

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Electricity (Greenhouse Gas Emissions) Bill 2004

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(As presented)

(Treasurer)

Electricity (Greenhouse Gas Emissions) Bill 2004

A Bill for

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Objects of Act**

9 (1) The objects of this Act are—

- 10 (a) to reduce greenhouse gas emissions associated with the
11 production and use of electricity; and
12 (b) to encourage participation in activities to offset the production
13 of greenhouse gas emissions.

14 (2) For these objects, this Act—

- 15 (a) establishes Territory greenhouse gas benchmarks and
16 individual greenhouse gas benchmarks for the reduction of
17 greenhouse gas emissions that are to be met by retail suppliers,
18 market customers and certain other people who supply or
19 consume electricity; and
20 (b) provides for greenhouse gas benchmarks to be complied with
21 by acquiring certificates relating to the carrying out of
22 activities that promote the reduction of greenhouse gas
23 emissions; and
24 (c) provides an economic incentive to undertake activities
25 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.

1 **Part 2 Greenhouse gas benchmarks**

2 **7 Territory greenhouse gas benchmarks**

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

14 **8 Greenhouse gas benchmarks to apply to benchmark**

15 **participants**

- 16 (1) A greenhouse gas benchmark for the reduction of greenhouse gas
- 17 emissions applies, in accordance with this Act, to each benchmark
- 18 participant.

19 *Note* A reference to an Act includes a reference to the statutory instruments

20 made or in force under the Act, including regulations (see Legislation

21 Act, s 104).

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

24 *Note* Failure to comply with a greenhouse gas benchmark will result in a

25 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

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

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

10 **11 Principles for working out compliance with greenhouse**
11 **gas benchmarks**

- 12 (1) A benchmark participant's compliance with the participant's
13 greenhouse gas benchmark for a year is worked out by subtracting
14 the participant's greenhouse gas benchmark from the number of
15 tonnes of carbon dioxide equivalent of greenhouse gas emissions in
16 the year for which the participant is responsible.
- 17 (2) The number of tonnes of carbon dioxide equivalent of greenhouse
18 gas emissions in a year for which a benchmark participant is
19 responsible is worked out by—
- 20 (a) multiplying the total number of megawatt hours of electricity
21 supplied or purchased by the participant in the year by the
22 ACT pool coefficient for greenhouse gas emissions arising out
23 of that electricity for the year; and
- 24 (b) subtracting from that number the number of tonnes of carbon
25 dioxide equivalent of greenhouse gas emissions abated by the
26 participant in the year.

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

- 1 (3) The number of tonnes of carbon dioxide equivalent of greenhouse
2 gas emissions abated by a benchmark participant in a year is the
3 total number of tonnes attributable to any abatement certificates
4 surrendered by the participant for the year and any renewable
5 energy certificates of the participant counted for the year.
- 6 (4) If the result obtained under subsection (1) is more than zero (a
7 **greenhouse shortfall**), the benchmark participant has failed to
8 comply with the participant's greenhouse gas benchmark.
- 9 (5) If the result obtained under subsection (1) is zero or less than zero,
10 the benchmark participant has complied with the participant's
11 greenhouse gas benchmark.
- 12 (6) In working out the total megawatt hours of electricity supplied by a
13 retail supplier in each year for subsection (2), electricity supplied by
14 the supplier to another benchmark participant is not to be taken into
15 account.

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

17 **12 Greenhouse shortfalls may be carried forward**

- 18 (1) An amount of tonnes of carbon dioxide equivalent of greenhouse
19 gas emissions of greenhouse shortfall in a year (other than the year
20 2007) may, subject to the rules, be carried forward to the next year.
- 21 (2) If an amount of greenhouse shortfall is carried forward, the amount
22 of the shortfall is, to the extent to which it is not abated by the
23 benchmark participant, subject to the greenhouse penalty at the end
24 of the next year and the penalty is not payable for the shortfall
25 amount at the end of the year from which it was carried forward.
- 26 (3) The penalty is payable at the same time as any greenhouse penalty
27 for the next year is payable (or would be payable, if owed).
- 28 (4) A greenhouse shortfall that is carried forward may be abated at the
29 end of the next year by surrendering abatement certificates or
30 counting renewable energy certificates.

- 1 (5) For that purpose, the greenhouse shortfall after abatement is worked
2 out by subtracting from the amount of the shortfall the total number
3 of tonnes of carbon dioxide equivalent of greenhouse gas emissions
4 attributable to any certificates surrendered or counted to abate the
5 greenhouse shortfall.
- 6 (6) The amount of greenhouse shortfall carried forward in relation to a
7 year may not exceed 10% of the benchmark participant's
8 greenhouse gas benchmark for the year.
- 9 (7) An amount of greenhouse shortfall may be carried forward whether
10 or not a shortfall was carried forward in the previous year.
- 11 **13 Factors to be determined and notified before beginning of**
12 **each year**
- 13 (1) The regulator must, in writing, determine the following matters for
14 each year:
- 15 (a) the ACT pool coefficient for greenhouse gas emissions;
16 (b) the ACT electricity demand;
17 (c) the ACT population;
18 (d) the electricity sector benchmark.
- 19 (2) A determination is a notifiable instrument.
- 20 *Note* A notifiable instrument must be notified under the Legislation Act.
- 21 (3) A determination is to be made in accordance with the requirements
22 (if any) of the rules.
- 23 (4) A determination for a year must be made before the beginning of the
24 year (but, if practicable, before the end of November in the previous
25 year).
- 26 (5) The matters determined for a year apply to the working out of
27 greenhouse gas benchmarks, and the assessment of compliance with
28 the benchmarks, for the next year.

- 1 **14 Evidentiary provisions relating to benchmarks**
- 2 (1) The regulator may give a certificate stating that, on a date or for a
- 3 period stated in the certificate—
- 4 (a) a person was or was not a benchmark participant; or
- 5 (b) the ACT pool coefficient, ACT electricity demand, ACT
- 6 population or electricity sector benchmark was the value or
- 7 amount stated in the certificate; or
- 8 (c) the greenhouse gas benchmark for a benchmark participant was
- 9 the amount stated in the certificate; or
- 10 (d) the greenhouse shortfall for a benchmark participant, or an
- 11 amount of greenhouse shortfall carried forward by a
- 12 benchmark participant, was the amount stated in the certificate;
- 13 or
- 14 (e) the greenhouse penalty payable by a benchmark participant
- 15 was the amount stated in the certificate.
- 16 (2) The certificate is admissible in a proceeding before any court or
- 17 tribunal and is evidence of the facts stated in it.

- 1 **Part 3** **Enforcement of greenhouse gas**
2 **benchmarks**
- 3 **15** **Licence conditions applying to retail suppliers**
- 4 (1) It is a condition of each retail supplier's licence that the retail
5 supplier comply with—
- 6 (a) its greenhouse gas benchmark; and
- 7 (b) this Act.
- 8 *Note* A reference to an Act includes a reference to the statutory instruments
9 made or in force under the Act, including regulations (see Legislation
10 Act, s 104).
- 11 (2) This section does not limit the Minister's power to give directions
12 under the Utilities Act, section 19 about licence conditions applying
13 to a retail supplier, including conditions (not inconsistent with this
14 Act) about—
- 15 (a) greenhouse gas emissions; or
- 16 (b) giving information to the regulator or scheme administrator
17 about matters related to this Act.
- 18 (3) Action may not be taken against the licence of a retail supplier
19 under the Utilities Act, section 42 (Revocation) or section 47
20 (Contravention of licence condition) in relation to a greenhouse
21 shortfall for which a greenhouse penalty is payable under this Act.
- 22 **16** **Greenhouse penalties**
- 23 (1) A benchmark participant who fails to comply with the participant's
24 greenhouse gas benchmark for reduction of greenhouse gas
25 emissions for a year is liable to pay a greenhouse penalty to the
26 Territory.

- 1 (2) The greenhouse penalty is the amount prescribed under the
2 regulations adjusted in accordance with the regulations (if any)
3 made for subsection (3).
- 4 (3) The regulations may provide for the adjustment of the greenhouse
5 penalty in accordance with movements in the CPI.
- 6 (4) A greenhouse penalty payable for a year by a benchmark participant
7 is payable to the Territory by 1 March in the following year or, if the
8 regulator decides a later date, that date.
- 9 *Note* An amount owing under a law may be recovered as a debt in a court of
10 competent jurisdiction (see Legislation Act, s 177).
- 11 (5) Any greenhouse penalties payable under this Act are to be used for
12 greenhouse gas reduction activities or programs nominated by the
13 Minister.
- 14 (6) In this section:
- 15 *CPI* means the All Groups Consumer Price Index (All Groups
16 Index) for Sydney issued by the Australian Statistician.
- 17 *Note* For when a greenhouse gas penalty is payable for a greenhouse shortfall
18 that is carried forward, see s 12.
- 19 **17 Annual greenhouse gas benchmark statements**
- 20 (1) A benchmark participant must give a greenhouse gas benchmark
21 statement to the regulator by 1 March in each year or, if the
22 regulator allows a later date, that date.
- 23 (2) A greenhouse gas benchmark statement must contain—
- 24 (a) an assessment of the benchmark participant's greenhouse gas
25 benchmark for the previous year; and
- 26 (b) an assessment of the participant's liability (if any) for the
27 greenhouse penalty for the previous year; and

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

5 (d) anything else required by the regulator.

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

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

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

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

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

19 Maximum penalty: 50 penalty units.

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

21 **18 Restrictions on surrender of abatement certificates**

22 (1) An abatement certificate cannot be surrendered by a benchmark
23 participant unless—

24 (a) the certificate is registered under this Act or a corresponding
25 law and the registration is in force; and

26 (b) the certificate was created in relation to an activity that took
27 place before the end of the year to which the benchmark
28 participant's latest greenhouse gas benchmark statement
29 relates; and

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

22 **19 Assessment of compliance with greenhouse gas** 23 **benchmarks**

- 24 (1) The regulations may make provision in relation to the following:
- 25 (a) the circumstances in which a renewable energy certificate may
26 or may not be counted by a benchmark participant towards a
27 greenhouse gas benchmark or to abate a greenhouse shortfall
28 that has been carried forward;

- 1 (b) the number of renewable energy certificates that may be
2 counted for a year (including for a greenhouse shortfall that
3 was carried forward);
- 4 (c) the assessment of the greenhouse shortfall (if any) and of
5 liability for a greenhouse penalty by a benchmark participant,
6 including self-assessment and assessment by the regulator;
- 7 (d) the date when an assessment is taken to have been made and
8 the date when an assessment takes effect;
- 9 (e) default assessments if a benchmark participant does not give a
10 greenhouse gas benchmark statement;
- 11 (f) amendment of assessments at the request of a benchmark
12 participant or on the regulator's own initiative;
- 13 (g) revocation of the cancellation of abatement certificates in
14 relation to amended assessments and the revival of the
15 certificates;
- 16 (h) payments resulting from amended assessments;
- 17 (i) notice of assessments.
- 18 (2) The regulations must include provisions that limit the number of
19 renewable energy certificates that may be counted towards a
20 greenhouse gas benchmark by reference to relevant acquisitions that
21 are attributable to sales of electricity in the ACT.
- 22 (3) In this section:
- 23 *relevant acquisition*—see the *Renewable Energy (Electricity) Act*
24 *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.

1 **Part 4** **Accreditation of abatement**
2 **certificate providers**

3 **22 Accreditation required for creating abatement certificates**

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

9 **23 Eligibility for accreditation**

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

- 1 (b) the activity happens in another jurisdiction where a mandatory
2 scheme intended to promote the reduction of greenhouse gas
3 emissions, approved by the Minister for this subsection, is in
4 operation.
- 5 (4) An approval is a notifiable instrument.
- 6 *Note* A notifiable instrument must be notified under the Legislation Act.
- 7 (5) The Minister may approve a scheme for subsection (3) (b) only if
8 the Minister is satisfied that—
- 9 (a) the reduction of greenhouse gas emissions proposed to be
10 achieved by the scheme is not less than the reduction proposed
11 to be achieved by the scheme established under this Act; and
- 12 (b) the monitoring and enforcement of compliance with the
13 scheme to be approved is no less stringent than that applying to
14 the scheme established under this Act.

15 **24 Application for accreditation**

- 16 (1) A person who is eligible for accreditation as an abatement certificate
17 provider in relation to an activity may apply to the scheme
18 administrator for accreditation as an abatement certificate provider
19 in relation to that activity.
- 20 (2) The scheme administrator must decide the application by—
- 21 (a) accrediting the applicant as an abatement certificate provider in
22 relation to a stated activity or stated activities; or
- 23 (b) refusing the application.
- 24 (3) The scheme administrator may refuse an application for
25 accreditation on the grounds prescribed under the regulations.
- 26 (4) The regulations may make provision in relation to applications for
27 accreditation.
- 28 *Note* A fee may be determined under s 64 for this provision.

- 1 **25 Duration of accreditation**
- 2 (1) Accreditation of a person as an abatement certificate provider
- 3 remains in force until suspended or cancelled by the scheme
- 4 administrator.
- 5 (2) The scheme administrator may suspend or cancel a person's
- 6 accreditation only on the grounds prescribed under the regulations.
- 7 (3) The cancellation or suspension of a person's accreditation is subject
- 8 to the conditions (if any) the scheme administrator imposes.
- 9 (4) The conditions may include (but are not limited to) a condition to
- 10 which the accreditation was subject immediately before it was
- 11 suspended or cancelled.
- 12 (5) The regulations may provide for the variation or revocation of any
- 13 conditions imposed by the scheme administrator on the suspension
- 14 or cancellation of accreditation as an abatement certificate provider.
- 15 **26 Conditions of accreditation**
- 16 (1) Accreditation as an abatement certificate provider is subject to the
- 17 following conditions:
- 18 (a) the conditions prescribed under the regulations;
- 19 (b) the conditions (if any) imposed by the scheme administrator at
- 20 the time of accreditation, or while the accreditation is in force,
- 21 in accordance with the regulations.
- 22 **Examples of conditions that may be imposed on a person's accreditation**
- 23 1 a condition that requires the person not to create an abatement certificate in
- 24 relation to the greenhouse gas emissions abated by an activity if an
- 25 abatement certificate or renewable energy certificate has already been
- 26 created in relation to that abatement or if that abatement has already been
- 27 used to comply with another mandatory scheme (whether of the ACT or
- 28 another jurisdiction) intended to promote the reduction of greenhouse gas
- 29 emissions
- 30 2 a condition that requires the person not to create a renewable energy
- 31 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.

- 1 **Part 5** **Creation of abatement**
2 **certificates**
- 3 **29** **Accredited abatement certificate provider may create**
4 **certificates**
- 5 An accredited abatement certificate provider may create abatement
6 certificates in accordance with this Act and the conditions (if any) of
7 the person's accreditation.
- 8 *Note 1* A reference to an Act includes a reference to the statutory instruments
9 made or in force under the Act, including regulations (see Legislation
10 Act, s 104).
- 11 *Note 2* If a form is approved under s 65 for a certificate, the form must be used.
- 12 **30** **Value of certificate**
- 13 An abatement certificate represents 1 tonne of carbon dioxide
14 equivalent of greenhouse gas emissions abated by the activity in
15 relation to which it was created.
- 16 **31** **Entitlement to create abatement certificates**
- 17 (1) The regulations and rules may make provision in relation to the
18 entitlement of accredited abatement certificate providers to create
19 abatement certificates in relation to the activities for which they are
20 accredited as abatement certificate providers.
- 21 (2) Without limiting subsection (1), the regulations and rules may
22 provide for the following:
- 23 (a) the number of abatement certificates that may be created in
24 relation to an activity on the basis of the carbon dioxide
25 equivalent of greenhouse gas emissions abated or to be abated
26 by the activity;

- 1 (b) the establishment of a point or level from which electricity
2 generating activities give rise to an entitlement to create
3 abatement certificates under this part.

4 **32 When certificates may be created**

- 5 (1) An abatement certificate in relation to an activity may be created by
6 an accredited abatement certificate provider—
7 (a) immediately after the activity happens; but
8 (b) not later than 6 months after the end of the year when the
9 activity happens.
10 (2) The regulations or rules may state when an activity is considered to
11 have happened for subsection (1).
12 (3) Without limiting subsection (2), the regulations or rules may
13 provide that an activity resulting in reduced consumption of
14 electricity that gives rise to an entitlement to create an abatement
15 certificate is taken to have happened on the day the activity first
16 began.
17 (4) Accordingly, abatement certificates may be created in relation to the
18 abatement of greenhouse gas emissions caused or to be caused by
19 the activity immediately after the activity is first begun.

20 **33 Creation of certificate must be registered**

- 21 (1) An abatement certificate is not effective until the creation of the
22 certificate is registered by the scheme administrator.
23 (2) An application for registration of the creation of an abatement
24 certificate may be made to the scheme administrator by an
25 accredited abatement certificate provider.
26 (3) The scheme administrator must decide an application for
27 registration of the creation of an abatement certificate by—

- 1 (a) accepting the application and registering the creation of the
2 certificate in the register of abatement certificates; or
3 (b) refusing the application.
- 4 (4) The scheme administrator registers the creation of a certificate by
5 creating an entry for the certificate in the register of abatement
6 certificates and recording the name of the person who created the
7 certificate as the owner of the certificate.
- 8 (5) The scheme administrator may refuse an application for registration
9 of the creation of an abatement certificate on the grounds prescribed
10 under the regulations.
- 11 (6) The regulations may make provision in relation to applications for
12 registration of the creation of an abatement certificate.
- 13 *Note* A fee may be determined under s 64 for an application.

14 **34 Duration of certificate**

- 15 (1) An abatement certificate registered by the scheme administrator
16 remains in force until it is cancelled by the scheme administrator.
- 17 (2) The scheme administrator may cancel an abatement certificate if—
18 (a) the person registered as the owner of the abatement certificate
19 surrenders the certificate to the regulator, by indicating in the
20 person's greenhouse gas benchmark statement that the person
21 wishes to surrender the certificate; and
22 (b) the regulator accepts the surrender of the certificate.
- 23 (3) An abatement certificate may also be cancelled by the scheme
24 administrator under section 35.
- 25 (4) The scheme administrator cancels an abatement certificate by
26 changing the entry relating to the abatement certificate in the
27 register of abatement certificates to show that the certificate is
28 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.

- 1 (8) A person commits an offence if—
- 2 (a) an order under this section requires the person to surrender an
- 3 abatement certificate; and
- 4 (b) the person fails to surrender the abatement certificate in
- 5 accordance with the order.
- 6 Maximum penalty: the number of penalty units worked out under
- 7 subsection (9).
- 8 (9) For the penalty in subsection (8), the number of penalty units is—
- 9 $1\,000 + \text{number of abatement certificates not surrendered}$
- 10 **Example**
- 11 The maximum penalty for an offence involving a failure to surrender 80
- 12 abatement certificates is 1 080 penalty units.
- 13 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 14 does not limit, the meaning of the provision in which it appears (see
- 15 Legislation Act, s 126 and s 132).
- 16 (10) If a person fails to comply with an order, the scheme administrator
- 17 may cancel any abatement certificates in relation to which the
- 18 person is registered as the owner.
- 19 (11) To remove any doubt—
- 20 (a) it is not an excuse for an offence against subsection (8) that the
- 21 person did not, when the order was made, hold enough
- 22 abatement certificates to comply with the order; and
- 23 *Note* A person who does not hold enough certificates to comply with
- 24 an order may obtain the required number by purchasing them.
- 25 (b) there is no minimum penalty for an offence against
- 26 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).

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

3 **Example**

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

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

- 9 (3) To remove any doubt—

- 10 (a) a person may be found guilty of an offence against
11 subsection (1) whether or not the abatement certificate created
12 is registered in the register of abatement certificates; and
13 (b) there is no minimum penalty for an offence against
14 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.

- 1 (2) An application for registration of a transfer of an abatement
2 certificate must be made to the scheme administrator by the parties
3 to the transfer.
- 4 (3) The scheme administrator must—
- 5 (a) accept the application by registering the transfer in the register
6 of abatement certificates; or
- 7 (b) refuse the application.
- 8 (4) The scheme administrator registers the transfer of an abatement
9 certificate by changing the entry relating to that certificate in the
10 register of abatement certificates to record the new owner of the
11 certificate.
- 12 (5) The scheme administrator may refuse an application for registration
13 of a transfer of an abatement certificate on the grounds prescribed
14 under the regulations.
- 15 (6) The scheme administrator must refuse an application for registration
16 of a transfer of a non-transferable abatement certificate unless—
- 17 (a) the scheme administrator is satisfied that the transfer is
18 associated with the sale of the business, or part of the business,
19 in relation to which the abatement certificate was created to the
20 person to whom the certificate is to be transferred; or
- 21 (b) the scheme administrator is authorised under the regulations to
22 register the transfer.
- 23 (7) The regulations may make provision in relation to applications for
24 the registration of transfers of abatement certificates.

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

26 **41 Other dealings in certificates**

27 The regulations may make provision in relation to the registration of
28 any mortgage, assignment, transmission of, or other dealing in, an
29 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.

1 **Part 7 Registers**

2 **44 Registers to be kept**

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

7 **45 Register of accredited abatement certificate providers**

- 8 (1) The register of accredited abatement certificate providers must
9 contain the following information in relation to each accredited
10 abatement certificate provider:
11 (a) the name of the accredited abatement certificate provider;
12 (b) the kind of certificates the accredited abatement certificate
13 provider is entitled to create;
14 (c) any other information required to be included in the register
15 under this Act.
16 *Note* A reference to an Act includes a reference to the statutory instruments
17 made or in force under the Act, including regulations (see Legislation
18 Act, s 104).
19 (2) The register of accredited abatement certificate providers may also
20 contain the information prescribed under the regulations in relation
21 to a person whose accreditation as an abatement certificate provider
22 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);

1 (b) any other information in the register that is required to be
2 available for public inspection under the regulations.

3 (3) A nomination is a notifiable instrument.

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

5 **47 Evidentiary provisions**

6 (1) A register is evidence of anything registered in it.

7 (2) If a register is kept completely or partly in electronic form, a
8 document issued by the scheme administrator stating particulars
9 included in the register, or the part kept in electronic form, is
10 admissible in a proceeding before any court or tribunal and is
11 evidence of the particulars.

12 **48 Correction of register**

13 The scheme administrator may correct any error or omission in a
14 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;

- 1 (d) to conduct audits, or require the conduct of audits, for this Act;
- 2 (e) to monitor, and report to the Minister on, the extent to which
- 3 retail suppliers comply, or fail to comply, with conditions
- 4 imposed under this Act on licences held by them;
- 5 (f) any other functions given to the regulator under this Act..
- 6 (2) The Minister must give the regulator any information the Minister
- 7 has that is requested by the regulator in relation to compliance by
- 8 benchmark participants with this Act.
- 9 (3) The regulator may delegate its functions under this Act to—
- 10 (a) a member of staff of the regulator; or
- 11 (b) anyone else approved, in writing, by the Minister.
- 12 *Note* For the making of delegations and the exercise of delegated functions,
- 13 see Legislation Act, pt 19.4.
- 14 (4) An approval is a notifiable instrument.
- 15 *Note* A notifiable instrument must be notified under the Legislation Act.
- 16 (5) The regulator, and anyone acting under the direction of the
- 17 regulator, is not liable in a civil proceeding for anything done or
- 18 omitted to be done honestly by the regulator in the exercise or
- 19 purported exercise of a function under this Act.

20 **51 Scheme administrator**

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

-
- 1 (a) the provision of services by IPART for the exercise of the
2 functions of the scheme administrator is approved under the
3 NSW Act, section 9 (Arrangements with other entities); and
- 4 (b) there is an arrangement between the Territory and IPART for
5 the provision of those services by IPART to the Territory.
- 6 (3) If subsection (1) (a) does not apply, the Minister must appoint a
7 person as the scheme administrator.
- 8 *Note 1* For the making of appointments (including acting appointments), see
9 Legislation Act, pt 19.3.
- 10 *Note 2* In particular, an appointment may be made by naming a person or
11 nominating the occupant of a position (see s 207).
- 12 *Note 3* Certain Ministerial appointments require consultation with an Assembly
13 committee and are disallowable (see Legislation Act, div 19.3.3).
- 14 (4) In deciding whether to appoint a scheme administrator, the Minister
15 must consider the following matters:
- 16 (a) the efficient costs of any appointment;
- 17 (b) the efficiency of administrative arrangements relating to the
18 abatement certificate scheme;
- 19 (c) ability to meet greenhouse objectives;
- 20 (d) proposed governance arrangements;
- 21 (e) proposed arrangements to manage liabilities associated with
22 exercising the scheme administrator's functions.
- 23 (5) The Minister may appoint more than 1 person to exercise the
24 functions of the scheme administrator and may appoint different
25 people to exercise particular functions of the scheme administrator.
- 26 (6) The regulations may make provision in relation to the appointment
27 of a scheme administrator by the Minister.

1 (7) In this section:

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

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

6 **52 Functions of scheme administrator etc**

7 (1) The scheme administrator has the following functions:

8 (a) the functions given to the scheme administrator under this Act
9 relating to the abatement certificate scheme;

10 (b) to monitor, and report to the Minister on, the extent to which
11 accredited abatement certificate providers comply with this
12 Act;

13 (c) to conduct audits, or require the conduct of audits, for this Act;

14 (d) any other functions given to the scheme administrator under
15 this Act.

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

19 (2) The Minister must give the scheme administrator any information
20 the Minister has that is requested by the scheme administrator in
21 relation to compliance by accredited abatement certificate providers
22 with this Act.

23 (3) The scheme administrator may delegate its functions under this Act
24 to—

25 (a) a member of staff of the scheme administrator; or

26 (b) anyone else approved, in writing, by the Minister.

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

- 1 (4) An approval is a notifiable instrument.

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

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

7 **53 Conduct of audits**

- 8 (1) The regulations may make provision in relation to the conduct of
9 audits by the regulator, the scheme administrator or anyone else for
10 this Act.

- 11 (2) Without limiting subsection (1), the regulations may provide for—

12 (a) the matters that may be the subject of an audit; and

13 (b) the people who may conduct an audit; and

14 (c) the functions that may be exercised by people who conduct an
15 audit; and

16 (d) offences relating to obstructing or hindering people, or refusing
17 or failing to comply with requirements made by people, who
18 conduct audits.

- 19 (3) A benchmark participant or accredited abatement certificate
20 provider is liable to pay to the regulator or the scheme administrator
21 the cost (as certified by the regulator or the scheme administrator) of
22 carrying out the regulator's or scheme administrator's audit
23 functions in relation to the participant or provider.

- 24 (4) A licence or accreditation may include conditions about working out
25 the cost of carrying out the audit functions.

- 1 **54 Provision of information, documents and evidence**
- 2 (1) For exercising the regulator's functions under this Act, the regulator
- 3 may by written notice given to a benchmark participant, an
- 4 abatement certificate provider or anyone else, require the
- 5 participant, provider or person to—
- 6 (a) give to the regulator, on or before a date stated in the notice,
- 7 the information or documents stated in the notice; or
- 8 (b) attend at a time, date and place stated in the notice to give
- 9 evidence to the regulator.
- 10 *Note* The Legislation Act, s 170 and s 171 deals with the application of the
- 11 privilege against selfincrimination and client legal privilege.
- 12 (2) For exercising the scheme administrator's functions under this Act,
- 13 the scheme administrator may by written notice given to a
- 14 benchmark participant, an abatement certificate provider or anyone
- 15 else, require the participant, provider or person to—
- 16 (a) give to the scheme administrator, on or before a date stated in
- 17 the notice, the information or documents stated in the notice; or
- 18 (b) attend at a time, date and place stated in the notice to give
- 19 evidence to the scheme administrator.
- 20 (3) A person commits an offence if the person—
- 21 (a) fails to comply with a notice given to the person under
- 22 subsection (1) or (2); or
- 23 (b) fails to answer a question that the regulator or scheme
- 24 administrator requires the person to answer under a notice
- 25 given under subsection (1) (b) or (2) (b).
- 26 Maximum penalty: 50 penalty units.
- 27 *Note* For offences in relation to giving false or misleading information to a
- 28 person exercising a function under a Territory law etc, see the Criminal
- 29 Code, pt 3.4 (False or misleading statements, information and
- 30 documents).
-

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

12 **55 Executive documents and proceedings**

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

22 **56 Confidential information**

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

- 1 (2) If the information is given on the understanding that it is
2 confidential and will not be disclosed, the regulator or scheme
3 administrator must ensure that the information is not disclosed to
4 anyone except—
5 (a) with the consent of the person who gave the information; or
6 (b) to the extent that the regulator or scheme administrator is
7 satisfied that the information is not confidential in nature; or
8 (c) if the disclosure is required under law.
9 (3) The regulator or scheme administrator may give directions
10 prohibiting or restricting the disclosure of the information if
11 satisfied it is desirable to do so because of the confidential nature of
12 the information.
13 (4) A person must not engage in conduct that contravenes a direction
14 given to the person under subsection (3).
15 Maximum penalty (subsection (4)): 50 penalty units, imprisonment
16 for 6 months or both.

17 **57 Annual report by regulator**

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

- 1 (3) The report must also set out the functions delegated by the regulator
2 under section 50 (3) and the person to whom they were delegated.
- 3 (4) The Minister must present the report to the Legislative Assembly as
4 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.

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

13 **60 Reviewable decisions**

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

- 1 (iv) an assessment of the amount of greenhouse penalty
2 payable by the participant or former participant for a year;
3 or
- 4 (b) a decision of the regulator to confirm, amend or revoke a
5 decision reconsidered under section 59 (Reconsideration of
6 certain decisions); or
- 7 (c) any other decision of the regulator prescribed under the
8 regulations.
- 9 (2) A person who is or was accredited, or who has applied to be
10 accredited, under this Act as an abatement certificate provider may
11 apply to the administrative appeals tribunal for review of any of the
12 following decisions of the scheme administrator:
- 13 (a) a decision to refuse accreditation of the person as an abatement
14 certificate provider;
- 15 (b) a decision to cancel or suspend the person's accreditation as an
16 abatement certificate provider;
- 17 (c) a decision to refuse registration of the creation of an abatement
18 certificate;
- 19 (d) any other decision prescribed under the regulations.
- 20 (3) A person who has applied for registration of a transfer of an
21 abatement certificate may apply to the administrative appeals
22 tribunal for review of a decision of the scheme administrator to
23 refuse registration of the transfer.
- 24 (4) A person who is the subject of an order by the scheme administrator
25 under section 35 (2) requiring the person to surrender abatement
26 certificates to the scheme administrator may apply to the
27 administrative appeals tribunal for review of a decision of the
28 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.

1 (2) A rule is a notifiable instrument.

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

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

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

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

10 **62 Obligations under greenhouse gas benchmark rules**

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

14 Maximum penalty: 100 penalty units.

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

17 **63 Criminal liability of executive officers**

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

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

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

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

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

27 (d) the officer was in a position to influence the conduct of the
28 corporation in relation to the contravention; and

1 (e) the officer failed to take all reasonable steps to prevent the
2 contravention.

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

5 (2) This section applies whether or not the corporation is prosecuted for,
6 or convicted of, the relevant offence.

7 (3) In deciding whether the executive officer took (or failed to take) all
8 reasonable steps to prevent the contravention, a court must have
9 regard to the following:

10 (a) any action the officer took directed towards ensuring the
11 following (to the extent that the action is relevant to the act or
12 omission):

13 (i) that the corporation arranges regular professional
14 assessments of the corporation's compliance with the
15 contravened provision;

16 (ii) that the corporation implements any appropriate
17 recommendation arising from such an assessment;

18 (iii) that the corporation's employees, agents and contractors
19 have a reasonable knowledge and understanding of the
20 requirement to comply with the contravened provision;

21 (b) any action the officer took when the officer became aware that
22 the contravention was, or might be, about to happen.

23 (4) Subsection (3) does not limit the matters to which the court may
24 have regard.

25 (5) This section does not apply if the corporation would have a defence
26 to a prosecution for the relevant offence.

27 (6) In this section:

28 *executive officer*, of a corporation, means a person, by whatever
29 name called and whether or not the person is a director of the

1 corporation, who is concerned with, or takes part in, the
2 corporation's management.

3 **64 Determination of fees**

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

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

7 (2) A determination is a disallowable instrument.

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

10 **65 Approved forms**

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

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

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

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

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

17 **66 Regulation-making power**

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

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

21 (2) The regulations may prescribe offences for contraventions of the
22 regulations and prescribe maximum penalties of not more than
23 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).

- 1 ***electricity sector benchmark***, for a year, means the electricity sector
2 benchmark determined under section 13 (1) (d) for the year.
- 3 ***engage in conduct*** means—
- 4 (a) do an act; or
- 5 (b) omit to do an act.
- 6 ***greenhouse gas*** means carbon dioxide, methane, nitrous oxide,
7 sulphur hexafluoride, a perfluorocarbon gas or any other gas
8 prescribed under the regulations for this definition.
- 9 ***greenhouse gas benchmark***, for a benchmark participant for a year,
10 means the benchmark for the year, in tonnes of carbon dioxide
11 equivalent of greenhouse gas emissions, determined for the
12 participant under this Act.
- 13 ***greenhouse gas benchmark rules*** means the rules in force under
14 section 61.
- 15 ***greenhouse penalty*** means a penalty payable under section 16.
- 16 ***greenhouse shortfall***—see section 11 (4).
- 17 ***ICRC*** means the Independent Competition and Regulatory
18 Commission established under the *Independent Competition and*
19 *Regulatory Commission Act 1997*.
- 20 ***large customer*** means a customer (other than a retail supplier) who
21 uses—
- 22 (a) 100 gigawatt hours or more of electricity at a single site in the
23 ACT in a year; or
- 24 (b) 100 gigawatt hours or more of electricity at 2 or more sites in
25 the ACT in a year, at least 1 of which uses 50 gigawatt hours
26 or more of electricity in the year.
- 27 ***licence*** means a licence under the Utilities Act.

- 1 **market customer** means a customer that—
- 2 (a) has classified any of its electricity loads as a market load under
- 3 the national electricity code; and
- 4 (b) is registered with NEMMCO as a market customer under the
- 5 national electricity code.
- 6 **national electricity code**—see the *Independent Competition and*
- 7 *Regulatory Commission Act 1997*, section 3 (1).
- 8 **NEMMCO** means the National Electricity Market Management
- 9 Company Limited ACN 072 010 327.
- 10 **register** means a register kept under part 7.
- 11 **register of abatement certificates** means the register mentioned in
- 12 section 46.
- 13 **register of accredited abatement certificate providers** means the
- 14 register mentioned in section 45.
- 15 **regulator** means the regulator under section 49.
- 16 **renewable energy certificate** means a certificate created under the
- 17 *Renewable Energy (Electricity) Act 2000* (Cwlth).
- 18 **retail supplier** means a person who holds a licence to provide a
- 19 utility service mentioned in the *Utilities Act*, section 6 (c)
- 20 (Electricity services).
- 21 **rules** means the greenhouse gas benchmark rules.
- 22 **scheme administrator** means the scheme administrator under
- 23 section 51.
- 24 **Territory greenhouse gas benchmark**—see section 7.
- 25 **Utilities Act** means the *Utilities Act 2000*.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2004.

2 Notification

Notified under the Legislation Act on 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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