



New South Wales

Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007 No 35

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New South Wales

Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007 No 35

Act No 35, 2007

An Act to amend the *Energy and Utilities Administration Act 1987* to establish the Climate Change Fund and to specify the purposes for which it may be applied; and for other purposes. [Assented to 4 July 2007]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007*.

2 Commencement

This Act commences or is taken to have commenced on 1 July 2007.

3 Amendment of Energy and Utilities Administration Act 1987 No 103

The *Energy and Utilities Administration Act 1987* is amended as set out in Schedule 1.

4 Consequential amendment of Electricity Supply Act 1995 No 94

The *Electricity Supply Act 1995* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 **Amendment of Energy and Utilities Administration Act 1987**

(Section 3)

[1] Section 3 Definitions

Insert the following definitions in alphabetical order in section 3 (1):

Climate Change Fund means the Climate Change Fund established under section 34E.

contributions order means an order under section 34J.

[2] Section 3 (1), definitions of “Energy Savings Fund” and “Water Savings Fund”

Omit the definitions.

[3] Part 6A, Divisions 2 and 3

Omit the Divisions. Insert instead:

Division 2 Climate Change Fund

34E Establishment of Climate Change Fund

There is to be established in the Special Deposits Account a fund called the “Climate Change Fund” (referred to in this Part as *the Fund*).

34F Purposes of Climate Change Fund

The purposes of the Fund are as follows:

- (a) to provide funding to reduce greenhouse gas emissions and the impacts of climate change associated with water and energy activities,
- (b) to provide funding to encourage water and energy savings and the recycling of water,
- (c) to provide funding to reduce the demand for water and energy, including addressing peak demand for energy,
- (d) to provide funding to stimulate investment in innovative water and energy savings measures,
- (e) to provide funding to increase public awareness and acceptance of the importance of climate change and water and energy savings measures,
- (f) to provide funding for contributions made by the State for the purposes of national energy regulation.

34G Payments into Climate Change Fund

- (1) There is payable into the Fund:
 - (a) all money received from contributions required to be made to the Fund under Division 3, and
 - (b) all money advanced by the Treasurer for the Fund, and
 - (c) all money appropriated by Parliament for the purposes of the Fund, and
 - (d) the proceeds of the investment of money in the Fund, and
 - (e) all money directed or authorised to be paid into the Fund by or under this or any other Act or law, and
 - (f) all money received from voluntary contributions to the Fund made by any other person or body.
- (2) Without limiting subsection (1) (f), State agencies are authorised by this section to make voluntary contributions to the Fund.
- (3) Subsection (2) does not authorise a State water agency or a distribution network service provider to refuse to pay a contribution to the Fund that is payable under Division 3.

34H Payments out of Climate Change Fund

- (1) There is payable from the Fund:
 - (a) any money approved by the Minister to fund all or any part of the cost of any measure that the Minister is satisfied promotes a purpose referred to in section 34F, and
 - (b) any money approved by the Minister to fund all or any part of the contributions that the State is required to make for the purposes of national energy regulation, and
 - (c) any money required to meet administrative expenses related to the Fund, and
 - (d) any money required to meet administrative expenses of the Minister in connection with the Minister's functions under this Act in relation to savings action plans, and
 - (e) any money directed or authorised to be paid from the Fund by or under this or any other Act or law.
- (2) In exercising the Minister's functions under subsection (1) (a) (but without limiting the generality of that paragraph), the Minister may:
 - (a) approve selection criteria from time to time to be applied to determine the kinds of water or energy savings measures that will be eligible for funding, and

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- (b) approve the funding of community grants from the Fund, being grants awarded on the basis of their merit in advancing one or more of the purposes referred to in section 34F, established through a competitive selection process, and
 - (c) require a person or body seeking funding for a water or energy savings measure to do either or both of the following as a precondition to applying for or obtaining funding:
 - (i) to submit a water savings action plan or energy savings action plan (as the case requires) that includes details about the measure,
 - (ii) to provide any other information requested by the Minister about the measure, and
 - (d) obtain and have regard to any advice, recommendations or other information provided to the Minister by a committee established by the Minister under Division 5, or by any other person or body, that the Minister considers relevant.
- (3) The Minister is to produce an annual report detailing fund allocations and programs and anticipated benefits, by reference to key performance indicators, to be achieved in advancing any one or more of the purposes referred to in section 34F.
 - (4) The annual report is to include an evaluation of the effectiveness of each program as it is completed under the Fund.
 - (5) The annual report is to be tabled in each House of Parliament within 6 months after the end of the financial year to which it relates.
 - (6) The Minister is to publish each annual report so as to promote, to the NSW public, schemes, technologies and processes that address climate change and to inform the NSW public about consumer choices and procurement decisions.

34I Investment of money in Climate Change Fund

The Minister may invest money in the Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Minister to invest the money, in any other manner approved by the Treasurer.

Division 3 Required contributions to Climate Change Fund

34J Minister may require State water agencies or distribution network service providers to make contributions to Climate Change Fund

- (1) The Minister may, by order published in the Gazette, require any one or more State water agencies or distribution network service providers to make an annual contribution for a specified financial year to the Fund.

Note. The Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

- (2) A contributions order:
 - (a) must specify the annual contributions payable by each State water agency or distribution network service provider to which the order applies (being an amount that does not exceed the maximum amount, if any, prescribed by the regulations), and
 - (b) may specify that an annual contribution may be paid by instalments during the financial year to which the order applies, and
 - (c) must specify the time or, in the case of an annual contribution that is payable by instalments, the times at which any contribution required under the order is to be made, and
 - (d) may be made before or during the financial year to which the order relates.

34K General provisions relating to contributions orders

- (1) The Minister is to cause a copy of a contributions order to be served on the State water agencies or distribution network service providers to which the order applies as soon as is reasonably practicable after the order is published in the Gazette.
- (2) A failure to comply with subsection (1) does not affect the validity of a contributions order.
- (3) Despite any other Act or law, a State water agency or distribution network service provider to which a contributions order applies must pay into the Fund such amounts at such times as may be required by the order.
- (4) An amount that is payable by a State water agency or distribution network service provider under a contributions order may be recovered by the Minister as a debt in any court of competent jurisdiction for payment into the Fund.

34L Special provisions relating to contributions orders applying to State water agencies

- (1) If a State water agency to which a proposed contributions order is to apply is constituted by or under an Act that is administered by a Minister other than the Minister administering section 34J of this Act, the order may be made only with the concurrence of the Minister administering the Act by or under which the agency is constituted.
- (2) If a State water agency to which a proposed contributions order is to apply is a local water utility within the meaning of the *Water Management Act 2000* but not a State owned corporation, the Minister must consult with each of the following before making the order:
 - (a) the State water agency,
 - (b) the Local Government and Shires Associations of New South Wales.
- (3) If the Independent Pricing and Regulatory Tribunal is required by or under the *Independent Pricing and Regulatory Tribunal Act 1992* to determine a maximum price for a water service provided by a State water agency, any requirement imposed on the agency by a contributions order to pay an amount into the Fund is to be treated for the purposes of section 16A of that Act as a requirement with which the agency must comply in providing the service.

Note. Section 16A of the *Independent Pricing and Regulatory Tribunal Act 1992* enables the Minister responsible for a government agency to direct the Tribunal, when it makes a determination of the maximum price for a government monopoly service provided by the agency, to include in the maximum price an amount representing the efficient cost of complying with a specified requirement imposed on the agency. It also enables the Minister to direct the Tribunal, when it makes a determination of the methodology for fixing the maximum price for the service, to include in the methodology a factor representing such a cost.

34M Special provisions relating to contributions orders applying to distribution network service providers

A proposed contributions order that is to apply to a distribution network service provider may be made only with:

- (a) the concurrence of the Treasurer, and
- (b) if section 14 (Licences) of the *Electricity Supply Act 1995* is administered by a Minister other than the Minister administering section 34J of this Act—the concurrence of the Minister administering section 14 of that Act.

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007

[5] Schedule 2, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Energy and Utilities Administration
Amendment (Climate Change Fund) Act
2007**

12 Continuity of Fund

The Climate Change Fund is a continuation of the Water Savings Fund and the Energy Savings Fund operating under this Act immediately before the commencement of the *Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007*.

13 Existing contributions orders

Any order in force under section 34J or 34P of this Act as in force immediately before the commencement of the *Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007* is taken to be a contributions order in force under section 34J (as substituted by that Act).

Schedule 2 Consequential amendment of Electricity Supply Act 1995

(Section 4)

[1] Part 4, Division 3A, heading

Omit “Energy Savings Fund”. Insert instead “Climate Change Fund”.

[2] Section 42A Definitions

Omit the definition of *Energy Savings Fund*. Insert instead:

Climate Change Fund means the Climate Change Fund established under section 34E of the *Energy and Utilities Administration Act 1987*.

[3] Section 42A, definition of “Fund contribution”

Omit “Energy Savings Fund by an order made under section 34P”.

Insert instead “Climate Change Fund by an order made under section 34J”.

[Agreement in principle speech made in Legislative Assembly on 19 June 2007
Second reading speech made in Legislative Council on 28 June 2007]

BY AUTHORITY