



New South Wales

Electricity Supply Amendment (Energy Savings Scheme) Bill 2015

Explanatory note

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

Overview of Bill

The principal object of this Bill is to make amendments to the energy savings scheme in the *Electricity Supply Act 1995* (the *principal Act*). Under the scheme, electricity network operators and retailers are required to meet energy savings targets based on their liable acquisitions of electricity. They meet their targets by purchasing and surrendering energy savings certificates, that have been created by accredited certificate providers. The amendments in this Bill include amendments to enable energy savings certificates to be created for activities that involve the consumption of gas, to extend the scheme to 2025 and to increase energy savings targets.

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.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

Schedule 1 [1] amends the objects of Part 9 (Energy savings scheme) of the principal Act by replacing references to electricity consumption with references to energy consumption so that the objects will extend to gas savings.

Schedule 1 [2]–[4] contain amendments to the definitions section of Part 9 of the principal Act that are consequential, in particular, on the amendments to sections 106 and 129 of the principal Act arising from the extension of the scheme to gas savings.

Schedule 1 [5] amends section 105 of the principal Act which establishes criteria for a recommendation by the Minister for a change in an energy savings scheme target for a year or years. The amendment enables the regulations to establish thresholds for the forming of an opinion that a change is appropriate because of an under supply or over supply of energy savings certificates.

Schedule 1 [6]–[9] amend section 106 of the principal Act which establishes individual energy savings targets for scheme participants. Instead of the targets being expressed in tonnes of carbon dioxide equivalent of greenhouse gas emissions, the amendments provide that they are to be expressed in units referred to as notional megawatt hours. This is to accommodate the extension of the scheme to energy saving activities involving the consumption of gas. The note that is included makes it clear that the number of notional megawatt hours of individual energy savings targets of scheme participants will not be the same as the number of actual megawatt hours saved by end users as a result of energy saving activities for which energy savings certificates are created.

Schedule 1 [10] inserts a new subsection in section 107 of the principal Act to clarify that if a scheme participant purchases electricity from another scheme participant, the purchase is not a liable acquisition if the purchase of the electricity is, or the supply of the electricity is to be treated as, a liable acquisition for that other scheme participant or for a scheme participant who is further up the chain of supply of the electricity (that is, closer to the point of generation).

Schedule 1 [11] amends the note to section 110 of the principal Act so that it includes a reference to energy saving activities involving the consumption of gas.

Schedule 1 [12] and [13] are amendments that reflect that energy savings shortfalls (as well as targets) are to be expressed in notional megawatt hours.

Schedule 1 [14]–[19] amend sections 113 and 114 of the principal Act which relate to penalty rates. The amendments are consequential on the amendments that change the units in which energy savings targets and shortfalls are expressed to notional megawatt hours and on the amendments that simplify the scheme by omitting Schedule 5A. The methodology for adjusting the rates for movements in the Consumer Price Index for Sydney will continue to be dealt with in the regulations. As with the amendment to section 105 of the principal Act, the amendment in **Schedule 1 [18]** to section 114 of the principal Act enables the regulations to establish thresholds for the forming of an opinion by the Minister that a change to the base penalty rate is appropriate because of an under supply or over supply of energy savings certificates.

Schedule 1 [20] makes an amendment to section 116 of the principal Act that is consequential on the extension of the scheme to 2025 by the amendment to section 178 of the principal Act.

Schedule 1 [21] amends section 122 of the principal Act which deals with the mechanics of exemptions from the scheme for an industry or activity that is both emissions intensive and trade exposed and the mechanics of revocations of exemptions. Instead of an exemption or revocation taking effect at the beginning of the year after the order granting or revoking the exemption is made, the amendments provide that the exemption or revocation takes effect on publication of the order in the Gazette or on a later day specified in the order.

Schedule 1 [22] amends section 124 of the principal Act to prevent an energy savings certificate being surrendered by a scheme participant for the purposes of meeting its individual energy savings target or remedying a carried forward shortfall if it relates to energy saving activities outside New South Wales unless the activity occurred in a State or Territory for which there is an approved corresponding scheme and the Minister has approved the surrender in New South Wales of such certificates for those purposes.

Schedule 1 [23] makes an amendment to section 127 of the principal Act so that it includes references to energy saving activities involving the consumption of gas.

Schedule 1 [24] amends section 127 of the principal Act to require the approval of a corresponding scheme by the Minister to be by order published in the Gazette. This is designed to provide appropriate evidence of the approval.

Schedule 1 [25] makes an amendment to section 128 of the principal Act so that energy savings certificates will relate to energy savings expressed in notional megawatt hours.

Schedule 1 [26] replaces section 129 of the principal Act which sets out how energy savings attributable to recognised energy saving activities are to be calculated. The amendment contemplates certificate conversion factors for both electricity and gas and for the scheme rules to provide for the methodology for calculating the number of megawatt hours of energy savings arising from a recognised energy saving activity and for applying the certificate conversion factors.

Schedule 1 [27]–[31] amend section 130 of the principal Act to introduce a separate certificate conversion factor for gas, namely, 0.39, and by making amendments necessary to simplify the presentation of the scheme by omitting Schedule 5B.

Schedule 1 [32] makes an amendment to section 135 of the principal Act related to the expansion of energy saving activities to include activities involving the consumption of gas.

Schedule 1 [33] and [34] amend section 142 of the principal Act which sets out the circumstances in which the Scheme Administrator may require surrender of energy savings certificates. Instead of the person having to have been found guilty of certain offences, the amendment provides that surrender may be required if the Scheme Administrator is satisfied, on the balance of probabilities on the basis of an audit conducted under the principal Act or the regulations or of information otherwise obtained by the Administrator under the principal Act or the regulations, that the person is guilty of an offence.

Schedule 1 [35] and [36] amend section 143 of the principal Act which requires energy savings certificates to be registered. The amendments contemplate that the fee for an application for registration of a certificate set out in the regulations will be subject to CPI increases as set out in the regulations.

Schedule 1 [37] amends the functions of the Scheme Regulator set out in section 152 of the principal Act to include the function of providing advice to the Minister on request about the extent of any under supply or over supply of energy savings certificates that may be surrendered under Part 9 of the principal Act.

Schedule 1 [38] mirrors the amendment to the functions of the Scheme Regulator in the functions of the Scheme Administrator set out in section 154 of the principal Act.

Schedule 1 [39] amends section 163 of the principal Act which sets out matters that must be included on the register of energy savings certificates. The amendment requires that, for an activity that takes place outside New South Wales under an approved corresponding scheme, the register must include the State or Territory in which the activity occurred.

Schedule 1 [40] makes an amendment to section 167 (Scheme rules) of the principal Act consequential on the amendment to section 129 of the principal Act.

Schedule 1 [41]–[44] amend section 174 of the principal Act which sets out matters to be included in the Scheme Regulator's annual report. The amendments require further statistics and assessments to be included in the report relevant to the question of whether there is an under supply or over supply of energy savings certificates that may be surrendered and clarify that existing references to actual energy savings relate to savings realised by end users.

Schedule 1 [45] amends section 178 of the principal Act to extend the scheme from the end of 2020 to the end of 2025.

Schedule 1 [46] and [47] amend section 187 of the principal Act which allows for penalty notices. The current provision empowers an authorised officer or police officer to issue a penalty notice. However, an authorised officer under the principal Act is a person authorised by an electricity entity who is given certain powers such as the power to enter a property to read a meter. The amendment alters the reference in this provision to enforcement officer defined as an employee of a government sector agency (within the meaning of the *Government Sector Employment Act 2013*) authorised in writing by the Minister to act as an enforcement officer.

Schedule 1 [48] increases the energy savings targets and energy conversion factors for 2016 to 2020 set out in Schedule 5 to the principal Act and adds targets and factors for 2021 to 2025.

Schedule 1 [49] omits Schedules 5A and 5B from the principal Act. The material contained in these Schedules is moved to the relevant provisions in the body of the principal Act for the purposes of simplifying the presentation of the scheme.

Schedule 1 [50] inserts a transitional provision into Schedule 6 to the principal Act relevant to converting energy savings certificates and energy savings shortfalls to notional megawatt hours. Other transitional provisions may be included in the regulations as provided for by clause 1 (1) of Schedule 6 to the principal Act.



New South Wales

Electricity Supply Amendment (Energy Savings Scheme) Bill 2015

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New South Wales

Electricity Supply Amendment (Energy Savings Scheme) Bill 2015

No. , 2015

A Bill for

An Act to amend the *Electricity Supply Act 1995* to make changes to the energy savings scheme; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Electricity Supply Amendment (Energy Savings Scheme) Act 2015</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Electricity Supply Act 1995 No 94	1
[1] Section 98 Objects of Part		2
	Omit “electricity” wherever occurring in section 98 (1) and (2) (a). Insert instead “energy”.	3
[2] Section 99 Definitions		4
	Omit the definitions of <i>carbon dioxide equivalent</i> and <i>greenhouse gas</i> from section 99 (1).	5
[3] Section 99 (1), definition of “certificate conversion factor”		6
	Omit “ <i>factor</i> ”. Insert instead “ <i>factors</i> ”.	7
[4] Section 99 (1)		8
	Insert in alphabetical order:	9
	<i>notional megawatt hours</i> —see section 106 (1).	10
[5] Section 105 Conditions under which energy savings scheme targets may be changed		11
	Omit section 105 (b) and (c). Insert instead:	12
	(b) the change to the energy savings scheme target is appropriate because of an under supply or over supply of energy savings certificates that may be surrendered under this Part, as evidenced in the manner set out in the regulations, or	13
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[6] Section 106 Individual energy savings targets		18
	Omit “expressed in tonnes of carbon dioxide equivalent of greenhouse gas emissions” from section 106 (1).	19
	Insert instead “expressed in units referred to as <i>notional megawatt hours</i> ”.	20
		21
[7] Section 106 (1) (a)		22
	Omit the paragraph. Insert instead:	23
	(a) Step 1	24
	Multiply the total value of all liable acquisitions made by the scheme participant during that year (expressed in megawatt hours) by the energy savings scheme target for the year (the <i>megawatt hours target</i>).	25
		26
		27
[8] Section 106 (2)		28
	Omit “tonne” wherever occurring. Insert instead “notional megawatt hour”.	29
[9] Section 106, note		30
	Omit the note. Insert instead:	31
	Note. For example, if a scheme participant has liable acquisitions in the year 2016 of 75,050 megawatt hours, to calculate the scheme participant’s individual energy savings target under subsection (1):	32
		33
		34
	(a) Step 1 requires the 75,050 megawatt hours to be multiplied by 0.07 (the energy savings scheme target for 2016), resulting in a megawatt hours target of 5,253.5, and	35
		36
		37
	(b) Step 2 requires the figure of 5,253.5 to be multiplied by 1.00 (the energy conversion factor for 2016), resulting in an individual energy savings target of 5,253.5 notional megawatt hours.	38
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	The result is then rounded up to 5,254 in accordance with subsection (2).	41

	The scheme participant has an individual energy savings target for the year 2016 of 5,254 notional megawatt hours.	1 2
	The scheme participant can meet this target by surrendering energy savings certificates to the Scheme Regulator in accordance with this Part. Since each certificate has a value of 1 notional megawatt hour (see section 128), the scheme participant can meet this target by surrendering 5,254 certificates.	3 4 5 6
	Energy savings certificates may be created in respect of activities that involve the consumption of electricity or gas or both electricity and gas. Certificate conversion factors are applied to the actual energy savings of end users resulting from an energy saving activity to produce energy savings expressed in notional megawatt hours for the purposes of energy savings targets. See Division 7.	7 8 9 10 11
	Consequently, the number of notional megawatt hours of individual energy savings targets of scheme participants will not be the same as the number of actual megawatt hours saved by end users as a result of energy saving activities for which energy savings certificates are created.	12 13 14 15
[10]	Section 107 Liable acquisitions	16
	Insert after section 107 (2):	17
	(2A) However, if a scheme participant purchases electricity from another scheme participant, the purchase is not a liable acquisition if the purchase of the electricity is, or the supply of the electricity is to be treated as, a liable acquisition for that other scheme participant or for a scheme participant who is further up the chain of supply of the electricity.	18 19 20 21 22
[11]	Section 110 What are the energy savings attributable to a scheme participant?	23
	Insert “or gas or both electricity and gas” after “electricity” in the note at the end of the section.	24 25
[12]	Section 111 Failure to meet individual energy savings target—energy savings shortfalls	26 27
	Omit “tonnes of carbon dioxide equivalent of greenhouse gas emissions” from section 111 (2).	28 29
	Insert instead “notional megawatt hours”.	30
[13]	Section 113 Penalty rates	31
	Omit “tonne of carbon dioxide equivalent of greenhouse gas emissions” from section 113 (1).	32 33
	Insert instead “notional megawatt hour”.	34
[14]	Section 113 (2)–(7)	35
	Omit the subsections. Insert instead:	36
	(2) Subject to section 114:	37
	(a) the base penalty rate is as follows:	38
	(i) for 2009 and 2010—\$24.50 per notional megawatt hour,	39
	(ii) for each subsequent year—the base penalty rate for a previous year specified in the regulations and adjusted for movements in the consumer price index in accordance with the regulations, and	40 41 42
	(b) the penalty conversion factor for a year is 0.94.	43
	(3) The Scheme Regulator is to cause notice of the adjusted base penalty rate for a year to be published on its website before the beginning of that year.	44 45

[15] Section 114 Changes to base penalty rates and penalty conversion factors	1
Omit “amend Schedule 5A to” from section 114 (1).	2
[16] Section 114 (2)	3
Omit the subsection.	4
[17] Section 114 (4)	5
Omit “to amend Schedule 5A”.	6
[18] Section 114 (4) (b) and (c)	7
Omit the paragraphs. Insert instead:	8
(b) the change to the base penalty rate is appropriate because of an under supply or over supply of energy savings certificates that may be surrendered under this Part, as evidenced in the manner set out in the regulations, or	9 10 11 12
[19] Section 114 (6), note	13
Omit the note.	14
[20] Section 116 Energy savings shortfalls may be carried forward	15
Omit “2020” wherever occurring in section 116 (6) (including the note).	16
Insert instead “2025”.	17
[21] Section 122 General provisions with respect to exemptions	18
Omit section 122 (1)–(3). Insert instead:	19
(1) An exemption takes effect on the day the order granting the exemption is published in the Gazette or, if a later day is specified in the order, on that later day.	20 21 22
(2) An exemption may be revoked by order of the Minister published in the Gazette.	23 24
(3) If an exemption is revoked, the revocation takes effect on the day the order revoking the exemption is published in the Gazette or, if a later day is specified in the order, on that later day.	25 26 27
[22] Section 124 Restrictions on surrender of energy savings certificates	28
Insert at the end of section 124 (1) (c):	29
, and	30
(d) in the case of a certificate that relates to an energy saving activity that occurred in a State or Territory for which there is an approved corresponding scheme under section 127—the Minister has, by the order approving the corresponding scheme or by a subsequent order published in the Gazette, approved the surrender of such certificates by a scheme participant for those purposes.	31 32 33 34 35 36
[23] Section 127 Activities in respect of which energy savings certificates may be created	37
Insert “or gas” after “electricity” wherever occurring.	38
[24] Section 127 (3)	39
Omit “in writing”. Insert instead “published in the Gazette”.	40

[25] Section 128 Energy savings represented by certificates	1
Omit “tonne of carbon dioxide equivalent of greenhouse gas emissions” wherever occurring.	2 3
Insert instead “notional megawatt hour”.	4
[26] Section 129	5
Omit the section. Insert instead:	6
129 Calculation of energy savings attributable to recognised energy saving activities	7 8
(1) The number of notional megawatt hours attributable to energy savings arising from a recognised energy savings activity is to be calculated by applying the certificate conversion factor or factors for the year in which the energy savings for which the certificate is created occurred to the number of megawatt hours of energy savings arising from the activity.	9 10 11 12 13
(2) Depending on the nature of the energy saving activity and the scheme rules, the calculation may require the application of the certificate conversion factor for electricity or the certificate conversion factor for gas or both the certificate conversion factor for electricity and the certificate conversion factor for gas.	14 15 16 17
(3) The scheme rules may provide for the methodology for calculating the number of megawatt hours of energy savings arising from a recognised energy saving activity and for applying the certificate conversion factors.	18 19 20
[27] Section 130 Certificate conversion factor	21
Omit section 130 (1). Insert instead:	22
(1) Subject to this section, the certificate conversion factors for a year are as follows:	23
(a) for electricity—1.06,	24 25
(b) for gas—0.39.	26
[28] Section 130 (2)	27
Omit the subsection.	28
[29] Section 130 (3)	29
Omit “amend Schedule 5B to change the”. Insert instead “change a”.	30
[30] Section 130 (4)	31
Omit the subsection.	32
[31] Section 130 (5)	33
Omit “the certificate”. Insert instead “a certificate”.	34
[32] Section 135 Eligibility for accreditation	35
Insert “or gas” after “electricity” in section 135 (2).	36
[33] Section 142 Scheme Administrator may require surrender of certificates	37
Omit section 142 (2). Insert instead:	38
(2) An order may be made against a person under this section only if the Scheme Administrator is satisfied (on the balance of probabilities on the basis of an	39 40

	audit conducted under this Act or the regulations or of information otherwise obtained by the Administrator under this Act or the regulations) that:	1
		2
	(a) the person is guilty of an offence involving the improper creation of energy savings certificates (that is, an offence under section 133), or	3
		4
	(b) the person is guilty of an offence of contravening a condition of the person's accreditation as a certificate provider (that is, an offence under section 138).	5
		6
		7
[34]	Section 142 (3)	8
	Omit "found guilty of an offence". Insert instead "on grounds".	9
[35]	Section 143 Creation of certificate must be registered	10
	Insert "(adjusted for movements in the consumer price index for each year in accordance with the regulations)" after "fee" in section 143 (6).	11
		12
[36]	Section 143 (7)	13
	Insert after section 143 (6):	14
	(7) The Scheme Regulator is to cause notice of any adjusted application fee to be published on its website before the beginning of the year to which the application fee applies.	15
		16
		17
[37]	Section 152 Functions of Scheme Regulator	18
	Insert after section 152 (1) (d):	19
	(d1) to provide advice to the Minister on request about the extent of any under supply or over supply of energy savings certificates that may be surrendered under this Part,	20
		21
		22
[38]	Section 154 Functions of Scheme Administrator	23
	Insert after section 154 (1) (c):	24
	(c1) to provide advice to the Minister on request about the extent of any under supply or over supply of energy savings certificates that may be surrendered under this Part,	25
		26
		27
[39]	Section 163 Register of energy savings certificates	28
	Insert after section 163 (1) (b):	29
	(b1) if the Minister has approved a corresponding scheme for a State or Territory for the purposes of section 127 and the energy saving activity to which the certificate relates occurred in such a State or Territory—the State or Territory in which the activity occurred,	30
		31
		32
		33
[40]	Section 167 Scheme rules	34
	Insert "and for applying the certificate conversion factors" after "activity" in paragraph (b) of the note to section 167 (1).	35
		36
[41]	Section 174 Annual report by Scheme Regulator	37
	Insert after section 174 (2) (c):	38
	(c1) the total number of energy savings certificates created in previous years and not surrendered under this Part before the beginning of the year to which the report relates,	39
		40
		41

	(c2)	an assessment of the extent of any under supply or over supply of energy savings certificates that may be surrendered under this Part in the year to which the report relates,	1 2 3
[42]	Section 174 (2) (d)		4
		Omit “actual energy savings that have been realised”.	5
		Insert instead “actual electricity and gas savings that have been realised by end users”.	6
[43]	Section 174 (2) (e)		7
		Omit “actual energy savings that will be realised”.	8
		Insert instead “actual electricity and gas savings that will be realised by end users”.	9
[44]	Section 174 (2A)		10
		Insert after section 174 (2):	11
	(2A)	For the purposes of subsection (2), any energy savings certificates created under an approved corresponding scheme that are not able to be surrendered by a scheme participant for the purpose of meeting its annual energy savings target or remedying a carried forward shortfall are to be disregarded.	12 13 14 15
[45]	Section 178 Automatic termination of scheme at end of year 2025		16
		Omit “2020” wherever occurring. Insert instead “2025”.	17
[46]	Section 187 Penalty notices for certain offences		18
		Omit “authorised officer” from section 187 (1). Insert instead “enforcement officer”.	19
[47]	Section 187 (9)		20
		Insert after section 187 (8):	21
	(9)	In this section, <i>enforcement officer</i> means an employee of a government sector agency (within the meaning of the <i>Government Sector Employment Act 2013</i>) authorised in writing by the Minister to act as an enforcement officer for the purposes of this section.	22 23 24 25
[48]	Schedule 5 Energy savings scheme—targets and energy conversion factors		26
		Omit the matter relating to the years 2016 to 2020. Insert instead:	27
			28
	2016	0.070	1.00
	2017	0.075	1.00
	2018	0.080	1.00
	2019	0.085	1.00
	2020	0.085	1.00
	2021	0.085	1.00
	2022	0.085	1.00
	2023	0.085	1.00
	2024	0.085	1.00
	2025	0.085	1.00

[49] Schedules 5A and 5B	1
Omit the Schedules.	2
[50] Schedule 6 Savings, transitional and other provisions	3
Insert after Part 12 of Schedule 6:	4
Part 13 Provisions consequent on enactment of Electricity Supply Amendment (Energy Savings Scheme) Act 2015	5
	6
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65 Units in which energy savings certificates and energy savings shortfalls are expressed	8
	9
(1) On and after the date of commencement of Schedule 1 [12] to the <i>Electricity Supply Amendment (Energy Savings Scheme) Act 2015</i> , an energy savings shortfall, or a carried forward energy savings shortfall, of a number of tonnes of carbon dioxide equivalent of greenhouse gas emissions, is to be regarded as an energy savings shortfall or a carried forward energy savings shortfall (as the case requires) of the same number of notional megawatt hours.	10
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(2) On and after the date of commencement of Schedule 1 [25] to the <i>Electricity Supply Amendment (Energy Savings Scheme) Act 2015</i> , the value of each registered energy savings certificate is one notional megawatt hour rather than one tonne of carbon dioxide equivalent of greenhouse gas emissions.	16
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