

Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002 No 122

[2002-122]



New South Wales

Status Information

Currency of version

Repealed version for 16 December 2002 to 21 July 2003 (accessed 17 July 2024 at 22:24)

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—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2003 No 40](#), Sch 3 with effect from 22.7.2003.

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](#).

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New South Wales

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Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002 No 122



New South Wales

An Act to amend the *Electricity Supply Act 1995* to establish greenhouse gas benchmarks for the electricity industry and to encourage activities relating to the reduction of greenhouse gas emissions; and for other purposes.

1 Name of Act

This Act is the *Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002*.

2 Commencement

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

3 Amendment of *Electricity Supply Act 1995 No 94*

The *Electricity Supply Act 1995* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of *Electricity Supply Act 1995*

(Section 3)

[1] Section 95 Appeals against decisions concerning licences

Insert “or the holder of a licence” after “An applicant under Schedule 2” in section 95 (1).

[2] Part 8A

Insert after Part 8:

Part 8A Reduction of greenhouse gas emissions

Division 1 Preliminary

97A Objects of Part

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

97AB Definitions

In this Part:

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

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

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

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

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

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

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

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

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

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

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

large customer means a customer (other than a retail supplier) who:

- (a) uses 100 gigawatt hours or more of electricity at a single site in this State in any year, or
- (b) uses 100 gigawatt hours or more of electricity at more than one site in this State in any year, at least one of which uses 50 gigawatt hours or more of electricity in that year.

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

NEMMCO means the National Electricity Market Management Company Limited ACN 072 010 327.

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

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

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

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

renewable energy certificate means a certificate created under the [Renewable](#)

Energy (Electricity) Act 2000 of the Commonwealth.

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

State greenhouse gas benchmark for a year means a State greenhouse gas benchmark specified for that year in section 97B (1).

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

State significant development has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

Division 2 Greenhouse gas benchmarks

97B State greenhouse gas benchmarks

- (1) The State greenhouse gas benchmarks are as follows:
 - (a) for the year commencing 1 January 2003, 8.65 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population,
 - (b) for the year commencing 1 January 2004, 8.31 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population,
 - (c) for the year commencing 1 January 2005, 7.96 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population,
 - (d) for the year commencing 1 January 2006, 7.62 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population,
 - (e) for each of the years commencing 1 January 2007 and ending on 31 December 2012, 7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population.
- (2) The State greenhouse gas benchmarks are to be the basis for the calculation of the greenhouse gas benchmark for each benchmark participant.

97BA Greenhouse gas benchmarks to apply to benchmark participants

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

Note—

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

97BB Benchmark participants

- (1) The following persons are benchmark participants for the purposes of this Part:
- (a) a retail supplier,
 - (b) an electricity generator prescribed by the regulations or any other person prescribed by the regulations, being an electricity generator or other person that supplies electricity directly to a customer under an electricity supply arrangement and that is, in respect of that supply, exempted from the operation of section 98 or to which section 98 does not apply,
 - (c) a market customer (other than a retail supplier), but only in respect of an electricity load it has classified as a market load and that is electricity supplied for use in this State,
 - (d) a large customer who has made an election, that is in force, to be subject to a greenhouse gas benchmark,
 - (e) a person who is engaged in carrying out State significant development and who has made an election, that is in force, to be subject to a greenhouse gas benchmark.
- (2) Regulations may be made for or with respect to the following matters:
- (a) the making of elections to be subject to greenhouse gas benchmarks,
 - (b) the circumstances in which an election to be subject to a greenhouse gas benchmark takes effect or ceases to be in force,
 - (c) the greenhouse penalty payable by a customer or person whose election to be subject to a greenhouse gas benchmark ceases to be in force,
 - (d) the circumstances when a person is taken to be a large customer or a large customer who uses electricity at more than one site.

97BC Principles for determining greenhouse gas benchmarks for benchmark participants

The greenhouse gas benchmark for a benchmark participant for a year is to be determined as follows:

- (a) by multiplying the State population for the year by the State greenhouse gas benchmark per head of population for the year to determine the electricity

sector benchmark,

- (b) by determining the proportion of the total electricity demand in the State (as determined by the Tribunal) applicable to the participant for the year,
- (c) by applying that proportion to the electricity sector benchmark for the year to calculate the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions comprising the benchmark for that participant.

Note—

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

97BD Principles for determining compliance with greenhouse gas benchmarks

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

Note—

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

- (3) **Number of tonnes of emissions abated by participant** The number of tonnes of carbon dioxide equivalent of greenhouse gas emissions abated by a benchmark participant in a year is the total number of tonnes attributable to any abatement certificates surrendered by the participant for that year and any renewable energy certificates of the participant counted for that year.
- (4) If the result obtained under subsection (1) is more than zero (a **greenhouse shortfall**), the benchmark participant has failed to comply with the participant's

greenhouse gas benchmark.

- (5) If the result obtained under subsection (1) is zero or less than zero, the benchmark participant has complied with the participant's greenhouse gas benchmark.
- (6) In determining the total megawatt hours of electricity supplied by a retail supplier or an electricity generator in each year for the purposes of subsection (2), electricity supplied by the supplier or generator to another benchmark participant is not to be taken into account.

Note—

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

97BE Greenhouse shortfalls may be carried forward

- (1) Despite any other provision of this Part, an amount of tonnes of carbon dioxide equivalent of greenhouse gas emissions of greenhouse shortfall in any year (other than the year commencing 1 January 2007) may, subject to the greenhouse gas benchmark rules, be carried forward to the next year.
- (2) If an amount of greenhouse shortfall is carried forward, the amount of that shortfall is, to the extent to which it is not abated by the benchmark participant, subject to the greenhouse penalty at the end of the next year and greenhouse penalty is not payable for the shortfall amount at the end of the year from which it was carried forward.
- (3) Any such penalty is payable at the same time as any greenhouse penalty for the next year is payable (or would be payable, if owed).
- (4) A greenhouse shortfall that is carried forward may be abated at the end of the next year by surrendering abatement certificates or counting renewable energy certificates.
- (5) For that purpose, the greenhouse shortfall after abatement is calculated by subtracting from the amount of the shortfall the total number of tonnes of carbon dioxide equivalent of greenhouse gas emissions attributable to any certificates surrendered or counted for the purpose of abating the greenhouse shortfall.
- (6) The amount of greenhouse shortfall carried forward in respect of a year may not exceed 10% of the benchmark participant's greenhouse gas benchmark for that year.
- (7) An amount of greenhouse shortfall may be carried forward whether or not a shortfall was carried forward in the previous year.

97BF Factors to be determined and published before commencement of each year

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

97BG Evidentiary provisions relating to benchmarks

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

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

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

Division 3 Enforcement of greenhouse gas benchmarks

97C Licence conditions applying to retail suppliers

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

Note—

Under clauses 8 and 8A of Schedule 2, the Minister and the Tribunal may impose monetary penalties for breaches of the requirements of this Act, the regulations and the greenhouse gas benchmark rules, as well as breaches of licence conditions. Other penalties may also be imposed under Schedule 2.

97CA Greenhouse penalties

- (1) A benchmark participant who fails to comply with the participant's greenhouse gas benchmark for reduction of greenhouse gas emissions for a year is liable to pay the greenhouse penalty in respect of the excess emissions.
- (2) The amount of the greenhouse penalty is \$10.50 per tonne of carbon dioxide equivalent of greenhouse shortfall determined under this Part for the year concerned, as adjusted in accordance with any regulations made under subsection (3).
- (3) The regulations may provide for the adjustment of the amount of greenhouse penalty in accordance with movements in the consumer price index.
- (4) A greenhouse penalty payable for a year by a benchmark participant is payable on 1 March in the following year or on any later date determined by the Tribunal for a benchmark participant.
- (5) A greenhouse penalty imposed under this Part may be recovered in any court of competent jurisdiction as a debt due to the Crown.
- (6) It is the wish of the Parliament that any greenhouse penalties payable to the Crown under this Part be used for the promotion of greenhouse gas reduction activities and programs nominated from time to time by the Minister.

(7) In this section:

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

Note—

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

97CB Annual greenhouse gas benchmark statements

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

Maximum penalty:

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

97CC Restrictions on surrender of abatement certificates

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

97CD Assessment of compliance with greenhouse gas benchmarks

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

lodged by a benchmark participant,

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

(3) In this section:

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

97CE Validity of assessment

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

97CF Waiver or suspension of obligations in emergencies

- (1) The Minister may, by order published in the Gazette, waive, or suspend for a specified period, the obligation of a benchmark participant to comply with the participant's greenhouse gas benchmark, but only if it appears to the Minister that a benchmark participant is or will be unable to comply with the benchmark because of:
- (a) a systems or other failure of the register of abatement certificates, or
 - (b) any other emergency affecting the integrity of the register or the abatement certificate scheme established under this Part.
- (2) An order may:
- (a) be made subject to conditions, and
 - (b) apply to all benchmark participants or to a specified class of participants, and
 - (c) specify the effect of the waiver or suspension on any other rights conferred

or obligations imposed under this Part.

- (3) An order takes effect on the day on which it is published in the Gazette or, if a later day is specified in the order, on that day.
- (4) An order may be amended or revoked by a later order.

Division 4 Accreditation of abatement certificate providers

97D Accredited persons may create abatement certificates

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

97DA Eligibility for accreditation

- (1) The regulations and greenhouse gas benchmark rules may make provision for or with respect to the eligibility of a person for accreditation as an abatement certificate provider.
- (2) The regulations and greenhouse gas benchmark rules may make provision for accreditation as an abatement certificate provider in respect of any activities or class of activities that promote the reduction of greenhouse gas emissions.
- (3) Without limiting subsection (2), the regulations and the greenhouse gas benchmark rules may make provision for or with respect to eligibility for accreditation in respect of the following activities:
 - (a) the generation of electricity in a manner that results in reduced emissions of greenhouse gases,
 - (b) activities that result in reduced consumption of electricity,
 - (c) activities of elective participants, associated with production processes that use electricity in this State, that result in reduced emissions of greenhouse gases.
- (4) The regulations and greenhouse gas benchmark rules may make provision for or with respect to eligibility for accreditation in respect of carbon sequestration by the planting of forests or other means, but only if:
 - (a) the activity occurs in this State, or
 - (b) the activity occurs in another jurisdiction in which a mandatory scheme intended to promote the reduction of greenhouse gas emissions, approved

by the Minister for the purposes of this subsection, is in operation.

- (5) The Minister may approve a scheme for the purposes of subsection (4) only if the Minister is satisfied that:
 - (a) the reduction of greenhouse gas emissions proposed to be achieved by the scheme is not less than the reduction proposed to be achieved by the scheme established under this Part, and
 - (b) the monitoring and enforcement of compliance with the scheme to be approved is no less stringent than that applicable to the scheme established under this Part.
- (6) The regulations and greenhouse gas benchmark rules are to include provision for the recognition of the arrangements in place before the commencement of this Part relating to category A generation, as referred to in the Emissions Workbook, under which energy in certain circumstances is deemed to be assigned to a retail supplier, so as to ensure that the retail supplier is entitled (subject to accreditation as an abatement certificate provider under this Part) to create abatement certificates in respect of any abatement of greenhouse gas emissions associated with that energy.
- (7) In this section:

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

97DB Application for accreditation

- (1) Any person who is eligible for accreditation as an abatement certificate provider in relation to any activity may apply to the Scheme Administrator for accreditation.
- (2) The Scheme Administrator is to determine an application for accreditation as an abatement certificate provider:
 - (a) by accrediting the applicant as an abatement certificate provider in relation to specified activities, or
 - (b) by refusing the application.
- (3) The Scheme Administrator may refuse an application for accreditation as an abatement certificate provider on such grounds as may be specified in the regulations.
- (4) The regulations may make provision for or with respect to applications for accreditation, including by requiring an application fee to be paid to the Scheme

Administrator.

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

97DC Duration of accreditation

- (1) Accreditation of a person as an abatement certificate provider in relation to an activity remains in force until suspended or cancelled by the Scheme Administrator.
- (2) The Scheme Administrator may suspend or cancel the accreditation of a person as an abatement certificate provider on such grounds as may be specified in the regulations.
- (3) The cancellation or suspension of the accreditation of a person as an abatement certificate provider is subject to such conditions as the Scheme Administrator imposes. Any such conditions may include (but are not limited to) any condition to which the accreditation was subject immediately before it was suspended or cancelled.
- (4) The regulations may provide for the variation or revocation of any conditions that are imposed by the Scheme Administrator on the suspension or cancellation of accreditation as an abatement certificate provider.

97DD Conditions of accreditation

- (1) Accreditation as an abatement certificate provider is subject to the following conditions:
 - (a) such conditions as may be imposed from time to time by the regulations,
 - (b) such conditions as may be imposed by the Scheme Administrator at the time of accreditation, or during the period in which the accreditation remains in force, in accordance with the regulations.
- (2) The regulations may provide for the variation or revocation of any conditions of accreditation that are imposed by the Scheme Administrator.
- (3) The following are examples of the types of conditions that may be imposed on the accreditation of a person as an abatement certificate provider:
 - (a) a condition that requires the person not to create an abatement certificate in respect of the greenhouse gas emissions abated by an activity if an abatement certificate or a renewable energy certificate has already been created in respect of that abatement or if that abatement has already been

used for the purposes of compliance with another mandatory scheme (whether of this State or another jurisdiction) intended to promote the reduction of greenhouse gas emissions,

- (b) a condition that requires the person not to create a renewable energy certificate in respect of the greenhouse gas emissions abated by an activity, or to use that abatement for the purposes of compliance with another mandatory scheme (whether of this State or another jurisdiction) intended to promote the reduction of greenhouse gas emissions, if an abatement certificate has already been created in respect of that abatement,
 - (c) a condition that requires the person to provide financial assurances to secure or guarantee the person's compliance with this Part,
 - (d) a condition that requires the person to take out and maintain a policy of insurance in connection with the person's functions as an accredited abatement certificate provider,
 - (e) a condition that requires the person to maintain the greenhouse gas abatement secured by carbon sequestration activities for 100 years,
 - (f) a condition that requires the person to enter into or arrange for a restriction or public positive covenant under section 88E of the [Conveyancing Act 1919](#), and to arrange for its registration, for the purpose of ensuring that specified requirements of a condition run with the land concerned,
 - (g) a condition that requires the person to provide information, assistance and access to the Scheme Administrator (or persons appointed by the Scheme Administrator) for the purposes of monitoring and auditing compliance by the person with this Part.
- (4) Subsection (3) does not prevent other conditions being imposed on the accreditation of a person as an abatement certificate provider.
- (5) A person must not contravene any of the conditions of the person's accreditation as an abatement certificate provider.

Maximum penalty: 2,000 penalty units.

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

97DE Accreditation not transferable

Accreditation as an abatement certificate provider is not transferable.

Division 5 Creation of abatement certificates

97E Accredited abatement certificate provider may create certificates

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

97EA Value of certificate

Each abatement certificate represents 1 tonne of carbon dioxide equivalent of greenhouse gas emissions abated by the activity in respect of which it was created.

97EB Entitlement to create abatement certificates

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

in accordance with the regulation or rule.

97EC When certificates may be created

- (1) An abatement certificate may be created by an accredited abatement certificate provider immediately after the activity in respect of which it was created takes place.
- (2) An abatement certificate may be created no later than 6 months after the end of the year in which the activity in respect of which it was created takes place.
- (3) The regulations or greenhouse gas benchmark rules may specify when an activity is considered to have taken place for the purposes of this Part.
- (4) Without limiting subsection (3), the regulations or greenhouse gas benchmark rules may provide that an activity resulting in reduced consumption of electricity that gives rise to an entitlement to create an abatement certificate is taken to have occurred on the date on which the activity is first commenced. Accordingly, abatement certificates may be created in respect of the abatement of greenhouse gas emissions caused or to be caused by the activity immediately after the activity is first commenced.

Note—

Subsection (4) makes it clear that the regulations or greenhouse gas benchmark rules may allow abatement certificates to be created in respect of an activity that has ongoing abatement effects as soon as the activity is commenced. It will not be necessary to wait until the abatement actually occurs before creating an abatement certificate in respect of that abatement. Such provisions may apply, for example, if the regulations or rules allow for the creation of abatement certificates in respect of the installation of energy efficient lighting, which has ongoing abatement effects.

97ED Creation of certificate must be registered

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

the name of the person who created the certificate as the owner of the certificate.

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

97EE Duration of certificate

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

97EF Scheme Administrator may require surrender of certificates

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

Note—

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

- (4) In any other case where an order is made under this section, the Scheme Administrator is to determine the number of certificates to be surrendered in accordance with the regulations.
- (5) Abatement certificates surrendered by the person for the purpose of compliance with an order under this section are to be cancelled by the Scheme Administrator.
- (6) A certificate surrendered under an order under this section is not to be counted toward compliance with a person's greenhouse gas benchmark or greenhouse shortfall. Accordingly, sections 97BD and 97BE do not apply in respect of certificates surrendered for the purpose of compliance with an order under this section.
- (7) A person must not fail to comply with an order under this section.

Maximum penalty: 1,000 penalty units, and an additional 1 penalty unit for each certificate the person fails to surrender in accordance with the order.
- (8) If a person fails to comply with an order under this section, the Scheme Administrator may cancel any abatement certificates in respect of which the person is registered under this Part as the owner.
- (9) For avoidance of doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of abatement certificates to comply with the order.

Note—

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

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

97EG Records to be kept by accredited abatement certificate providers

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

Division 6 Transfers and other dealings in abatement certificates

97F Types of abatement certificate

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

97FA Transferability of certificates

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

97FB Application for registration of transfer

- (1) The transfer of an abatement certificate does not have effect until the transfer is registered by the Scheme Administrator under this Part.
- (2) An application for registration of a transfer of an abatement certificate is to be made to the Scheme Administrator by the parties to the transfer.
- (3) The Scheme Administrator must:
 - (a) accept the application by registering the transfer of the certificate in the register of abatement certificates, or
 - (b) refuse the application.
- (4) The Scheme Administrator registers the transfer of an abatement certificate by altering the entry relating to that certificate in the register of abatement certificates so as to record the new owner of the certificate.
- (5) The Scheme Administrator may refuse an application for registration of a transfer of an abatement certificate on such grounds as may be specified in the

regulations.

- (6) The Scheme Administrator must refuse an application for registration of a transfer of a non-transferable abatement certificate unless:
 - (a) the Scheme Administrator is satisfied that the transfer is associated with the sale of the business, or part of the business, in connection with which the abatement certificate was created to the person to whom the certificate is to be transferred, or
 - (b) the Scheme Administrator is authorised by the regulations to register the transfer.
- (7) The regulations may make provision for or with respect to applications for the registration of transfers of abatement certificates, including by requiring an application fee to be paid to the Scheme Administrator.

97FC Other dealings in certificates

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

97FD Holder of certificate may deal with certificate

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

Note—

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

those certificates to be the actual certificates improperly created (as those certificates may already have been sold).

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

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

Division 7 Registers

97G Establishment and keeping of registers

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

97GA Register of accredited abatement certificate providers

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

- (b) any other information in the register that is required by the regulations to be made available for public inspection.

97GB Register of abatement certificates

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

97GC Evidentiary provisions

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

97GD Correction of register

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

Division 8 Functions of Tribunal and Scheme Administrator

97H Functions of Tribunal

- (1) The Tribunal has the following functions:

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

97HA Scheme Administrator

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

certificate scheme,

- (c) ability to meet greenhouse objectives,
- (d) proposed governance arrangements,
- (e) arrangements proposed to manage liabilities associated with carrying out the Scheme Administrator's functions.

(3) The Scheme Administrator has the following functions:

- (a) the functions conferred by this Act relating to the abatement certificate scheme established by this Part,
- (b) to monitor, and to report to the Minister on, the extent to which accredited abatement certificate providers comply with this Act, the regulations, the greenhouse gas benchmark rules and any conditions of accreditation,
- (c) to conduct audits, or require the conduct of audits, for the purposes of this Part,
- (d) such other functions as are conferred or imposed on it by or under this Act or any other Act or law.

(4) If the Scheme Administrator is appointed by the Minister, the Scheme Administrator also has such other functions as are conferred or imposed on it by the Minister under the terms of its appointment as Scheme Administrator.

(5) For the purpose of enabling the Scheme Administrator to exercise its functions, the Minister must furnish the Scheme Administrator with such information in the possession of the Minister as the Scheme Administrator may request in relation to the compliance by accredited abatement certificate providers with this Part.

(6) The Scheme Administrator may, with the approval of the Minister, delegate the exercise of its functions under this Part, other than this power of delegation, to any other person or body.

(7) The Scheme Administrator, and any person acting under the direction of the Scheme Administrator, is not liable in any civil proceedings for anything done or omitted to be done in good faith in the exercise or purported exercise of any function conferred or imposed by or under this Act.

(8) The regulations may make provision for or with respect to the appointment of a Scheme Administrator by the Minister.

(9) The Minister may appoint more than one person or body to exercise the functions of the Scheme Administrator and may appoint different persons or bodies to exercise particular functions of the Scheme Administrator. In such a

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

97HB Conduct of audits

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

97HC Provision of information, documents and evidence

- (1) For the purposes of exercising the Tribunal's functions under this Part (whether as the Tribunal or the Scheme Administrator), the Chairperson of the Tribunal may, by notice in writing served on an officer of a benchmark participant, an accredited abatement certificate provider or any other person, require the officer or person to do any one or more of the following:
 - (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out the information specified in the notice,
 - (b) to send to the Tribunal, on or before a day specified in the notice, the documents specified in the notice,
 - (c) to attend a meeting of the Tribunal to give evidence.
- (2) For the purposes of exercising the Scheme Administrator's functions under this

Part, the Scheme Administrator (not being the Tribunal) may, by notice in writing served on an officer of a benchmark participant or an accredited abatement certificate provider, require the officer to do any one or more of the following:

- (a) to send to the Scheme Administrator, on or before a day specified in the notice, a statement setting out the information specified in the notice,
 - (b) to send to the Scheme Administrator, on or before a day specified in the notice, the documents specified in the notice.
- (3) If documents are given to the Tribunal or Scheme Administrator under this section, the Tribunal or Scheme Administrator:
- (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for the period necessary for those purposes, and
 - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal or Scheme Administrator.

97HD Cabinet documents and proceedings

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

- (3) In this section:

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

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

97HE Confidential information

- (1) If a person provides information to the Tribunal or Scheme Administrator in

connection with the Tribunal's or Scheme Administrator's functions under this Part on the understanding that the information is confidential and will not be divulged, the Tribunal or Scheme Administrator is required to ensure that the information is not divulged by it to any person, except:

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

97HF Annual report by Tribunal

- (1) As soon as practicable after 1 March (but on or before 30 June) in each year, the Tribunal must prepare and forward to the Minister a report on the extent to which benchmark participants have complied, or failed to comply, with greenhouse gas benchmarks during the 12 months ending on 31 December in the previous year.
- (2) Without limiting subsection (1), the report is to contain the following:
 - (a) the identity of each benchmark participant and the performance of the participant in relation to the participant's greenhouse gas benchmark,
 - (b) the total number of abatement certificates surrendered in each category of certificate.
- (3) The report must also set out the functions delegated by the Tribunal under section 97H (3) and the person or body to whom they were delegated.
- (4) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Division 9 Reviews

971 Appeals to Administrative Decisions Tribunal about certificates and related matters

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

Administrator and who is aggrieved by a decision of the Scheme Administrator to impose that order may apply to the Administrative Decisions Tribunal for a review of the decision.

Division 10 Offences

Note—

Under section 101 directors and managers of corporations that commit offences may be proceeded against if they knowingly authorise or permit the commission of the offence.

97J Improper creation of certificates

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

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

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

97JA Obstruction of Tribunal or Scheme Administrator

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

Maximum penalty:

- (a) in the case of a corporation—250 penalty units,

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

97JB False or misleading information

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

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

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

97JC Licence condition relating to offences

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

Division 11 Greenhouse gas benchmark rules

97K Greenhouse gas benchmark rules

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

- (g) the methodology for determining whether a benchmark participant has complied with the participant's greenhouse gas benchmark in any year,
 - (h) any other matter for which a greenhouse gas benchmark rule may be made under this Part,
 - (i) any other matter prescribed by the regulations.
- (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.
- (3) A rule may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.
- (4) The Minister may from time to time approve amendments to the rules or a revocation of rules.
- (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:
- (a) written notice of the approval of the rule must be published in the Gazette, and
 - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
 - (c) the Minister must make available a copy of the rule to each benchmark participant and make copies available to the public.
- (6) A rule must be consistent with this Act and the regulations.

97KA Obligations under greenhouse gas benchmark rules

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

Maximum penalty:

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

- (2) It is a condition of a retail supplier's licence that the retail supplier must comply with the greenhouse gas benchmark rules.

[3] Section 103 Recovery of fees and penalties

Insert "or payable under Part 8A" after "licence" where firstly occurring.

[4] Section 103A

Insert after section 103:

103A Penalty notices for certain offences

- (1) An authorised officer or a police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made

under, this or any other Act relating to proceedings that may be taken in respect of offences.

[5] Section 106 Regulations

Insert after section 106 (1) (h):

(h1) information and returns to be provided to the Tribunal or the Minister by benchmark participants under Part 8A,

(h2) fees for audits and other monitoring or accreditation activities or services provided by the Tribunal or Scheme Administrator under Part 8A,

[6] Section 106 (3)

Omit "100". Insert instead "250".

[7] Section 106 (3)

Omit "25". Insert instead "100".

[8] Schedule 2 Licences

Insert "or by or under any other Act" after "regulations" in clause 6 (1) (a).

[9] Schedule 2, clause 6 (4)

Omit the subclause. Insert instead:

(4) Without limitation, the Minister must impose a condition on each retail supplier's licence requiring the holder of the licence to prepare and publish annual reports in relation to its performance in meeting the minimum standards of service required under its standard form customer supply contracts.

[10] Schedule 2, clause 6 (6)-(8)

Omit the subclauses.

[11] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002

[12] Schedule 6, Part 5

Insert after Part 4:

Part 5 Provisions consequent on enactment of Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002

40 First benchmark figures

Despite section 97BF, the Tribunal may, for the year commencing 1 January 2003, determine the matters specified in section 97BF (1) before, on or after 1 January 2003.

41 Abatement certificates

- (1) For the purposes of accrediting persons as abatement certificate providers and enabling the creation, registration and transfer of abatement certificates, the Scheme Administrator may determine any matter for or with respect to which regulations may be made under Division 4, 5 or 6 of Part 8A in accordance with such guidelines (if any) as may be approved by the Minister.
- (2) This clause ceases to have effect when regulations are made for the purposes of Division 4 of Part 8A, or 6 months after the date of commencement of this clause, whichever is the earlier.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Electricity Supply Act 1995, section 103A

2.2 Independent Pricing and Regulatory Tribunal Act 1992 No 39

[1] Section 9 Arrangements with other entities

Insert “(whether under this or any other Act)” after “Tribunal” where secondly occurring in section 9 (1) (a).

[2] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (1):

Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002

2.3 Industrial Relations Act 1996 No 17

Section 210 Freedom from victimisation

Insert at the end of section 210 (1) (j):

- (k) assists the Independent Pricing and Regulatory Tribunal or Scheme Administrator in the exercise of its functions under the *Electricity Supply Act 1995*.