activities for which an accredited certificate provider is accredited,
- (b) a decision of the Scheme Administrator to make a claim on or realise any financial assurance provided by an accredited certificate provider.

### **Note—**

This clause allows the decisions referred to above to be reviewed by the Civil and Administrative Tribunal.

## **59A Annual report by Scheme Regulator**

For the Act, Schedule 4A, clause 76(1A)(a), the prescribed date is 31 July in the subsequent year.

# **Part 7 Peak demand reduction scheme**

## **Division 1 Preliminary**

### **59B Definitions**

In this Part—

***approved auditor*** means a person required to conduct an audit under Division 7.

***corresponding scheme*** means a scheme or arrangement with similar objectives to the peak demand reduction scheme.

### **59C Direct suppliers of electricity**

- (1) For the Act, Schedule 4A, clause 81, definition of ***direct supplier of electricity***, the following electricity generators are prescribed—

(a) AGL Macquarie Pty Limited (ACN 167 859 494),

(b) Sunset Power International Pty Ltd (ACN 162 696 335).

(2) For the Act, Schedule 4A, clause 90(2)(b), the following are liable acquisitions—

(a) the supply of electricity by AGL Macquarie Pty Limited (ACN 167 859 494) to Tomago Aluminium Company Pty Ltd (ACN 001 862 228),

(b) the supply of electricity by Sunset Power International Pty Ltd (ACN 162 696 335) under an electricity supply arrangement to—

(i) BlueScope Steel (AIS) Pty Ltd (ACN 000 019 625), or

(ii) BHP Billiton Limited (ACN 004 028 077).

## **60 Peak demand reduction targets**

For the purposes of the Act, Schedule 4A, clause 84(1), the targets specified in the following table are prescribed for each compliance period—

<b>Compliance period</b>	<b>Target</b>
2022–2023	0.5%
2023–2024	1%
2024–2025	3%
2025–2026	5.5%
2026–2027	7.5%
2027–2028	8.5%
2028–2029	9.5%
2029–2030	10%
2030–2031	10%
2031–2032	10%
2032–2033	10%
2033–2034	10%
2034–2035	10%
2035–2036	10%
2036–2037	10%
2037–2038	10%

2038–2039	10%
2039–2040	10%
2040–2041	10%
2041–2042	10%
2042–2043	10%
2043–2044	10%
2044–2045	10%
2045–2046	10%
2046–2047	10%
2047–2048	10%
2048–2049	10%
2049–2050	10%

### 61 Peak demand reduction period

For the purposes of the Act, Schedule 4A, clause 85(1), the peak demand reduction period for a compliance period is the period between 2:30pm and 8:30pm Australian Eastern Standard Time on each day of the compliance period.

### 62 Scheme penalty rates

(1) For the purposes of the Act, Schedule 4A, clause 99, the scheme penalty rate is—

- (a) for the 2022–2023 compliance period—\$2.35 per certificate, or
- (b) for each subsequent compliance period—the amount calculated as follows—

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

**CPI<sub>current year</sub>** means the consumer price index for the June quarter immediately before the beginning of the compliance period.

**CPI<sub>Jun 22</sub>** means the consumer price index for the June quarter 2022.

- (2) The amount of the scheme penalty rate is to be rounded up to the nearest cent.
- (3) The scheme penalty rate for each compliance period, other than the 2022–2023 compliance period, must be published on the Scheme Regulator’s website before the beginning of the compliance period.

## **Division 2 Assessment of compliance of scheme participants**

### **62A Definition of “assessment”**

In this Division—

**assessment**, of a scheme participant, means an assessment of the following—

- (a) the participant’s individual liable demand for a compliance period,
- (b) the participant’s individual certificate target for a compliance period,
- (c) the participant’s liability for a shortfall penalty for a compliance period, including liability for a shortfall penalty for a carried forward shortfall.

### **62B Notification of individual liable demand**

A calculation of a scheme participant’s individual liable demand is taken to have been notified to the Scheme Regulator on—

- (a) 30 September in the year the compliance period ends, or
- (b) the day on which the participant gives the Scheme Regulator the notice required by the Act, Schedule 4A, clause 89(4).

### **62C Self-assessment provided in annual statement**

- (1) An assessment provided by a scheme participant in an annual statement is taken to have been made on the last of the following days—
  - (a) 15 December in the year the compliance period ends, or
  - (b) the day on which the annual statement is lodged.
- (2) The liability of a scheme participant for a shortfall penalty for a compliance period is the assessment of the liability provided by the participant in the annual statement for the compliance period, unless another assessment is or has been made by the Scheme Regulator.

### **62D Default calculation of individual liable demand**

- (1) In calculating a scheme participant’s individual liable demand for the Act, Schedule 4A, clause 89(5), the Scheme Regulator must apply the formula in the Act, Schedule 4A, clause 89(1).
- (2) In determining a scheme participant’s liable acquisitions for the purpose of the formula, the Scheme Regulator—
  - (a) may base the assessment on the Scheme Regulator’s best estimate of the scheme participant’s liable acquisitions, verified by the Market Operator where possible,

and

(b) may take into account any other matters the Scheme Regulator considers appropriate.

(3) As soon as practicable after the calculation is made, the Scheme Regulator must give written notice of the calculation to the scheme participant.

(4) The calculation is taken to have been made on—

(a) 30 September in the year the relevant compliance period ends, or

(b) a later date specified by the Scheme Regulator in the notice of assessment given to the scheme participant.

#### **62E Default assessments where annual statement not lodged**

(1) The Scheme Regulator may make an assessment for a compliance period if a scheme participant fails to lodge an annual statement for the compliance period in accordance with the Act.

(2) In making an assessment the Scheme Regulator must—

(a) for an assessment of a participant's individual certificate target—apply the formula in the Act, Schedule 4A, clause 92, and

(b) for an assessment of the participant's liability for a shortfall penalty for a compliance period—calculate the shortfall penalty in accordance with the Act, Schedule 4A, clause 98(2).

(3) As soon as practicable after the assessment is made the Scheme Regulator must give written notice of the assessment to the scheme participant.

(4) The assessment is taken to have been made on—

(a) 15 December in the year the compliance period ends, or

(b) a later date specified by the Scheme Regulator in the notice of assessment given to the scheme participant.

#### **62F Amendment of assessments generally**

(1) The Scheme Regulator may, at any time, amend an assessment by making the alterations or additions the Scheme Regulator thinks necessary to correct the assessment.

(2) The Scheme Regulator may amend an assessment for a compliance period whether or not the scheme participant has paid a shortfall penalty for the period.

(3) As soon as practicable after an assessment is amended, the Scheme Regulator must

give written notice of the amended assessment to the scheme participant.

- (4) The Scheme Regulator may revoke the cancellation of, and revive, a certificate surrendered in connection with an unamended assessment if, in the Scheme Regulator's opinion, the scheme participant surrendered a greater number of certificates in connection with the assessment than was required to—
  - (a) meet the participant's individual certificate target, or
  - (b) remedy a carried forward shortfall.
- (5) When reviving surrendered certificates, the Scheme Regulator must revive the number of certificates the Scheme Regulator is satisfied are surplus to the number required to be surrendered in connection with the amended assessment.
- (6) When selecting certificates to be revived, the Scheme Regulator must revive the certificates with the longest remaining period before expiry under the Act, Schedule 4A, clause 119.
- (7) If there are insufficient certificates able to be revived under subclause (6), the Scheme Regulator may revive expired certificates, but only for 12 months.
- (8) An assessment may be amended under this clause no later than 12 months after the date on which the assessment is taken to have been made under this Division.
- (9) Subclause (8) does not apply to—
  - (a) an amendment the Scheme Regulator is satisfied is required due to fraud or the provision of false or misleading information by a scheme participant, or
  - (b) an amendment applied for by the scheme participant.

#### **62G Application for amended assessment**

- (1) A scheme participant may apply to the Scheme Regulator for the amendment of an assessment relating to the participant.
- (2) An application may be made no later than 12 months after the day on which the assessment is taken to have been made under this Division.
- (3) An application must be in the form approved by the Scheme Regulator and state the grounds on which the amendment is sought.
- (4) A scheme participant may, in an application under this clause, elect to surrender additional certificates for the purposes of the amended assessment.
- (5) An election must contain details of the certificates proposed to be surrendered.
- (6) The Scheme Regulator may deal with an election as if the election had accompanied



the annual statement to which the assessment relates.

#### **62H Changes to liability for shortfall penalty as result of amended assessment**

- (1) A shortfall penalty payable due to the amendment of an assessment is taken to be payable on the later of the following dates—
  - (a) the date 7 days after the date the Scheme Regulator gives the scheme participant notice of the amended assessment,
  - (b) the date on which a shortfall penalty would have been payable under the original assessment.
- (2) The Scheme Regulator may extend the period for payment of a shortfall penalty that becomes payable as a result of the amendment of an assessment.
- (3) A scheme participant whose liability for a shortfall penalty is reduced as a result of an amended assessment is entitled to a refund of an excess shortfall penalty paid under the previous assessment.
- (4) If an assessment has been amended, the Scheme Regulator may, within 12 months after the day on which a shortfall penalty became payable under the amended assessment, further amend the assessment if satisfied the further amendment is necessary to make a just reduction in the scheme participant's liability under the assessment.

#### **62I Effect on appeals**

Nothing in this Division prevents the amendment of an assessment to give effect to a decision on a review or appeal under the Act.

### **Division 3 Accreditation of certificate providers**

#### **62J Eligibility for accreditation**

- (1) A person is eligible for accreditation as a certificate provider for an activity if—
  - (a) the activity is recognised under the scheme rules, and
  - (b) the Scheme Administrator—
    - (i) approved the person's record keeping arrangements, or
    - (ii) for a proposed activity—is satisfied the person will, when the activity is carried out, have appropriate record keeping arrangements, and
  - (c) the Scheme Administrator is satisfied the activity will be undertaken substantially as described in the person's application for accreditation.
- (2) A reference in this Division to an activity includes a reference to an existing or

proposed activity.

### **62K Application for accreditation**

An application for accreditation as a certificate provider for an activity must—

- (a) be made in the way approved by the Scheme Administrator, and
- (b) be accompanied by the information relating to the activity the Scheme Administrator requires, and
- (c) be accompanied by the fee set out in Schedule 3.

#### **Note—**

The Act, Schedule 4A, clause 111(4) allows the Scheme Administrator to charge a fee for investigating and determining an application for accreditation, in addition to the application fee.

### **62L Undertakings**

- (1) The Scheme Administrator may require an applicant to give an undertaking to not claim a benefit under a corresponding scheme if claiming the benefit would result in a benefit being obtained under more than 1 scheme for the same demand reduction.
- (2) The Scheme Administrator may require an applicant to give an undertaking that, if the applicant is granted accreditation subject to an audit condition, the applicant will withhold from transfer a proportion of the certificates created by the applicant pending the result of the audit.
- (3) The Scheme Administrator may require an accredited certificate provider who is subject to an audit condition to give an undertaking to withhold from transfer a proportion of the certificates created by the provider pending the result of the audit.
- (4) The Scheme Administrator must not require a person to give an undertaking to withhold from transfer more than 20% of the certificates created by the person.
- (5) An undertaking must be given in the form required by the Scheme Administrator.
- (6) In this clause—

**applicant** means a person who applies for accreditation as a certificate provider.

**audit condition** means a condition requiring an audit under clause 62ZC of the creation of certificates.

### **62M Grounds for refusal of application for accreditation**

- (1) The Scheme Administrator may refuse an application for accreditation as a certificate provider for an activity if—
  - (a) the Scheme Administrator is not satisfied the applicant is eligible for accreditation

- as a certificate provider for the activity, or
  - (b) the application for accreditation is not properly made, or
  - (c) the applicant fails to give the Scheme Administrator an undertaking required to be given under clause 62L, or
  - (d) the Scheme Administrator is not satisfied the applicant is competent to be a certificate provider for the activity, or
  - (e) the Scheme Administrator is satisfied the applicant is not a fit and proper person.
- (2) If the Scheme Administrator refuses an application for accreditation as a certificate provider, the Scheme Administrator must give the applicant written notice of the grounds for refusal.
- (3) An individual may not be a fit and proper person if the individual—
- (a) has, in the previous 10 years, been found guilty of an offence involving fraud or dishonesty, whether in New South Wales or elsewhere, or
  - (b) has been found guilty of an offence under the Act or this Regulation.
- (4) A corporation may not be a fit and proper person if a person who is a director of the corporation or otherwise involved in the management of the corporation is not a fit and proper person under this clause.
- (5) Subclauses (3) and (4) do not limit the grounds on which the Scheme Administrator may be satisfied an applicant is not a fit and proper person.

#### **62N Suspension or cancellation of accreditation**

- (1) The Scheme Administrator may suspend or cancel the accreditation of a person as a certificate provider for an activity on 1 or more of the following grounds—
- (a) the Scheme Administrator is satisfied—
    - (i) the person has ceased to be eligible for accreditation as a certificate provider for the activity, or
    - (ii) the person, or a close associate of the person, has contravened a provision of the Act, the regulations, the scheme rules or a condition to which the accreditation is subject,
  - (b) the person has requested the suspension or cancellation,
  - (c) the person is an individual who has—
    - (i) become bankrupt, or

- (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors, or
  - (iii) compounded with the person's creditors or made an assignment of remuneration for the benefit of the person's creditors,
  - (d) the person is a corporation the subject of a winding up order or for which an insolvency official has been appointed,
  - (e) the Scheme Administrator is not satisfied the person is competent to be a certificate provider for the activity,
  - (f) the Scheme Administrator is satisfied the person is not a fit and proper person.
- (2) If the Scheme Administrator suspends or cancels the accreditation of a person, the Scheme Administrator must give the person written notice of the suspension or cancellation with reasons.
- (3) A suspension or cancellation takes effect—
- (a) when notice of the suspension or cancellation is given to the person, or
  - (b) on a later date specified by the Scheme Administrator in the notice.
- (4) An individual may not be a fit and proper person if the individual—
- (a) has, in the previous 10 years, been found guilty of an offence involving fraud or dishonesty, whether in New South Wales or elsewhere, or
  - (b) has been found guilty of an offence under the Act or this Regulation.
- (5) A corporation may not be a fit and proper person if a person who is a director of the corporation or otherwise involved in the management of the corporation is not a fit and proper person under this clause.
- (6) Subclauses (4) and (5) do not limit the grounds on which the Scheme Administrator may be satisfied an applicant is not a fit and proper person.

## **620 Transfer of accreditation**

An application for transfer of accreditation as a certificate provider must be—

- (a) made in the way required by the Scheme Administrator, and
- (b) accompanied by the information relating to the activity required by the Scheme Administrator, and
- (c) accompanied by the fee set out in Schedule 3.

### **62P Application to amend accreditation**

- (1) An accredited certificate provider may apply to the Scheme Administrator to amend the activities for which the provider is accredited.
- (2) An application must be—
  - (a) made in the way approved by the Scheme Administrator, and
  - (b) accompanied by information required by the Scheme Administrator.

#### **Note—**

The Act, Schedule 4A, clause 115(6) allows the Scheme Administrator to charge a fee for investigating and determining an application to amend a provider's accreditation.

## **Division 4 Prescribed conditions of accreditation**

### **62Q Conditions of accreditation**

For the Act, Schedule 4A, clause 114(1)(a), it is a condition of the accreditation of a person as a certificate provider that the person must not contravene a provision of this Division.

### **62R Contravention of undertaking**

An accredited certificate provider must not contravene an undertaking, given to the Scheme Administrator under clause 62L, in connection with the person's accreditation or application for accreditation.

### **62S Record keeping**

- (1) An accredited certificate provider must keep the following records—
  - (a) a record of—
    - (i) the location in which the activity occurred, and
    - (ii) the peak demand reduction capacity, calculated in accordance with the scheme rules, arising from the activity, and
    - (iii) the methodology, data and assumptions used to calculate the peak demand reduction capacity,
  - (b) other records the Scheme Administrator, by written notice, requires the accredited certificate provider to keep.
- (2) A record must be kept—
  - (a) for at least 6 years after the record is made, and
  - (b) in a way approved by the Scheme Administrator.

### **62T Co-operation with audits**

- (1) An accredited certificate provider must provide the information and assistance required for an audit conducted under Division 7.
- (2) Without limiting subclause (1), an accredited certificate provider must give a person conducting an audit access to the provider's premises that the person reasonably requires for the purpose of the audit.

## **Division 5 Imposition of conditions by Scheme Administrator**

### **62U Imposition of conditions by Scheme Administrator**

- (1) If the Scheme Administrator intends to impose a condition on the accreditation of a person as a certificate provider under the Act, Schedule 4A, clause 114(1)(b), either at the time of accreditation or during the period in which the accreditation remains in force, the Scheme Administrator must give the person written notice of the condition.
- (2) The condition takes effect on the date on which the notice is given to the person or a later date specified in the notice.
- (3) The Scheme Administrator may, at any time, by written notice given to a person, revoke or vary a condition imposed on the accreditation of the person by the Scheme Administrator.
- (4) If the Scheme Administrator imposes a condition on, or varies a condition of, the accreditation of a person, the Scheme Administrator must give the person written notice of the reasons for the decision to impose or vary the condition.

### **62V Financial assurances**

- (1) This clause applies if the Scheme Administrator imposes a condition on the accreditation of a person as a certificate provider requiring the person to provide financial assurance to the Scheme Administrator to secure or guarantee the person's compliance with an order that may be made against the person under the Act, Schedule 4A, clause 117.
- (2) The amount of financial assurance required by the Scheme Administrator must be determined having regard to the following—
  - (a) the activities for which the person is accredited or is to be accredited,
  - (b) the number of certificates the person has created or is likely to create,
  - (c) the frequency of audits conducted or to be conducted of the person's activities,
  - (d) other matters the Scheme Administrator considers relevant.
- (3) Financial assurance must be in the form the Scheme Administrator considers

appropriate, for example a bank guarantee or bond.

- (4) A claim may be made on the financial assurance provided by a scheme participant only if—
  - (a) an order is made against the person under the Act, Schedule 4A, clause 117, and
  - (b) the person who gave the assurance fails to comply with the order.
- (5) The Scheme Administrator must give to the person who provided financial assurance written notice of an intention to make a claim at least 21 days before making the claim.
- (6) The maximum amount the Scheme Administrator may claim is calculated by multiplying the number of certificates the person failed to surrender in compliance with the order by the scheme penalty rate for the compliance period in which the claim is made.

#### **62W Application to vary or revoke conditions of accreditation**

- (1) An accredited certificate provider may apply to the Scheme Administrator to vary or revoke a condition of the provider's accreditation.
- (2) An application must be—
  - (a) made in the way approved by the Scheme Administrator, and
  - (b) accompanied by the information the Scheme Administrator requires.

**Note—**

The Act, Schedule 4A, clause 115(6) allows the Scheme Administrator to charge a fee for investigating and determining an application to amend a provider's accreditation.

## **Division 6 Certificates**

#### **62X Registration of creation of certificates**

- (1) An application for registration of the creation of a certificate must be made to the Scheme Administrator in the way approved by the Scheme Administrator.
- (2) For each certificate created, the application must be accompanied by the fee set out in Schedule 3.
- (3) The Scheme Administrator may refuse an application for registration of the creation of a certificate on 1 or more of the following grounds—
  - (a) the applicant is not an accredited certificate provider or the accreditation of the person as a certificate provider is suspended at the time of application,

- (b) the application for registration was not properly made,
  - (c) the Scheme Administrator is not satisfied the applicant was entitled to create the certificate,
  - (d) the Scheme Administrator is satisfied the accredited certificate provider who created the certificate has contravened a provision of the Act, this Regulation, the scheme rules or the conditions of the accredited certificate provider's accreditation.
- (4) If the Scheme Administrator refuses an application for registration of the creation of a certificate, the Scheme Administrator must give the applicant written notice of the refusal and the reasons for the refusal.

#### **62Y Form of certificates**

- (1) Certificates must be created in a form approved by the Scheme Administrator.
- (2) Each certificate must include the following—
  - (a) the name of the person who created the certificate,
  - (b) a statement of the activity for which the certificate is created, including the information the Scheme Administrator by written notice requires the accredited certificate provider to include in the certificate,
  - (c) the compliance period in which the activity occurred,
  - (d) the compliance period in which the capacity to reduce demand will be made available,
  - (e) for a certificate relating to an activity that occurred in a State or Territory for which there is an approved corresponding scheme under the Act, Schedule 4A, clause 107—the State or Territory in which the activity occurred,
  - (f) the certificate expiry date.

#### **62Z Order requiring surrender of certificates**

- (1) This clause applies if an order is made or proposed to be made under the Act, Schedule 4A, clause 117 against a person who the Scheme Administrator is satisfied is guilty of an offence under the Act, Schedule 4A, clause 114(2), being an offence arising from a contravention of a condition referred to in clause 62R.
- (2) For the Act, Schedule 4A, clause 117, the number of certificates to be surrendered under the order is—
  - (a) if the contravention relates to an undertaking under clause 62L(1)—the number equivalent to the number of certificates for which, in the Scheme Administrator's



opinion, a benefit was obtained under a corresponding scheme, and

- (b) if the contravention relates to an undertaking under clause 62L(2) or (3)—the number equivalent to the number of certificates the Scheme Administrator is satisfied were not withheld from transfer in accordance with the undertaking.

#### **62ZA Registration of transfer of certificates**

- (1) An application for registration of the transfer of a certificate must be made to the Scheme Administrator in the way approved by the Scheme Administrator.
- (2) The Scheme Administrator may refuse an application for registration of the transfer of a certificate if satisfied—
  - (a) the application for registration is not properly made, or
  - (b) the proposed transfer contravenes the Act, this Regulation or the scheme rules.
- (3) If the Scheme Administrator refuses an application for registration of the transfer of a certificate, the Scheme Administrator must give the applicant written notice of the reasons for the refusal.

### **Division 7 Audits**

#### **62ZB Audit of scheme participant**

- (1) The Scheme Regulator may, at any time, conduct an audit, or require an audit be conducted, of a scheme participant's compliance with the peak demand reduction scheme.
- (2) An audit may be conducted—
  - (a) to substantiate information provided to the Scheme Regulator, or
  - (b) to determine whether the scheme participant has complied with the Act, this Regulation or the scheme rules.
- (3) For an audit required by the Scheme Regulator, the Scheme Regulator may require the audit to be conducted by a person—
  - (a) nominated by the Scheme Regulator, or
  - (b) chosen by the scheme participant from a panel of persons nominated by the Scheme Regulator, or
  - (c) nominated by the scheme participant and approved by the Scheme Regulator.
- (4) An audit must be conducted in accordance with the directions of the Scheme Regulator.

### **622C Audit of accredited certificate provider**

- (1) The Scheme Administrator may, at any time, conduct an audit, or require an audit be conducted, of an accredited certificate provider in relation to the following matters—
  - (a) the creation of certificates,
  - (b) eligibility for accreditation,
  - (c) compliance with a condition of accreditation.
- (2) An audit may be conducted—
  - (a) to substantiate information provided to the Scheme Administrator, or
  - (b) to determine whether the provider has complied with the Act, this Regulation, the scheme rules or the conditions of the provider's accreditation.
- (3) For an audit required by the Scheme Administrator, the Scheme Administrator may require the audit to be conducted by a person—
  - (a) nominated by the Scheme Administrator, or
  - (b) chosen by the accredited certificate provider from a panel of persons nominated by the Scheme Administrator, or
  - (c) nominated by the accredited certificate provider and approved by the Scheme Administrator.
- (4) An audit must be conducted in accordance with the directions of the Scheme Administrator.

### **622D Impersonating an auditor**

A person must not impersonate an approved auditor.

Maximum penalty—

- (a) for a corporation—250 penalty units, or
- (b) for an individual—100 penalty units.

## **Division 8 Registers**

### **622E Register of accredited certificate providers**

- (1) The register of accredited certificate providers must include the following information about each accredited certificate provider, in addition to the information specified in the Act, Schedule 4A, clause 134—
  - (a) the activity or activities for which the accredited certificate provider is accredited,

- (b) the total number of certificates created by the accredited certificate provider for each activity and registered in the register of certificates in the previous compliance period,
  - (c) the States or Territories in which the activities took place.
- (2) The register of accredited certificate providers must include the following information about a person whose accreditation as a certificate provider is suspended or cancelled—
- (a) the name of the person,
  - (b) the reasons the accreditation was suspended or cancelled,
  - (c) the date on which the accreditation was suspended or cancelled,
  - (d) for a suspension—the period of the suspension.

#### **62ZF Register of persons refused accreditation**

For the Act, Schedule 4A, clause 134A, the register of persons refused accreditation as accredited certificate providers must include the following information about each person refused accreditation—

- (a) the date the person's application for accreditation was made,
- (b) the date the person's application for accreditation was refused,
- (c) the activities for which the person applied for accreditation.

### **Division 9 Miscellaneous**

#### **62ZG Conditions under which peak demand reduction targets may be changed**

- (1) For the Act, Schedule 4A, clauses 84(4)(c) and 99(3)(c)—
- (a) the evidence of an under supply of certificates must comprise evidence that, for each of 2 or more consecutive compliance periods, the scheme certificate target for the compliance period exceeded the number of certificates available to meet the target by 10% or more, and
  - (b) the evidence of an oversupply of certificates must comprise evidence that for a compliance period the number of certificates available to meet the scheme certificate target exceeded the target by 20% or more.
- (2) A certificate created under an approved corresponding scheme that is unable to be surrendered by a scheme participant for the purposes of meeting the individual certificate target or remedying a carried forward shortfall must be disregarded.

### **62ZH Decisions reviewable by Civil and Administrative Tribunal**

For the Act, Schedule 4A, clause 139(2)(d), the following decisions of the Scheme Administrator are prescribed—

- (a) a decision to impose or vary a condition of the accreditation of a certificate provider,
- (b) a decision to refuse to vary the activities for which an accredited certificate provider is accredited,
- (c) a decision to make a claim on financial assurance provided by an accredited certificate provider.

#### **Note—**

This clause allows the decisions referred to above to be reviewed by the Civil and Administrative Tribunal.

### **62ZI Relevant agencies**

For the Act, Schedule 4A, clause 136A(3), definition of **relevant agency**, paragraph (b), the following bodies are prescribed—

- (a) the person appointed as the administrator under the *Energy Efficiency (Cost of Living) Improvement Act 2012* of the Australian Capital Territory, section 23,
- (b) the Australian Energy Regulator established by the *Competition and Consumer Act 2010* of the Commonwealth, section 44AE,
- (c) the Australian Transaction Reports and Analysis Centre established by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth, section 209,
- (d) the Clean Energy Regulator established by the *Clean Energy Regulator Act 2011* of the Commonwealth, section 11,
- (e) the Essential Services Commission established by the *Essential Services Commission Act 2002* of South Australia, section 4(1),
- (f) the Essential Services Commission established by the *Essential Services Commission Act 2001* of Victoria, section 7(1),
- (g) AEMO,
- (h) the Australian Federal Police,
- (i) the NSW Police Force.

### **62ZJ Annual report by Scheme Regulator**

For the Act, Schedule 4A, clause 142(1A)(a), the prescribed date is 31 July in the

subsequent year.

## Part 7A Renewable fuel scheme

### 63 Scheme target for green hydrogen

For the purposes of the Act, Schedule 4A, clause 151(3), the scheme targets for green hydrogen specified in the following table are prescribed for each compliance period—

Compliance period	Target (in gigajoules)
2024	90,000
2025	360,000
2026	890,000
2027	1,780,000
2028	3,200,000
2029	5,330,000
2030–2044	8,000,000

### 63A Scheme penalty rates

For the Act, Schedule 4A, clause 163(1), \$17.50 per certificate is prescribed as the scheme penalty rate for the 2025 compliance period.

## Part 7B Limitation on recovery of charges from green hydrogen producers—the Act, s 192

### Division 1 Preliminary

#### 64 Definitions

(1) In this Part—

**approved customer** means a customer approved under clause 65C(3).

**eligible customer**—see clause 65B.

**green hydrogen shortfall** means the amount of charges that a network service provider is not entitled to recover from an approved customer or retailer because of the operation of this Part.

(2) Words used in this Part have the same meaning as in the *National Electricity Rules*.

#### 65 Electricity taken to be used to produce green hydrogen

(1) For the Act, section 192(4), electricity is taken to be used to produce green hydrogen

if—

- (a) the electricity is used in connection with the production of hydrogen, and
- (b) the electricity was conveyed by a transmission or distribution system to a connection point, and
- (c) the person who uses the electricity in connection with the production of hydrogen, or a person acting on their behalf, has surrendered renewable energy certificates equivalent to the amount of electricity used in accordance with GreenPower.

(2) In this clause—

**GreenPower** means the renewable energy accreditation scheme administered by the Office of Energy and Climate Change on behalf of the National GreenPower Steering Group.

**renewable energy certificate** has the same meaning as it has in the *Renewable Energy (Electricity) Act 2000* of the Commonwealth.

#### **65A Minister may request information from customers and network service providers**

- (1) The Minister may, by written notice, require a customer or network service provider to provide relevant information to the Minister within the period specified in the notice.
- (2) A customer or network service provider must comply with a requirement under subclause (1).
- (3) In this clause—

**relevant information** means information that the Minister reasonably requires to assist in exercising the Minister's functions under this Part, including for the purposes of determining whether a customer is or continues to be an eligible customer.

## **Division 2 Eligibility and approval of green hydrogen producers**

#### **65B Eligibility of green hydrogen producers**

- (1) In this Part, a customer is an **eligible customer** if—
  - (a) electrical power used or to be used by the customer only for green hydrogen purposes is or will be delivered—
    - (i) at a connection point used only for those purposes, or
    - (ii) if the network service provider has approved separate metering arrangements for the part of a customer's electrical power used only for green hydrogen purposes—at a metering point used only for those purposes, and
  - (b) the customer's load, measured at either of the points specified in paragraph (a),

has or will have an electrical demand of at least 1MW at any time in a 12-month period.

(2) In this clause—

***green hydrogen purposes*** means the purposes of producing green hydrogen.

### **65C Approval of eligible customers**

(1) An eligible customer may apply to the Minister to be approved as entitled to the limitation specified in clause 65E.

(2) The application must include—

(a) a statement that the customer proposes to produce green hydrogen before 1 January 2031, and

(b) one or more of the following statements—

(i) that the customer has been given written confirmation by the relevant network service provider that the connection of the customer's load will not require augmentations or alterations to affected networks, other than augmentations or alterations involving connection assets,

(ii) that the relevant network service provider has given information to the customer about augmentations or alterations to affected networks required by the connection of the customer's load, other than augmentations or alterations involving connection assets, and the customer proposes to pay for the augmentations or alterations,

(iii) that the relevant network service provider has given information to the customer about power transfer limitations or load control arrangements to manage network constraints and the customer proposes to agree to the limitations or arrangements being in place for 12 years from the day on which clause 65E(1) first applies to the customer, and

(c) a copy of the written confirmation or information referred to in paragraph (b) given to the customer by the relevant network service provider,

(d) information about the customer's expected maximum demand for the load, or part of the load, used only for the purposes of producing green hydrogen.

(3) The Minister must, by order published in the Gazette, approve a customer as entitled to the limitation specified in clause 65E(3) if satisfied the customer is an eligible customer.

(4) The order must specify—

(a) the location, or proposed location, of the approved customer's connection point,

and

(b) for electricity to which the limitation applies—the approved customer’s expected electrical demand for the load, or part of the load.

(5) An approved customer must—

(a) if the customer entered into a connection agreement or connection contract in relation to the connection point specified in the order after the order was made—within 2 years of the Minister making the order, give the Minister a copy of the connection agreement or connection contract, and

(b) if the customer’s load used only for the purposes of producing green hydrogen has an electrical demand of at least 100MW—every 6 months after the customer starts to produce green hydrogen, give AEMO information about the customer’s load in the form approved by the Minister.

(6) The Minister must refuse an application if the Minister is satisfied that the combined expected maximum electrical demand of all approved customers and the applicant, if approved, would be greater than 750MW.

(7) In this clause, a reference to the electrical demand of a customer’s load is to the load measured at either of the points specified in clause 65B(1)(a).

#### **65D Revocation of approval**

The Minister must revoke an order made under clause 65C in relation to an approved customer if satisfied—

(a) the approved customer has ceased to be an eligible customer, or

(b) the approved customer has ceased to produce green hydrogen, or

(c) that, within 2 years of the Minister making the order, the approved customer is not a party to a connection agreement or connection contract with a network service provider in relation to a connection point specified in that order, or

(d) the approved customer has not complied with a proposal in the application under clause 65C(2) or the statement in clause 65C(2)(b)(i) is not true, or

(e) the approved customer has not complied with a requirement under clause 65A or 65C(5).

#### **65E Limitation on recovery of charges from approved customers**

(1) A network service provider may only recover 10% of the specified charges from—

(a) an approved customer, or



- (b) if an approved customer contracts with a retailer for the supply of electricity to the customer to produce green hydrogen—the retailer.

**Note—**

The Act, section 192(3), provides that the regulations may not have the effect of reducing the total revenue earned by the network service provider under a determination.

- (2) A network service provider is required to comply with subclause (1) for 12 years from the day on which the subclause first applies to an approved customer.
- (3) In this clause—

**relevant distribution charges** means—

- (a) charges for standard control services, and
- (b) designated pricing proposal charges.

**specified charges** means—

- (a) for a transmission network service provider—the transmission charges the provider is entitled to recover under a determination from—
  - (i) for electricity used by a customer to produce green hydrogen—the customer, or
  - (ii) for electricity purchased by a retailer on behalf of a customer for the customer to produce green hydrogen—the retailer, and
- (b) for a distribution network service provider—the relevant distribution charges the provider is entitled to recover under a determination from—
  - (i) for electricity used by a customer to produce green hydrogen—the customer, or
  - (ii) for electricity purchased by a retailer on behalf of a customer for the customer to produce green hydrogen—the retailer.

**transmission charges** means charges for—

- (a) prescribed transmission use of system services, and
- (b) prescribed common transmission services.

## **Division 3 Modification of National Electricity Rules—the Act, s 192(2)**

### **65F Modification relating to green hydrogen shortfall**

- (1) This clause modifies the *National Electricity Rules* to give effect to this Part.

- (2) The *National Electricity Rules* do not apply to a network service provider to the extent required to—
  - (a) reduce the charges payable by a relevant customer to a network service provider in order to comply with clause 65E, and
  - (b) recover the equivalent of the green hydrogen shortfall from customers who are not relevant customers.
- (3) A transmission network service provider may recover a green hydrogen shortfall from the provider's transmission customers, other than relevant customers, through charges for either or both of the following—
  - (a) the adjusted non-locational component for prescribed TUOS services,
  - (b) prescribed common transmission services.
- (4) The transmission network service provider may only recover the green hydrogen shortfall under subclause (2) in accordance with the co-ordinating network service provider's or transmission network service provider's pricing methodology, as the case requires.
- (5) A distribution network service provider may recover a green hydrogen shortfall from the provider's distribution customers, other than relevant customers, through charges for standard control services or designated pricing proposal charges.
- (6) In this clause—

**relevant customer** means—

  - (a) an approved customer, but only in relation to the amount of electricity used by the approved customer to produce green hydrogen, or
  - (b) a retailer, if an approved customer contracts with the retailer for the supply of electricity to the customer to produce green hydrogen, but only in relation to the amount of electricity used by the approved customer to produce green hydrogen.

### **65G Modification relating to green hydrogen shortfall**

- (1) This clause modifies the *National Electricity Rules* to give effect to clauses 65E and 65F.
- (2) This clause applies to a network service provider if—
  - (a) the provider is required to comply with clause 65E(1) during the provider's regulatory control period, and
  - (b) the provider determines it is necessary to revise the following to give effect to clause 65F—

- (i) for a transmission network service provider—the pricing methodology approved by the AER for that provider,
  - (ii) for a distribution network service provider—the tariff structure statement approved by the AER for that provider.
- (3) The transmission network service provider may submit a revised pricing methodology to the AER to give effect to clause 65F.
- (4) The distribution network service provider may submit a revised tariff structure statement to the AER to give effect to clause 65F.
- (5) A reference in subclauses (2)(a) and (b)(i) and (3) to a network service provider extends to a co-ordinating network service provider if—
  - (a) the co-ordinating network service provider, or a transmission network service provider that appointed the co-ordinating network service provider (an **appointing provider**), is required to comply with clause 65E(1) during the provider’s regulatory control period, and
  - (b) the co-ordinating network service provider determines it is necessary to revise the pricing methodology approved by the AER for that provider to give effect to clause 65F.
- (6) Also, a reference in subclauses (2)(a) and (b)(i) and (3) to a network service provider extends to an appointing provider if—
  - (a) this clause applies to the co-ordinating network service provider for the appointing provider, and
  - (b) the appointing provider determines it is necessary to revise the pricing methodology approved by the AER for that provider to give effect to clause 65F.
- (7) A reference in the *National Electricity Rules* to—
  - (a) a pricing methodology is taken to be a reference to a pricing methodology submitted in accordance with this clause, and
  - (b) a tariff structure statement is taken to be a reference to a tariff structure statement submitted in accordance with this clause.

**65H Modification relating to offers to connect**

The *National Electricity Rules*, rule 5.3.6 is taken to include the following paragraph—

- (b6) If a customer has notified a network service provider that the customer intends to produce green hydrogen, the offer to connect made under paragraph (a) must include—

- (1) if the network service provider has determined that the connection of the customer's load will not require augmentations or alterations to affected networks, other than augmentations or alterations involving connection assets or augmentations or alterations that the customer will pay for (**excluded augmentations**)—a statement to that effect, or
- (2) if the network service provider proposes to impose power transfer limitations or load control arrangements to enable the network service provider to manage network constraints—
  - (i) a statement to that effect, including an explanation as to why the power transfer limitations or load control arrangements are necessary, and
  - (ii) a description of the power transfer limitations or load control arrangements, or
- (3) if neither subparagraph (1) or (2) applies—a statement that, and an explanation as to why, the network service provider—
  - (i) has determined, or was unable to determine whether, the connection of the customer's load will require augmentations or alterations to affected networks, other than excluded augmentations, and
  - (ii) if the load will require augmentations or alterations to affected networks other than excluded augmentations—the provider is unable to impose power transfer limitations or load control arrangements to enable the network service provider to manage network constraints.

#### **65I Modification relating to connection offers**

The *National Electricity Rules*, rule 5A.F.4 is taken to include the following paragraph—

- (b1) If a customer has notified a distribution service provider that the customer intends to produce green hydrogen, the negotiated connection offer must include—
  - (1) if the distribution service provider has determined that the connection of the customer's load will not require augmentations or alterations to affected networks, other than augmentations or alterations involving connection assets or augmentations or alterations that the customer will pay for (**excluded augmentations**)—a statement to that effect, or
  - (2) if the distribution service provider proposes to impose power transfer limitations or load control arrangements to enable the distribution service provider to manage network constraints—
    - (i) a statement to that effect, including an explanation as to why the power transfer limitations or load control arrangements are necessary, and

- (ii) a description of the power transfer limitations or load control arrangements, or
- (3) if neither subparagraph (1) or (2) applies—a statement that, and an explanation as to why, the distribution service provider—
  - (i) has determined, or was unable to determine whether, the customer’s load will require augmentations or alterations to affected networks, other than excluded augmentations, and
  - (ii) if the load will require augmentations or alterations to affected networks, other than excluded augmentations—the provider is unable to impose power transfer limitations or load control arrangements to enable the distribution service provider to manage network constraints.

## **Part 8 Miscellaneous**

### **66 Descriptions of parts of local government areas in distribution districts**

For the purposes of section 83(3) of the Act and the references in Schedule 3 to the Act to parts of local government areas in the distribution districts of Essential Energy and Ausgrid, those parts are described in Schedule 1.

### **67 Market operations rules**

For the purposes of section 63C(1)(i) of the Act, market operations rules may be made for or with respect to the following matters—

- (a) record keeping by retailers and distributors,
- (b) obligations and procedures relating to the implementation of systems relating to the transfer of information between retailers and distributors.

### **68 (Repealed)**

### **69 Service of documents**

A notice or document required or authorised to be given to a person by or under the Act or this Regulation may be—

- (a) sent by post—
  - (i) in the case of a person who is a distributor—to any office of the distributor, or
  - (ii) in any other case—addressed to the person at the last known address of the person, or
- (b) given personally to the person, or
- (c) sent to the person by email to an email address provided by the person, or

(d) by other electronic means.

## **70 (Repealed)**

### **70A Penalty notice offences and penalties**

- (1) For the purposes of the Act, section 187 and Schedule 4A clause 71C and 136D—
  - (a) each offence created by a provision specified in Column 1 of Schedule 4 is an offence for which a penalty notice may be served, and
  - (b) the penalty prescribed for each offence is the amount specified opposite the provision in—
    - (i) for an individual—Column 2 of the Schedule, or
    - (ii) for a corporation—Column 3 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 4 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

### **70B Civil penalty orders**

For the Act, Schedule 4A, clauses 63A and 132A, definitions of ***civil penalty provision***, each provision specified in Schedule 5 is a civil penalty provision for which a civil penalty order may be issued.

### **71 Date on which Division 5 of Part 4 of Act ceases to have effect**

For the purpose of section 43EJ(2) of the Act, 31 December 2016 is prescribed as the day on which Division 5 of Part 4 of the Act ceases to have effect.

### **72 Savings consequent on repeal of 2001 General Regulation**

- (1) Any act, matter or thing that, immediately before the repeal of the *Electricity Supply (General) Regulation 2001*, had effect under that Regulation continues to have effect under this Regulation.
- (2) This clause does not apply in relation to Part 9, 10 or 11 of the *Electricity Supply (General) Regulation 2001*.

#### **Note—**

Parts 9, 10 and 11 of that Regulation are remade in the *Electricity Supply (Safety and Network Management) Regulation 2014*.

### **73 Savings consequent on termination of scheme set out in Part 8A of the Act**

Without limiting clause 72(1), clause 68 of the *Electricity Supply (General) Regulation 2001* continues to apply in relation to the registration of the transfer of abatement

certificates (within the meaning of Part 8A of the Act).

#### **74 Amendment of assessments relating to energy savings scheme for 2009, 2010 and 2011**

- (1) Despite clause 35(2), a scheme participant may make an application under clause 35 in respect of an assessment that is contained in an energy savings statement relating to 2009, 2010 or 2011.
- (2) The scheme participant may make any such application no later than 1 March 2015.
- (3) Expressions used in this clause have the same meanings as in Part 9 of the Act and Division 3 of Part 6.

#### **75 Protection of underground electricity power lines—designated information provider**

For the Act, section 63X, definition of **designated information provider**, paragraph (b), Before You Dig Australia Limited (ABN 91 089 413 650) is prescribed.

### **Schedule 1 Descriptions of parts of local government areas in distribution districts**

(Clause 66)

#### **1 Distribution district of Ausgrid**

The part of Merriwa referred to in the description of Ausgrid's distribution district in Schedule 3 to the Act is the part of Merriwa that was within the distribution district of Shortland Electricity, as it was immediately before 1 October 1995.

#### **2 Distribution district of Essential Energy**

The part of Merriwa referred to in the description of Essential Energy's distribution district in Schedule 3 to the Act is the part of Merriwa that was within the distribution district of Ulan Electricity, as it was immediately before 1 October 1995.

### **Schedule 2 Saved aspects of greenhouse gas abatement certificate scheme for carbon sequestration activities**

#### **Part 1 Preliminary and general**

##### **1 Definitions** (cf clause 42 2001 General Regulation)

- (1) In this Schedule—

**accreditation** means accreditation as an accredited abatement certificate provider.

**carbon sequestration activity** means a carbon sequestration activity (within the meaning of the Carbon Sequestration Rule) carried out before 1 July 2012.

**Note—**

1 July 2012 is the termination day for the scheme set out in Part 8A of the Act.

**Carbon Sequestration Rule** means the *Greenhouse Gas Benchmark Rule (Carbon Sequestration) No 5 of 2003*, as approved by the Minister under section 97K of the Act, published in the Gazette on 28 May 2010 (and taken to have been published in the Gazette on 21 May 2010).

**provider** means the following accredited abatement certificate providers—

- (a) the Forestry Corporation of New South Wales,
- (b) CO2 Australia Limited (ACN 102 990 803),
- (c) Mallee Carbon Limited (ACN 118 946 188).

(2) Expressions used in this Schedule have the same meanings as in Part 8A of the Act.

## **2 Application of this Schedule**

This Schedule applies only in relation to—

- (a) the accreditation and auditing of a provider, and
- (b) abatement certificates created by a provider on or before 1 September 2012.

**Note—**

Under section 97EC(2E) of the Act, 1 September 2012 (which is 2 months after the termination day of 1 July 2012) is the latest day on which an abatement certificate could be created.

## **Part 2 Conditions of accreditation**

### **3 Carbon sequestration activity to be maintained for 100 years** (cf clauses 51 and 55 2001 General Regulation)

- (1) A provider that created an abatement certificate on or before 1 September 2012 in respect of a carbon sequestration activity must ensure the continued storage (by means of planted forests on eligible land, within the meaning of the Carbon Sequestration Rule), of the quantity of carbon dioxide stored by the activity in respect of which the certificate is created (calculated in accordance with the Carbon Sequestration Rule) for a period of 100 years after the certificate is created.
- (2) For the purposes of section 97DD(1)(a) of the Act, it is a condition of the accreditation of a provider that the provider does not contravene this clause.

### **4 Record keeping** (cf clauses 51 and 57 2001 General Regulation)

- (1) A provider must keep a record of the following—
  - (a) the location and size of any eligible land (within the meaning of the Carbon



Sequestration Rule) owned or controlled from time to time by the provider,

(b) any carbon sequestration rights held in respect of any other eligible land (within the meaning of the Carbon Sequestration Rule) from time to time,

(c) any activity conducted on land referred to in paragraph (a) or (b) that is likely to result in a reduction in the greenhouse gas emissions abated by the planted forests on that land, including any clearing of that land.

(2) The provider must keep any other records that the Scheme Administrator, by notice in writing to the provider, requires the provider to keep.

(3) A record required to be kept by a provider by or under this clause must be retained by the provider for at least 6 years after the record is made.

(4) Records are to be kept in a way approved by the Scheme Administrator.

(5) For the purposes of section 97DD(1)(a) of the Act, it is a condition of the accreditation of a provider that the provider does not contravene this clause.

(6) In this clause—

**carbon sequestration right** has the same meaning as in the Carbon Sequestration Rule.

**clearing** of land means—

(a) cutting down, felling, thinning, logging or removing any trees on the land, or

(b) killing, destroying, poisoning, ringbarking, uprooting or burning trees on the land,  
or

(c) substantially damaging or injuring trees on the land in any other way.

## **5 Imposition of conditions by Scheme Administrator** (cf clause 59 2001 General Regulation)

(1) If the Scheme Administrator intends to impose a condition on the accreditation of a provider under section 97DD(1)(b) of the Act (including any condition of a kind referred to in section 97DD(3) of the Act), the Scheme Administrator must give notice in writing of that fact to the provider.

(2) The condition takes effect on the date on which the notice is given to the provider, or on a later date specified in the notice.

(3) The Scheme Administrator may, at any time by notice in writing given to a provider, revoke or vary a condition imposed on the accreditation of the provider by the Scheme Administrator.

(4) If the Scheme Administrator imposes or varies a condition of accreditation of a

provider, the Scheme Administrator must advise the provider in writing of the reasons for the decision to impose or vary the condition.

**6 Financial assurances to secure compliance with order to surrender certificates** (cf clause 60 2001 General Regulation)

- (1) This clause applies if the Scheme Administrator imposes a condition on the accreditation of a provider requiring the provider to give a financial assurance to the Scheme Administrator to secure or guarantee the provider's compliance with any order that may be made against the provider under section 97EF of the Act.
- (2) The amount of any financial assurance required by the Scheme Administrator is to be determined by the Scheme Administrator having regard to the following—
  - (a) the carbon sequestration activities in respect of which the provider is accredited,
  - (b) the number of abatement certificates that the provider created before 1 September 2012,
  - (c) the frequency of audits conducted or to be conducted in respect of the provider,
  - (d) any other matters the Scheme Administrator considers relevant.
- (3) A financial assurance is to be in a form that the Scheme Administrator considers appropriate (such as a bank guarantee or bond).
- (4) A financial assurance given to the Scheme Administrator may be claimed or realised by the Scheme Administrator only if—
  - (a) an order is made under section 97EF of the Act against the provider, and
  - (b) the provider fails to comply with the order.
- (5) The Scheme Administrator must give the provider written notice of the Scheme Administrator's intention to make a claim on or realise the financial assurance (or any part of it) at least 21 days before doing so.
- (6) The maximum amount that the Scheme Administrator may claim or recover under the financial assurance is the compliance cost in respect of the provider's failure to comply with the order under section 97EF of the Act.
- (7) For the purposes of this clause, the **compliance cost** in respect of a provider's failure to comply with an order under section 97EF of the Act is to be determined by the Scheme Administrator by multiplying the number of certificates that the provider failed to surrender in compliance with the order by the market value of those certificates at the time that the financial assurance is claimed on or realised.

## Part 3 Audits

### 7 Definition of “approved auditor” (cf definition in clause 42 2001 General Regulation)

In this Part—

**approved auditor** means a person required to conduct an audit under this Part.

### 8 Audits (cf clause 70 2001 General Regulation)

- (1) The Tribunal or the Scheme Administrator may at any time conduct or require audits to be conducted of a provider in relation to the following matters—
  - (a) the creation of abatement certificates before 1 September 2012,
  - (b) eligibility for accreditation,
  - (c) compliance with any conditions of accreditation.
- (2) An audit may be conducted for the purpose of—
  - (a) substantiating information given to the Tribunal or Scheme Administrator, or
  - (b) determining whether the provider has complied with the Act, the regulations, the Carbon Sequestration Rule or the conditions of the provider’s accreditation.
- (3) In the case of an audit required by the Tribunal, the Tribunal may require the audit to be conducted by—
  - (a) a person nominated by the Tribunal, or
  - (b) a person chosen by the provider from a panel of persons nominated by the Tribunal, or
  - (c) a person nominated by the provider and approved by the Tribunal.
- (4) In the case of an audit required by the Scheme Administrator, the Scheme Administrator may require the audit to be conducted by—
  - (a) a person nominated by the Scheme Administrator, or
  - (b) a person chosen by the provider from a panel of persons nominated by the Scheme Administrator, or
  - (c) a person nominated by the provider and approved by the Scheme Administrator.
- (5) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Tribunal or Scheme Administrator.

**9 Co-operation with audits** (cf clauses 51 and 58 2001 General Regulation)

- (1) A provider must give any information and assistance that is necessary to comply with any audit conducted under this Part.
- (2) Without limiting subclause (1), a provider must provide any access to premises that is necessary to comply with any schedule or timetable of audits agreed to by the provider (whether before or after accreditation).
- (3) For the purposes of section 97DD(1)(a) of the Act, it is a condition of the accreditation of a provider that the provider does not contravene this clause.

**10 Impersonating approved auditor** (cf clause 71 2001 General Regulation)

A person must not impersonate an approved auditor.

Maximum penalty—250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

## **Part 4 Miscellaneous**

**11 Register of accredited abatement certificate providers** (cf clause 69 2001 General Regulation)

- (1) The register of accredited abatement certificate providers is to include the following information (in addition to the information specified in section 97GA of the Act)—
  - (a) the carbon sequestration activity or activities in respect of which the provider is accredited,
  - (b) the States or Territories in which those activities took place,
  - (c) any other information relating to the provider's accreditation that the Scheme Administrator considers appropriate.
- (2) The register of accredited abatement certificate providers is to include the following information in relation to a provider whose accreditation is suspended or cancelled—
  - (a) the name of the provider,
  - (b) the reason or reasons why the accreditation was suspended or cancelled,
  - (c) the date on which the accreditation was suspended or cancelled and, in the case of a suspension, the period of the suspension,
  - (d) any conditions of accreditation that continue to have effect in respect of the provider.
- (3) The following information is to be made available for public inspection under section 97GA(3) of the Act (in addition to the information referred to in section 97GA(4) of the

Act)—

- (a) the information referred to in subclause (1)(b),
- (b) the information referred to in subclause (2).

**12 Order requiring surrender of abatement certificates by providers** (cf clause 65 2001 General Regulation)

- (1) This clause applies if an order is made or is proposed to be made under section 97EF of the Act against a provider that has been found guilty of an offence against section 97DD(5) of the Act, being an offence that arose as a result of the provider contravening any of the following conditions—
  - (a) a condition referred to in clause 3 (relating to maintenance of carbon sequestration),
  - (b) a condition referred to in clause 52 of the former Regulation (relating to undertakings given to the Scheme Administrator in connection with benefits under mandatory greenhouse gas schemes).
- (2) For the purposes of section 97EF(4) of the Act, the number of certificates to be surrendered under the order is to be determined by the Scheme Administrator as follows—
  - (a) in a case referred to in subclause (1)(a)—the number of abatement certificates that, in the opinion of the Scheme Administrator, were created by the provider in respect of carbon sequestration activities and in respect of which the provider has contravened the condition referred to in subclause (1)(a),
  - (b) in a case referred to in subclause (1)(b)—the number that is equivalent to the number of abatement certificates that, in the opinion of the Scheme Administrator, were created in respect of output or greenhouse gas abatement for which a benefit was obtained under a mandatory greenhouse gas scheme.
- (3) In this clause—

**former Regulation** means the *Electricity Supply (General) Regulation 2001* (as in force immediately before its repeal).

**mandatory greenhouse gas scheme** has the same meaning as in Part 6 of the former Regulation.

**13 Cancellation of accreditation** (cf clause 50 2001 General Regulation)

- (1) The Scheme Administrator may cancel the accreditation of a provider on any of the following grounds—
  - (a) the Scheme Administrator is satisfied that the provider has ceased to be eligible

under the Carbon Sequestration Rule for accreditation,

- (b) the provider has requested the cancellation,
- (c) the Scheme Administrator is satisfied that the provider has contravened a provision of the Act, the regulations, the Carbon Sequestration Rule or a condition to which the accreditation is subject,
- (d) the provider is the subject of a winding up order or a controller or administrator has been appointed for the provider.

- (2) If the Scheme Administrator cancels the accreditation of a provider, the Scheme Administrator is required to notify the provider in writing of the cancellation and the grounds on which the accreditation is cancelled.
- (3) A cancellation takes effect when notice of the cancellation is served on the provider by the Scheme Administrator, or on such later date as may be specified by the Scheme Administrator in the notice.

- (4) In this clause—

**provider** includes Go-Gen Australia Pty Ltd (ACN 071 260 467).

#### **14 Administrative reviews** (cf clause 72 2001 General Regulation)

For the purposes of section 97I(2)(d) of the Act, the following decisions are prescribed—

- (a) a decision of the Scheme Administrator to impose or vary a condition of accreditation of a provider,
- (b) a decision of the Scheme Administrator to make a claim on or realise any financial assurance given by a provider.

**Note—**

This clause allows the decisions referred to above to be administratively reviewed by the Civil and Administrative Tribunal.

## **Schedule 3 Fees**

clauses 39, 43, 51, 62K, 62O and 62X

### **1 Fees**

The following fees are payable under the Act and this Regulation—

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Matter for which fee payable</b>	<b>Fee</b>

### Energy savings scheme

The Act, Schedule 4A, clause 39(4) and this Regulation clause 39(c)	Application for accreditation as energy savings certificate provider	\$2,500
The Act, Schedule 4A, clause 43(4) and this Regulation clause 43(c)	Application for transfer of accreditation as energy savings certificate provider	\$500
The Act, Schedule 4A, clause 46(6) and this Regulation clause 51(2)	Application for registration of the creation of an energy savings certificate	\$0.80, adjusted annually as set out in clause 2, for each certificate

### Peak demand reduction scheme

The Act, Schedule 4A, clause 111(4) and this Regulation clause 62K(c)	Application for accreditation as a certificate provider	\$2,500
The Act, Schedule 4A, clause 116(4) and this Regulation clause 62O(c)	Application for transfer of accreditation as a certificate provider	\$500
The Act, Schedule 4A, clause 118(10) and this Regulation clause 62X(2)	Application for registration of the creation of a certificate	\$0.0279, adjusted annually as set out in clause 3, for each certificate

## 2 Adjustment of fee for registration of energy savings certificate

(1) Under the Act, Schedule 4A, clause 46(6), the fee for an application for registration of the creation of an energy savings certificate must be adjusted on 1 January of each year as follows—

(a) for calendar years 2017–2022 using the following formula—

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

**Fee<sub>year</sub>** is the fee for each certificate for the year concerned.

**Fee<sub>year-1</sub>** is the fee for each certificate for the immediately preceding year.

**CPI<sub>year-1</sub>** is the Consumer Price Index for the September quarter of the immediately preceding year.

**CPI<sub>year-2</sub>** is the Consumer Price Index for the September quarter of the year before the immediately preceding year.

(b) for calendar years after 2022 using the following formula—

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

**Fee<sub>year</sub>** is the registration fee for the year concerned.

**CPI<sub>year-1</sub>** is the Consumer Price Index for the September quarter of the immediately preceding year.

**CPI<sub>Sep 21</sub>** is the Consumer Price Index for the September quarter 2021.

(2) A fee must be rounded up to the nearest cent.

### 3 Adjustment of fee for registration of peak demand reduction certificate

(1) Under the Act, Schedule 4A, clause 118(10), the fee for an application for registration of the creation of a certificate must be adjusted on 1 November of each year using the following formula—

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

**Fee<sub>current period</sub>** is the registration fee for the compliance period concerned.

**CPI<sub>current year</sub>** is the Consumer Price Index for the June quarter immediately preceding the start of the relevant compliance period.

**CPI<sub>Jun 22</sub>** is the Consumer Price Index for the June quarter 2022.

(2) A fee must be rounded up to the nearest one hundredth of a cent.

## Schedule 4 Penalty notice offences

clause 70A

Column 1	Column 2	Column 3
Provision	Penalty—individual	Penalty—corporation
<b>Offences under the Act</b>		
<b>Energy savings scheme</b>		
Schedule 4A, clause 26(6)	\$1,100	\$2,750
Schedule 4A, clause 36(1)	\$22,000	\$22,000



Schedule 4A, clause 41(3)	\$22,000	\$22,000
Schedule 4A, clause 45(5)—		
(a) base amount, and	\$11,000	\$11,000
(b) for each energy savings certificate the person fails to surrender	\$110	\$110
Schedule 4A, clause 60	\$1,100	\$2,750
Schedule 4A, clause 71	\$1,100	\$2,750
Schedule 4A, clause 71B(5)	\$550	\$2,200
<b>Peak demand reduction scheme</b>		
Schedule 4A, clause 103(6)	\$1,100	\$2,750
Schedule 4A, clause 108(1)	\$22,000	\$22,000
Schedule 4A, clause 114(2)	\$22,000	\$22,000
Schedule 4A, clause 117(4)—		
(a) base amount, and	\$11,000	\$11,000
(b) for each certificate the person fails to surrender	\$110	\$110
Schedule 4A, clause 129	\$1,100	\$2,750
Schedule 4A, clause 136C(5)	\$1,100	\$2,200
Schedule 4A, clause 137(9)	\$1,100	\$2,750
<b>Offences under this Regulation</b>		
Clause 10B(2)	\$5,500	\$11,000
Clause 10B(4)	\$5,500	\$11,000
Clause 10B(5)	\$100	\$100
Clause 10C(2) and (3)	\$5,500	\$11,000
Clause 10E	\$5,500	\$11,000
Clause 10F	\$100	\$100
Clause 10G	\$5,500	\$11,000

## Schedule 5 Civil penalty orders

clause 70B

### Provision

**Energy savings scheme**

The Act, Schedule 4A, clause 26(6)

The Act, Schedule 4A, clause 36(1)

The Act, Schedule 4A, clause 41(3)

The Act, Schedule 4A, clause 45(5)

The Act, Schedule 4A, clause 60

The Act, Schedule 4A, clause 71

The Act, Schedule 4A, clause 71B(5)

**Peak demand reduction scheme**

The Act, Schedule 4A, clause 103(6)

The Act, Schedule 4A, clause 108(1)

The Act, Schedule 4A, clause 114(2)

The Act, Schedule 4A, clause 117(4)

The Act, Schedule 4A, clause 129

The Act, Schedule 4A, clause 136C(5)

The Act, Schedule 4A, clause 137(9)