



New South Wales

Electricity Supply (General) Amendment Regulation 2015

under the

Electricity Supply Act 1995

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Electricity Supply Act 1995*.

ANTHONY ROBERTS, MP
Minister for Industry, Resources and Energy

Explanatory note

The object of this Regulation is to amend the *Electricity Supply (General) Regulation 2014* as follows:

- (a) to change the way in which adjustments for movements in the Consumer Price Index are made to base penalty rates,
- (b) to increase the fees payable for an application for accreditation as an energy savings certificate provider and for an application for registration of the creation of an energy savings certificate,
- (c) to provide for the fee for an application for registration of the creation of an energy savings certificate to be adjusted annually for movements in the Consumer Price Index,
- (d) to allow the Scheme Administrator to require a person who applies for accreditation to give the Administrator an undertaking relating to withholding energy savings certificates from transfer pending an audit,
- (e) to require an energy savings certificate to specify the State or Territory in which the energy savings activity occurred if the certificate relates to an activity in a State or Territory for which there is an approved corresponding scheme under the Act,
- (f) to establish thresholds for the Minister to be able to form an opinion that an energy scheme target or base penalty rate should be changed because of an under supply or over supply of energy savings certificates,
- (g) to correct a reference to a financial year that should have been a reference to a calendar year,
- (h) to extend the date for the expiry of the Solar Bonus Scheme from 30 June 2016 to 31 December 2016,
- (i) to specify penalty notice offences and the fees payable for penalty notice offences.

This Regulation is made under the *Electricity Supply Act 1995*, including section 43EJ (Solar Bonus Scheme), Part 9 (Energy savings scheme), section 187 (Penalty notice offences) and section 191 (Regulations).

Electricity Supply (General) Amendment Regulation 2015

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Electricity Supply Act 1995

1 Name of Regulation

This Regulation is the *Electricity Supply (General) Amendment Regulation 2015*.

2 Commencement

This Regulation commences on 1 January 2016 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Electricity Supply (General) Regulation 2014

[1] Clause 30

Omit the clause. Insert instead:

30 CPI adjustment to base penalty rates

Pursuant to section 113 (2) (a) (ii) of the Act:

- (a) for 2011, 2012, 2013, 2014 and 2015—the base penalty rates that applied under section 113 of the Act, and regulations made under the Act for the purposes of section 113 (5) of the Act, as then in force (calculated as the base penalty rate for 2009 adjusted for movements in the consumer price index) continue to apply, and
- (b) for 2016—the base penalty rate is \$28.76 per notional megawatt hour (being the base penalty rate for 2009 adjusted for movements in the consumer price index between the March quarter 2009 and the September quarter 2015), and
- (c) for 2017 and each subsequent year—the base penalty rate for the year is the amount per notional megawatt hour calculated as follows (if necessary, rounded up to the nearest cent):

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where:

Base penalty rate_{year} is the base penalty rate for the year concerned.

Base penalty rate_{year-1} is the base penalty rate for the immediately preceding year.

CPI_{year-1} is the Consumer Price Index for the September quarter of the immediately preceding year.

CPI_{year-2} is the Consumer Price Index for the September quarter of the year before the immediately preceding year.

[2] Clause 39 Application for accreditation

Omit “an application fee of \$500” from clause 39 (c).

Insert instead “the fee set out in Schedule 3”.

[3] Clause 40

Omit the clause. Insert instead:

40 Undertakings

The Scheme Administrator may require a person who applies for accreditation to give to the Scheme Administrator one or more of the following undertakings (in the terms that the Scheme Administrator may require):

- (a) an undertaking not to claim any benefit under a corresponding scheme if that would result in a benefit being obtained under both that scheme and the energy savings scheme in respect of the same energy savings,
- (b) if the conditions of accreditation will require the conduct under clause 56 of an audit in relation to the creation of energy savings certificates by the accredited certificate provider—an undertaking to withhold from transfer a proportion (not greater than 20%) of those energy savings certificates pending the result of the audit.

[4] Clause 43 Transfer of accreditation

Omit “an application fee of \$500” from clause 43 (c).

Insert instead “the fee set out in Schedule 3”.

[5] Clause 45, heading

Omit the heading to the clause. Insert instead:

45 Contravention of undertaking

[6] Clause 51 Registration of creation of certificates

Omit “a fee of \$0.70” from clause 51 (2). Insert instead “the fee set out in Schedule 3”.

[7] Clause 52 Form of energy savings certificates

Insert after clause 52 (2) (b):

- (b1) in the case of a certificate that relates to an energy savings activity that occurred in a State or Territory for which there is an approved corresponding scheme under section 127 of the Act—the State or Territory in which the activity occurred,

[8] Clause 53 Order requiring surrender of energy savings certificates

Omit “has been found guilty” from clause 53 (1).

Insert instead “the Scheme Administrator is satisfied is guilty”.

[9] Clause 53 (2)

Omit the subclause. Insert instead:

- (2) For the purposes of section 142 (4) of the Act, the number of energy savings certificates to be surrendered under the order is:
 - (a) if the contravention relates to an undertaking under clause 40 (a)—the number that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were created in respect of energy savings for which a benefit was obtained under a corresponding scheme, and
 - (b) if the contravention relates to an undertaking under clause 40 (b)—the number that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were not withheld from transfer in accordance with the undertaking.

[10] Clause 58 Register of accredited certificate providers

Omit “financial” from clause 58 (1) (b). Insert instead “calendar”.

[11] Clause 58A

Insert before clause 59:

58A Conditions under which energy savings scheme targets may be changed

- (1) For the purposes of sections 105 (b) and 114 (4) (b) of the Act:
 - (a) the evidence of an under supply of energy savings certificates must comprise evidence that, in each of 2 or more consecutive years, the total number of certificates required to meet all individual energy savings targets in the year exceeded, by at least 10%, the sum of the total number of certificates created in that year and the total number of

- certificates created in a previous year and not surrendered by the beginning of the year, and
- (b) the evidence of an over supply of energy savings certificates must comprise evidence that the sum of the total number of certificates created in a year and the total number of certificates created in a previous year and not surrendered by the beginning of the year exceeded, by at least 20%, the total number of certificates required to meet all individual energy savings targets in the year.
- (2) For the purposes of subclause (1), any energy savings certificates created under an approved corresponding scheme that are not able to be surrendered by a scheme participant for the purposes of meeting its individual energy savings target or remedying a carried forward shortfall are to be disregarded.

[12] Clause 70A

Insert after clause 70:

70A Penalty notice offences and penalties

- (1) For the purposes of section 187 of the Act:
- (a) each offence created by a provision specified in Column 1 of Schedule 4 is an offence for which a penalty notice may be served, and
- (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 4 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

[13] Clause 71 Date on which Division 5 of Part 4 of Act ceases to have effect

Omit “30 June 2016”. Insert instead “31 December 2016”.

[14] Schedules 3 and 4

Insert after Schedule 2:

Schedule 3 Fees

1 Fees

The following fees are payable under the Act and this Regulation:

- | | | |
|-----|---|--|
| (a) | application for accreditation as energy savings certificate provider (section 136 (4) of the Act and clause 39 (c)) | \$2,500 |
| (b) | application for transfer of accreditation as energy savings certificate provider (section 140 (4) of the Act and clause 43 (c)) | \$500 |
| (c) | application for registration of the creation of an energy savings certificate (section 143 (6) and clause 51 (2)) | \$0.80 (adjusted annually as set out in clause 2) for each certificate |
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2 Adjustment of fee for registration of energy savings certificate

Pursuant to section 143 (6) of the Act, the fee for an application for registration of the creation of an energy savings certificate is to be adjusted on 1 January of each year, beginning on 1 January 2017, with the amount for the year being calculated as follows (if necessary, rounded up to the nearest cent):

$$\text{Fee}_{\text{year}} = \text{Fee}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where:

Fee_{year} is the fee for each certificate for the year concerned.

Fee_{year-1} is the fee for each certificate for the immediately preceding year.

CPI_{year-1} is the Consumer Price Index for the September quarter of the immediately preceding year.

CPI_{year-2} is the Consumer Price Index for the September quarter of the year before the immediately preceding year.

Schedule 4 Penalty notice offences

(Clause 70A)

Column 1	Column 2
Provision	Penalty
Offences under the Act	
section 123 (6)	(a) in the case of a corporation—\$2,500 (b) in the case of an individual—\$1,000
section 133 (1)	\$20,000
section 138 (3)	\$20,000
section 142 (5)	\$10,000 or \$N for each energy savings certificate the person fails to surrender in accordance with the order, whichever is the greater, where: <i>N</i> is: (a) the scheme penalty rate for the year in which the offence is alleged to have been committed multiplied by 1.6, or (b) 1 penalty unit, whichever is the lesser.
section 168	(a) in the case of a corporation—\$2,500 (b) in the case of an individual—\$1,000