

Electricity Supply Amendment (GGAS) Bill 2009

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the transition from the greenhouse gas abatement scheme set out in Part 8A of the *Electricity Supply Act 1995* (the *Principal Act*) when a similar scheme is established either nationally or in this State and at least one other State or Territory, by:

- (a) permitting a termination day to be proclaimed if the Minister for Energy is satisfied that the similar scheme will apply in New South Wales and so long as the termination day does not occur before that scheme applies, and
- (b) providing for a final compliance period that ends on the day immediately preceding the termination day, and
- (c) preventing the creation of abatement certificates in respect of activities occurring on or after the termination day, and
- (d) preventing a person from applying for accreditation as an abatement certificate provider on or after 1 January 2010 (or any later date that may be prescribed), and
- (e) providing that an abatement certificate cannot be created in relation to category A generation occurring on or after 1 July 2010 (or any later date that may be prescribed), and
- (f) providing that compensation is not payable by the State in relation to the enactment, making or operation of Part 8A of the Principal Act or any Act that amends that Part (including the proposed Act), or the termination of the scheme set out in that Part or related conduct or actions.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

Schedule 1 [18] substitutes section 97KB of the Principal Act which provided for the termination of the operation of the greenhouse gas abatement scheme set out in Part 8A of that Act (the **GGAS scheme**) by proclamation of the Governor. The new provision modifies how the GGAS scheme is to be terminated by the Governor. The Governor may, by proclamation, prescribe a termination day for the scheme or repeal any or all of the provisions of Part 8A. The Governor is not to make any such proclamation unless the Minister for Energy is satisfied that a similar scheme (established nationally or with other States or Territories) will apply in New South Wales. That other scheme must be designed to reduce greenhouse gas emissions associated with the production and use of electricity and must encourage participation in activities to offset the production of greenhouse gas emissions. The termination day, or any day specified for the repeal of a provision, must not be a day that is earlier than the day on which that other scheme applies in New South Wales.

Under the GGAS scheme, persons who are subject to the scheme (**benchmark participants**) have obligations that arise annually. However, as the scheme may be terminated part way through a year, a final period of less than one year is likely.

Schedule 1 [1] inserts a definition of **compliance period** that is to replace the use of the term “year” in Part 8A of the Principal Act. A compliance period is a year, except in the case of the final compliance period, which is the period from 1 January until the day immediately preceding the termination day. **Schedule 1 [3], [8] and [10]** replace references to “year” with references to “compliance period” throughout Part 8A. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [1] also inserts definitions of **category A generation, Emissions Workbook, final compliance period** and **termination day** for the purposes of Part 8A. **Schedule 1 [13] and [14]** make consequential amendments.

Schedule 1 [5] substitutes section 97B of the Principal Act to omit redundant provisions. Schedule 1 [4] makes a consequential amendment.

Schedule 1 [6] updates the principles for determining the greenhouse gas benchmark for a benchmark participant to refer to compliance periods and to provide for a pro rata reduction of that benchmark for the final compliance period. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [7] makes it clear that an amount by which a benchmark participant fails to comply with the participant’s greenhouse gas benchmark for the final compliance period (a **greenhouse shortfall**) cannot be carried forward.

Schedule 1 [11] provides that any greenhouse penalty payable by a benchmark participant in respect of a greenhouse shortfall for the final compliance period is payable within 3 months after the termination day or on any later day determined by the Independent Pricing and Regulatory Tribunal (the **Tribunal**).

Schedule 1 [12] requires a benchmark participant to lodge with the Tribunal the participant’s greenhouse gas benchmark statement in respect of the final compliance period not later than 3 months after the termination day or such later day as may be permitted by the Tribunal.

Schedule 1 [15] provides that a person may not apply for accreditation as an abatement certificate provider under Part 8A of the Principal Act on or after 1 January 2010 (or any later date that may be prescribed).

Schedule 1 [16] provides that an abatement certificate cannot be created later than 2 months after the termination day or in respect of activities occurring on or after the termination day. That amendment also provides that an abatement certificate cannot be created in relation to category A generation that occurs on or after 1 July 2010 (or any later day that may be prescribed) and any such abatement certificate cannot be created after 1 October 2010, or if a later day is prescribed, 3 months after that later day.

Schedule 1 [17] provides that the Tribunal’s report to the Minister on the extent to which benchmark participants have complied, or failed to comply, with greenhouse gas benchmarks during the final compliance period is to be forwarded to the Minister as soon as practicable after the day occurring 3 months after the termination day (but on or before the day occurring 7 months after the termination day).

Schedule 1 [19] provides that compensation is not payable by or on behalf of the State in relation to the enactment, making or operation of Part 8A of the Principal Act, any Act that amends that Part (including the proposed Act) or any instrument under that Part, or in relation to any statement or conduct relating to any such enactment, making or operation or any statement or conduct in relation to accreditation as an abatement certificate provider or to abatement certificates.

Schedule 1 [20] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 1 [21]** permits such regulations to be made consequent on the repeal of a provision of Part 8A of the Principal Act.

Schedule 1 [22] updates a reference to an abolished Department.

Schedule 2 Amendment of instruments

Schedule 2.2 [1] omits redundant references to an abolished Department.

Schedule 2.2 [2] and [3] make amendments that are consequential on the amendments in Schedule 1.

Schedule 2.2 [4] omits a redundant definition.

Schedule 2.2 [5] provides, in respect of the final compliance period, for a pro rata reduction of the baseline for the activities of a person in respect of which an abatement certificate provider is entitled to create certificates.

Schedule 2.1 and 2.3 omit redundant definitions.