

2004

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

Electricity (Greenhouse Gas Emissions) Regulation 2004

Subordinate Law SL2004-60

EXPLANATORY STATEMENT

Circulated by authority of

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Minister for the Environment

EXPLANATORY STATEMENT

Authority

This regulation is authorised by section 66 of the *Electricity (Greenhouse Gas Emissions) Act 2004*.

Outline/background

This regulation prescribes a number of matters for the operation of the Greenhouse Gas Abatement Scheme established by the *Electricity (Greenhouse Gas Emissions) Act 2004*. The regulation contains provisions regarding who can be a benchmark participant, the relationship with Commonwealth renewable energy certificates, assessment of compliance with greenhouse gas benchmarks, accreditation for participation in this scheme, creation and transfer of abatement certificates and audit of accredited abatement certificate providers.

Given that the *Electricity (Greenhouse Gas Emissions) Act 2004* is modeled on the NSW Greenhouse Gas Abatement Scheme established under the *Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002 (NSW)*, the regulation mirrors the relevant provisions of Part 8A of the *Electricity Supply (General) Regulation 2001 (NSW)*.

Revenue/Cost Implications

There are no revenue/cost implications as the regulation merely provides details that are necessary for the operation of the *Electricity (Greenhouse Gas Emissions) Act 2004*.

Formal Sections

Part 1 Preliminary

Section 1 – Name of Regulation

This section states the name of the regulation, which is the *Electricity (Greenhouse Gas Emissions) Regulation 2004*.

Section 2 – Commencement

This section provides that the regulation will commence on the day after it is notified.

Section 3 – Dictionary

This section provides that the dictionary at the end of the regulation is part of this regulation.

Section 4 – Notes

This section provides an explanation that notes included in the regulation are explanatory and do not form part of the regulation.

Section 5 – Offences against regulation – application of Criminal Code

This section provides that other legislation applies in relation to the offences in the regulation. The notes draw attention to the Criminal Code, and the definitions of penalty units.

Part 2 Greenhouse gas benchmarks

Division 2.1 Benchmark participants

Section 6 – Circumstances in which a person is taken to be a large customer—Act, s 9 (2) (d)

Section 9(1)(c) of the Act provides that a large customer can elect to be a subject to a greenhouse gas benchmark. This section sets out the conditions on which that election is effective. Subsection (1) provides that the regulator must be satisfied that the customer will use the defined amount of electricity in the year of the election. Subsection (2) provides for a customer who uses electricity at more than one site. Subsection (3) makes provision for corporations to be large customers by aggregating the electricity used by the corporation and related companies for the purpose of determining whether the test for a large customer is met.

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

The section makes provision for how a person can elect to become a benchmark participant. The regulator can approve a form for such an election. An election for a year is to be made by 30 June of the previous year, except for 2005, where election can be made up to 1 April of 2005.

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

This section sets out the evidence that must be provided to the regulator by a person who makes an election to become an elective participant as a large customer. Subsection 3 provides for a person to make the election in relation to part of their use if that part meets the requirements for classification as a large customer.

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

This section sets out the time an election takes effect, the requirements on the regulator for notification of an accepted election and the duration of the election. Subsection (4) provides that both the customer and the regulator can cancel the election, effective at the end of the year in which notice is given. Subsection (5) provides that an elective participant that does not wish to continue in a year, must give notice before 30 June of the previous year.

Section 10 - Regulator may cancel election

This sets out the conditions on which the regulator can cancel an election by an elective participant.

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

This section provides for the payment of any greenhouse penalties in the event of an election ceasing. It also provides that a greenhouse shortfall cannot be carried forward if the election ceases.

Division 2.2 Greenhouse penalties

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

This section sets the greenhouse penalty.

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

This section provides for indexation of the greenhouse penalty.

Division 2.3 Renewable Energy Certificates

Section 14 - Circumstances in which renewable energy certificates may be counted towards greenhouse gas benchmark—Act, s 19 (1) (a)

This section sets out the circumstances in which a renewable energy certificate under the Commonwealth scheme can be counted towards a greenhouse benchmark. There is a different set of conditions for compulsory and elective participants.

Section 15 - Limit on number of renewable energy certificates that may be counted—Act, s 19 (2) 12

This section sets out the method of calculating the maximum number of Commonwealth renewable energy certificates that can be counted towards a participant's greenhouse gas benchmark.

Division 2.4 Assessment of compliance with greenhouse gas benchmarks

Section 16 - Assessment of compliance with greenhouse gas benchmarks

This section provides that the assessment of greenhouse shortfall and liability for penalties by the regulator is taken to be the formal assessment of these matters, and is taken to have effect on 1 March in the following year, or whenever it was lodged, whichever is later.

Section 17 - Default assessments

This section provides that the regulator can make an assessment in the absence of a greenhouse gas benchmark statement by a given participant. This assessment can be based on an estimate of that participant's sale or use of electricity.

Section 18 - Amendment of assessments

This section makes provision for the regulator to amend assessments on its own initiative or at the request of the relevant participant.

Section 19 - Time limits for amended assessments

This section sets out the time limits for amending assessments, generally within one year of the original assessment.

Section 20 - Amended assessments generally

This section allows for amendment of an assessment outside the time limits in section 19 because of the result of a review, appeal or objection in relation to an assessment. It also makes provision for when adjusted penalties are to be paid.

Section 21 - Notice of assessments

This section provides that assessments and amended assessments must be given to the benchmark participant as soon as practicable after they are made.

Part 3 Greenhouse gas abatement certificate scheme

Division 3.1 Eligibility for accreditation

Section 22 - Electricity generation activities

This section sets out the conditions under which a person is eligible to be accredited as an abatement certificate provider in relation to electricity generation.

Section 23 - Carbon sequestration activities

This section sets out the conditions under which a person is eligible to be accredited as an abatement certificate provider in relation to carbon sequestration.

Section 24 - Demand side abatement activities

This section sets out the conditions under which a person is eligible to be accredited as an abatement certificate provider in relation to demand side abatement.

Section 25 - Large user abatement activities

This section sets out the conditions under which a person is eligible to be accredited as an abatement certificate provider in relation to large user abatement.

Division 3.2 Applications for accreditation

Section 26 - Application for accreditation

This section provides that applications for accreditation must be made in a way approved by the Regulator. Sub-section (2) sets out disclosure requirements for those accredited under the Commonwealth renewable energy certificates scheme.

Section 27 - Benefits under other schemes

This section provides that the regulator may require an applicant for accreditation to give an undertaking not to claim benefits under another mandatory greenhouse gas scheme if that would mean the applicant would get benefits under both schemes for the same greenhouse gas abatement.

Section 28 - Grounds for refusal of application for accreditation

This section sets out the grounds on which accreditation may be refused. This includes a failure to give an undertaking required under section 27.

Section 29 - Suspension or cancellation of accreditation

This section sets out the grounds for suspension or cancellation of accreditation, which include ceasing to meet the requirements, contravention of the Act or a condition of the accreditation, or the person requesting it.

Division 3.3 Prescribed conditions of accreditation

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

This section provides that it is a condition of every accreditation that the person comply with provisions of this division. The requirements of sections 31 to 36 therefore are conditions of each accreditation.

Section 31 - Claiming benefits under other schemes

This section provides that a person must not breach an undertaking given under section 27.

Section 32 - Commonwealth renewable energy scheme

This section provides that a person must not create abatement certificates in relation to output for which it has already created a renewable energy certificate under the Commonwealth scheme. Sub-sections (3) and (4) set out disclosure requirements on accredited abatement certificate providers if they are accredited or become accredited under the Commonwealth scheme.

Section 33 - Carbon sequestration activity to be maintained

This section requires that a person who creates abatement certificates for carbon sequestration by way of planted forests must maintain the sequestration for 100 years.

Section 34 - Retail suppliers of elective participants to be notified to scheme Administrator

This section provides that a person creating certificates in relation to large user abatement activity must notify the scheme administrator if the person enters new agreements to purchase electricity from a retail supplier.

Section 35 - Record keeping

This section sets out the record keeping requirements on abatement certificate providers.

Section 36 - Co-operation with audits

This section requires that an abatement certificate provider must co-operate with audits carried out under division 3.7.

Division 3.4 Imposition of conditions by scheme administrator

Section 37 - Imposition of conditions by scheme administrator

This section requires the scheme administrator to give written notice of conditions to be imposed on an accredited abatement certificate provider and to provide reasons for so doing. It also provides for when these conditions come into effect.

Section 38 - Financial assurances

This section sets out the criteria to be used in setting a financial assurance imposed by the scheme administrator on an abatement certificate provider. It also sets out the circumstances in which the scheme administrator can make a claim on the financial assurance.

Division 3.5 Creation of abatement certificates

Section 39 - Form of abatement certificates

This section sets out the matters which must be included in an abatement certificate.

Section 40 - Determination of baseline

This section empowers the scheme administrator to set a baseline for activities in relation to which abatement certificates can be made.

Section 41 - Activities that take place before accreditation

This section provides that activities carried out before the scheme begins on 1 January 2005, or before the person lodged their application for accreditation, cannot be used as a basis for creation of abatement certificates.

Section 42 - Registration of creation of certificate

This section provides for the scheme administrator to determine the way an application for registration of the creation of an abatement certificate can be made. It also sets out the grounds on which such an application can be refused.

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

This section sets out when abatement certificates must be surrendered and how the number of certificates that are to be surrendered is to be determined.

Division 3.6 Transfer of certificates

Section 44 - Entitlement to create transferable abatement certificates

This section provides that transferable abatement certificates can be created for electricity generation activities, carbon sequestration activities and demand side abatement activities, and that anyone who is accredited for these activities can make transferable certificates.

Section 45 - Entitlement to create non-transferable abatement certificates

This section provides that non-transferable abatement certificates can be created in relation to large user activities.

Section 46 - Registration of transfers of certificates

This section provides that the scheme administrator can determine the way in which applications for transfer of certificates can be made. It also sets out the grounds on which the application can be refused, and that the scheme administrator must give reasons for that refusal.

Section 47 - Register of accredited abatement certificate providers

This section sets out what must be included in the register of accredited abatement certificate providers. The information that must be made available to the public is provided in sub section (3).

Division 3.7 Audits of accredited abatement certificate providers

Section 48 - Audits—Act, s 53

This section empowers the regulator and the scheme administrator to conduct or require the conduct of an audit of the creation of abatement certificates, eligibility for accreditation and compliance with conditions of accreditation. It sets out the permitted purposes of an audit, and who it can be conducted by.

Section 49 - Impersonating approved auditor

This section makes it an offence to impersonate an approved auditor.

Division 3.8 Review of decisions

Section 50 - Reviewable decisions—Act, s 60 (2) (d)

This section sets out the decisions of the scheme administrator that can be reviewed in the Administrative Appeals Tribunal.