

#### Explanatory note

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

#### Overview of Bill

The object of this Bill is to amend the Electricity Supply Act 1995 (the principal Act) to establish an energy savings scheme. The scheme is intended to create a financial incentive to reduce the consumption of electricity by encouraging energy saving activities.

Retail suppliers of electricity, and certain other participants in the electricity market, will be required to participate in the energy savings scheme.

Participants in the energy savings scheme will be required to meet an individual energy savings target in each year (starting with 2009). Individual energy savings targets are calculated by reference to the energy savings scheme targets that are set out in the Bill.

Scheme participants can meet their individual energy savings target by surrendering energy savings certificates to the Scheme Regulator. Energy savings certificates can be created by persons who engage in recognised energy saving activities and are accredited under the scheme to create certificates. The certificates are tradeable. The Bill makes provision for the operation and enforcement of the energy savings scheme, including for the payment of penalties by scheme participants who fail to meet individual energy savings targets, and for other consequential matters.

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The energy savings scheme is different from the existing greenhouse gas abatement scheme (GGAS) set out in Part 8A of the principal Act. It is limited to activities that reduce the consumption of electricity, and does not apply to activities that reduce greenhouse gas emissions generally. The energy savings scheme is intended to complement the proposed national scheme for carbon pollution reduction.

The energy savings scheme will automatically terminate at the end of the year 2020, but may be terminated earlier (for instance if a national energy savings scheme is established).

#### 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 1 July 2009.

#### Schedule 1 Amendment of Electricity Supply Act 1995

#### The energy savings scheme

The principal amendments made by the Bill are contained in Schedule 1 [2] and [7]. Schedule 1 [2] inserts new Part 9 in the principal Act, and is explained in detail below.

#### Preliminary (Division 1)

Division 1 of new Part 9 provides for the objects of the new Part and definitions used in the new Part.

The principal object of the new Part is to create a financial incentive to reduce the consumption of electricity by encouraging energy saving activities.

The other objects of the new Part are:

(a) to assist households and businesses to reduce electricity consumption and electricity costs, and

(b) to complement any national scheme for carbon pollution reduction by making the reduction of greenhouse gas emissions achievable at a lower cost, and

(c) to reduce the cost of, and the need for, additional energy generation, transmission and distribution infrastructure.

#### Energy savings scheme (Division 2)

Division 2 of new Part 9 establishes the energy savings scheme.

The persons required to participate in the scheme are retail suppliers of electricity, direct suppliers of electricity and consumers of electricity whose electricity load is classified as a market load.

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Scheme participants are required to meet an individual energy savings target in each year, starting with 2009. (For the purposes of starting up the scheme, the year 2009 is taken to be the period of 6 months from 1 July 2009, but after that each year will be an ordinary calendar year.)

Energy savings scheme targets (Division 3)

Division 3 of new Part 9 establishes the general energy savings targets for the scheme, referred to as energy savings scheme targets. These targets are to be used as the basis for calculating the individual energy savings targets of scheme participants.

The energy savings scheme targets are set out in proposed Schedule 5 to the principal Act (see Schedule 1 [7]).

The Bill authorises the energy savings scheme targets to be changed, by regulation, in limited circumstances. An energy savings scheme target for a year cannot be changed after the year has started or within 12 months before the start of that year.

Individual energy savings targets (Division 4)

Division 4 of new Part 9 provides for the calculation of individual energy savings targets and penalties for failure to meet targets.

A scheme participant's individual energy savings target for a year is calculated by multiplying the total value of all liable acquisitions made by the scheme participant during that year by the energy savings scheme target for that year (that is, the target referred to in proposed Division 3). This result is then multiplied by the energy conversion factor for that year to obtain an individual energy savings target for the year.

A liable acquisition of a scheme participant is any purchase of electricity by the scheme participant (from the national electricity market operator or from any person who is not registered as a participant in the national electricity market) where the electricity is purchased for consumption by, or onsale to, end users in this State or for use in this State. Certain supplies of electricity generated by scheme participants are also treated as liable acquisitions of electricity.

Energy conversion factors are set out in proposed Schedule 5 to the principal Act (see Schedule 1 [7]).

A scheme participant's individual energy savings target is expressed in tonnes of carbon dioxide equivalent of greenhouse gas emissions.

A scheme participant meets its individual energy savings target if the energy savings attributable to the scheme participant during the year to which the target applies are equivalent to, or exceed, the scheme participant's individual energy savings target.

The energy savings that are attributable to a scheme participant under the scheme is the total value of all energy savings certificates that the scheme participant elects to surrender under the scheme for the purpose of meeting its individual energy savings target.

If a scheme participant fails to meet an individual energy savings target, the scheme participant will be liable for an energy savings shortfall penalty, calculated by

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reference to the amount of its energy savings shortfall (the amount by which its individual energy savings target exceeds the energy savings attributable to the scheme participant).

The penalty is calculated by reference to the relevant base penalty rate set out in

proposed Schedule 5A to the principal Act (see Schedule 1 [7]), multiplied by the penalty conversion factor also set out in that proposed Schedule.

The base penalty rates may be adjusted for movements in the consumer price index. The base penalty rates and penalty conversion factors may also be changed by regulation in other limited circumstances. Base penalty rates and penalty conversion factors cannot be changed after the year has started or within 12 months before the start of that year (apart from adjustments for movements in the consumer price index).

Scheme participants will be permitted, subject to certain limitations, to avoid an energy savings shortfall penalty by carrying forward their energy savings shortfall (or part of their energy savings shortfall) to the next year. However, the carried forward shortfall must be remedied in the next year.

#### Exemptions (Division 5)

Division 5 of new Part 9 permits the Minister to grant exemptions from the scheme in respect of the electricity load used by a specified person or class of persons or used in connection with a specified activity or class of activities. The Minister may grant such an exemption only if satisfied that the electricity load is used in connection with an industry or activity that is both emissions intensive and trade exposed. An exemption may be a full exemption or a partial exemption.

The effect of the exemption is that scheme participants can deduct from their liable acquisitions any electricity purchased or supplied that represents exempt electricity load.

#### Assessment of compliance of scheme participants (Division 6)

Division 6 of new Part 9 requires scheme participants to lodge with the Scheme Regulator an annual energy savings statement. This statement is to contain an assessment of the scheme participant's individual energy savings target for the year and details of energy savings certificates proposed to be surrendered to meet that target.

Division 6 also provides for other miscellaneous matters relating to the assessment process.

#### Creation of energy savings certificates (Division 7)

Division 7 of new Part 9 provides for the creation of energy savings certificates.

The rules made under the scheme may provide for the creation of energy savings certificates in respect of any activity that reduces the consumption of electricity in this State. Energy savings achieved in other jurisdictions may also be recognised under the scheme if there is in that other jurisdiction a corresponding energy savings

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scheme approved by the Minister. Activities in respect of which energy savings certificates may be created are referred to as recognised energy saving activities.

Subject to certain transitional arrangements for persons accredited as certificate providers under GGAS, the energy saving activity concerned must commence on or after 1 July 2008.

An energy savings certificate may be created for each whole tonne of carbon dioxide equivalent of greenhouse gas emissions attributable to energy savings arising from a recognised energy saving activity.

To calculate the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions attributable to energy savings arising from a recognised energy saving activity it is necessary to multiply the number of megawatt hours of energy savings arising from the recognised energy saving activity (which is provided for by the scheme rules) by a certificate conversion factor.

Certificate conversion factors are set out in proposed Schedule 5B to the principal Act (see Schedule 1 [7]). Certificate conversion factors may be changed by

regulation.

Certificate may be created after the energy saving activity occurs. There are time limits on creating certificates.

Certificates may not be created in relation to energy savings already claimed under GGAS.

It will be an offence to improperly create a certificate.

Accreditation of certificate providers (Division 8)

Division 8 of new Part 9 provides for the accreditation of persons as providers of energy savings certificates. Only accredited certificate providers can create energy savings certificates. The regulations may make provision for eligibility for accreditation.

Division 8 also provides for other miscellaneous matters relating to accreditation (applications for accreditation, duration of accreditation, conditions of accreditation and transfer of accreditation).

If a person improperly creates certificates, or creates certificates in contravention of conditions of accreditation, the Scheme Administrator may require the person to surrender energy savings certificates to the Scheme Administrator. The purpose of this provision is to prevent energy savings that have not actually been achieved from being attributed to a scheme participant.

Registration, form and duration of energy savings certificates (Division 9)

Division 9 of new Part 9 requires the creation of an energy savings certificate to be registered. It also provides for the form and duration of certificates.

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Transfers and other dealings in certificates (Division 10)

Division 10 of new Part 9 facilitates trading in energy savings certificates and provides for other matters relating to transfers of certificates.

Administration of scheme (Division 11)

Division 11 of new Part 9 provides for a Scheme Regulator and Scheme Administrator, and sets out their functions. In general, the Scheme Regulator is responsible for the administration of the scheme with regard to scheme participants (including monitoring compliance with the scheme by scheme participants) and the Scheme Administrator is responsible for the administration of the scheme with regard to accreditation of certificate providers and trading in certificates (including monitoring compliance with the scheme by accredited certificate providers).

The Scheme Regulator and Scheme Administrator will have power to conduct audits and to require information. It will be an offence to obstruct the Scheme Regulator or Scheme Administrator in the exercise of their functions or to provide false and misleading information to the Scheme Regulator or Scheme Administrator.

Division 11 also makes special provision for confidential information and for the protection of Cabinet documents.

Registers (Division 12)

Division 12 of new Part 9 provides for the following registers to be kept by the Scheme Administrator:

(a) a register of accredited certificate providers,

(b) a register of energy savings certificates.

It also allows the Scheme Administrator to make publicly available aggregated data compiled from the registers and provides for other matters in relation to the registers.

Scheme rules (Division 13)

Division 13 of new Part 9 enables the Minister to approve rules for the purposes of the scheme. Scheme participants must comply with scheme rules.

Miscellaneous (Division 14)

Division 14 of new Part 9 contains miscellaneous provisions relating to the scheme. These provisions deal with the following:

- (a) the obligation of retail suppliers to comply with the scheme as a condition of their licences,
- (b) arrangements for persons who cease to be scheme participants,
- (c) appeals to the Administrative Decisions Tribunal,
- (d) certificate evidence,
- (e) protection from personal liability for persons involved in administering the scheme,

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- (f) annual reports by the Scheme Regulator,
- (g) five-yearly reviews of the scheme,
- (h) waiver or suspension of obligations under the scheme in emergencies,
- (i) early termination of the scheme (for example, if a national scheme is established).

Unless terminated earlier, the scheme will automatically terminate at the end of the year 2020.

Savings and transitional matters

Schedule 1 [9] provides for savings and transitional matters in connection with the establishment of the energy savings scheme. These include provision for the transition from GGAS to the new scheme. Persons who are accredited under GGAS in respect of activities that are recognised energy saving activities under the new scheme will be able to be accredited as certificate providers under the new scheme. From the commencement of the new scheme, abatement certificates will not be able to be created under GGAS in relation to recognised energy saving activities unless the activities took place before that commencement. The provisions also allow exemptions for 2009 to be granted after the commencement of the scheme.

Schedule 1 [8] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Other amendments

Schedule 1 [1] makes a consequential amendment to provisions of the principal Act relating to GGAS, to reflect the fact that electricity consumption activities will now be dealt with under the new energy savings scheme.

Schedule 1 [3]–[5] make consequential amendments that extend existing arrangements for the recovery of fees and regulation-making powers so that they apply in respect of the energy savings scheme.

Schedule 1 [6] renumbers existing Part 9 of the Act, as a consequence of the insertion of the new Part 9.