



Australian Capital Territory

Electricity (Greenhouse Gas Emissions) Regulation 2004

SL2004-60

made under the

Electricity (Greenhouse Gas Emissions) Act 2004

Republication No 5

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About this republication

The republished law

This is a republication of the *Electricity (Greenhouse Gas Emissions) Regulation 2004*, made under 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 17 December 2009. It also includes any amendment, repeal or expiry affecting the republished law to 17 December 2009.

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):

- 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

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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17/12/09

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Australian Capital Territory

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Electricity (Greenhouse Gas Emissions) Act 2004

Part 1 Preliminary

1 Name of regulation

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

3 Dictionary

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

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

For example, the signpost definition '*demand side abatement activity*—see section 26.' means that the term 'demand side abatement activity' is defined in that section.

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

4 Notes

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

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

5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (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

Division 2.1 Benchmark participants

6 When person is taken to be large customer—Act, s 9 (2) (d)

- (1) A customer is taken to be a large customer if—
 - (a) the amounts of electricity required to be used for the Act, definition of *large customer*, as measured from the point of consumption, are used by the customer in the year before the making of the election to be an elective participant; or
 - (b) the regulator is satisfied that the customer is likely to use the required amounts of electricity in the year in which the election is to have effect.
- (2) A customer is taken to be a large customer who uses electricity at 2 or more sites in the ACT if—
 - (a) subsection (1) applies to the customer; and
 - (b) each site is owned or occupied by the customer.
- (3) A corporation (other than a retail supplier) is taken to be a large customer who uses electricity at 2 or more sites in the ACT if—
 - (a) the corporation is 1 of a number of related bodies corporate; and
 - (b) the corporation is the purchaser of electricity, on behalf of 1 or more of the related bodies corporate, used at sites in the ACT that are owned or occupied by 1 or more of the related bodies corporate; and
 - (c) either—
 - (i) the total electricity used by the corporation, at sites in the ACT that are owned or occupied by the corporation, and

the related bodies corporate for which the corporation purchased electricity, in the year before an election by the corporation to be an elective participant, equalled or exceeded the amounts required to be used by a customer for the dictionary, definition of *large customer*, paragraph (b); or

- (ii) the regulator is satisfied that the corporation and any related bodies corporate are likely to use those amounts of electricity, at sites in the ACT that are owned or occupied by the corporation or related bodies corporate, in the year in which the election is to have effect.

- (4) In this section:

related body corporate—see the Corporations Act, section 9 (dictionary).

7 Elections to become benchmark participants— Act, s 9 (2) (a)

- (1) An election by a person to become an elective participant must—

- (a) be made in the way approved by the regulator; and

Note If a form is approved under the Act, s 65 for an election, the form must be used.

- (b) state the period (1 year or a stated number of years) for which the election is to have effect.

- (2) An election must identify any retail supplier or electricity generator who is to supply the electricity load or the part of the load covered by the election.
- (3) An election must be made not later than 30 June in the year before the year in which the election is to have effect or any later day approved by the regulator.

8 Elections by large customers—Act, 9 (2) (a)

- (1) A person who makes an election to become an elective participant as a large customer must provide evidence to the regulator—
 - (a) that the person is a customer who used or is likely to use 100 gigawatt hours (GWh) or more of electricity at a single site, or at 2 or more sites (at least 1 of which used or is likely to use 50 GWh or more), in the ACT, as mentioned in section 6 (1) or (2); or
 - (b) that the person is a corporation that is the purchaser of electricity on behalf of 1 or more related bodies corporate and those related bodies corporate, including the corporation, used or are likely to use a total amount of 100 GWh or more of electricity at 2 or more sites in the ACT (at least 1 of which used or is likely to use 50 GWh or more), as mentioned in section 6 (3).
- (2) For subsection (1), the regulator may require the person to provide information and documents requested by the regulator.
- (3) A person may make an election to become an elective participant as a large customer in relation to part of the customer's electricity load (whether it is part of a load related to a single site or more than 1 site) if the part meets the requirements for classification as a large customer.

9 Duration of election to be elective participant—Act, s 9 (2) (b)

- (1) An election to be an elective participant does not take effect unless—
 - (a) if only part of the person's electricity load is covered by the election—the regulator is satisfied that the part will be separately metered at the beginning of the period for which the election is made; and

- (b) it is accepted by the regulator.
- (2) The regulator must, as soon as practicable after accepting an election, give written notice of the acceptance to—
 - (a) the person who made the election; and
 - (b) any retail supplier or electricity generator who is to supply the electricity load or the part of the load covered by the election.
- (3) An election to be an elective participant that is accepted by the regulator has effect for the period stated in the notice of acceptance.
- (4) However, an election by a large customer to be an elective participant ceases to have effect at the end of the year in which—
 - (a) the regulator gives the large customer written notice of cancellation; or
 - (b) the large customer notifies the regulator of its intention not to continue as an elective participant.
- (5) An elective participant who does not wish to continue to be an elective participant in the next year must notify the regulator not later than 30 June before that year.

Note If a form is approved under the Act, s 65 for this provision, the form must be used.

- (6) Notice for subsection (5) must be given in the way approved by the regulator.

10 Regulator may cancel election

- (1) The regulator may cancel an election by an elective participant if the regulator believes on reasonable grounds, that the elective participant was not eligible to make the election or does not meet the requirements for making an election as a large customer.

- (2) In considering whether to take action under subsection (1), the regulator is not required to consider any reduction in the consumption or anticipated consumption of electricity by an elective participant that is due to abatement measures carried out for the Act.

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

11 Payment of greenhouse penalty when election ceases to have effect—Act, s 9 (2) (c)

If an election by an elective participant ceases to have effect and a further election is not made by the participant or is refused by the regulator—

- (a) any greenhouse penalty payable in relation to the election period, and any greenhouse penalty payable for greenhouse shortfall carried forward from the previous year, is to be assessed and paid at the end of that period as if the election were still in force; and
- (b) a greenhouse shortfall may not be carried forward if so provided by the rules.

Division 2.2 Greenhouse penalties

12 Greenhouse penalty for greenhouse shortfall—Act, s 16 (2)

The greenhouse penalty is \$10.50 per tonne of carbon dioxide equivalent of greenhouse shortfall determined under the Act, section 11, for the year concerned, as adjusted by section 13.

13 CPI adjustment to greenhouse penalty—Act, s 16 (3)

- (1) The amount of the greenhouse penalty is to be adjusted on 1 July each year, beginning 1 July 2005, by the following formula and rounded to the nearest half dollar:

$$\text{greenhouse penalty for the previous year} \times \frac{A}{B}$$

- (2) In this section:

A means the sum of the CPI numbers for each quarter of the year previous to the year beginning on 1 July when the adjustment is to be made.

B means the sum of the CPI numbers for each quarter of the year 2 years previous to the year beginning on 1 July when the adjustment is to be made.

CPI—see the Act, section 16.

Division 2.3 Renewable energy certificates

14 When renewable energy certificates may be counted towards greenhouse gas benchmark—Act, s 19 (1) (a)

- (1) A renewable energy certificate may be counted towards the greenhouse gas benchmark, or to abate a greenhouse gas shortfall, for a year by a benchmark participant (other than an elective participant) if the following are satisfied:
 - (a) the certificate has been surrendered by the participant under the *Renewable Energy (Electricity) Act 2000* (Cwlth) or the regulator is satisfied that an offer to surrender the certificate has been made under that Act for the year;
 - (b) the participant's greenhouse gas benchmark statement states the number of renewable energy certificates surrendered or proposed to be surrendered under that Act for the year;
 - (c) the costs of, or associated with, the certificate have not been paid to the participant by an elective participant or otherwise passed on by the participant to an elective participant.
- (2) A renewable energy certificate may be counted towards the greenhouse gas benchmark, or to abate a greenhouse gas shortfall, for a year by an elective participant if the following are satisfied:
 - (a) the certificate has been surrendered by another benchmark participant under the *Renewable Energy (Electricity) Act 2000* (Cwlth) or the regulator is satisfied that an offer to surrender the certificate has been made under that Act for the year;
 - (b) the elective participant's greenhouse gas benchmark statement states the number of renewable energy certificates proposed to be counted for the year;
 - (c) the costs of, or associated with, the certificate have been paid by the elective participant to another benchmark participant or

have been otherwise passed on to the elective participant by another benchmark participant;

- (d) evidence satisfactory to the regulator of the matters mentioned in paragraph (c) has been provided to the regulator with the elective participant's greenhouse gas benchmark statement.

15 Limit on number of renewable energy certificates that may be counted—Act, s 19 (2)

- (1) The maximum number of renewable energy certificates that may be counted by a benchmark participant towards the participant's greenhouse gas benchmark in a year is the number worked out in accordance with this section.
- (2) For a benchmark participant that is a market customer (other than a retail supplier), the total number of certificates is worked out by multiplying the total amount in megawatt hours (MWh) of the participant's relevant acquisitions of electricity purchased for use in the ACT in the year concerned by the renewable power percentage for the year and rounding the result to the nearest MWh.
- (3) For a benchmark participant that is a retail supplier, the total number of certificates is worked out by—
 - (a) multiplying the total amount in MWh of the participant's relevant acquisitions of electricity bought for use in the ACT in the year concerned by the renewable power percentage for the year and rounding the result to the nearest MWh; and
 - (b) subtracting from that amount the number of certificates mentioned in section 14 (2) applying to the year.
- (4) For an elective participant, the total number of certificates is worked out by—
 - (a) if electricity is bought at a connection point located in a distribution network—multiplying the total amount in MWh of electricity purchases related to the electricity load covered by

the election in the year concerned by the renewable power percentage for the year and by the distribution loss factor applying to the connection point and rounding the result to the nearest MWh; or

- (b) if electricity is not purchased in a way mentioned in paragraph (a)—multiplying the total amount in MWh of electricity purchases related to the electricity load covered by the election in the year concerned by the renewable power percentage for the year and rounding the result to the nearest MWh.

- (5) In this section:

connection point has the same meaning as it has in the national electricity rules.

distribution loss factor has the same meaning as it has in the national electricity rules.

distribution network has the same meaning as it has in the national electricity rules.

National Electricity (ACT) Law—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity Law).

national electricity rules means the national electricity rules under the National Electricity (ACT) Law.

relevant acquisition has the same meaning as it has in the *Renewable Energy (Electricity) Act 2000* (Cwlth).

renewable power percentage has the same meaning as it has in the *Renewable Energy (Electricity) Act 2000* (Cwlth).

Division 2.4 Assessment of compliance with greenhouse gas benchmarks

16 Assessment of compliance with greenhouse gas benchmarks

- (1) The assessment of any greenhouse shortfall and of liability for greenhouse penalty set out in the greenhouse gas benchmark statement of a benchmark participant is, unless the regulator makes another assessment, taken to be the greenhouse shortfall or the liability of the participant for greenhouse penalty for the participant for the year concerned.
- (2) The assessment has effect as if it were a notice of assessment signed by the regulator and given to the participant on the day when the assessment is taken to have been made.
- (3) The assessment is taken to have been made on 1 March in the following year, or the day when the greenhouse gas benchmark statement is lodged, whichever is the later.

17 Default assessments

- (1) The regulator may make an assessment of any greenhouse shortfall, and of the liability for greenhouse penalty, for a year of a benchmark participant if the participant fails to lodge a greenhouse gas benchmark statement for the year in accordance with the Act.
- (2) In making an assessment under this section, the regulator may—
 - (a) base the assessment on the regulator's best estimate of the participant's sale or use of electricity in the ACT, verified by NEMMCO if possible; and
 - (b) take into account any other matters the regulator considers appropriate.

18 Amendment of assessments

- (1) The regulator may at any time amend an assessment of the greenhouse shortfall, and of the liability for greenhouse penalty, for a year of a benchmark participant by making any alterations or additions that the regulator considers necessary, whether or not a greenhouse penalty has been paid for the year.
- (2) If the regulator considers there has been an avoidance of a greenhouse penalty, the regulator may amend the assessment by making alterations or additions the regulator considers necessary to correct the assessment.
- (3) An amendment under subsection (2) may be made by the regulator—
 - (a) if the regulator considers the avoidance is because of fraud or evasion—at any time; or
 - (b) in any other case—within 1 year after the day the assessment is made.
- (4) A benchmark participant may apply to the regulator for an amended assessment within 1 year after the day the assessment is made.
- (5) An application by a benchmark participant must be in writing and state the grounds on which it is made.
- (6) A benchmark participant may, for an application under this section or with the regulator's consent, submit details of abatement certificates sought to be surrendered, and of renewable energy certificates sought to be counted, that have not been submitted previously in relation to the year concerned for consideration for an amended assessment.
- (7) The regulator may take into account details submitted under subsection (6) when deciding whether to amend an assessment.
- (8) A benchmark participant whose liability for a greenhouse penalty is reduced as a result of an amended assessment is entitled to a refund

of any additional greenhouse penalty paid under the previous assessment.

19 Time limits for amended assessments

- (1) An amendment that reduces a benchmark participant's liability to pay a greenhouse penalty must be made within 1 year after the original assessment date.
- (2) The regulator may make further amendment to an assessment if the regulator considers that it is necessary to alter any reduction in the benchmark participant's liability under the assessment.
- (3) The regulator may make amendments mentioned in subsection (2) within 1 year after a greenhouse penalty became payable under the assessment.
- (4) If an application is made by a benchmark participant for an amendment of an assessment within 1 year after a greenhouse penalty became payable under that assessment, the regulator may amend the assessment even though the period of 1 year has elapsed.

20 Amended assessments generally

- (1) This division does not prevent the amendment of an assessment of the greenhouse shortfall, and of the liability for greenhouse penalty, of a benchmark participant to give effect to—
 - (a) the decision on any review or appeal under the Act; or
 - (b) its amendment by reduction of any particular following the participant's objection or pending any review or appeal under the Act.
- (2) A greenhouse penalty payable under an assessment amended under this division is taken to be payable—
 - (a) if the amendment is completely or partly as a result of an error by the regulator—on the day when the amended assessment is made; or

- (b) in any other case—on the day when a greenhouse penalty became payable under the original assessment.
- (3) An amended assessment is taken to be an assessment for the Act.

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

21 Notice of assessments

As soon as practicable after the regulator makes or amends an assessment of the greenhouse shortfall and of any liability for a greenhouse penalty of a benchmark participant, the regulator must give written notice of the assessment or amended assessment to the participant.

Part 3 Greenhouse gas abatement certificate scheme

Division 3.1 Eligibility for accreditation

Note This division, together with the rules, provides for eligibility for accreditation as an abatement certificate provider in relation to the following activities:

- (a) electricity generation activities
- (b) carbon sequestration activities
- (c) demand side abatement activities
- (d) large user abatement activities.

22 Electricity generation activities

- (1) A person is eligible for accreditation as an abatement certificate provider in relation to an activity if—
 - (a) the activity involves the generation of electricity by an existing or proposed generating system and the person is eligible for accreditation in relation to the generation of electricity by the generating system under the provisions of the rules relating to generation; and
 - (b) for an existing generating system—
 - (i) the generating system is equipped with metering equipment approved by the scheme administrator; and
 - (ii) the person has record keeping arrangements in relation to the activity approved by the scheme administrator; and
 - (c) for a proposed generating system—the scheme administrator is satisfied that—
 - (i) the generating system will, when the generating system is operating, be equipped with appropriate metering equipment; and

- (ii) the person will, when the generating system is operating, have appropriate record keeping arrangements in relation to that activity; and
 - (iii) the system will operate substantially as described in the person's application for accreditation.
- (2) For this regulation, an activity that gives rise to eligibility for accreditation under subsection (1) may be referred to as an *electricity generation activity*.

23 Carbon sequestration activities

- (1) A person is eligible for accreditation as an abatement certificate provider in relation to an activity if—
 - (a) the activity is an existing or proposed carbon sequestration activity under the rules and the person is eligible for accreditation as an abatement certificate provider in relation to the activity under the provisions of the rules relating to carbon sequestration; and
 - (b) for an existing carbon sequestration activity—the person has record keeping arrangements in relation to the activity approved by the scheme administrator; and
 - (c) for a proposed carbon sequestration activity—
 - (i) the scheme administrator is satisfied that when the carbon sequestration activity is carried out, the person will have appropriate record keeping arrangements in relation to that activity; and
 - (ii) the scheme administrator is satisfied that the activity will be carried out substantially as described in the person's application for accreditation.
- (2) For this regulation, an activity that gives rise to eligibility for accreditation under this section may be referred to as a *carbon sequestration activity*.

24 Demand side abatement activities

- (1) A person is eligible for accreditation as an abatement certificate provider in relation to an activity if—
 - (a) the activity is an existing or proposed demand side abatement activity under the rules and the person is eligible for accreditation in relation to the activity under the provisions of the rules relating to demand side abatement; and
 - (b) for an existing demand side abatement activity—the person has record keeping arrangements in relation to the activity approved by the scheme administrator; and
 - (c) for a proposed demand side abatement activity—
 - (i) the scheme administrator is satisfied that the person will, when the demand side abatement activity is carried out, have appropriate record keeping arrangements in relation to that activity; and
 - (ii) the scheme administrator is satisfied that the activity will be carried out substantially as described in the person's application for accreditation.
- (2) For this regulation, an activity that gives rise to eligibility for accreditation under this section may be referred to as a ***demand side abatement activity***.

25 Large user abatement activities

- (1) A person is eligible for accreditation as an abatement certificate provider in relation to an existing or proposed activity if—
 - (a) the person is a large user; and
 - (b) the person is eligible for accreditation as an abatement certificate provider in relation to the activity under the provisions of the rules relating to large user abatement certificates; and

- (c) for an existing activity—the person has record keeping arrangements in relation to the activity approved by the scheme administrator; and
 - (d) for a proposed activity—
 - (i) the scheme administrator is satisfied that the person will, when the activity is carried out, have appropriate record keeping arrangements in relation to that activity; and
 - (ii) the scheme administrator is satisfied that the activity will be carried out substantially as described in the person's application for accreditation.
- (2) For this regulation, an activity that gives rise to eligibility for accreditation under this section may be referred to as a ***large user abatement activity***.

Division 3.2 Applications for accreditation

26 Application for accreditation

- (1) An application for accreditation as an abatement certificate provider in relation to an activity must be made in the way approved by the scheme administrator.
- Note 1* If a form is approved under the Act, s 65 for this provision, the form must be used.
- Note 2* A fee may be determined under the Act, s 64 for this provision.
- (2) An application for accreditation as an abatement certificate provider in relation to an electricity generation activity—
- (a) must disclose whether the applicant is accredited as an accredited power station under the *Renewable Energy (Electricity) Act 2000* (Cwlth) in relation to the generating system that the person owns or operates; and
 - (b) if the applicant is so accredited—must be accompanied by any information or authorities (for example, release forms) that the

scheme administrator requires for the purpose of obtaining from ORER, or substantiating, information relating to the following:

- (i) any renewable energy certificates the person has created during any period;
- (ii) the Commonwealth renewable energy scheme baseline of the power station.

Note An example is part of the regulation, 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) A reference in this division to an **activity** includes a reference to an existing or proposed activity.

27 Benefits under other schemes

The scheme administrator may require a person applying for accreditation to give the scheme administrator an undertaking, in terms the scheme administrator requires, not to claim a benefit under a mandatory greenhouse gas scheme if that would result in a benefit being obtained under both that scheme and the abatement scheme established under the Act in relation to the same output or greenhouse gas abatement.

28 Grounds for refusal of application for accreditation

- (1) The scheme administrator may refuse an application for accreditation as an abatement certificate provider in relation to an activity if—
 - (a) the scheme administrator is not satisfied that the applicant is eligible for accreditation as an abatement certificate provider in relation to the activity; or
 - (b) the application for accreditation is not properly made; or

- (c) the applicant fails to give the scheme administrator an undertaking required under section 27 in relation to the application in terms satisfactory to the scheme administrator.
- (2) If the scheme administrator refuses an application for accreditation as an abatement certificate provider, the scheme administrator must give the applicant written reasons for refusal.

29 Suspension or cancellation of accreditation

- (1) The scheme administrator may suspend or cancel the accreditation of a person as an abatement certificate provider in relation to an activity on any of the following grounds:
 - (a) the scheme administrator is satisfied that the person has ceased to be eligible for accreditation as an abatement certificate provider in relation to the activity;
 - (b) the person has requested the suspension or cancellation;
 - (c) the scheme administrator is satisfied that the person has contravened a provision of the Act, or a condition of the accreditation;
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (d) the person becomes bankrupt or personally insolvent;
 - (e) the person is a corporation that is the subject of a winding-up order or for which a controller or administrator has been appointed.
- (2) If the scheme administrator suspends or cancels the accreditation of a person, the scheme administrator must tell the person in writing of the suspension or cancellation and the reasons for it.
 - (3) A suspension or cancellation takes effect on—

- (a) the day, and the time on that day, the notice of suspension or cancellation is served on the person by the scheme administrator; or
- (b) if a later date of effect is stated in the notice—that date.

Division 3.3 Prescribed conditions of accreditation

30 Conditions of accreditation—Act, s 26 (1) (a)

It is a condition of a person's accreditation as an abatement certificate provider that the person does not contravene any of the provisions of this division.

31 Claiming benefits under other schemes

An accredited abatement certificate provider must not contravene an undertaking, mentioned in section 27, given to the scheme administrator in relation to the person's application for accreditation.

32 Commonwealth renewable energy scheme

- (1) An accredited abatement certificate provider in relation to an electricity generation activity must not create an abatement certificate in relation to output for which it has already created a renewable energy certificate.
- (2) Subsection (1) has effect subject to the rules.
- (3) If an accredited abatement certificate provider in relation to an electricity generation activity is accredited as an accredited power station under the *Renewable Energy (Electricity) Act 2000* (Cwlth) in relation to the generating system used in connection with that electricity generation activity, the provider must provide to the scheme administrator the information, authorities (for example, release forms) or other assistance that the scheme administrator, by written notice given to the person, requires for the purposes of

obtaining from ORER, or substantiating, information relating to the following:

- (a) any renewable energy certificates the provider has created during any period;
- (b) the Commonwealth renewable energy scheme baseline of the accredited power station.

Note An example is part of the regulation, 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).

- (4) If an accredited abatement certificate provider in relation to an electricity generation activity obtains, at any time after accreditation, accreditation as an accredited power station under the *Renewable Energy (Electricity) Act 2000* (Cwlth) in relation to the generating system used in connection with that electricity generation activity, the provider must disclose that fact to the scheme administrator within 21 days of becoming accredited under that Act.

33 Carbon sequestration activity to be maintained

An accredited abatement certificate provider who creates an abatement certificate in relation to a carbon sequestration activity must ensure the continued storage, by way of planted forests on eligible land, of the quantity of carbon dioxide stored by the activity in relation to which the certificate is created (worked out in accordance with the rules) for 100 years after the certificate is created.

34 Retail suppliers of elective participants to be notified to scheme administrator

- (1) An accredited abatement certificate provider in relation to a large user abatement activity must tell the scheme administrator in writing if the provider enters into an agreement or arrangement to purchase electricity from a retail supplier that has not already been notified to the scheme administrator.

- (2) The notice must be given to the scheme administrator within 21 days after the day the agreement or arrangement is entered into.

35 Record keeping

- (1) An accredited abatement certificate provider in relation to an electricity generation activity must keep a record of the following:
- (a) the amount of electricity supplied by the generating system;
 - (b) the type of fuel or fuels used by the generating system to generate electricity;
 - (c) the source of the fuel or fuels;
 - (d) the amount of each fuel used by the generating system to generate electricity.
- (2) An accredited abatement certificate provider in relation to a carbon sequestration activity must keep a record of the following:
- (a) the location and size of any eligible land owned or controlled by the person at any time during the sequestration activity;
 - (b) any carbon sequestration rights held in relation to any other eligible land at any time during the sequestration activity;
 - (c) any activity conducted on land mentioned in subsection (2) (a) or (b) that is likely to result in a reduction in the greenhouse gas emissions abated by the planted forests on the land, including any clearing of the land.
- (3) An accredited abatement certificate provider in relation to a demand side abatement activity must keep a record of the following:
- (a) the location where the activity happened;
 - (b) the abatement of greenhouse gases (worked out in accordance with the rules) associated with the activity;
 - (c) the methodology, data and assumptions used to calculate the abatement;

- (d) if the activity relates to the on-site generation of electricity—the matters mentioned in subsection (1).
- (4) An accredited abatement certificate provider in relation to a large user abatement activity must keep a record of the following:
 - (a) the location where the activity happened;
 - (b) emissions of greenhouse gases associated with the activity;
 - (c) the abatement of greenhouse gases (worked out in accordance with the rules) associated with the activity;
 - (d) the methodology, data and assumptions used to work out the abatement.
- (5) An accredited abatement certificate provider must keep any other records the scheme administrator, by written notice given to the provider, requires the provider to keep.
- (6) A record required to be kept by a person under this section must be kept by the person for at least 6 years after the record is made.
- (7) Records must be kept in a way approved by the scheme administrator.
- (8) In this section:
 - carbon sequestration right*** has the meaning given by the rules.
 - clearing***, of land, means—
 - (a) cutting down, felling, thinning, logging or removing any trees on the land; or
 - (b) killing, destroying, poisoning, ringbarking, uprooting or burning trees on the land; or
 - (c) substantially damaging or injuring trees on the land in any other way.

36 Cooperation with audits

- (1) An accredited abatement certificate provider must provide the information and assistance that is necessary to comply with any audit conducted under division 3.7.
- (2) Without limiting subsection (1), an accredited abatement certificate provider must provide all access to premises that is necessary to comply with any schedule or timetable of audits agreed to by the accredited abatement certificate provider (whether before or after accreditation).

Division 3.4 Imposition of conditions by scheme administrator

37 Imposition of conditions by scheme administrator

- (1) If the scheme administrator intends to impose a condition on the accreditation of a person as an accredited abatement certificate provider under the Act, section 26 (1) (b), either at the time of accreditation or any time during the period the accreditation remains in force, the scheme administrator must give written notice of that fact to the person on whom the condition is to be imposed.
- (2) The condition takes effect on the date when the notice is given to the person, or a later date stated in the notice.
- (3) However, a condition imposed at the time of accreditation does not take effect until the date when the person is accredited as an abatement certificate provider.
- (4) The scheme administrator may, at any time, by written notice given to a person, revoke or vary a condition imposed on the accreditation of the person by the scheme administrator.
- (5) If the scheme administrator imposes or varies a condition of accreditation of a person, the scheme administrator must give the person written reasons for the decision to impose or vary the condition.

38 Financial assurances

- (1) This section applies if the scheme administrator imposes a condition on the accreditation of a person as an accredited abatement certificate provider requiring the person to provide a financial assurance to the scheme administrator to secure or guarantee the person's compliance with any order that may be made against the person under the Act, section 35.
- (2) The amount of any financial assurance required by the scheme administrator is to be decided by the scheme administrator having regard to the following:
 - (a) the activities in relation to which the person is accredited or to be accredited;
 - (b) the number of abatement certificates that the person has created or is likely to create;
 - (c) the frequency of audits conducted or to be conducted in relation to the person;
 - (d) anything else the scheme administrator considers relevant.
- (3) A financial assurance must be in the form the scheme administrator considers appropriate.

Examples

a bank guarantee or bond

Note An example is part of the regulation, 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).

- (4) A financial assurance provided to the scheme administrator may be claimed or realised by the scheme administrator only if—
 - (a) an order is made against the person under the Act, section 35; and
 - (b) the person who gave the financial assurance fails to comply with the order.

- (5) The scheme administrator must give to the person who provided the financial assurance written notice of its intention to make a claim on or realise the financial assurance (or any part of it) at least 21 days before doing so.
- (6) The maximum amount that the scheme administrator may claim or recover under the financial assurance is the compliance cost in relation to the person's failure to comply with the order under the Act, section 35.
- (7) For this section, the ***compliance cost*** in relation to a person's failure to comply with an order under the Act, section 35 is to be decided by the scheme administrator by multiplying the number of certificates that the person failed to surrender in compliance with the order by the market value of those certificates when the financial assurance is claimed on or realised.

Division 3.5 Creation of abatement certificates

39 Form of abatement certificates

- (1) Abatement certificates are to be created in a form approved by the scheme administrator.
- (2) An abatement certificate must include the following:
 - (a) a statement of the activity in relation to which the abatement certificate is created, including any information relating to the activity that the scheme administrator, by written notice to an accredited abatement certificate provider, requires to be included in the certificate;
 - (b) the year when the activity took place;
 - (c) the name of the person who created the certificate.

40 Determination of baseline

The scheme administrator may determine, in accordance with the rules, a baseline for the activities of a person in relation to which an abatement certificate provider is entitled to create certificates.

Note Baselines may be used to determine the activities in relation to which abatement certificates may be created under the greenhouse gas benchmark rules.

41 Activities that take place before accreditation

- (1) An accredited abatement certificate provider is not entitled to create an abatement certificate in relation to an activity that happened before the day when the accredited abatement certificate provider lodged with the scheme administrator an application (completed to the satisfaction of, and in a form acceptable to, the scheme administrator) for accreditation as an abatement certificate provider.
- (2) An accredited abatement certificate provider is not entitled to create an abatement certificate in relation to an activity that happened before 1 January 2005.
- (3) To remove any doubt, any regulation or rule made under the Act, section 32 (2) applies in relation to this section.

Note The Act, s 32 (2) allows any regulation or rule to state when an activity is considered to have taken place for the Act, s 32 (1).

42 Registration of creation of certificate

- (1) An application for registration of the creation of an abatement certificate is to be made to the scheme administrator in the way approved by the scheme administrator.

Note 1 If a form is approved under the Act, s 65 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 64 for this provision.

- (2) The scheme administrator may refuse an application for registration of the creation of an abatement certificate on any of the following grounds:
- (a) the applicant is not an accredited abatement certificate provider or the accreditation of the person as an abatement certificate provider is suspended at the time of application;
 - (b) the application for registration was not properly made;
 - (c) the scheme administrator is not satisfied that the applicant was entitled to create an abatement certificate in relation to the activity;
 - (d) the scheme administrator considers that the accredited abatement certificate provider who created the certificate has contravened a provision of the Act or the conditions of the provider's accreditation.

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

- (3) If the scheme administrator refuses an application for registration of the creation of an abatement certificate, the scheme administrator must give the applicant written reasons for the refusal.

43 Order requiring surrender of abatement certificates—Act, s 35

- (1) This section applies if an order is made or is proposed to be made under the Act, section 35 against a person who has been found guilty of an offence against the Act, section 27, for contravention of—
- (a) a condition mentioned in section 31 (relating to undertakings given to the scheme administrator in relation to benefits under mandatory greenhouse gas schemes); or

- (b) a condition mentioned in section 32 (1) (relating to the creation of abatement certificates in relation to output for which a renewable energy certificate has already been created); or
 - (c) a condition mentioned in section 33 (relating to maintenance of carbon sequestration).
- (2) For the Act, section 35 (3), the number of certificates to be surrendered under the order is to be decided by the scheme administrator as follows:
 - (a) in a case mentioned in subsection (1) (a)—the number that is equivalent to the number of abatement certificates that, in the opinion of the scheme administrator, were created in relation to output or greenhouse gas abatement for which a benefit was obtained under a mandatory greenhouse gas scheme;
 - (b) in a case mentioned in subsection (1) (b)—the number that is equivalent to the number of abatement certificates that, in the opinion of the scheme administrator, were created by the person in contravention of the condition mentioned in subsection (1) (b);
 - (c) in a case mentioned in subsection (1) (c)—the number of abatement certificates that, in the opinion of the scheme administrator, were created by the person in relation to carbon sequestration activities and in relation to which the person has contravened the condition mentioned in subsection (1) (c).

Division 3.6 Transfer of certificates

44 Entitlement to create transferable abatement certificates

- (1) Transferable abatement certificates may be created in relation to the following activities:
 - (a) electricity generation activities;
 - (b) carbon sequestration activities;

(c) demand side abatement activities.

- (2) Anyone (including a large user) who is an accredited abatement certificate provider in relation to an activity mentioned in subsection (1) may create a transferable abatement certificate in relation to that activity in accordance with the Act.

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

45 Entitlement to create non-transferable abatement certificates

- (1) Non-transferable abatement certificates may be created in relation to large user abatement activities.
- (2) An accredited abatement certificate provider in relation to a large user abatement activity may create a non-transferable abatement certificate in relation to that activity in accordance with the Act.

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

46 Registration of transfers of certificates

- (1) An application for registration of the transfer of an abatement certificate must be made in the way approved by the scheme administrator.

Note 1 If a form is approved under the Act, s 65 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 64 for this provision.

- (2) The scheme administrator may refuse an application for registration of the transfer of an abatement certificate if—
- (a) the application for registration is not properly made; or

- (b) the scheme administrator considers the proposed transfer of the abatement certificate contravenes the Act.

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

Note 2 If the abatement certificate is a non-transferable abatement certificate, the scheme administrator must refuse an application for registration of a transfer of the certificate unless the transfer is associated with the sale of the business of the transferor to the transferee or the scheme administrator is otherwise authorised to register the transfer (see the Act, s 40).

- (3) If the scheme administrator refuses an application for registration of the transfer of an abatement certificate, the scheme administrator must give the applicant written reasons for the refusal.

47 Register of accredited abatement certificate providers

- (1) The register of accredited abatement certificate providers must include the following information (in addition to the information required under the Act, section 45):
 - (a) the activity or activities in relation to which the accredited abatement certificate provider is accredited as an abatement certificate provider;
 - (b) the total number of abatement certificates created by the accredited abatement certificate provider in relation to each of those activities and registered in the register of abatement certificates in the previous financial year;
 - (c) the States or Territories where the activities took place;
 - (d) any other information relating to the person's accreditation as the scheme administrator considers appropriate.
- (2) The register of accredited abatement certificate providers must include the following information in relation to a person whose

accreditation as an abatement certificate provider is suspended or cancelled:

- (a) the name of the person;
 - (b) the kind of certificates (transferable or non-transferable) the person was entitled to create under the terms of the person's accreditation;
 - (c) the reason or reasons why the accreditation was suspended or cancelled;
 - (d) the date the accreditation was suspended or cancelled and, for a suspension, the period of the suspension;
 - (e) any conditions of accreditation that continue to have effect in relation to the person.
- (3) The following information must be made available for public inspection under the Act, section 45 (in addition to the information required under the Act, section 45 (3)):
- (a) the information mentioned in subsection (1) (c);
 - (b) the information mentioned in subsection (2).

Division 3.7 Audits of accredited abatement certificate providers

48 Audits—Act, s 53

- (1) The regulator or the scheme administrator may at any time conduct or require audits to be conducted of accredited abatement certificate providers in relation to the following matters:
- (a) the creation of abatement certificates;
 - (b) eligibility for accreditation;
 - (c) compliance with any conditions of accreditation.

- (2) An audit may be conducted for the purpose of—
- (a) substantiating information provided to the regulator or scheme administrator; or
 - (b) deciding whether the provider has complied with the Act or the conditions of the provider's accreditation.

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

- (3) For an audit required by the regulator, the regulator may require the audit to be conducted by—
- (a) a person nominated by the regulator; or
 - (b) a person chosen by the accredited abatement certificate provider from a panel of people nominated by the regulator; or
 - (c) a person nominated by the accredited abatement certificate provider and approved by the regulator.
- (4) For an audit required by the scheme administrator, the scheme administrator may require the audit to be conducted by—
- (a) a person nominated by the scheme administrator; or
 - (b) a person chosen by the accredited abatement certificate provider from a panel of people nominated by the scheme administrator; or
 - (c) a person nominated by the accredited abatement certificate provider and approved by the scheme administrator.
- (5) An approved auditor must conduct an audit in accordance with the directions (if any) of the regulator or scheme administrator.

49 Impersonating approved auditor

A person commits an offence if the person impersonates an approved auditor.

Maximum penalty: 20 penalty units.

Division 3.8 Review of decisions

50 Decisions—Act, s 58, def *internally reviewable decision* and *reviewable decision*

A decision mentioned in schedule 1, column 3, under a provision mentioned in column 2 in relation to the decision is prescribed.

51 Right of review and notice—Act, s 59, s 60B and s 60C (a)

An entity mentioned in schedule 1, column 4 is prescribed.

Schedule 1 Reviewable decisions

(see div 3.8)

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
1	Act, 13	determination of greenhouse gas benchmark for participant or former participant for year	benchmark participant or former benchmark participant	regulator
2	Act, 18 (2)	refuse to accept surrender of abatement certificate because surrender not required for compliance with participant's or former participant's greenhouse gas benchmark or to abate greenhouse shortfall	benchmark participant or former benchmark participant	regulator
3	Act, 24 (2) (b)	refuse accreditation of person as abatement certificate provider	accredited person or applicant for accreditation	scheme administrator
4	Act, 25 (2)	suspend person's accreditation as abatement certificate provider	accredited person or applicant for accreditation	scheme administrator

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
5	Act, 25 (2)	cancel person's accreditation as abatement certificate provider	accredited person or applicant for accreditation	scheme administrator
6	Act, 26	impose or vary condition of accreditation of accredited abatement certificate provider	accredited abatement certificate provider	scheme administrator
7	Act, 33 (3) (b)	refuse registration of creation of abatement certificate	accredited person or applicant for accreditation	scheme administrator
8	Act, 35 (2)	impose order requiring person to surrender abatement certificates to scheme administrator	person subject to order	scheme administrator
9	Act, 40 (3) (b)	refuse registration of transfer of abatement certificate	applicant for registration	scheme administrator

Schedule 1

Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
10	14	refuse to count renewable energy certificate for compliance with participant's or former participant's greenhouse benchmark or to abate greenhouse shortfall	benchmark participant or former benchmark participant	regulator
11	16 or 17	assessment of amount of greenhouse penalty payable by the participant for year	benchmark participant or former benchmark participant	regulator
12	38 (4)	make claim on or realise financial assurance provided by accredited abatement certificate provider	accredited abatement certificate provider	scheme administrator
13		any decision of regulator prescribed by regulation	benchmark participant or former benchmark participant	regulator

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
14		any decision of scheme administrator prescribed by regulation	accredited abatement certificate provider or applicant for accreditation	scheme administrator

Dictionary

(see s 3)

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

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

- ACT
- bankrupt or personally insolvent
- Commonwealth
- function
- person
- the Territory
- under
- writing
- year.

Note 3 Terms used in this regulation have the same meaning that they have in the *Electricity (Greenhouse Gas Emissions) Act 2004* (see Legislation Act, s 148). For example, the following terms are defined in the *Electricity (Greenhouse Gas Emissions) Act 2004*, dict:

- abatement certificate
- accredited abatement certificate provider
- benchmark participant (see s 9)
- carbon dioxide equivalent
- elective participant
- greenhouse gas
- greenhouse gas benchmark rules
- greenhouse penalty
- greenhouse shortfall (see s 11 (4))
- large customer
- licence
- market customer
- NEMMCO
- register
- register of abatement certificates
- register of accredited abatement certificate providers

- regulator
- renewable energy certificate
- retail supplier
- rules
- scheme administrator.

approved auditor means a person required by the regulator or scheme administrator to conduct an audit under division 3.7.

carbon sequestration activity—see section 23.

Commonwealth renewable energy scheme baseline of a power station means the 1997 eligible renewable power baseline for the power station within the meaning of the *Renewable Energy (Electricity) Act 2000* (Cwlth), section 14.

demand side abatement activity—see section 24.

electricity generation activity—see section 22.

eligible land has the meaning given by the greenhouse gas benchmark rules.

greenhouse gas benchmark statement means a statement required to be lodged by a benchmark participant under the Act, section 17.

large user abatement activity—see section 25.

mandatory greenhouse gas scheme means a mandatory scheme (whether of the ACT or another jurisdiction) intended to promote the reduction of greenhouse gas emissions or that has the effect of substantially reducing greenhouse gas emissions (but does not include the abatement certificate scheme established under the Act).

ORER means the Office of the Renewable Energy regulator within the meaning of the *Renewable Energy (Electricity) Act 2000* (Cwlth).

supplier means a retail supplier.

Endnotes

1 About the endnotes

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 2001*, 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) Regulation 2004 SL2004-60

notified LR 20 December 2004

s 1, s 2 commenced 20 December 2004 (LA s 75 (1))

remainder commenced 21 December 2004 (s 2)

as amended by

Statute Law Amendment Act 2005 (No 2) A2005-62 sch 3 pt 3.7

notified LR 21 December 2005

s 1, s 2 commenced 21 December 2005 (LA s 75 (1))

sch 3 pt 3.7 commenced 11 January 2006 (s 2 (1))

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.36

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.36 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.23

notified LR 26 November 2009

s 1, s 2 commenced 26 November 2009 (LA s 75 (1))

sch 3 pt 3.23 commenced 17 December 2009 (s 2)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Elections to become benchmark participants—Act, s 9 (2) (a)

s 7 (4), (5) exp 31 December 2005 (s 7 (5))

Limit on number of renewable energy certificates that may be counted—Act, s 19 (2)

s 15 am A2005-62 amdt 3.112

Suspension or cancellation of accreditation

s 29 am A2009-49 amdt 3.52

Decisions—Act, s 58, def *internally reviewable decision* and *reviewable decision*

s 50 sub A2008-38 amdt 1.152

Endnotes

5 Earlier republications

Right of review and notice—Act. s 59. s 60B and S 60C (a)

s 51 ins A2008-38 amdt 1.152

Reviewable decisions

sch 1 ins A2008-37 amdt 1.153

Dictionary

dict am A2005-62 amdt 3.113; A2009-49 amdt 3.53

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 21 Dec 2004	21 Dec 2004– 31 Dec 2005	not amended	new regulation
R2 1 Jan 2006	1 Jan 2006– 10 Jan 2006	not amended	commenced expiry
R3 11 Jan 2006	11 Jan 2006– 1 Feb 2009	A2005-62	amendments by A2005-62
R4 2 Feb 2009	2 Feb 2009– 16 Dec 2009	A2008-37	amendments by A2008-37

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