

Overview of the NSW Greenhouse Gas Abatement Scheme

**Prepared for IPART by
Acuiti Legal**

**INDEPENDENT PRICING AND REGULATORY TRIBUNAL
OF NEW SOUTH WALES**

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1 INTRODUCTION TO THE SCHEME

1.1 Introduction

1.1.1 The Scheme

On 1 January 2003 the revised New South Wales Greenhouse Gas Abatement Scheme (**Scheme**) began operation in its new form. The Scheme sets and regulates mandatory targets for abating the emission of greenhouse gases from electricity production and use.

The Scheme requires NSW electricity retailers and certain other parties (**benchmark participants**) to meet mandatory targets by reducing their emissions of greenhouse gases to identified benchmark levels. A failure to do so will result in a penalty calculated per tonne of emissions generated above the benchmark participant's benchmark.

Greenhouse gas emissions in excess of a benchmark participant's benchmark can be off-set by surrendering abatement certificates purchased from accredited abatement certificate providers. Abatement certificates may be created from certain emissions reduction activities.

The Scheme has 2 main arms dealing with:

- Benchmark participants and their compliance with the Scheme.
- Accreditation of abatement certificate providers and the registration, transfer and surrender of abatement certificates.

1.2 Who administers the Scheme?

The Independent Pricing and Regulatory Tribunal of New South Wales (**IPART**) performs 2 distinct roles under the Scheme:

- It oversees benchmark participants' compliance with the Scheme as a Compliance Regulator.
- It oversees the creation and transfer of greenhouse gas abatement certificates by accredited abatement certificate providers as the Scheme Administrator.

1.3 What does this Guide do?

This Guide provides an overview of the Scheme and a general summary of the rights and responsibilities of the various "players". It is designed to be read in conjunction with the documents which relate to the Scheme (see paragraph 1.4 below).

Chapter 2 of this Guide considers the greenhouse gas benchmarks framework and what is required to comply with those benchmarks. Chapter 3 of this Guide considers the abatement certificates scheme.

This Guide should not be relied upon as a substitute for legal advice.

1.4 Which documents regulate the Scheme?

The Scheme has effect through the following legislation and statutory instruments:

- **Act:** The Electricity Supply Act 1995 (as amended by the Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002).
- **Regulation:** The Electricity Supply (General) Regulation 2001 (as amended by the Electricity Supply (General) Amendment (Greenhouse Gas Emission Reduction) Regulation 2002 and the Electricity Supply (General) Amendment (Greenhouse Gas Abatement Scheme) Regulation 2003).
- **Rules:** A number of Greenhouse Gas Benchmark Rules issued through the Ministry of Energy and Utilities. There are currently 5 Benchmark Rules, addressing Compliance (Rule 1), Generation (Rule 2), Demand Side Abatement (Rule 3), Large User Abatement Certificates (Rule 4) and Carbon Sequestration (Rule 5).

This Guide uses the terms "Act", "Regulation" and "Benchmark Rule/s" to refer to the above instruments.

1.5 Interpretation of this Guide

1.5.1 References to the Tribunal

Unless otherwise noted, all references to "Compliance Regulator" in chapter 2 of this Guide mean IPART in its capacity as the regulator of benchmark participants' compliance with the Scheme, while all references to "Scheme Administrator" in chapter 3 of this Guide mean IPART in its capacity as Scheme Administrator.

1.5.2 Definitions of expressions used

Expressions defined in the Act have the same meaning in this Guide as they have in the Scheme legislation and statutory instruments.

2 GREENHOUSE GAS BENCHMARKS

2.1 Overview of Chapter

A greenhouse gas benchmark for the reduction of greenhouse gas emissions applies to each person required to comply with the Scheme (**benchmark participants**) and is calculated using the Act, Regulation and the Benchmark Rules.

If a benchmark participant fails to comply with its greenhouse gas benchmark for a year, a penalty will be payable by the benchmark participant.

This Chapter sets out who is a benchmark participant, how benchmarks are calculated, how a benchmark participant complies with the Scheme and what happens if a benchmark participant fails to comply.

2.2 Benchmark participants

2.2.1 Introduction

This section identifies who is responsible for compliance with the benchmarks under the Scheme. Certain persons may elect to become benchmark participants.

2.2.2 Who is a benchmark participant?

The following persons are benchmark participants under section 97BB of the Act:

- Retail suppliers.
- Certain generators and other direct suppliers prescribed by the Regulation (Macquarie Generation is the only generator currently prescribed under clause 73B of the Regulation in respect of its supply of electricity to the Tomago Aluminium Company Pty Ltd).
- Market customers (other than retail suppliers), but only in respect of an electricity load that the market customer has classified as a market load and that is electricity supplied for use in New South Wales.
- Large customers who have elected to be subject to a greenhouse gas benchmark (see paragraph 2.2.6).
- Persons carrying out a State significant development and who have elected to be subject to a greenhouse gas benchmark.

2.2.3 How are elections to become a benchmark participant made?

An election to become a benchmark participant must be made to the Compliance Regulator in a form approved by the Compliance Regulator: clause 73BB(1) and (2) Regulation.

2.2.4 When must an election to become a benchmark participant be made to the Compliance Regulator?

Normally, an election to become a benchmark participant must be made to the Compliance Regulator no later than 30 June the year before the year in which the election is to have effect (unless the Compliance Regulator approves a later date): clause 73BB(3) Regulation.

An election to become a benchmark participant in respect of the calendar year commencing 1 January 2003, however, can also be made no later than 30 June 2003 (the Compliance Regulator extended the final date as allowed by clause 73BB(4) Regulation).

2.2.5 Does an election automatically take effect?

No. An election has no effect unless the Compliance Regulator accepts the election: clause 73BD(1) Regulation.

The Compliance Regulator must, as soon as practicable after accepting an election, write to the person who made the election (and any other benchmark participant that supplied electricity to that person), noting that the person's election has been accepted: clause 73BD(2) Regulation.

2.2.6 When is a customer taken to be a large customer for the purposes of electing to become a benchmark participant?

A customer is taken to be a large customer, and therefore eligible to elect to become a benchmark participant, if the customer uses:

- (a) 100 GWh or more of electricity at a single site in New South Wales; or
 - (b) 100 GWh or more of electricity at more than one site in New South Wales at least one of which uses 50 GWh or more (and the customer owns or occupies all of those sites),
- in the year before making an election to be a benchmark participant (as measured from the point of consumption), or the Compliance Regulator is satisfied that the customer is likely to use those amounts in the year in which the election is to have effect (clause 73BA Regulation and definition of "large customer" in section 97AB Act).

2.2.7 What additional evidence must a large customer making an election provide to the Compliance Regulator?

When making an election to become a large customer benchmark participant, a customer must provide the Compliance Regulator with evidence that it satisfies the figures set out above, including providing information and documents requested by the Compliance Regulator: clause 73BC(1) and (2) Regulation.

Provision also exists for some large customers to elect to become a benchmark participant in respect of only part of their load: clause 73BC(3) and (4) of the Regulation.

2.2.8 How long does an election last?

An election is effective for the period specified in the notice of acceptance provided by the Compliance Regulator: clause 73BD(3) Regulation.

However, if the elective participant requests that its election cease or the Compliance Regulator cancels the election (in the case of a large customer), the election will cease to have effect at the end of that year: clause 73BD(4) and (5) Regulation.

A request by an elective participant that its election cease must be in a form approved by the Compliance Regulator: clause 73BD(6) Regulation.

2.2.9 When may the Compliance Regulator cancel an election?

The Compliance Regulator may cancel the election of a large customer only if the Compliance Regulator is satisfied, or reasonably suspects, that the person was not eligible to make the election or does not meet the requirements for making an election as a large customer: clause 73BE Regulation.

2.2.10 What happens to the greenhouse penalty when an elective participant's election no longer has effect and is not replaced by another election?

Any greenhouse penalty for the election period, and any greenhouse penalty payable for a greenhouse shortfall carried forward from the previous year is still payable at the end of the period as if the election was still in force: clause 73BF Regulation.

2.3 Determining compliance with the Scheme

2.3.1 Introduction

This section gives an overview of what benchmark participants must do to comply with the Scheme.

2.3.2 How does a benchmark participant comply with the Scheme?

A benchmark participant complies with the Scheme if its "Attributable Emissions" are equal to or less than its "Greenhouse Gas Benchmark". (Both of these are expressed in tonnes of carbon dioxide equivalent.): section 97BD(1) Act and clause 5.1 Benchmark Rule 1 (Compliance).

(For the calculation of a benchmark participant's "Greenhouse Gas Benchmark", see paragraph 2.4 below. For the calculation of "Attributable Emissions", see paragraph 2.5 below.)

2.3.3 When does a benchmark participant have a greenhouse shortfall under the Scheme?

A benchmark participant has a greenhouse shortfall under the Scheme if its Attributable Emissions exceed its Greenhouse Gas Benchmark: clause 5.2 Benchmark Rule 1 (Compliance). The benchmark participant must pay a greenhouse penalty in respect of the shortfall: section 97CA Act. In some cases, a greenhouse shortfall may be carried forward to the next year: section 97BE Act.

(See paragraph 8 below for more detail on the greenhouse penalty.)

2.3.4 How does the Compliance Regulator determine compliance?

A benchmark participant is required to lodge a greenhouse gas benchmark statement with the Compliance Regulator each year. The Compliance Regulator may make its own assessment of the greenhouse shortfall for a benchmark participant based on the benchmark participant's greenhouse gas benchmark statement or it may rely on the assessment set out in the benchmark participant's greenhouse gas benchmark statement: clause 73E(1) Regulation.

(See paragraph 2.6.5 below for more detail on assessments.)

2.4 Calculation of benchmarks

2.4.1 Introduction

This section briefly sets out how the greenhouse gas benchmark for each benchmark participant is calculated.

2.4.2 How is a benchmark participant's benchmark calculated?

The Greenhouse Gas Benchmark (**Benchmark**) for a benchmark participant for a year is determined as follows:

$$\text{Benchmark} = \frac{\text{Total Electricity Sold}}{\text{Total State Electricity Demand} \times \text{Electricity Sector Benchmark}}$$

Where:

$$\text{Electricity Sector Benchmark} = \frac{\text{Total State Population} \times \text{State Greenhouse Gas Benchmark for that year}}{\text{Total Electricity Sold}}$$

The State Greenhouse Gas Benchmarks are specified in the Act (section 97B). The inputs in italics are those which must be determined and published by the Compliance Regulator each year, as they are relevant to all benchmark participants (see paragraph 2.4.3 below). The only variable that is specific to each benchmark participant is Total Electricity Sold, which is also to be calculated by the Compliance Regulator in accordance with the Benchmark Rules: section 97BC Act and Benchmark Rule 1 (Compliance).

2.4.3 Inputs to be determined and published by the Compliance Regulator each year

By 30 November each year, the Compliance Regulator must determine and publish in the Gazette the following information for the purposes of determining the greenhouse gas benchmarks for benchmark participants for the next year:

- NSW pool coefficient for greenhouse gas emissions.
- Total State electricity demand.
- Total State population.
- Electricity sector benchmark.

(See section 97BF(1) Act.)

2.4.4 How does the Compliance Regulator calculate the variables relevant to determining the Benchmarks?

The Compliance Regulator must determine the variables relevant to determining the Benchmarks (referred to in paragraphs 2.4.2 and 2.4.3 above) in accordance with the Benchmark Rules: section 97BF(2) Act (see Benchmark Rule 1 (Compliance) for details on how to calculate them).

2.5 Calculation of attributable emissions

2.5.1 Introduction

This section sets out how the Attributable Emissions for each benchmark participant are calculated.

2.5.2 Attributable Emissions

Attributable Emissions for a benchmark participant for a year is determined as follows:

$$\text{Attributable emissions} = (\text{Total electricity purchased} \times \text{NSW pool coefficient}) - \text{NGACs Surrendered} - (\text{RECs Counted} \times \text{NSW pool coefficient}) - \text{LUACs Surrendered}$$

"NGACs" are transferable abatement certificates and "LUACs" are large user abatement certificates (see the Benchmark Rules for further information on each term referred to above).

2.5.3 Can a renewable energy certificate be counted towards a greenhouse gas benchmark?

Benchmark participants can count renewable energy certificates towards their greenhouse gas benchmark or use them to abate their greenhouse gas shortfall in certain circumstances.

Renewable energy certificates counted under the Scheme are still surrendered to the Office of Renewable Energy Regulator under the renewable energy certificates scheme and counted towards that scheme: clause 73DA Regulation.

2.5.4 Is there maximum number of renewable energy certificates that can be counted towards a greenhouse gas benchmark?

Yes. There are limits on the number of renewable energy certificates that can be counted towards a greenhouse gas benchmark, depending on whether the benchmark participant is a market customer, a retail supplier or an elective participant: clause 73DB Regulation.

2.6 Annual greenhouse gas benchmark statements

2.6.1 Introduction

This section sets out the process for benchmark participants to lodge annual greenhouse gas benchmark statements with the Compliance Regulator each year, so that the Compliance Regulator may assess compliance.

2.6.2 When must greenhouse gas benchmark statements be lodged with the Compliance Regulator?

A benchmark participant must lodge a greenhouse gas benchmark statement with the Compliance Regulator by 1 March each year or any later date permitted by the Compliance Regulator: section 97CB(1) Act.

2.6.3 What form must a greenhouse gas benchmark statement take?

A greenhouse gas benchmark statement must be in a form approved by the Compliance Regulator: section 97CB(3) Act.

2.6.4 What information must accompany a greenhouse gas benchmark statement?

For each year's greenhouse gas benchmark statement, a benchmark participant must provide details of all abatement certificates it seeks to surrender for that year and all renewable energy certificates it seeks to be counted for that year or seeks to surrender or be counted to abate a greenhouse shortfall carried forward from the previous year: section 97CB(4) Act.

2.6.5 Assessment of compliance

A benchmark participant's assessment of its greenhouse shortfall and liability for the greenhouse penalty in its greenhouse gas benchmark statement is taken to be the benchmark participant's greenhouse shortfall and liability for the greenhouse penalty for that year unless the Compliance Regulator makes its own assessment: clause 73E(1) Regulation.

The Compliance Regulator may also make an assessment of a benchmark participant's greenhouse shortfall and liability for the greenhouse penalty if the benchmark participant does not lodge a greenhouse gas benchmark statement for that year: clause 73EA Regulation.

Clauses 73EB, 73EC and 73ED of the Regulation sets out the circumstances in which assessments can be amended.

2.7 Surrender of abatement certificates

2.7.1 Introduction

This section sets out the process for benchmark participants to surrender abatement certificates for compliance purposes.

2.7.2 When can an abatement certificate be surrendered by a benchmark participant?

An abatement certificate can be surrendered by a benchmark participant provided:

- a) the abatement certificate is validly registered;
- b) the abatement certificate was created in relation to an activity that took place before the end of the year to which the greenhouse gas benchmark statement relates; and
- c) the benchmark participant is recorded in the register of abatement certificates as the owner of the abatement certificate: section 97CC(1) Act.

2.7.3 May the Compliance Regulator refuse to accept the surrender of an abatement certificate?

Yes. If the Compliance Regulator is of the opinion that an abatement certificate cannot be surrendered or that the abatement certificate is surplus to the number required to be surrendered for compliance with a benchmark participant's greenhouse gas benchmark or to abate a greenhouse shortfall, then the Compliance Regulator may refuse to accept the surrender of the abatement certificate: section 97CC(2) Act.

2.8 Greenhouse penalties

2.8.1 Introduction

This section sets out the circumstances in which a benchmark participant is required to pay a penalty, and the amount of that penalty.

2.8.2 What happens if a benchmark participant does not meet its greenhouse gas benchmark?

If a benchmark participant does not comply with its greenhouse gas benchmark for reduction of greenhouse gas emissions for a year, then it must pay \$10.50 per tonne of carbon dioxide equivalent of greenhouse shortfall for the year concerned (as indexed in accordance with clause 73C of the Regulation) (**greenhouse penalty**): section 97CA Act.

2.8.3 When must a greenhouse penalty be paid?

A greenhouse penalty for a year must be paid by the benchmark participant by 1 March of the following year unless the Compliance Regulator determines a later date: section 97CA(4) Act.

2.9 Documents, information and evidence relating to the Scheme

The Compliance Regulator may request certain information or documents from a person to allow it to exercise its functions. The Compliance Regulator may also request that a person attend a meeting of the Compliance Regulator to give evidence: section 97HC Act.

2.10 Penalties for breaches of Act, Regulation or Benchmark Rules

A breach of the Act, Regulation or Benchmark Rules can result in an offence against the Act, Regulation or Benchmark Rules and/or a breach of a retail supplier's licence conditions.

Offences against Part 8A of the Act, the Regulation or the Benchmark Rules are dealt with summarily in the Local Court or Supreme Court unless they are prescribed as penalty notice offences (there are no penalty notice offences currently prescribed under the Regulation): sections 102 and 103A Act.

It is a condition of a retail supplier's licence that the retail supplier comply with Part 8A of the Act, the Regulation and the Benchmark Rules: sections 97JC and 97KA(2) Act.

2.11 Review of the Compliance Regulator's decisions

A benchmark participant or a former benchmark participant who is aggrieved by one of the following decisions of the Compliance Regulator may apply to the Administrative Decisions Tribunal for a review of the decision:

- A determination as to the greenhouse gas benchmark for the participant or former participant for a year.
- A decision to refuse to accept the surrender of an abatement certificate for the purposes of complying with the participant's or former participant's greenhouse gas benchmark or abating a greenhouse shortfall.

- A decision to refuse to count a renewable energy certificate for the purposes of complying with the participant's or former participant's greenhouse gas benchmark or a greenhouse shortfall.
- An assessment of the amount of greenhouse penalty payable by the participant or former participant for a year.

(See section 97I Act.)

3 ABATEMENT CERTIFICATES SCHEME

3.1 Overview of Chapter

In order to reduce the average emissions of greenhouse gases from electricity supplied or used by a benchmark participant, the benchmark participant must purchase abatement certificates from accredited abatement certificate providers and surrender these to the Compliance Regulator.

This Chapter sets out how to apply for accreditation as an abatement certificate provider, how to create and register abatement certificates and how to transfer abatement certificates.

3.2 Accreditation as an abatement certificate provider

3.2.1 Introduction

This and the next section sets out how to apply for accreditation as an abatement certificate provider.

3.2.2 How does a person become an accredited abatement certificate provider?

A person who is eligible for accreditation as a abatement certificate provider in relation to any activity must apply to the Scheme Administrator (section 97DB(2) Act) and pay an application fee of \$500 (clause 73H(1)(b)). The Scheme Administrator may also charge a fee to the applicant for the costs of investigating and determining an application for accreditation as an abatement certificate provider: section 97DB(5) Act.

The application for accreditation must be in a form approved by the Scheme Administrator: clause 73H(1) Regulation.

3.2.3 Who may apply for accreditation as an abatement certificate provider?

A person who conducts one or more of the following activities is eligible for accreditation as an abatement certificate provider:

- Electricity generation activities.
- Carbon sequestration activities.
- Demand side abatement activities.
- Large user abatement activities.

(Division 2 of Part 8B of the Regulation and Benchmark Rules 2, 3, 4 and 5).

3.2.4 Is special information to be included in applications relating to electricity generation activities?

Yes. An application for accreditation as an abatement certificate provider in respect of an electricity generation activity must disclose whether or not the applicant is accredited under the *Renewable Energy (Electricity) Act 2000* (Cth) in respect of the generating system that the applicant owns or operates.

If the applicant is so accredited, the applicant must provide any information or authorities required by the Scheme Administrator to allow the Scheme Administrator to substantiate the renewable energy certificates that the person has created in a certain period and the Commonwealth renewable energy scheme baseline for the applicant's power station: clause 73H(2) Regulation.

3.2.5 Is accreditation as an abatement certificate provider subject to conditions?

Yes. The Regulation can (and does) set out conditions of accreditation as an abatement certificate provider (see Division 4 of Part 8A of the Regulation for the current conditions of accreditation).

The Scheme Administrator may also place conditions on an abatement certificate provider's accreditation (at the time accreditation is applied for or at any time during the period of accreditation): section 97DD(1)(b) Act. These conditions must be imposed in accordance with the Regulation (see section 97DD(3) of the Act and Division 5 of Part 8A of the Regulation for the current conditions which the Scheme Administrator may impose on an abatement certificate provider's accreditation).

3.2.6 May the Scheme Administrator request an undertaking regarding benefits under other schemes before accepting an application?

Yes. The Scheme Administrator may require an applicant to give the Scheme Administrator an undertaking not to claim any benefit under a mandatory greenhouse gas scheme if such an action would result in a benefit being obtained under both that scheme and the abatement certificate scheme under Part 8A of the Act in respect of the same output or greenhouse gas abatement: clause 73HA Regulation.

3.2.7 How long does accreditation last?

Accreditation as an abatement certificate provider in relation to an activity remains in force until suspended or cancelled by the Scheme Administrator in accordance with clause 73HC of the Regulation: section 97DC(1) Act.

3.2.8 May a person transfer their accreditation to another person?

No. Accreditation as an abatement certificate provider is not transferable: section 97DE Act.

3.3 Abatement certificates

3.3.1 Introduction

The Scheme Administrator accredits abatement certificate providers so that those abatement certificate providers may create abatement certificates. This section sets out when an abatement certificate can be created and by whom.

3.3.2 Who may create abatement certificates?

Only accredited abatement certificate providers may create abatement certificates. Creation of abatement certificates is subject to Part 8A of the Act, the Regulation, the Benchmark Rules and any conditions placed on the person's accreditation as an abatement certificate provider: section 97E Act.

An abatement certificate must be in a form approved by the Scheme Administrator: clause 73K(1) Regulation.

3.3.3 What is the value of an abatement certificate?

Each abatement certificate represents 1 tonne of carbon dioxide equivalent of greenhouse gas emissions abated by the activity in respect of which it was created: section 97EA Act.

3.3.4 When may abatement certificates be created?

An abatement certificate:

- May be created by an accredited abatement certificate provider immediately after the activity in respect of which it was created takes place: section 97EC(1) Act.
- Must not be created more than 6 months after the end of the year in which the activity in respect of which it was created takes place: section 97EC(2) Act.

An accredited abatement certificate provider is not entitled to create an abatement certificate in respect of an activity that took place before accreditation was granted by the Scheme Administrator, unless the activity takes place in 2003: clause 73KB(1) and (2) Regulation.

In the year 2003, an accredited abatement certificate provider is not entitled to create an abatement certificate in respect of an activity that took place before 1 January 2003: clause 73KB(3) Regulation.

See the Benchmark Rules for further details on when a particular activity is considered to have taken place for the purposes of Part 8A of the Act.

An abatement certificate provider may only create abatement certificates in excess of the baseline set for the abatement certificate provider by the Scheme Administrator: clause 73KA Regulation.

3.3.5 Determination of abatement certificate provider's baseline

The Benchmark Rules set out the various baselines that apply to abatement certificate providers depending on the activity to which the abatement certificate relates.

3.4 Registration of abatement certificates

3.4.1 Introduction

This section sets out the process for registering abatement certificates.

3.4.2 Do abatement certificates need to be registered?

Yes. An abatement certificate has no force or effect until the Scheme Administrator registers the creation of the certificate: section 97ED(1) Act.

3.4.3 How does an abatement certificate become registered?

An accredited abatement certificate provider must apply to the Scheme Administrator for registration of the creation of an abatement certificate (section 97ED(2) Act) and must pay a fee of \$0.15 for each certificate created: clause 73KC(2) Regulation.

An application for registration of the creation of an abatement certificate must be in a form approved by the Scheme Administrator: clause 73KC(1) Regulation.

If the Scheme Administrator accepts the application, the Scheme Administrator must create an entry for the certificate on the register of abatement certificates maintained by the Scheme Administrator. The name of the person who created the abatement certificate must be recorded as the owner of the abatement certificate: section 97ED(4) Act.

3.4.4 How long does an abatement certificate last?

An abatement certificate remains in force until cancelled by the Scheme Administrator: section 97EE(1) Act.

3.4.5 May the holder of an abatement certificate deal with the abatement certificate?

Yes. The person registered as the owner of an abatement certificate may, subject to Part 8A of the Act, deal with the abatement certificate as its absolute owner and give good discharges for any consideration for any such dealing, subject to the qualifications set out at section 97FD(2) and (3): section 97FD(1) Act.

3.5 Cancellation and surrender of abatement certificates

The Scheme Administrator may cancel an abatement certificate in the circumstances set out in section 97EE(2) of the Act and clause 73KD Regulation.

The Scheme Administrator may require the surrender of an abatement certificate in the circumstances set out in section 97EF of the Act.

3.6 Transfer of abatement certificates

3.6.1 Introduction

This section sets out the processes for transferring abatement certificates.

3.6.2 What are the types of abatement certificates?

There are 2 types of abatement certificates:

- A transferable abatement certificate which may be created in respect of electricity generation, carbon sequestration and demand side abatement activities.
- A non-transferable abatement certificate which may be created in respect of large user abatement activities.

(Clauses 73L(1) and 73LA Regulation).

3.6.3 Can abatement certificates be transferred?

In general, only transferable abatement certificates can be transferred: section 97FA Act.

A non-transferable abatement certificate may be transferred as part of the sale of the business in connection with which the abatement certificate was created: section 97FB(6) Act.

3.6.4 How are abatement certificates transferred?

By applying to the Scheme Administrator for registration of the transfer: section 97FB Act. A transfer of an abatement certificate does not take effect until the transfer is registered by the Scheme Administrator: section 97FB(1) Act.

An application for registration of the transfer of an abatement certificate must be in a form approved by the Scheme Administrator: clause 73LB(1) Regulation.

3.7 Audits

The Scheme Administrator (or the Compliance Regulator) may conduct audits of accredited abatement certificate providers in certain circumstances: section 97HB Act and clause 73M Regulation.

An accredited abatement certificate provider may be liable for the costs associated with an audit of the abatement certificate provider: section 97HB(3) Act.

3.8 Documents, information and evidence relating to the Scheme

The Scheme Administrator may request certain information or documents from a person to allow it to exercise its functions. The Scheme Administrator may also request that a person attend a meeting of the Scheme Administrator to give evidence: section 97HC Act.

3.9 Review of the Scheme Administrator's decisions

- (a) A person who is or was accredited, or who has applied to be accredited, under Part 8A of the Act as an abatement certificate provider and who is aggrieved by any of the following decisions of the Scheme Administrator may apply to the Administrative Decisions Tribunal for a review of the decision:
 - (1) a decision to refuse accreditation of the person as an abatement certificate provider;
 - (2) a decision to cancel or suspend the accreditation of the person as an abatement certificate provider;
 - (3) a decision to refuse registration of the creation of an abatement certificate;
 - (4) a decision to impose or vary a condition of accreditation of an accredited abatement certificate provider; or
 - (5) a decision to make a claim on or realise any financial assurance provided by an accredited abatement certificate provider.
- (b) A person who has applied for the registration of a transfer of an abatement certificate under Part 8A of the Act and who is aggrieved by a decision of the Scheme Administrator to refuse registration of the transfer may apply to the Administrative Decisions Tribunal for a review of the decision.
- (c) A person who is the subject of an order by the Scheme Administrator under Part 8A of the Act requiring the person to surrender abatement certificates to the Scheme Administrator and who is aggrieved by a decision of the Scheme Administrator to impose that order may apply to the Administrative Decisions Tribunal for a review of the decision.

(Section 97I(2) to (4) Act and clause 73N Regulation).