



New South Wales

Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000 No 91

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Protection of the Environment Operations Act 1997 No 156	2
Schedule 1 Amendments	3



New South Wales

Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000 No 91

Act No 91, 2000

An Act to amend the *Protection of the Environment Operations Act 1997* to make further provision with respect to tradeable emission schemes and other schemes involving economic measures. [Assented to 8 December 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Protection of the Environment Operations Act 1997 No 156

The *Protection of the Environment Operations Act 1997* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 69 Conditions relating to tradeable emission schemes and other schemes involving economic measures

Insert at the end of section 69:

Note. Conditions relating to tradeable emission schemes may be attached to licences by the regulations (see Part 9.3A).

[2] Section 293 Schemes for economic measures

Omit “as referred to in section 294” from section 293 (4).

Insert instead “as referred to in Part 9.3A”.

[3] Section 293 (5) and (6)

Omit the subsections.

[4] Section 293A

Insert after section 293:

293A Alteration, suspension or termination of a scheme

- (1) The EPA may alter, suspend or terminate a scheme referred to in section 293 or any part of such a scheme.
- (2) Before taking any such action, the EPA must:
 - (a) cause notice of its intention to do so to be published in the Gazette and in a newspaper circulating throughout the State or in the locality in which the scheme operates, and
 - (b) in that notice, invite the public to make submissions on the proposed alteration, suspension or termination, and
 - (c) allow a period of not less than 21 days for the receipt of those submissions.
- (3) The EPA must take into account any submission received within that period in deciding whether to proceed with the alteration, suspension or termination.

- (4) The EPA may alter the scheme or part of the scheme without complying with subsections (2) and (3) if it considers that:
 - (a) the alteration is not significant, or
 - (b) the alteration is necessary because of an emergency.
- (5) The EPA may suspend the scheme or part of the scheme without complying with subsections (2) and (3) if it considers that:
 - (a) the suspension is required urgently in order to protect the environment, public health, property, or the integrity of the scheme, or
 - (b) the suspension is necessary because of an emergency.
- (6) The EPA may terminate the scheme or part of the scheme without complying with subsections (2) and (3) if it considers that the termination is necessary because of an emergency.

[5] Section 294

Omit the section. Insert instead:

294 Liability of Crown

- (1) The Crown does not incur any liability (including liability for compensation) for any loss (including a loss in entitlements or in the value of entitlements) incurred as a consequence of any of the following:
 - (a) the implementation, alteration, suspension or termination of a scheme referred to in section 293 or of any part of such a scheme,
 - (b) the alteration, suspension, cancellation or forfeiture of any rights or entitlements under such a scheme.
- (2) In this section:

compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes any officer, employee or agent of the Crown.

[6] Section 294A

Insert after section 294:

294A Exercise of functions by Minister and EPA

In exercising their functions under this Part and Part 9.3A, the Minister and the EPA are to have regard to the objects of this Act, particularly section 3 (d).

[7] Section 295

Omit the section. Insert instead:

295 Regulations

The regulations may make provision for or with respect to any of the following:

- (a) the development or implementation of schemes involving economic measures,
- (b) the alteration, suspension or termination of such a scheme or of any part of such a scheme.

Note. More specific regulation-making powers for tradeable emission schemes are set out in Part 9.3A.

[8] Part 9.3A

Insert after Part 9.3:

Part 9.3A Tradeable emission schemes

295A Definitions

In this Part:

participant in a tradeable emission scheme means:

- (a) a person who holds a tradeable emission permit or credit created under the scheme, or
- (b) a person who holds a licence that authorises the person to carry out any activity that is regulated under the scheme or a licence of a kind prescribed by the

regulations as being a licence to which the scheme applies (whether or not the person holds a tradeable emission permit or credit).

tradeable emission scheme means a scheme referred to in section 295B.

295B Tradeable emission schemes

- (1) A tradeable emission scheme may include any or all of the following elements:
 - (a) the creation of a market for entitlements to emit a particular pollutant or pollutants,
 - (b) monitoring and reporting levels of pollution and emission of pollutants,
 - (c) the creation of tradeable emission permits or credits,
 - (d) the initial sale or allocation and further sale or allocation of tradeable emission permits or credits,
 - (e) provision for the holding of tradeable emission permits or credits by members of the public,
 - (f) the rights and duties of participants in the scheme,
 - (g) the trading of tradeable emission permits or credits or of any entitlement conferred by them (including restrictions on trading and any other dealings),
 - (h) safeguards against anti-competitive behaviour by participants in the scheme,
 - (i) the alteration, suspension, cancellation or forfeiture of tradeable emission permits or credits, or other rights or entitlements under the scheme.
- (2) A tradeable emission scheme must include:
 - (a) a limit on total emissions of the pollutant or pollutants to which the scheme applies, or
 - (b) a scheme to offset pollution, or
 - (c) a program for the surrender of tradeable emission permits or credits over time, or
 - (d) a combination of any or all of the elements referred to in paragraphs (a)–(c).

- (3) A tradeable emission scheme may include elements other than those mentioned in this section.

295C Regulations relating to tradeable emission schemes

- (1) The regulations may make provision for or with respect to tradeable emission schemes, including provision for or with respect to any of the elements referred to in section 295B.
- (2) A tradeable emission scheme regulation is not repealed by the operation of Part 3 of the *Subordinate Legislation Act 1989*.
- (3) A tradeable emission scheme regulation may be periodically reviewed by the Minister, in accordance with a timetable set out in the regulation. Any such review must include a review of the operation of the elements of the scheme referred to in section 295B (2).
- (4) The Minister is to ensure that the public is given an opportunity to make submissions with respect to the review, and that any submissions with respect to the review that are received within the period allowed for the receipt of submissions are appropriately considered.
- (5) In order to give the public an opportunity to make submissions with respect to the review, the Minister must:
- (a) cause notice of the review to be published in the Gazette and in a newspaper circulating throughout the State or in the locality in which the scheme operates, and
 - (b) in that notice, invite the public to make submissions with respect to the review, and
 - (c) allow a period of not less than 21 days for the receipt of those submissions.
- (6) For the purposes of this section, a ***tradeable emission scheme regulation*** is a regulation that contains only the following provisions:
- (a) provisions that relate to a tradeable emission scheme (including any ancillary, consequential, savings or transitional provisions), and

- (b) provisions that deal with the citation and commencement of the regulation, or other provisions of a machinery nature.

- (7) This section does not limit the generality of section 295.

295D Licence conditions

- (1) The regulations may, for the purpose of giving effect to a tradeable emission scheme, impose conditions on licences.
- (2) Conditions of a licence that are imposed by the regulations for the purposes of this Part cannot be substituted, omitted, amended or revoked by a regulatory authority.
- (3) To avoid doubt, there is no appeal under section 287 against a condition that is imposed on a licence by the regulations.
- (4) This section does not prevent conditions with respect to a tradeable emission scheme from being attached to a licence by an appropriate regulatory authority in the manner provided for by Chapter 3.

295E Imposition of penalties for contravention of scheme

- (1) If the EPA is satisfied that a participant in a tradeable emission scheme has caused a pollutant to be emitted in contravention of the scheme on one or more occasions, the EPA may, subject to the regulations, require the participant to pay a penalty to the EPA.
- (2) The penalty is to be the amount prescribed by, or calculated in accordance with, the regulations.
- (3) Without limiting subsection (2), the regulations may provide for the penalty to be calculated on the basis of the following (or a combination of the following):
 - (a) the quantity of pollutant emitted by the participant in contravention of the scheme, as estimated by the EPA,
 - (b) the amount of monetary, financial or other economic benefits obtained by the participant as a result of contravening the scheme, as estimated by the EPA.

-
- (4) The EPA is required to give written notice to a participant of:
 - (a) any penalty the participant is required to pay under this section, and
 - (b) the time within which the penalty is to be paid.
 - (5) If the participant fails to pay the penalty, within the time specified by the EPA in the notice, the EPA may:
 - (a) cancel, suspend, or order the forfeiture of, any tradeable emission permits or credits held by the participant, in accordance with the regulations, or
 - (b) take any other action against the person (such as suspending the person from participating in the scheme) that is authorised by the regulations.
 - (6) This section does not prevent proceedings being taken against a participant for an offence against this Act or the regulations arising as a result of a contravention of a tradeable emission scheme.
 - (7) The EPA may take any other action authorised by the regulations (as referred to in section 295F) in addition to or instead of imposing a penalty under this section.

295F Other action that may be taken by EPA

- (1) The regulations may authorise the EPA, or a person exercising functions under a tradeable emission scheme on behalf of the EPA, to do any or all of the following, in the circumstances set out in the regulations:
 - (a) cancel or suspend tradeable emission permits or credits, or any entitlement that they confer,
 - (b) order the forfeiture of tradeable emission permits or credits to the EPA,
 - (c) cancel or suspend a person's right to participate in the scheme, or impose conditions or other restrictions on any such right.
- (2) Without limiting subsection (1), the regulations may authorise such action to be taken:
 - (a) for one or more contraventions of the scheme, or

- (b) for a failure to pay any penalty, contribution or other amount payable in connection with the scheme.

295G Participation in scheme by EPA

The EPA may participate in a tradeable emission scheme, including by holding and trading in tradeable emission permits and credits.

295H Cost recovery

- (1) The regulations may require participants in a tradeable emission scheme to pay to the EPA a contribution towards the following:
 - (a) the costs of management and administration of the scheme (including payment for services provided by any person or body exercising functions under the scheme),
 - (b) the costs of ensuring compliance with the scheme,
 - (c) any other costs relating to the scheme.
- (2) The amount of the contribution (or the manner in which it is to be calculated) and other matters concerning its payment are to be set out in the regulations.
- (3) The contribution is recoverable by the EPA as a debt in a court of competent jurisdiction.
- (4) The regulations may authorise the payment of the contribution by instalments. If an instalment is not paid by the due date, the balance then becomes due and payable (together with any interest or other penalty for late payment prescribed by the regulations).
- (5) The regulations may:
 - (a) require a person to continue to make a contribution referred to in this section in respect of a tradeable emission permit or credit that has been forfeited until the permit or credit is sold or re-allocated, and
 - (b) exempt any person or class of persons from payment of a contribution referred to in this section.
- (6) The EPA is not required to pay a contribution referred to in this section.

295I Tradeable Emission Schemes Fund

- (1) There is to be established in the Special Deposits Account an account called the Tradeable Emission Schemes Fund.
- (2) Money in the Fund is under the control of the EPA and can be expended by the EPA only for the purposes authorised by this section.
- (3) There is to be paid into the Fund:
 - (a) all contributions paid by participants in a tradeable emission scheme under a regulation referred to in section 295H (Cost recovery), and
 - (b) the proceeds of investment of money in the Fund, and
 - (c) any gift or bequest of money for the purposes of the Fund, and
 - (d) any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund.
- (4) There may be paid out of the Fund:
 - (a) the costs of management and administration of tradeable emission schemes (including payment for services provided by any person or body exercising functions under the scheme), and
 - (b) the costs of ensuring compliance with tradeable emission schemes, and
 - (c) such other costs relating to tradeable emission schemes as the EPA directs to be paid out of the Fund.
- (5) A separate account is to be established in the Fund for each tradeable emission scheme.
- (6) If more than one account in the Fund is established under this Part, money in the accounts may be invested as a common pool. The proceeds of investments are to be distributed rateably among the accounts that contributed money to the common pool according to the amount contributed.

295J Exercise of scheme functions by other persons and bodies

- (1) The EPA may enter into agreements and other arrangements with a person or body in respect of the exercise of the functions of the EPA under a tradeable emission scheme by the person or body on behalf of the EPA.
- (2) The regulations may provide for the constitution of committees (as incorporated or unincorporated bodies):
 - (a) to provide advice on tradeable emission schemes, and
 - (b) to exercise any other functions conferred on them by the EPA or by the regulations in connection with tradeable emission schemes.
- (3) A matter or thing done or omitted to be done by such a committee, a member of the committee or a person acting under the direction of the committee does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act or the regulations, subject a member or a person so acting personally to any action, liability, claim or demand.

295K Liability for operation of scheme

- (1) The Crown does not incur any liability (including liability for compensation) in respect of anything done or omitted to be done in good faith by the EPA, or by a person exercising functions under a tradeable emission scheme on behalf of the EPA, in connection with the operation of a tradeable emission scheme.
- (2) Without limiting subsection (1), that subsection applies to anything done or omitted to be done in connection with the operation of any register or other system by which tradeable emission permits or credits, or other entitlements, are traded under a tradeable emission scheme.
- (3) This section does not limit the generality of section 294.
- (4) In this section:
compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes any officer, employee or agent of the Crown.

295L Application of Duties Act 1997

A tradeable emission permit or credit, or any other entitlement, created under a tradeable emission scheme is not dutiable property for the purposes of the *Duties Act 1997*.

[9] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000

[10] Schedule 5

Insert at the end of the Schedule (with appropriate Part and clause numbering):

Part Provisions consequent on enactment of Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000

Compensation provisions

Section 293 (6) continues to apply in respect of any loss incurred before the repeal of that subsection by the *Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000*, as if that subsection had not been repealed by that Act.

[Minister's second reading speech made in—
Legislative Assembly on 1 November 2000
Legislative Council on 30 November 2000]

BY AUTHORITY
