



Australian Capital Territory

# **Electricity (Greenhouse Gas Emissions) Act 2004**

**A2004-71**

**Republication No 1**

**Effective: 7 September 2004 – 10 January 2006**

Republication date: 7 September 2004

Act not amended

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Electricity (Greenhouse Gas Emissions) Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 7 September 2004. It also includes any amendment, repeal or expiry affecting the republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Electricity (Greenhouse Gas Emissions) Act 2004

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Australian Capital Territory

# **Electricity (Greenhouse Gas Emissions) Act 2004**

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An Act 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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Electricity (Greenhouse Gas Emissions ) Act 2004*.

### 3 Objects of Act

- (1) The objects of this Act are—
  - (a) to reduce greenhouse gas emissions associated with the production and use of electricity; and
  - (b) to encourage participation in activities to offset the production of greenhouse gas emissions.
- (2) For these objects, this Act—
  - (a) establishes Territory 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 people 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 benchmark.



## 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*national electricity code*—see the *Independent Competition and Regulatory Commission Act 1997*, section 3 (1).’ means that the term ‘national electricity code’ is defined in that subsection and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Greenhouse gas benchmarks

### 7 Territory greenhouse gas benchmarks

- (1) The *Territory greenhouse gas benchmarks* are as follows:
  - (a) for the year 2005—7.96 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of ACT population;
  - (b) for the year 2006—7.62 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of ACT population;
  - (c) for each of the years 2007 to 2012—7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of ACT population.
- (2) The Territory greenhouse gas benchmarks are to be the basis for working out the greenhouse gas benchmark for each benchmark participant.

### 8 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 Act, to each benchmark participant.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) The greenhouse gas benchmark for a benchmark participant is to be worked out in accordance with this Act.

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

## **9 Benchmark participants**

- (1) For this Act, the following people are *benchmark participants*:
- (a) a retail supplier;
  - (b) a market customer (other than a retail supplier), but only in relation to an electricity load that the market customer has classified as a market load and that is electricity supplied for use in the ACT;
  - (c) a large customer who has made an election, that is in force, to be subject to a greenhouse gas benchmark.
- (2) The regulations may make provision in relation to the following:
- (a) the making of elections to be subject to greenhouse gas benchmarks;
  - (b) the circumstances in which an election takes effect or ceases to be in force;
  - (c) the greenhouse penalty payable by a customer or person whose election ceases to be in force;
  - (d) the circumstances in which a person is taken to be a large customer or a large customer who uses electricity at more than 1 site.

## **10 Principles for working out greenhouse gas benchmarks for benchmark participants**

The greenhouse gas benchmark for a benchmark participant for a year is to be worked out by—

- (a) multiplying the ACT population for the year by the Territory greenhouse gas benchmark for the year to work out the electricity sector benchmark; and

- (b) working out the proportion of the total electricity demand in the ACT (as determined by the regulator) that is applicable to the participant for the year; and
- (c) applying that proportion to the electricity sector benchmark for the year to work out the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions that make up the benchmark for that participant.

*Note* The rules set out how the matters mentioned in this section are to be worked out.

## **11 Principles for working out compliance with greenhouse gas benchmarks**

- (1) A benchmark participant's compliance with the participant's greenhouse gas benchmark for a year is worked out by subtracting the participant's greenhouse gas benchmark from the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions in the year for which the participant is responsible.
- (2) The number of tonnes of carbon dioxide equivalent of greenhouse gas emissions in a year for which a benchmark participant is responsible is worked out by—
  - (a) multiplying the total number of megawatt hours of electricity supplied or purchased by the participant in the year by the ACT pool coefficient for greenhouse gas emissions arising out of that electricity for the year; and
  - (b) subtracting from that number the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions abated by the participant in the year.

*Note* The method set out in the rules for working out electricity supplied or purchased by a benchmark participant may take into account electricity lost from transmission or distribution (see s 61 (1) (c)).

- (3) 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 the year and any renewable energy certificates of the participant counted for the 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 working out the total megawatt hours of electricity supplied by a retail supplier in each year for subsection (2), electricity supplied by the supplier to another benchmark participant is not to be taken into account.

*Note* The rules set out how the principles in this section are to be applied.

## **12 Greenhouse shortfalls may be carried forward**

- (1) An amount of tonnes of carbon dioxide equivalent of greenhouse gas emissions of greenhouse shortfall in a year (other than the year 2007) may, subject to the rules, be carried forward to the next year.
- (2) If an amount of greenhouse shortfall is carried forward, the amount of the 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 the penalty is not payable for the shortfall amount at the end of the year from which it was carried forward.
- (3) The 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 worked out 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 to abate the greenhouse shortfall.
- (6) The amount of greenhouse shortfall carried forward in relation to a year may not exceed 10% of the benchmark participant's greenhouse gas benchmark for the year.
- (7) An amount of greenhouse shortfall may be carried forward whether or not a shortfall was carried forward in the previous year.

**13 Factors to be determined and notified before beginning of each year**

- (1) The regulator must, in writing, determine the following matters for each year:
  - (a) the ACT pool coefficient for greenhouse gas emissions;
  - (b) the ACT electricity demand;
  - (c) the ACT population;
  - (d) the electricity sector benchmark.
- (2) A determination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (3) A determination is to be made in accordance with the requirements (if any) of the rules.
- (4) A determination for a year must be made before the beginning of the year (but, if practicable, before the end of November in the previous year).
- (5) The matters determined for a year apply to the working out of greenhouse gas benchmarks, and the assessment of compliance with the benchmarks, for the next year.

**14        Evidentiary provisions relating to benchmarks**

- (1) The regulator may give a certificate stating that, on a date or for a period stated in the certificate—
  - (a) a person was or was not a benchmark participant; or
  - (b) the ACT pool coefficient, ACT electricity demand, ACT population or electricity sector benchmark was the value or amount stated in the certificate; or
  - (c) the greenhouse gas benchmark for a benchmark participant was the amount stated in the certificate; or
  - (d) the greenhouse shortfall for a benchmark participant, or an amount of greenhouse shortfall carried forward by a benchmark participant, was the amount stated in the certificate; or
  - (e) the greenhouse penalty payable by a benchmark participant was the amount stated in the certificate.
- (2) The certificate is admissible in a proceeding before any court or tribunal and is evidence of the facts stated in it.

## **Part 3**                      **Enforcement of greenhouse gas benchmarks**

### **15**                      **Licence conditions applying to retail suppliers**

- (1) It is a condition of each retail supplier's licence that the retail supplier comply with—
- (a) its greenhouse gas benchmark; and
  - (b) this Act.

*Note*            A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) This section does not limit the Minister's power to give directions under the Utilities Act, section 19 about licence conditions applying to a retail supplier, including conditions (not inconsistent with this Act) about—
- (a) greenhouse gas emissions; or
  - (b) giving information to the regulator or scheme administrator about matters related to this Act.
- (3) Action may not be taken against the licence of a retail supplier under the Utilities Act, section 42 (Revocation) or section 47 (Contravention of licence condition) in relation to a greenhouse shortfall for which a greenhouse penalty is payable under this Act.

### **16**                      **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 a greenhouse penalty to the Territory.



- (2) The greenhouse penalty is the amount prescribed under the regulations adjusted in accordance with the regulations (if any) made for subsection (3).
- (3) The regulations may provide for the adjustment of the greenhouse penalty in accordance with movements in the CPI.
- (4) A greenhouse penalty payable for a year by a benchmark participant is payable to the Territory by 1 March in the following year or, if the regulator decides a later date, that date.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

- (5) Any greenhouse penalties payable under this Act are to be used for greenhouse gas reduction activities or programs nominated by the Minister.
- (6) In this section:

***CPI*** means the All Groups Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

*Note* For when a greenhouse gas penalty is payable for a greenhouse shortfall that is carried forward, see s 12.

## **17 Annual greenhouse gas benchmark statements**

- (1) A benchmark participant must give a greenhouse gas benchmark statement to the regulator by 1 March in each year or, if the regulator allows a later date, that date.
- (2) A greenhouse gas benchmark statement must contain—
  - (a) an assessment of the benchmark participant's greenhouse gas benchmark for the previous year; and
  - (b) an assessment of the participant's liability (if any) for the greenhouse penalty for the previous year; and

(c) an assessment of the participant's liability (if any) for a greenhouse penalty payable in relation to a greenhouse shortfall carried forward from the year before the previous year; and

(d) anything else required by the regulator.

*Note* If a form is approved under s 65 for a greenhouse gas benchmark statement, the form must be used.

(3) A greenhouse gas benchmark statement for a year must be accompanied by details of—

(a) all abatement certificates sought to be surrendered for the year or sought to be surrendered to abate a greenhouse shortfall carried forward from the previous year; and

(b) all renewable energy certificates sought to be counted for the year or sought to be counted to abate a greenhouse shortfall carried forward from the previous year.

(4) A benchmark participant commits an offence if the benchmark participant fails to give a greenhouse gas benchmark statement in accordance with this section.

Maximum penalty: 50 penalty units.

(5) An offence against this section is a strict liability offence.

## **18 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 Act or a corresponding law 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 benchmark participant's latest greenhouse gas benchmark statement relates; and

- (c) the participant is recorded in the register of abatement certificates under this Act or a corresponding law as the owner of the certificate.
- (2) The regulator may, by written notice given to a benchmark participant, refuse to accept the surrender of an abatement certificate by the benchmark participant if the regulator considers—
  - (a) the certificate cannot be surrendered under subsection (1); or
  - (b) the certificate has been or may be surrendered under a corresponding law; or
  - (c) the certificate is not required to be surrendered for compliance with the participant's greenhouse gas benchmark or to abate a greenhouse shortfall.
- (3) If the regulator accepts the surrender of an abatement certificate, and the regulator is not the scheme administrator, the regulator must give the scheme administrator written notice of the decision, including details of the abatement certificate surrendered.
- (4) In this section:  
*corresponding law* means—
  - (a) the *Electricity Supply Act 1995* (NSW), part 8A (Reduction of greenhouse gas emissions); or
  - (b) another law prescribed under the regulations for this definition.

## **19 Assessment of compliance with greenhouse gas benchmarks**

- (1) The regulations may make provision in relation to the following:
  - (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 a greenhouse penalty by a benchmark participant, including self-assessment and assessment by the regulator;
  - (d) the date when an assessment is taken to have been made and the date when an assessment takes effect;
  - (e) default assessments if a benchmark participant does not give a greenhouse gas benchmark statement;
  - (f) amendment of assessments at the request of a benchmark participant or on the regulator's own initiative;
  - (g) revocation of the cancellation of abatement certificates in relation to amended assessments and the revival of the certificates;
  - (h) payments resulting from amended assessments;
  - (i) notice of assessments.
- (2) The regulations must 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 the ACT.
- (3) In this section:
- relevant acquisition***—see the *Renewable Energy (Electricity) Act 2000* (Cwlth), section 31.

**20 Validity of assessment**

An assessment of a liability to pay a greenhouse penalty is not invalid only because a provision of this Act has not been complied with.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

**21 Waiver or suspension of obligations in emergencies**

- (1) The Minister may, by written order, waive, or suspend for a stated period, the obligation of a benchmark participant to comply with the participant's greenhouse gas benchmark.

- (2) An order is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (3) The Minister may make an order only if the Minister is satisfied 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) an emergency affecting the integrity of the register or the abatement certificate scheme.

- (4) An order may—

- (a) be made subject to conditions; and
- (b) state the effect of the waiver or suspension on any other rights given or obligations imposed under this Act.

## **Part 4                      Accreditation of abatement certificate providers**

### **22                      Accreditation required for creating abatement certificates**

- (1) A person may create an abatement certificate under this Act only if the person is an accredited abatement certificate provider.
- (2) An accredited abatement certificate provider may create abatement certificates only in relation to the activities in relation to which the person is accredited.

### **23                      Eligibility for accreditation**

- (1) The regulations and rules may make provision in relation to the eligibility of a person for accreditation as an abatement certificate provider.
- (2) The regulations and rules may make provision in relation to eligibility for accreditation in relation to—
  - (a) the generation of electricity in a way that results in reduced emissions of greenhouse gases; and
  - (b) activities that result in reduced consumption of electricity; and
  - (c) activities of elective participants, associated with production processes that use electricity in this Territory, that result in reduced emissions of greenhouse gases; and
  - (d) any other activities that promote the reduction of greenhouse gas emissions.
- (3) However, the regulations and rules may make provision in relation to eligibility for accreditation in relation to carbon sequestration by the planting of forests or other means, only if—
  - (a) the activity happens in the ACT; or

(b) the activity happens in another jurisdiction where a mandatory scheme intended to promote the reduction of greenhouse gas emissions, approved by the Minister for this subsection, is in operation.

(4) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(5) The Minister may approve a scheme for subsection (3) (b) 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 Act; and

(b) the monitoring and enforcement of compliance with the scheme to be approved is no less stringent than that applying to the scheme established under this Act.

## **24 Application for accreditation**

(1) A person who is eligible for accreditation as an abatement certificate provider in relation to an activity may apply to the scheme administrator for accreditation as an abatement certificate provider in relation to that activity.

(2) The scheme administrator must decide the application by—

(a) accrediting the applicant as an abatement certificate provider in relation to a stated activity or stated activities; or

(b) refusing the application.

(3) The scheme administrator may refuse an application for accreditation on the grounds prescribed under the regulations.

(4) The regulations may make provision in relation to applications for accreditation.

*Note* A fee may be determined under s 64 for this provision.

**25 Duration of accreditation**

- (1) Accreditation of a person as an abatement certificate provider remains in force until suspended or cancelled by the scheme administrator.
- (2) The scheme administrator may suspend or cancel a person's accreditation only on the grounds prescribed under the regulations.
- (3) The cancellation or suspension of a person's accreditation is subject to the conditions (if any) the scheme administrator imposes.
- (4) The conditions may include (but are not limited to) a condition to which the accreditation was subject immediately before it was suspended or cancelled.
- (5) The regulations may provide for the variation or revocation of any conditions imposed by the scheme administrator on the suspension or cancellation of accreditation as an abatement certificate provider.

**26 Conditions of accreditation**

- (1) Accreditation as an abatement certificate provider is subject to the following conditions:
  - (a) the conditions prescribed under the regulations;
  - (b) the conditions (if any) imposed by the scheme administrator at the time of accreditation, or while the accreditation is in force, in accordance with the regulations.

**Examples of conditions that may be imposed on a person's accreditation**

- 1 a condition that requires the person not to create an abatement certificate in relation to the greenhouse gas emissions abated by an activity if an abatement certificate or renewable energy certificate has already been created in relation to that abatement or if that abatement has already been used to comply with another mandatory scheme (whether of the ACT or another jurisdiction) intended to promote the reduction of greenhouse gas emissions
- 2 a condition that requires the person not to create a renewable energy certificate in relation to the greenhouse gas emissions abated by an activity,



or to use that abatement to comply with another mandatory scheme (whether of the ACT or another jurisdiction) intended to promote the reduction of greenhouse gas emissions, if an abatement certificate has already been created in relation to the abatement

- 3 a condition that requires the person to provide financial assurances to secure or guarantee the person's compliance with this Act
- 4 a condition that requires the person to take out and maintain a policy of insurance in relation to the person's functions as an accredited abatement certificate provider
- 5 a condition that requires the person to maintain the greenhouse gas abatement secured by carbon sequestration activities for 100 years
- 6 a condition that requires the person to provide information, assistance and access to the scheme administrator (or people appointed by the scheme administrator) for monitoring and auditing the person's compliance with this Act

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The regulations may provide for the variation or revocation of a condition of accreditation imposed by the scheme administrator.

## **27 Contravention of conditions—offence**

A person commits an offence if the person engages in conduct that contravenes—

- (a) a condition of the person's accreditation as an abatement certificate provider; or
- (b) a condition of the cancellation or suspension of the person's accreditation as an abatement certificate provider.

Maximum penalty: 2 000 penalty units.

## **28 Accreditation not transferable**

Accreditation as an abatement certificate provider is not transferable.

## Part 5 Creation of abatement certificates

### 29 Accredited abatement certificate provider may create certificates

An accredited abatement certificate provider may create abatement certificates in accordance with this Act and the conditions (if any) of the person's accreditation.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

*Note 2* If a form is approved under s 65 for a certificate, the form must be used.

### 30 Value of certificate

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

### 31 Entitlement to create abatement certificates

- (1) The regulations and rules may make provision in relation to the entitlement of accredited abatement certificate providers to create abatement certificates in relation to the activities for which they are accredited as abatement certificate providers.
- (2) Without limiting subsection (1), the regulations and rules may provide for the following:
  - (a) the number of abatement certificates that may be created in relation to an activity 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.

### **32 When certificates may be created**

- (1) An abatement certificate in relation to an activity may be created by an accredited abatement certificate provider—
  - (a) immediately after the activity happens; but
  - (b) not later than 6 months after the end of the year when the activity happens.
- (2) The regulations or rules may state when an activity is considered to have happened for subsection (1).
- (3) Without limiting subsection (2), the regulations or 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 happened on the day the activity first began.
- (4) Accordingly, abatement certificates may be created in relation to the abatement of greenhouse gas emissions caused or to be caused by the activity immediately after the activity is first begun.

### **33 Creation of certificate must be registered**

- (1) An abatement certificate is not effective until the creation of the certificate is registered by the scheme administrator.
- (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 must decide 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; 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 the grounds prescribed under the regulations.
- (6) The regulations may make provision in relation to applications for registration of the creation of an abatement certificate.

*Note* A fee may be determined under s 64 for an application.

### **34 Duration of certificate**

- (1) An abatement certificate registered by the scheme administrator remains in force until it is cancelled by the scheme administrator.
- (2) The scheme administrator may cancel an abatement certificate if—
  - (a) the person registered as the owner of the abatement certificate surrenders the certificate to the regulator, by indicating in the person's greenhouse gas benchmark statement that the person wishes to surrender the certificate; and
  - (b) the regulator accepts the surrender of the certificate.
- (3) An abatement certificate may also be cancelled by the scheme administrator under section 35.
- (4) The scheme administrator cancels an abatement certificate by changing the entry relating to the abatement certificate in the register of abatement certificates to show that the certificate is cancelled.

**35 Scheme administrator may require surrender of certificates**

- (1) This section applies if a person is found guilty of an offence against—
  - (a) section 27 (Contravention of conditions—offence); or
  - (b) section 37 (Improper creation of certificates—offence).
- (2) The scheme administrator may, by written order given to the person, require the person to surrender to the scheme administrator, within the period stated in the order, the number of abatement certificates stated in the order.
- (3) For an order made against a person found guilty of an offence against section 27, the scheme administrator must decide the number of certificates to be surrendered in accordance with the regulations.
- (4) For an order made against a person found guilty of an offence against section 37, the scheme administrator must require the surrender of the same number of certificates as were, in the scheme administrator's opinion, created by the person in contravention of that section and registered under this Act.
- (5) The scheme administrator must cancel any abatement certificates surrendered under this section.
- (6) A certificate surrendered under this section must not be counted toward compliance with a person's greenhouse gas benchmark or greenhouse shortfall.
- (7) Accordingly, section 11 (Principles for working out compliance with greenhouse gas benchmarks) and section 12 (Greenhouse shortfalls may be carried forward) do not apply in relation to certificates surrendered in compliance with an order under this section.

- (8) A person commits an offence if—
- (a) an order under this section requires the person to surrender an abatement certificate; and
  - (b) the person fails to surrender the abatement certificate in accordance with the order.

Maximum penalty: the number of penalty units worked out under subsection (9).

- (9) For the penalty in subsection (8), the number of penalty units is—

1 000 + number of abatement certificates not surrendered

**Example**

The maximum penalty for an offence involving a failure to surrender 80 abatement certificates is 1 080 penalty units.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (10) If a person fails to comply with an order, the scheme administrator may cancel any abatement certificates in relation to which the person is registered as the owner.

- (11) To remove any doubt—

- (a) it is not an excuse for an offence against subsection (8) that the person did not, when the order was made, hold enough abatement certificates to comply with the order; and

*Note* A person who does not hold enough certificates to comply with an order may obtain the required number by purchasing them.

- (b) there is no minimum penalty for an offence against subsection (8).

- (12) A prosecution of a person for an offence against subsection (8) may be begun only if—
- (a) the period within which the person may apply to the administrative appeals tribunal for review of the decision to impose an order under this section has ended and no application for review has been made; or
  - (b) an application by the person for review of the decision has been finally decided and is unsuccessful.
- (13) The regulations may make provision in relation to orders under this section.

### **36 Records to be kept by accredited abatement certificate providers**

The regulations may make provision in relation to—

- (a) the records to be kept by accredited abatement certificate providers; and
- (b) the information required to be provided to the scheme administrator in relation to the creation of abatement certificates.

### **37 Improper creation of abatement certificates—offence**

- (1) A person commits an offence if the person creates an abatement certificate in contravention of this Act or the conditions (if any) of the person's accreditation as an abatement certificate provider.

Maximum penalty: the number of penalty units worked out under subsection (2).

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

*Note 2* The Criminal Code provides for certain ancillary offences (eg attempt) that operate in relation to all Territory laws (see the Code, pt 2.4).

- (2) For the penalty in subsection (1), the number of penalty units is—  
100 + number of abatement certificates created

**Example**

The maximum penalty for an offence involving the creation of 80 abatement certificates is 180 penalty units.

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) To remove any doubt—
- (a) a person may be found guilty of an offence against subsection (1) whether or not the abatement certificate created is registered in the register of abatement certificates; and
  - (b) there is no minimum penalty for an offence against subsection (1).



## **Part 6                      Transfers and other dealings in                                          abatement certificates**

### **38                      Kinds of abatement certificate**

- (1) Two kinds of abatement certificate may be created—
  - (a) transferable abatement certificates; and
  - (b) non-transferable abatement certificates.
- (2) The regulations and rules may make provision in relation to the entitlement of accredited abatement certificate providers to create transferable or non-transferable abatement certificates.
- (3) Subject to the regulations and rules, an elective participant is entitled to create non-transferable abatement certificates only in relation to activities of the elective participant that—
  - (a) are associated with production processes that use electricity in the ACT; and
  - (b) give rise to an entitlement to accreditation as an abatement certificate provider.

### **39                      Transferability of certificates**

- (1) A transferable abatement certificate may be transferred to anyone.
- (2) A non-transferable abatement certificate is not transferable, except under section 40 (6).

### **40                      Application for registration of transfer**

- (1) The transfer of an abatement certificate is not effective until the transfer is registered by the scheme administrator.

- (2) An application for registration of a transfer of an abatement certificate must 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 in the register of abatement certificates; or
  - (b) refuse the application.
- (4) The scheme administrator registers the transfer of an abatement certificate by changing the entry relating to that certificate in the register of abatement certificates 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 the grounds prescribed under 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 relation to which the abatement certificate was created to the person to whom the certificate is to be transferred; or
  - (b) the scheme administrator is authorised under the regulations to register the transfer.
- (7) The regulations may make provision in relation to applications for the registration of transfers of abatement certificates.

*Note* A fee may be determined under s 64 for this provision.

## **41 Other dealings in certificates**

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

**42      Holder of certificate may deal with certificate**

- (1) A person registered as the owner of an abatement certificate may deal with the certificate as its absolute owner and give a good discharge for any consideration for a dealing.
- (2) However, subsection (1)—
  - (a) is subject to any rights that—
    - (i) appear in the register of abatement certificates to belong to someone else; and
    - (ii) are registered in accordance with the regulations (if any) made for section 41; and
  - (b) only protects a person who deals with the person registered as the owner of the abatement certificate as an honest purchaser 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 honestly and for value does not lose the protection provided by subsection (1) only because the person has notice that someone has been found guilty of an offence against section 37 (Improper creation of certificates—offence) in relation to the abatement certificate.

**43      Scheme administrator not concerned with legal effect of transaction**

The scheme administrator is not concerned with the legal effect of any transaction registered under this Act and the registration of the transaction does not give the transaction any effect that it would not have apart from this part.

## Part 7 Registers

### 44 Registers to be kept

- (1) The scheme administrator must keep—
  - (a) a register of accredited abatement certificate providers; and
  - (b) a register of abatement certificates.
- (2) A register may be kept completely or partly in electronic form.

### 45 Register of accredited abatement certificate providers

- (1) The register of accredited abatement certificate providers must contain the following information in relation to each accredited abatement certificate provider:
  - (a) the name of the accredited abatement certificate provider;
  - (b) the kind of certificates the accredited abatement certificate provider is entitled to create;
  - (c) any other information required to be included in the register under this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) The register of accredited abatement certificate providers may also contain the information prescribed under the regulations in relation to a person whose accreditation as an abatement certificate provider is suspended or cancelled.
- (3) Copies of the following information in the register of accredited abatement certificate providers must be available for public inspection (free of charge) during ordinary business hours at an

address in the ACT nominated, in writing, by the scheme administrator:

- (a) the information mentioned in subsection (1) (a) and (b);
  - (b) any other information in the register that is required to be available for public inspection under the regulations.
- (4) A nomination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **46 Register of abatement certificates**

- (1) The register of abatement certificates must contain the following information in relation to each abatement certificate:
- (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 under this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) Copies of the following information in the register of abatement certificates must be available for public inspection (free of charge) during ordinary business hours at an address in the ACT nominated, in writing, by the scheme administrator:
- (a) the information mentioned in subsection (1) (a), (b) and (c);
  - (b) any other information in the register that is required to be available for public inspection under the regulations.

- (3) A nomination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

#### **47 Evidentiary provisions**

- (1) A register is evidence of anything registered in it.
- (2) If a register is kept completely or partly in electronic form, a document issued by the scheme administrator stating particulars included in the register, or the part kept in electronic form, is admissible in a proceeding before any court or tribunal and is evidence of the particulars.

#### **48 Correction of register**

The scheme administrator may correct any error or omission in a register.

## Part 8                      The regulator and scheme administrator

### 49                      The regulator

- (1) The regulator is—
  - (a) the ICRC; or
  - (b) if a person is appointed as the regulator under subsection (2)—the person appointed.
- (2) The Minister may appoint a person as the regulator.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

### 50                      Functions of regulator etc

- (1) The regulator has the following functions:
  - (a) to make determinations under section 13;
  - (b) to assess and determine, in accordance with this Act, the greenhouse gas benchmark for a benchmark participant and whether or not the benchmark has been complied with;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (c) to assess and decide, in accordance with this Act, 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 this Act;
  - (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 Act on licences held by them;
  - (f) any other functions given to the regulator under this Act.
- (2) The Minister must give the regulator any information the Minister has that is requested by the regulator in relation to compliance by benchmark participants with this Act.
- (3) The regulator may delegate its functions under this Act to—
- (a) a member of staff of the regulator; or
  - (b) anyone else approved, in writing, by the Minister.
- Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.
- (4) An approval is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (5) The regulator, and anyone acting under the direction of the regulator, is not liable in a civil proceeding for anything done or omitted to be done honestly by the regulator in the exercise or purported exercise of a function under this Act.

## **51 Scheme administrator**

- (1) The scheme administrator is—
- (a) if IPART is declared to be the scheme administrator under subsection (2)—IPART; or
  - (b) in any other case—a person appointed as the scheme administrator under subsection (3).
- (2) The Minister may, in writing, declare IPART to be the scheme administrator only if—



- (a) the provision of services by IPART for the exercise of the functions of the scheme administrator is approved under the NSW Act, section 9 (Arrangements with other entities); and
  - (b) there is an arrangement between the Territory and IPART for the provision of those services by IPART to the Territory.
- (3) If subsection (1) (a) does not apply, the Minister must appoint a person as the scheme administrator.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (4) In deciding whether to appoint a scheme administrator, the Minister must consider the following matters:
- (a) the efficient costs of any appointment;
  - (b) the efficiency of administrative arrangements relating to the abatement certificate scheme;
  - (c) ability to meet greenhouse objectives;
  - (d) proposed governance arrangements;
  - (e) proposed arrangements to manage liabilities associated with exercising the scheme administrator's functions.
- (5) The Minister may appoint more than 1 person to exercise the functions of the scheme administrator and may appoint different people to exercise particular functions of the scheme administrator.
- (6) The regulations may make provision in relation to the appointment of a scheme administrator by the Minister.

- (7) In this section:

**IPART** means the Independent Pricing and Regulatory Tribunal established under the NSW Act.

**NSW Act** means the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

## 52 Functions of scheme administrator etc

- (1) The scheme administrator has the following functions:
- (a) the functions given to the scheme administrator under this Act relating to the abatement certificate scheme;
  - (b) to monitor, and report to the Minister on, the extent to which accredited abatement certificate providers comply with this Act;
  - (c) to conduct audits, or require the conduct of audits, for this Act;
  - (d) any other functions given to the scheme administrator under this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) The Minister must give the scheme administrator any information the Minister has that is requested by the scheme administrator in relation to compliance by accredited abatement certificate providers with this Act.
- (3) The scheme administrator may delegate its functions under this Act to—
- (a) a member of staff of the scheme administrator; or
  - (b) anyone else approved, in writing, by the Minister.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

- (4) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (5) The scheme administrator, and anyone acting under the direction of the scheme administrator, is not liable in a civil proceeding for anything done or omitted to be done honestly in the exercise or purported exercise of a function under this Act.

### **53 Conduct of audits**

- (1) The regulations may make provision in relation to the conduct of audits by the regulator, the scheme administrator or anyone else for this Act.
- (2) Without limiting subsection (1), the regulations may provide for—
- (a) the matters that may be the subject of an audit; and
  - (b) the people who may conduct an audit; and
  - (c) the functions that may be exercised by people who conduct an audit; and
  - (d) offences relating to obstructing or hindering people, or refusing or failing to comply with requirements made by people, who conduct audits.
- (3) A benchmark participant or accredited abatement certificate provider is liable to pay to the regulator or the scheme administrator the cost (as certified by the regulator or the scheme administrator) of carrying out the regulator's or scheme administrator's audit functions in relation to the participant or provider.
- (4) A licence or accreditation may include conditions about working out the cost of carrying out the audit functions.

**54 Provision of information, documents and evidence**

- (1) For exercising the regulator's functions under this Act, the regulator may by written notice given to a benchmark participant, an abatement certificate provider or anyone else, require the participant, provider or person to—
- (a) give to the regulator, on or before a date stated in the notice, the information or documents stated in the notice; or
  - (b) attend at a time, date and place stated in the notice to give evidence to the regulator.

*Note* The Legislation Act, s 170 and s 171 deals with the application of the privilege against selfincrimination and client legal privilege.

- (2) For exercising the scheme administrator's functions under this Act, the scheme administrator may by written notice given to a benchmark participant, an abatement certificate provider or anyone else, require the participant, provider or person to—
- (a) give to the scheme administrator, on or before a date stated in the notice, the information or documents stated in the notice; or
  - (b) attend at a time, date and place stated in the notice to give evidence to the scheme administrator.
- (3) A person commits an offence if the person—
- (a) fails to comply with a notice given to the person under subsection (1) or (2); or
  - (b) fails to answer a question that the regulator or scheme administrator requires the person to answer under a notice given under subsection (1) (b) or (2) (b).

Maximum penalty: 50 penalty units.

*Note* For offences in relation to giving false or misleading information to a person exercising a function under a Territory law etc, see the Criminal Code, pt 3.4 (False or misleading statements, information and documents).

- (4) An offence against subsection (3) is a strict liability offence.
- (5) If documents are given to the regulator or scheme administrator under this section, the regulator 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 to make the copies or take the extracts; and
  - (c) during that period must allow them to be inspected at all reasonable times by anyone who would be entitled to inspect them if they were not in the possession of the regulator or scheme administrator.

## **55 Executive documents and proceedings**

- (1) This Act does not entitle the regulator or scheme administrator to—
  - (a) require a person to give any statement of information or answer any question that relates to confidential proceedings of the Executive; or
  - (b) require a person to produce a record of the Executive; or
  - (c) inspect a record of the Executive.
- (2) In this section:  
*record*, of the Executive—see the *Territory Records Act 2002*, section 9.

## **56 Confidential information**

- (1) This section applies to information given to the regulator or scheme administrator (including information in a document given to the regulator or scheme administrator) in relation to the regulator's or scheme administrator's functions under this Act.

- (2) If the information is given on the understanding that it is confidential and will not be disclosed, the regulator or scheme administrator must ensure that the information is not disclosed to anyone except—
  - (a) with the consent of the person who gave the information; or
  - (b) to the extent that the regulator or scheme administrator is satisfied that the information is not confidential in nature; or
  - (c) if the disclosure is required under law.
- (3) The regulator or scheme administrator may give directions prohibiting or restricting the disclosure of the information if satisfied it is desirable to do so because of the confidential nature of the information.
- (4) A person must not engage in conduct that contravenes a direction given to the person under subsection (3).

Maximum penalty (subsection (4)): 50 penalty units, imprisonment for 6 months or both.

## **57 Annual report by regulator**

- (1) As soon as possible after 1 March (but before 1 July) in each year, the regulator must prepare and give the Minister a report on the extent to which benchmark participants have complied, or failed to comply, with greenhouse gas benchmarks in the previous calendar year.
- (2) Without limiting subsection (1), the report must contain—
  - (a) the name of each benchmark participant and the performance of the participant in relation to the participant's greenhouse gas benchmark; and
  - (b) the total number of abatement certificates surrendered for each kind of certificate.

- (3) The report must also set out the functions delegated by the regulator under section 50 (3) and the person to whom they were delegated.
- (4) The Minister must present the report to the Legislative Assembly as soon as possible (but within 6 sitting days) after receiving it.

## Part 9 Review of decisions

### 58 Notice of decisions that may be reconsidered or reviewed

- (1) If the regulator or scheme administrator (the *decision-maker*) makes a decision that may be reconsidered or reviewed under this part, the decision-maker must give written notice of the decision to each person entitled to apply for review of the decision.
- (2) The notice must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (3) In particular, the notice must tell the person—
  - (a) whether the person has the right to apply for reconsideration of the decision or the right to apply for review of the decision by the administrative appeals tribunal, and how the application must be made; and
  - (b) if the person has the right to apply for reconsideration of the decision—that the person has the right to apply to the administrative appeals tribunal for review of the decision made on the reconsideration; and
  - (c) about the options available under other Territory laws to have the decision reviewed by a court or the ombudsman.

### 59 Reconsideration of certain decisions

- (1) This section applies to a decision of the regulator that—
  - (a) is mentioned in section 60 (1); and
  - (b) is made by the ICRC constituted by 1 commissioner (the *original decision maker*).



- (2) A benchmark participant or former benchmark participant may apply to the ICRC for reconsideration of the decision.
- (3) The application must be made within 28 days after the day the applicant for reconsideration is told about the decision.
- (4) The application must be in writing and must set out the grounds on which reconsideration of the decision is sought.
- (5) The making of the application does not affect the operation of the decision.
- (6) Within 28 days after the day the application is made, the ICRC must reconsider the decision and confirm, amend or revoke it.
- (7) For subsection (6), the ICRC must be constituted by 1 or more commissioners none of whom is the original decision maker.
- (8) If the decision is not amended or revoked within the 28 days, the decision is taken to have been confirmed by the ICRC.

## **60 Reviewable decisions**

- (1) A benchmark participant or former benchmark participant may apply to the administrative appeals tribunal for review of—
  - (a) any of the following decisions of the regulator (other than a decision made by the ICRC constituted by 1 commissioner):
    - (i) a determination of the greenhouse gas benchmark for the participant or former participant for a year;
    - (ii) a decision to refuse to accept the surrender of an abatement certificate for compliance with the participant's or former participant's greenhouse gas benchmark or to abate a greenhouse shortfall;
    - (iii) a decision to refuse to count a renewable energy certificate for compliance with the participant's or former participant's greenhouse benchmark or to abate a greenhouse shortfall;

- (iv) an assessment of the amount of greenhouse penalty payable by the participant or former participant for a year; or
  - (b) a decision of the regulator to confirm, amend or revoke a decision reconsidered under section 59 (Reconsideration of certain decisions); or
  - (c) any other decision of the regulator prescribed under the regulations.
- (2) A person who is or was accredited, or who has applied to be accredited, under this Act as an abatement certificate provider may apply to the administrative appeals tribunal for review of any of the following decisions of the scheme administrator:
  - (a) a decision to refuse accreditation of the person as an abatement certificate provider;
  - (b) a decision to cancel or suspend the person's accreditation as an abatement certificate provider;
  - (c) a decision to refuse registration of the creation of an abatement certificate;
  - (d) any other decision prescribed under the regulations.
- (3) A person who has applied for registration of a transfer of an abatement certificate may apply to the administrative appeals tribunal for review of a decision of the scheme administrator to refuse registration of the transfer.
- (4) A person who is the subject of an order by the scheme administrator under section 35 (2) requiring the person to surrender abatement certificates to the scheme administrator may apply to the administrative appeals tribunal for review of a decision of the scheme administrator to impose the order.

## Part 10 Miscellaneous

### 61 Greenhouse gas benchmark rules

- (1) The Minister may, in writing, approve rules in relation to the following matters:
  - (a) the method 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 method for determining the greenhouse gas benchmark for a benchmark participant;
  - (c) the method 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 stated electricity load;
  - (d) the method for determining the ACT pool coefficient for greenhouse gas emissions;
  - (e) the method for determining the estimated ACT demand for electricity for a year and the proportion of that demand applicable to a benchmark participant;
  - (f) the method for determining the ACT population for a year;
  - (g) the method for determining whether a benchmark participant has complied with the participant's greenhouse gas benchmark in any year;
  - (h) anything else for which a greenhouse gas benchmark rule may be made under this Act;

(i) anything else prescribed under the regulations.

(2) A rule is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(3) A rule may apply, adopt or incorporate an instrument or provision of an instrument as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

## 62 Obligations under greenhouse gas benchmark rules

A benchmark participant or an accredited abatement certificate provider must not engage in conduct that contravenes a greenhouse gas benchmark rule.

Maximum penalty: 100 penalty units.

*Note* Compliance with the rules is also a condition of each retail supplier's licence (see s 15 (1)).

## 63 Criminal liability of executive officers

(1) An executive officer of a corporation commits an offence if—

(a) the corporation contravenes a provision of this Act; and

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

(b) the contravention is an offence against this Act (the *relevant offence*); and

(c) the officer was reckless about whether the contravention would happen; and

- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the contravention, a court must have regard to the following:
  - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
    - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

- (6) In this section:

***executive officer***, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

## **64 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **65 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **66 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 20 penalty units for offences against the regulations.

## Dictionary

(see s 4)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- function
- under
- year.

***abatement certificate***—

- (a) means an abatement certificate created under part 5; and
- (b) in part 2 and part 3 includes an abatement certificate created under a corresponding law under section 18 (4).

***accredited abatement certificate provider*** means a person accredited as an abatement certificate provider under part 4 and whose accreditation is in force.

***ACT pool coefficient*** means the average greenhouse gas emissions intensity of electricity sent out to customers in the ACT, expressed in tonnes of carbon dioxide equivalent per megawatt hour, as determined by the regulator under this Act.

***ACT population*** for a year means the population of the ACT for the year, as determined by the regulator under this Act.

***benchmark participant***—see section 9.

***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 mentioned in section 9 (1) (c).

***electricity sector benchmark***, for a year, means the electricity sector benchmark determined under section 13 (1) (d) for the year.

***engage in conduct*** means—

- (a) do an act; or
- (b) omit to do an act.

***greenhouse gas*** means carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, a perfluorocarbon gas or any other gas prescribed under the regulations for this definition.

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

***greenhouse gas benchmark rules*** means the rules in force under section 61.

***greenhouse penalty*** means a penalty payable under section 16.

***greenhouse shortfall***—see section 11 (4).

***ICRC*** means the Independent Competition and Regulatory Commission established under the *Independent Competition and Regulatory Commission Act 1997*.

***large customer*** means a customer (other than a retail supplier) who uses—

- (a) 100 gigawatt hours or more of electricity at a single site in the ACT in a year; or
- (b) 100 gigawatt hours or more of electricity at 2 or more sites in the ACT in a year, at least 1 of which uses 50 gigawatt hours or more of electricity in the year.

***licence*** means a licence under the Utilities Act.



**market customer** means a customer that—

- (a) has classified any of its electricity loads as a market load under the national electricity code; and
- (b) is registered with NEMMCO as a market customer under the national electricity code.

**national electricity code**—see the *Independent Competition and Regulatory Commission Act 1997*, section 3 (1).

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

**register** means a register kept under part 7.

**register of abatement certificates** means the register mentioned in section 46.

**register of accredited abatement certificate providers** means the register mentioned in section 45.

**regulator** means the regulator under section 49.

**renewable energy certificate** means a certificate created under the *Renewable Energy (Electricity) Act 2000* (Cwlth).

**retail supplier** means a person who holds a licence to provide a utility service mentioned in the *Utilities Act*, section 6 (c) (Electricity services).

**rules** means the greenhouse gas benchmark rules.

**scheme administrator** means the scheme administrator under section 51.

**Territory greenhouse gas benchmark**—see section 7.

**Utilities Act** means the *Utilities Act 2000*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the Legislation Act, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

|                                                     |                                                                   |
|-----------------------------------------------------|-------------------------------------------------------------------|
| am = amended                                        | ord = ordinance                                                   |
| amdt = amendment                                    | orig = original                                                   |
| ch = chapter                                        | par = paragraph/subparagraph                                      |
| def = definition                                    | pres = present                                                    |
| dict = dictionary                                   | prev = previous                                                   |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously                                            |
| div = division                                      | pt = part                                                         |
| exp = expires/expired                               | r = rule/subrule                                                  |
| Gaz = Gazette                                       | renum = renumbered                                                |
| hdg = heading                                       | reloc = relocated                                                 |
| IA = Interpretation Act 1967                        | R[X] = Republication No                                           |
| ins = inserted/added                                | RI = reissue                                                      |
| LA = Legislation Act 2001                           | s = section/subsection                                            |
| LR = legislation register                           | sch = schedule                                                    |
| LRA = Legislation (Republication) Act 1996          | sdiv = subdivision                                                |
| mod = modified/modification                         | sub = substituted                                                 |
| o = order                                           | SL = Subordinate Law                                              |
| om = omitted/repealed                               | <u>underlining</u> = whole or part not commenced or to be expired |

### 3 Legislation history

#### **Electricity (Greenhouse Gas Emissions ) Act 2004 A2004-71**

notified LR 6 September 2004

s 1, s 2 commenced 6 September 2004 (LA s 75 (1))

remainder commenced 7 September 2004 (s 2)

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

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