

Legislative Council—No 76A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 7 April 2009

South Australia

**Statutes Amendment (Energy Efficiency Shortfalls)
Bill 2009**

A BILL FOR

An Act to amend the *Electricity Act 1996* and the *Gas Act 1997*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Electricity Act 1996*

- 4 Insertion of section 94B
94B Energy efficiency shortfalls

Part 3—Amendment of *Gas Act 1997*

- 5 Insertion of section 91A
91A Energy efficiency shortfalls
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Energy Efficiency Shortfalls) Act 2009*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Electricity Act 1996*

4—Insertion of section 94B

After section 94A insert:

94B—Energy efficiency shortfalls

- 15 (1) Subject to this section, if the Commission is satisfied that a relevant electricity retailer has an energy efficiency shortfall (or **REES shortfall**) with respect to a particular year, the Commission may recover an amount in respect of the shortfall (a **shortfall penalty**).
- 20 (2) The amount that the Commission may recover as a shortfall penalty from the relevant electricity retailer in respect of a REES shortfall will be—
 - (a) the prescribed base penalty; and

- (b) an additional amount, calculated in accordance with the regulations, to reflect the extent of the shortfall.
- (3) The Commission may not proceed to recover a shortfall penalty from a relevant electricity retailer under this section unless the Commission has served on the retailer a notice (a *shortfall notice*)—
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- (a) stating that the retailer has a REES shortfall and the grounds on which the shortfall has been determined; and
- (b) setting out—
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- (i) the prescribed base penalty; and
- (ii) the calculation used by the Commission to arrive at the amount payable under subsection (2)(b).
- (4) A shortfall notice must include, or be accompanied by, a statement advising that the relevant electricity retailer may, by written notice to the Commission served within a period specified by the Commission, elect to be prosecuted in respect of the shortfall as an alternative to paying the shortfall penalty.
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- (5) The period specified by the Commission under subsection (4) must be at least 21 days from the date of service of the shortfall notice on the relevant electricity retailer.
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- (6) If the relevant electricity retailer elects to be prosecuted within the time specified under subsection (4), the Commission may not proceed to recover the shortfall penalty specified in the shortfall notice.
- (7) If the relevant electricity retailer does not elect to be prosecuted within the time specified under subsection (4), the Commission may proceed to recover the shortfall penalty specified in the shortfall notice.
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- (8) The Commission may, if it thinks fit, by subsequent notice—
- (a) withdraw a shortfall notice;
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- (b) issue a new shortfall notice in place of an existing notice, on account of recalculations undertaken by the Commission (and this section will apply to any new shortfall notice published under this subsection as if the original notice had not been issued).
- (9) Subject to subsection (10), nothing in this section prevents the commencement of criminal proceedings at any time in relation to a contravention of this Act but if such proceedings are commenced then the Commission may not commence or continue proceedings to recover a shortfall penalty under this section in respect of the conduct to which the criminal proceedings relate.
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- (10) If a shortfall penalty specified in a shortfall notice is paid by the relevant electricity retailer (other than where the payment is made in response to an original shortfall notice after a new shortfall notice is served on the retailer), the retailer cannot be prosecuted in relation to the relevant contravention of the Act.
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(11) Subject to the preceding subsections, the Commission may recover the amount of any shortfall penalty as a debt from the relevant electricity retailer.

(11a) The Commission must establish a scheme for the use of any amount recovered as a shortfall penalty under this section for 1 or more of the following purposes:

(a) to assist persons who may have failed to benefit from activities relating to energy efficiency on account of any electricity retailer's energy efficiency shortfall;

(b) to support other programs or activities to promote or support energy efficiency or renewable energy initiatives within South Australian households.

(12) For the purposes of this section—

(a) a relevant electricity retailer has an energy efficiency shortfall if the retailer has failed to engage, in accordance with and to the extent required by the regulations, in activities relating to energy efficiency identified by the regulations for the purposes of this section; and

(b) the extent of an energy efficiency shortfall is to be calculated in accordance with the regulations.

(13) This section extends to an energy efficiency shortfall occurring in 2009 (including a shortfall that is attributable to requirements arising before the commencement of this section).

(14) In this section—

prescribed base penalty means an amount, not exceeding \$100 000, prescribed by the regulations for the purposes of this section;

relevant electricity retailer means an electricity entity that is authorised to sell electricity by retail identified by the regulations for the purposes of this section.

Part 3—Amendment of *Gas Act 1997*

5—Insertion of section 91A

After section 91 insert:

91A—Energy efficiency shortfalls

(1) Subject to this section, if the Commission is satisfied that a relevant gas retailer has an energy efficiency shortfall (or *REES shortfall*) with respect to a particular year, the Commission may recover an amount in respect of the shortfall (a *shortfall penalty*).

(2) The amount that the Commission may recover as a shortfall penalty from the relevant gas retailer in respect of a REES shortfall will be—

(a) the prescribed base penalty; and

- (b) an additional amount, calculated in accordance with the regulations, to reflect the extent of the shortfall.
- (3) The Commission may not proceed to recover a shortfall penalty from a relevant gas retailer under this section unless the Commission has served on the retailer a notice (a *shortfall notice*)—
- (a) stating that the retailer has a REES shortfall and the grounds on which the shortfall has been determined; and
- (b) setting out—
- (i) the prescribed base penalty; and
- (ii) the calculation used by the Commission to arrive at the amount payable under subsection (2)(b).
- (4) A shortfall notice must include, or be accompanied by, a statement advising that the relevant gas retailer may, by written notice to the Commission served within a period specified by the Commission, elect to be prosecuted in respect of the shortfall as an alternative to paying the shortfall penalty.
- (5) The period specified by the Commission under subsection (4) must be at least 21 days from the date of service of the shortfall notice on the relevant gas retailer.
- (6) If the relevant gas retailer elects to be prosecuted within the time specified under subsection (4), the Commission may not proceed to recover the shortfall penalty specified in the shortfall notice.
- (7) If the relevant gas retailer does not elect to be prosecuted within the time specified under subsection (4), the Commission may proceed to recover the shortfall penalty specified in the shortfall notice.
- (8) The Commission may, if it thinks fit, by subsequent notice—
- (a) withdraw a shortfall notice;
- (b) issue a new shortfall notice in place of an existing notice, on account of recalculations undertaken by the Commission (and this section will apply to any new shortfall notice published under this subsection as if the original notice had not been issued).
- (9) Subject to subsection (10), nothing in this section prevents the commencement of criminal proceedings at any time in relation to a contravention of this Act but if such proceedings are commenced then the Commission may not commence or continue proceedings to recover a shortfall penalty under this section in respect of the conduct to which the criminal proceedings relate.
- (10) If a shortfall penalty specified in a shortfall notice is paid by the relevant gas retailer (other than where the payment is made in response to an original shortfall notice after a new shortfall notice is served on the retailer), the retailer cannot be prosecuted in relation to the relevant contravention of the Act.

(11) Subject to the preceding subsections, the Commission may recover the amount of any shortfall penalty as a debt from the relevant gas retailer.

5 (11a) The Commission must establish a scheme for the use of any amount recovered as a shortfall penalty under this section for 1 or more of the following purposes:

(a) to assist persons who may have failed to benefit from activities relating to energy efficiency on account of any gas retailer's energy efficiency shortfall;

10 (b) to support other programs or activities to promote or support energy efficiency or renewable energy initiatives within South Australian households.

(12) For the purposes of this section—

15 (a) a relevant gas retailer has an energy efficiency shortfall if the retailer has failed to engage, in accordance with and to the extent required by the regulations, in activities relating to energy efficiency identified by the regulations for the purposes of this section; and

20 (b) the extent of an energy efficiency shortfall is to be calculated in accordance with the regulations.

(13) This section extends to an energy efficiency shortfall occurring in 2009 (including a shortfall that is attributable to requirements arising before the commencement of this section).

(14) In this section—

25 ***prescribed base penalty*** means an amount, not exceeding \$100 000, prescribed by the regulations for the purposes of this section;

relevant gas retailer means a gas entity that is authorised to sell gas by retail identified by the regulations for the purposes of this section.