

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

Overview of Bill

Part 8A of the Electricity Supply Act 1995 (the Principal Act) establishes a scheme that provides for the reduction of greenhouse gas emissions associated with the production and use of electricity and encourages participation in activities to offset the production of greenhouse gas emissions:

- (a) by setting out State greenhouse gas benchmarks and providing for the calculation on the basis of these of individual greenhouse gas benchmarks for certain participants in the electricity industry and large users of electricity, and
- (b) by providing a scheme for the recognition of activities that reduce or promote the reduction of greenhouse gas emissions and enable trading in, and use of certificates created as a result of those activities for the purpose of meeting greenhouse gas benchmarks, and
- (c) by imposing penalties for failure to meet greenhouse gas benchmarks in any year.

The scheme currently has effect until 31 December 2012 as State greenhouse gas benchmarks that are the basis of the scheme are set until that date.

The object of this Bill is to amend the Principal Act:

- (a) to provide for the extended operation of the scheme from 2012 to 2021 and beyond or until a scheme with similar objects is established on a national basis or in this jurisdiction and at least one or more other States or Territories, and
- (b) to increase in incremental steps commencing 1 January 2010 the amount of the penalty payable under Part 8A by a benchmark participant who fails to comply with the participant's greenhouse gas benchmark for reduction of greenhouse gas emissions in any year, and
- (c) to make minor amendments to facilitate the administration of the scheme.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Electricity Supply Act 1995 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Electricity Supply (General) Regulation 2001 set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Electricity Supply Act 1995

State greenhouse gas benchmarks

Section 97B of the Principal Act currently sets out the State greenhouse gas benchmarks for the years commencing on 1 January 2003 and ending on 31 December 2012 as 7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population.

Schedule 1 [1] amends section 97B to expand the period for which that benchmark is set to 31 December 2021 and beyond.

Termination of scheme

Schedule 1 [8] inserts proposed section 97KB to enable the Governor by proclamation to terminate the operation of any or all of the provisions of Part 8A if the Minister has certified that the Minister is satisfied that New South Wales is, or will be, a participant in a scheme with comparable objects to the scheme established

by Part 8A that has been established on a national basis or in New South Wales and at least one other State or Territory.

Greenhouse penalties

Section 97CA of the Principal Act makes a benchmark participant who fails to meet the participant's greenhouse gas benchmark for a year liable to an amount of civil penalty of a specified amount per tonne of carbon dioxide equivalent of greenhouse shortfall for the year concerned adjusted in accordance with the regulations in accordance with movements in the consumer price index.

Schedule 1 [2] amends section 97CA to increase in incremental steps between 1 January 2010 and 1 January 2013 the amount of penalty payable. The current amount of \$11.50 per tonne of carbon dioxide equivalent of greenhouse shortfall will rise to \$15.50 by 1 January 2013.

Schedule 1 [10] inserts proposed clause 50 into Schedule 6 (Savings, transitional and other provisions) to preserve the amount of greenhouse penalty for the current year.

Schedule 2 contains consequential amendments to the Electricity Supply (General) Regulation 2001 so that the amounts of penalty specified in section 97CA as amended will be adjusted in accordance with movements in the consumer price index.

Administration of scheme

The Scheme Administrator is required by Division 7 of Part 8A to keep and maintain a register of accredited abatement certificate providers and a register of abatement certificates. The Division provides for the form in which the registers are to be kept and the information to be included in them and that may be made publicly available.

Schedule 1 [6] inserts proposed section 97GBA to enable the Scheme Administrator to compile and make available consolidated information compiled from the registers.

Conditions of accreditation

Under the scheme, persons may be accredited as abatement certificate providers.

Once accredited, providers may create abatement certificates in respect of greenhouse gas abatements. Section 97DD sets out the conditions of accreditation. Conditions include conditions limiting the creation of such certificates in respect of abatements already used or for the purposes of compliance with other mandatory schemes of this or other jurisdictions intended to promote the reduction of greenhouse gas emissions.

Schedule 1 [4] amends section 97DD to expand those limitations to include abatements used for purposes of compliance with voluntary and non-government schemes or in accordance with any agreement, arrangement or undertaking of any kind.

The conditions of accreditation include such conditions as may be imposed by the Scheme Administrator.

Schedule 1 [5] inserts proposed section 97DDA to enable an accredited abatement certificate provider to apply to the Scheme Administrator for the variation or revocation of any condition imposed and to provide for the making of regulations with respect to the variation and revocation of conditions (including application fees). It also enables the Scheme Administrator to charge fees on a cost recovery basis for the investigation and determination of such applications. Schedule 1 [3] makes a consequential amendment to omit a regulation-making power that has been incorporated in proposed section 97DDA (2). Schedule 1 [10] inserts clause 51 into Schedule 6 (Savings, transitional and other provisions) so that existing conditions may be varied or revoked.

Annual report by Tribunal

Section 97HF requires the Tribunal to report to the Minister on or before 30 June in each year on benchmark participants who have complied, or failed to comply, with greenhouse gas benchmarks.

Schedule 1 [7] amends section 97HF to extend the latest date for the report to

31 July.

Savings, transitional and other provisions

Schedule 1 [9] amends Schedule 6 to enable the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [10] contains savings and transitional provisions described above.

Schedule 2 Amendment of Electricity Supply (General) Regulation 2001

Schedule 2 contains the amendments described above to clause 73C of the Electricity Supply (General) Regulation 2001 that are consequential on Schedule 1 [2].