



# **Renewable Energy (Electricity) Act 2000**

**No. 174, 2000**



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**An Act for the establishment and administration of  
a scheme to encourage additional electricity  
generation from renewable energy sources, and for  
related purposes**

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# **Renewable Energy (Electricity) Act 2000**

**No. 174, 2000**

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**An Act for the establishment and administration of a scheme to encourage additional electricity generation from renewable energy sources, and for related purposes**

[Assented to 21 December 2000]

The Parliament of Australia enacts:

**Part 1—Preliminary**

**1 Short title**

This Act may be cited as the *Renewable Energy (Electricity) Act 2000*.

**2 Commencement**

This Act commences 28 days after the day on which it receives the Royal Assent.

**3 Object/outline**

The objects of this Act are:

- (a) to encourage the additional generation of electricity from renewable sources; and
- (b) to reduce emissions of greenhouse gases; and
- (c) to ensure that renewable energy sources are ecologically sustainable.

This is done through the issuing of certificates for the generation of qualifying electricity and requiring certain purchasers (called *liable*

*entities*) to surrender a specified number of certificates for the electricity that they acquire during a year.

Where a liable entity does not have enough certificates to surrender, the liable entity will have to pay renewable energy shortfall charge.

#### **4 Years to which this Act applies**

This Act applies to the year commencing on 1 January 2001 and to all subsequent years. However, no certificates can be created, and no liability arises, in respect of electricity generated on or after 1 January 2021.

#### **5 Definitions**

- (1) In this Act, unless the contrary intention appears:

*1997 eligible renewable power baseline* has the meaning given by section 14.

*Agriculture Department* means the Department responsible for administering the *Primary Industries Levies and Charges Collection Act 1991*.

*arrangement* means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct.

*Australia*, when used in a geographical sense, includes all the external Territories.

*Australian Greenhouse Office*, if that Office does not exist, means the Department responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*.

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***authorised Commonwealth contractor*** means a person who:

- (a) provides, or proposes to provide, services to the Commonwealth under a contract; and
- (b) is authorised, in writing, by the Regulator for the purposes of this definition.

***carried forward shortfall*** has the meaning given by subsection 36(2).

***carried forward surplus*** has the meaning given by section 38.

***certificate*** means a renewable energy certificate created under Division 4 of Part 2.

***document*** includes a document in electronic form.

***ecologically sustainable*** means that an action is consistent with the following principles of ecologically sustainable development:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity, which is that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

***electricity generation return*** has the meaning given by section 20.

***energy acquisition statement*** has the meaning given by section 44.

**general interest charge rate**, for a day, is the rate that is the general interest charge rate for that day for the purposes of the *Taxation Administration Act 1953*.

**government body** means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory.

**GWh** means gigawatt hour.

**Head of the Australian Greenhouse Office**, if that Office does not exist, means the Secretary of the Department responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*.

**identification code** has the meaning given by section 16.

**liable entity** has the meaning given by section 35.

**Minister for Finance** means the Minister administering the *Financial Management and Accountability Act 1997*.

**monitoring warrant** has the meaning given by section 125.

**MW** means megawatt.

**MWh** means megawatt hour.

**National Electricity Code** means the code of conduct called the National Electricity Code referred to in Schedule 1 to the *National Electricity (South Australia) Act 1996* of South Australia.

**NEMMCO** has the same meaning as in the National Electricity Code.

**objection decision** has the meaning given by section 58.

**Office of the Renewable Energy Regulator** has the meaning given by section 149.

**outstanding renewable energy shortfall charge related liability** of a person at a particular time means a renewable energy shortfall charge related liability of the person:

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- (a) that has arisen at or before that time (whether or not it is due and payable at that time); and
- (b) an amount of which has not been paid before that time.

**produce** includes permit access to.

**protected document** means a document that:

- (a) contains information about a person; and
- (b) is obtained or made by a person to whom Part 12 applies in the course of, or because of, the person's duties under or in relation to this Act.

**protected information** means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom Part 12 applies in the course of, or because of, the person's duties under or in relation to this Act.

**register of accredited power stations** has the meaning given by section 138.

**register of registered persons** has the meaning given by section 136.

**register of renewable energy certificates** has the meaning given by section 140.

**registration number** has the meaning given by section 12.

**Regulator** means the Renewable Energy Regulator (see section 142).

**relevant acquisition** has the meaning given by section 31.

**renewable energy certificate** means a certificate created under Division 4 of Part 2.

**renewable energy shortfall charge** means the charge payable under section 36.

**renewable energy certificate shortfall** has the meaning given by section 38.



**renewable energy shortfall charge related liability** means a pecuniary liability to the Commonwealth (including a liability the amount of which is not yet due and payable) being:

- (a) renewable energy shortfall charge; or
- (b) additional renewable energy shortfall charge under section 70 or Part 7.

**renewable energy shortfall statement** has the meaning given by section 46.

**renewable power percentage** means the percentage prescribed under section 39.

**required GWh of renewable source electricity** has the meaning given by section 40.

**senior employee**, in relation to an authorised Commonwealth contractor, means an employee of the contractor, where the skills and responsibilities that are expected of the employee are equivalent to, or exceed, the skills and responsibilities expected of at least one of the senior officers of the Regulator.

**senior officer**, in relation to the Office of the Renewable Energy Regulator, means:

- (a) an SES employee or acting SES employee in the Office of the Renewable Energy Regulator; or
- (b) a person who holds or performs the duties of an Executive Officer (Level 2) office or position in the Office of the Renewable Energy Regulator.

**small generation unit** means a device that generates electricity that is specified by the regulations to be a small generation unit.

**solar water heater** means a device that heats water using solar energy that satisfies any conditions set out in the regulations.

**warrant premises**, in relation to a monitoring warrant, means the premises to which the warrant relates.

- (2) For the purposes of this Act, electricity is taken to be a good that can be acquired.

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**6 Act binds Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) Nothing in this Act permits the Crown to be prosecuted for an offence.

**7 Application to the external Territories**

This Act extends to every external Territory.

**7A Tax deductibility**

To avoid doubt, a charge or penalty under this Act is not tax deductible for the purposes of any law dealing with income tax.

## **Part 2—Renewable energy certificates**

### **Division 1—Preliminary**

#### **8 Overview of Part**

This Part provides for the creation, trading and extinguishing of renewable energy certificates.

The certificates are used to avoid or reduce the amount of renewable energy shortfall charge that liable entities who acquire electricity have to pay. The liable entities will generally acquire the certificates by purchasing them.

The certificates are created by people who generate power from accredited power stations using renewable energy sources where the amount generated exceeds the relevant 1997 eligible renewable power base line. The certificates are also created for approved installations of solar hot water heaters.

A person needs to be registered under Division 2 before they can create a certificate.

A power station needs to be accredited under Division 3 before a certificate can be issued in relation to power generated by it.

A certificate must be registered when it is created. Every transfer of the certificate must also be registered.

When a certificate has been surrendered by a liable party, it ceases to be valid.

## **Division 2—Registration of generators etc.**

### **9 Who can register**

- (1) Any person may be registered under this Act.
- (2) However, if a person's registration has been suspended under section 30, the person cannot be registered during the period of the suspension.

### **10 Applying for registration**

- (1) A person may apply to the Regulator to be registered.
- (2) The application must:
  - (a) be made in a form and manner required by the Regulator; and
  - (b) contain any information required by the Regulator; and
  - (c) be accompanied by any documents required by the Regulator; and
  - (d) be accompanied by the fee (if any) prescribed by the regulations for the making of applications for registration.

### **11 Regulator to approve or refuse application**

If the Regulator receives an application that is properly made under section 10, the Regulator must approve the application unless the person has previously been registered. If the person has previously been registered, the Regulator must refuse the application.

### **12 Regulator to allocate registration numbers**

If the Regulator approves an application, the Regulator must allocate the applicant a unique registration number and advise the applicant of the number.

## **Division 3—Accreditation of eligible power stations**

### **13 Application for accreditation**

- (1) A registered person may apply to the Regulator for accreditation, as an accredited power station, of a particular electricity generation system that the person owns.
- (2) The application must:
  - (a) be made in a form and manner required by the Regulator; and
  - (b) specify those parts of the system that the applicant considers are a single power station; and
  - (ba) list:
    - (i) the eligible renewable power sources from which power is intended to be generated; and
    - (ii) the estimated average annual output of each source listed under subparagraph (i); and
  - (c) contain any other information required by the Regulator; and
  - (d) be accompanied by any documents required by the Regulator; and
  - (e) be accompanied by the fee (if any) prescribed by the regulations for the making of applications for accreditation.
- (3) The Regulator must enter details of the application on the register of applications for accredited power stations.

### **14 Regulator to determine certain matters**

- (1) If the Regulator receives an application that is properly made under section 13, the Regulator must:
  - (a) determine which components of the system are to be taken to be a power station for the purposes of this Act; and
  - (b) determine whether the power station is eligible for accreditation.
- (2) A power station is eligible for accreditation if:

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- (a) some or all of the power generated by the power station is generated from an eligible renewable power source; and
  - (b) the power station satisfies any prescribed requirements.
- (3) If the Regulator determines that the power station is eligible for accreditation, the Regulator must also determine:
- (a) the **1997 eligible renewable power baseline** for the power station; and
  - (b) any energy sources used by the power station that are not eligible renewable energy sources.
- (4) The Regulator must determine the matters specified in paragraphs (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) in accordance with guidelines prescribed in the regulations.
- (5) To avoid doubt:
- (a) the regulations may provide that a power station includes components that are integral to the operation of the power station or to the generation of electricity by the power station; and
  - (b) the 1997 eligible renewable power baseline for a power station may be nil.

**15 Regulator to approve or refuse application**

If the Regulator determines that a power station is eligible for accreditation, the Regulator must approve the application. In any other case, the Regulator must refuse the application.

**16 Regulator to allocate identification codes**

If the Regulator approves an application, the Regulator must allocate the power station a unique identification code and advise the applicant of the code.

**17 What is an *eligible renewable energy source*?**

- (1) The following energy sources are ***eligible renewable energy sources***:

- (a) hydro;
  - (b) wind;
  - (c) solar;
  - (d) bagasse co-generation;
  - (e) black liquor;
  - (f) wood waste;
  - (g) energy crops;
  - (h) crop waste;
  - (i) food and agricultural wet waste;
  - (j) landfill gas;
  - (k) municipal solid waste combustion;
  - (l) sewage gas;
  - (m) geothermal-aquifer;
  - (n) tidal;
  - (o) photovoltaic and photovoltaic Renewable Stand Alone Power Supply systems;
  - (p) wind and wind hybrid Renewable Stand Alone Power Supply systems;
  - (q) micro hydro Renewable Stand Alone Power Supply systems;
  - (r) solar hot water;
  - (s) co-firing;
  - (t) wave;
  - (u) ocean;
  - (v) fuel cells;
  - (w) hot dry rocks.
- (2) The following energy sources are not eligible renewable energy sources:
- (a) fossil fuels;
  - (b) waste products derived from fossil fuels.
- (3) The regulations may prescribe any matter necessary or convenient to give effect to this section.

## **Division 4—Creation of certificates**

### **Subdivision A—Electricity generation**

#### **18 Creating certificates for additional renewable electricity**

- (1) A registered person may create a certificate for each whole MWh of electricity generated by an accredited power station that the person operates during a year that is in excess of the power station's 1997 eligible renewable power baseline.
- (2) If the amount of electricity generated by an accredited power station that a registered person operates during a year that is in excess of the power station's 1997 eligible renewable power baseline is less than 1 MWh but greater than or equal to 0.5 MWh, the person may create a 1 MWh certificate in respect of the electricity generated during the year.
- (3) The amount of electricity generated by an accredited power station is to be worked out in accordance with the regulations.
- (4) Electricity is to be excluded from all calculations under this section to the extent that the electricity was generated using any energy sources that are not eligible renewable energy sources.

#### **19 When certificates may be created**

The certificate may be created immediately after the generation of the final part of the electricity in relation to which it is created.

Note: For offences related to the creation of certificates, see section 24.

#### **20 Electricity generation return**

- (1) A registered person who generates electricity during a year must give an electricity generation return for the year to the Regulator before 14 February in the immediately following year.
- (2) The return must include details of:
  - (a) the amount of electricity generated by the person during the year; and



- (b) the amount of that electricity that was generated using eligible renewable energy sources; and
- (c) the number of certificates created by the person in respect of the electricity generated; and
- (d) any other information specified by the regulations.

## **Subdivision B—Solar water heaters**

### **21 When a certificate may be created**

- (1) If a solar water heater is installed on or after 1 April 2001 and the solar water heater displaces non-renewable electricity, certificates may be created after the heater is installed.
- (2) Whether a solar water heater displaces non-renewable electricity is to be determined in accordance with the regulations.

### **22 How many certificates may be created**

The number of certificates (each representing 1 MWh) that may be created for a particular installation of a solar water heater is to be determined in accordance with the regulations.

### **23 Who may create a certificate**

- (1) The owner of the solar water heater at the time that it is installed is entitled to create the certificate or certificates that relate to the solar water heater.
- (2) However, the owner may, by written notice, assign the right to create the certificate or certificates to another person. If the owner does this, the owner is not entitled to create the certificate or certificates but the person to whom the right was assigned is entitled to create the certificate or certificates.
- (3) Despite subsections (1) and (2), a person who is not registered may not create a certificate that relates to the solar water heater.

### **Subdivision BA—Small generation units**

#### **23A When a certificate may be created**

- (1) If a small generation unit is installed on or after 1 April 2001 and the small generation unit displaces non-renewable electricity, certificates may be created after the small generation unit is installed.
- (2) Whether a small generation unit displaces non-renewable electricity is to be determined in accordance with the regulations.

#### **23B How many certificates may be created**

The number of certificates (each representing 1 MWh) that may be created for a particular installation of a small generation unit is to be determined in accordance with the regulations.

#### **23C Who may create a certificate**

- (1) The owner of the small generation unit at the time that it is installed is entitled to create the certificate or certificates that relate to the small generation unit.
- (2) However, the owner may, by written notice, assign the right to create the certificate or certificates to another person. If the owner does this, the owner is not entitled to create the certificate or certificates but the person to whom the right was assigned is entitled to create the certificate or certificates.
- (3) Despite subsections (1) and (2), a person who is not registered may not create a certificate that relates to the small generation unit.

#### **23D No other certificates to be created**

A person must not create certificates under Subdivision A in respect of electricity generated by a small generation unit.

## **Subdivision C—Improper creation of certificates**

### **24 Improper creation of certificates—offences**

- (1) A person is guilty of an offence if:
- (a) the person creates a certificate; and
  - (b) the person is not entitled to create the certificate.

Maximum penalty: 1 penalty unit.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person is guilty of an offence if:
- (a) the person creates a certificate; and
  - (b) the person is not entitled to create the certificate.

Maximum penalty: 5 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

- (4) To avoid doubt, a penalty may be imposed in respect of each certificate in respect of which a person is guilty of an offence.

Example: An individual who commits an offence under subsection (1) by creating 20 certificates that the individual was not entitled to create would be subject to a maximum penalty of 20 penalty units. If the offence were under subsection (3), the individual would be subject to a maximum penalty of 100 units.

- (5) In determining whether a person was not entitled to create a certificate, the fact that the certificate has been registered by the Regulator under section 26 is to be disregarded.

Note: This ensures that a person cannot raise as relevant evidence the fact that a certificate has been registered.

## **Division 5—Form and registration of certificates**

### **25 Form and content of certificates**

- (1) Certificates are to be created in an electronic form approved in writing by the Regulator.
- (2) Each certificate is to contain:
  - (a) a unique identification code; and
  - (b) the electronic signature of the person who created the certificate; and
  - (c) the date on which the electricity in relation to which the certificate was created was generated; and
  - (d) the date on which the certificate was created.
- (3) A certificate's unique identification code is to consist of the following in the following order:
  - (a) the registered person's registration number;
  - (b) the power station's identification code;
  - (c) the year;
  - (d) a number in an unbroken sequence, that is used for all certificates issued in respect of electricity generated by the power station in that year, that starts at one and has increments of one.

### **26 Certificates must be registered**

- (1) A certificate is not valid until it has been registered by the Regulator.
- (2) The Regulator must be advised of the creation of a certificate by electronic transmission in the manner determined, in writing, by the Regulator.
- (3) When the Regulator is notified that a certificate has been created, the Regulator must determine whether the certificate is eligible for registration.

- (3A) A certificate is not eligible for registration unless the Regulator has been paid the fee (if any) prescribed by the regulations for the registration of the certificate.
- (4) If the Regulator determines that a certificate is eligible for registration, the Regulator must create an entry for the certificate in the register of renewable energy certificates and record the person who created the certificate as the owner of the certificate.
- (5) If the Regulator determines that a certificate is not eligible for registration, the Regulator must notify the person who created the certificate.
- (6) The Regulator may at any time (whether before or after the registration of a certificate) require the person who created the certificate to provide to the Regulator a written statement containing such information as the Regulator requires in connection with the creation of the certificate. The person who created the certificate must provide the statement within the period (not being a period of less than 14 days) specified by the Regulator.

## **Division 6—Transfer of certificates**

### **27 Certificates may be transferred**

Certificates that have been registered under section 26 may be transferred to any person.

### **28 Regulator to be notified**

- (1) The Regulator must be notified of each transfer of a certificate.
- (2) The notification must be by electronic transmission in the manner determined, in writing, by the Regulator.
- (2A) The notification must be accompanied by the fee (if any) prescribed by the regulations for the purposes of this subsection.
- (3) When the Regulator is notified, the Regulator must alter the register of certificates to show the transferee as the owner of the certificate.

## **Division 7—Retirement of certificates**

### **29 Retirement of certificates**

- (1) Where a certificate is surrendered under section 44, the certificate ceases to be valid.
- (2) When a certificate ceases to be valid, the Regulator must alter the entry relating to the certificate in the register of certificates to show that the certificate is no longer valid.

## **Division 8—Suspension of registration**

### **30 Suspension of registration**

- (1) If a registered person has been convicted of an offence under subsection 24(3), the Regulator may suspend the person's registration for such period (not exceeding 2 years) as the Regulator considers appropriate in all of the circumstances.
- (2) If a person whose registration has previously been suspended under subsection (1) is convicted of another offence under subsection 24(3), the Regulator may suspend the person's registration for such period (including permanently) as the Regulator considers appropriate in all of the circumstances.



## **Part 3—Acquisition of electricity**

### **31 What are *relevant acquisitions*?**

- (1) There are 2 types of *relevant acquisitions* of electricity. These are:
  - (a) a wholesale acquisition (see section 32); and
  - (b) a notional wholesale acquisition (see section 33).
- (2) An acquisition is not a relevant acquisition if:
  - (a) the electricity was delivered on a grid that has a capacity that is less than 100 MW and that is not, directly or indirectly, connected to a grid that has a capacity of 100 MW or more; or
  - (b) the end user of the electricity generated the electricity and either of the following conditions are satisfied:
    - (i) the point at which the electricity is generated is less than 1 kilometre from the point at which the electricity is used;
    - (ii) the electricity is transmitted or distributed between the point of generation and the point of use and the line on which the electricity is transmitted or distributed is used solely for the transmission or distribution of electricity between those 2 points; or
  - (c) the electricity is later acquired by NEMMCO.
- (3) The amount of electricity acquired under a relevant acquisition and the capacity of a grid are to be determined in accordance with the regulations.
- (4) A person who owns, operates or controls a grid must give the Regulator a statement within 28 days of either of the following happening:
  - (a) the capacity of the grid increases from less than 100 MW to 100 MW or more;
  - (b) the grid becomes connected, directly or indirectly, to a grid that has a capacity of 100 MW or more.

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The statement must include any information specified in the regulations.

### 32 Wholesale acquisitions

- (1) A **wholesale acquisition** is an acquisition of electricity from:
  - (a) NEMMCO; or
  - (b) a person who did not acquire it from another person.
- (2) To avoid doubt, subsection (1) does not apply where an end user acquires electricity from a generator and subsection 33(2) applies to create a notional wholesale acquisition in connection with that acquisition.

### 33 Notional wholesale acquisitions

- (1) There are 2 situations in which a **notional wholesale acquisition** of electricity takes place.
- (2) The first situation is where the end user of the electricity acquires the electricity from the person who generated the electricity and the end user is not registered under the National Electricity Code. In this situation, the generator is taken to be 2 persons (the **notional generator** and the **notional wholesaler**), and this Act applies as if the notional wholesaler acquired the electricity from the notional generator at the time that the end user acquired the electricity. That acquisition is a **notional wholesale acquisition**.
- (2A) Subsection (2) does not apply if the person who generated the electricity has previously sold it to another person (including NEMMCO).
- (3) The second situation is where the end user of the electricity generated the electricity and neither of the following conditions are satisfied:
  - (a) the point at which the electricity is generated is less than 1 kilometre from the point at which the electricity is used;
  - (b) the electricity is transmitted or distributed between the point of generation and the point of use and the line on which the electricity is transmitted or distributed is used solely for the

transmission or distribution of electricity between those 2 points.

In this situation, the generator is taken to be 2 persons (the *notional generator* and the *notional wholesaler*), and this Act applies as if the notional wholesaler acquired the electricity from the notional generator at the time that the electricity is used. That acquisition is a *notional wholesale acquisition*.

### **34 Special provision relating to transactions involving NEMMCO**

Despite section 31, no acquisition of electricity by NEMMCO is a relevant acquisition.

## Part 4—Renewable energy shortfall charge

### Division 1—Liability to charge

#### 35 Liable entities

A person who, during a year, makes a relevant acquisition of electricity is called a *liable entity*.

Note: *Relevant acquisition* is defined in section 31.

#### 36 Charge payable by liable entity

- (1) Subject to subsection (2), if a liable entity has a renewable energy certificate shortfall for a year, *renewable energy shortfall charge* is payable in respect of the shortfall.
- (2) No renewable energy shortfall charge is payable by a liable entity for a year if its renewable energy certificate shortfall for the year is less than 10% of the liable entity's required renewable energy for the year. However, the renewable energy certificate shortfall becomes a *carried forward shortfall* for the year.
- (3) Renewable energy shortfall charge imposed in respect of a liable entity's renewable energy certificate shortfall for a year is payable by the liable entity.

#### 37 Amount of charge

The amount of renewable energy shortfall charge payable by a liable entity is worked out using the formula:

Renewable energy certificate shortfall × Rate of charge

where:

*rate of charge* is the rate of charge as specified under the *Renewable Energy (Electricity) (Charge) Act 2000*.

### 38 Determination of renewable energy certificate shortfall

The following method statement shows how to work out a liable entity's renewable energy certificate shortfall for a year.

**Method statement—working out the renewable energy certificate shortfall**

- Step 1.* Work out the total amount, in MWh, of electricity acquired by the liable entity during the year under relevant acquisitions.
- Step 2.* Multiply the total electricity acquired by the renewable power percentage for the year and round the result to the nearest MWh (rounding 0.5 upwards). Add to the result any carried forward shortfall from the previous year or subtract any carried forward surplus for the previous year. The result is the liable entity's **required renewable energy** for the year.
- Step 3.* Subtract the total value, in MWh, of renewable energy certificates surrendered to the Regulator for that year by the liable person from the required renewable energy for the year.

*Result:* If the result is greater than zero, the liable person has a **renewable energy certificate shortfall** for the year equal to the result.

If the result is zero, the liable person does not have a renewable energy certificate shortfall for the year.

If the result is less than zero, the liable person has a **carried forward surplus** for the year.

## Division 2—Renewable power percentage

### 39 Regulations to specify renewable power percentage

- (1) The *renewable power percentage* for a year is the percentage specified in the regulations. The regulation specifying a percentage for a year must be made on or before 31 March in the year.
- (2) If the regulations do not specify a percentage for a year, the percentage for the year is:
  - (a) for the year commencing on 1 January 2001—0.24%; and
  - (b) for any later year—the rate worked out using the formula:

$$\text{Renewable power percentage for the previous year} \times \frac{\text{Required GWh for the year}}{\text{Required GWh for the previous year}}$$

- (3) Before the Governor-General makes a regulation under subsection (1), the Minister must take into consideration:
  - (a) the required GWh of renewable source electricity for the year; and
  - (b) the amount estimated as the amount of electricity that will be acquired under relevant acquisitions during the year; and
  - (c) the amount by which the required GWhs of renewable source electricity for all previous years has exceeded, or has been exceeded by, the amount of renewable source electricity required under the scheme in those years.
- (4) The amount of renewable source electricity required under the scheme in a year is worked out using the formula:

$$\text{Total electricity acquired under relevant acquisitions during the year} \times \text{Renewable power percentage for the year}$$

- (5) A failure to comply with subsection (3) does not affect the validity of the regulations.

#### **40 Required GWh of renewable source electricity**

The *required GWh of renewable source electricity* for a year is set out in the following table:

<b>Required GWh of renewable source electricity</b>	
<b>Year</b>	<b>Required additional GWh</b>
2001	300
2002	1100
2003	1800
2004	2600
2005	3400
2006	4500
2007	5600
2008	6800
2009	8100
2010 and later years	9500

## **Division 3—Other provisions related to the charge**

### **41 Arrangements to avoid or reduce renewable energy shortfall charge**

If:

- (a) a liable entity makes an arrangement; and
- (b) as a result of the arrangement the liable entity's renewable energy certificate shortfall in a year is reduced; and
- (c) in the Regulator's opinion the arrangement was made solely or principally for the purpose of avoiding payment of renewable energy shortfall charge otherwise than in accordance with this Act;

the liable entity is liable to pay for the year an amount of renewable energy shortfall charge equal to the amount that, in the Regulator's opinion, the liable entity would have been liable to pay if the arrangement had not been made.

### **42 Application of Act to Commonwealth**

- (1) The Commonwealth is not liable to pay renewable energy shortfall charge (including additional renewable energy shortfall charge) that is payable under this Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay renewable energy shortfall charge (including additional renewable energy shortfall charge).
- (2) The Minister for Finance may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.
- (3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.
- (4) In subsections (1) and (2):



**Commonwealth** includes:

- (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); and
  - (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*);
- that cannot be made liable to taxation by a Commonwealth law.

#### **43 Cancellation of exemptions from charges**

- (1) This section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay charge payable under this Act.
- (2) The cancellation does not apply if the provision of the other Act:
  - (a) commences after this section commences; and
  - (b) refers specifically to charge payable under this Act.

## Part 5—Statements and assessments

### Division 1—Statements

#### 44 Annual energy acquisition statements

- (1) A liable entity who acquired electricity under a relevant acquisition during a year must lodge an energy acquisition statement for the year on or before:
  - (a) 14 February in the following year; or
  - (b) any later day allowed by the Regulator.
- (2) The statement must set out:
  - (a) the name and postal address of the liable entity; and
  - (b) the amount of electricity acquired under relevant acquisitions during the year; and
  - (c) the value, in MWh, of renewable energy certificates being surrendered for that year; and
  - (d) any carried forward shortfall or carried forward surplus for the previous year; and
  - (e) any carried forward surplus for the current year; and
  - (f) any other information specified by the regulations.
- (3) The statement must:
  - (a) be in a form approved by the Regulator; and
  - (b) be lodged with the Regulator in accordance with the regulations; and
  - (c) be signed by or on behalf of the liable entity making the statement.
- (4) The annual energy acquisition statement must be accompanied by details of all renewable energy certificates being surrendered for that year. A certificate cannot be specified unless the liable person is recorded in the register of certificates as the owner of the certificates at the time that the statement is lodged.

- (5) The annual energy acquisition statement must also be accompanied by the fee (if any) prescribed by the regulations for the surrender of the renewable energy certificates that are being surrendered for the year.

#### **45 Restrictions on certificates that can be surrendered**

A certificate cannot be surrendered unless:

- (a) the certificate is valid; and
- (b) the certificate was created before the end of the year to which the energy acquisition statement relates; and
- (c) the liable entity is recorded in the register of certificates as the owner of the certificate at the time that the statement is lodged.

#### **46 Annual renewable energy shortfall statements**

- (1) A liable entity that has a renewable energy certificate shortfall for a year must lodge a renewable energy shortfall statement for the year on or before:
- (a) 14 February in the following year; or
  - (b) any later day allowed by the Regulator.
- (2) The statement must set out:
- (a) the name and postal address of the liable entity; and
  - (b) the liable entity's renewable energy certificate shortfall for the year; and
  - (c) any carried forward shortfall or carried forward surplus for the previous year; and
  - (d) any carried forward shortfall for the year; and
  - (e) the amount of the renewable energy shortfall charge for the year; and
  - (f) any other information specified by the regulations.
- (3) The statement must:
- (a) be in a form approved by the Regulator; and
  - (b) be lodged with the Regulator in accordance with the regulations; and

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- (c) be signed by or on behalf of the liable entity making the statement.

## **Division 2—Assessments**

### **47 First renewable energy shortfall statement for year taken to be assessment**

If:

- (a) a liable entity lodges a renewable energy shortfall statement for a year; and
- (b) a renewable energy shortfall statement has not previously been lodged, and an assessment has not previously been made, for the year in relation to the liable entity;

then:

- (c) the statement has effect as an assessment of the liable entity's renewable energy certificate shortfall for the year and of the renewable energy shortfall charge payable on the shortfall; and
- (d) the assessment is taken to have been made on 14 February in the following year or the day on which the statement was lodged, whichever is the later; and
- (e) the renewable energy certificate shortfall specified in the statement is to be taken to be the amount of renewable energy shortfall charge payable by the liable entity for the year; and
- (f) the statement has effect as if it were a notice of assessment signed by the Regulator and given to the liable entity on the day on which the assessment is taken to have been made.

### **48 Default assessments**

- (1) If a liable entity has lodged an energy acquisition statement for a year but:
  - (a) the liable entity has not lodged a renewable energy shortfall statement for the year; and

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- (b) the Regulator is of the opinion that the liable entity is liable to pay renewable energy shortfall charge for the year; the Regulator may make an assessment of the liable entity's renewable energy certificate shortfall for the year, taking into account any certificates surrendered, and of the renewable energy shortfall charge payable on the shortfall.
- (2) If:
- (a) a liable entity has not lodged a renewable energy shortfall statement for a year; and
  - (b) the liable entity has also not lodged an energy acquisition statement for the year; and
  - (c) the Regulator is of the opinion that the liable entity is liable to pay renewable energy shortfall charge for the year; the Regulator may make an assessment of the liable entity's renewable energy certificate shortfall for the year, assuming that no certificates have been surrendered, and of the renewable energy shortfall charge payable on the shortfall.
- (3) For the purposes of making an assessment under subsection (1) or (2), the renewable energy certificate shortfall is taken to be the amount that, in the Regulator's opinion, might reasonably be expected to be the shortfall.
- (4) Renewable energy shortfall charge in relation to an assessment for a year made under this section is taken to have become payable on 14 February in the following year.
- (5) An assessment under this section may not be made until after 14 February in the following year.

**49 Amendment of assessments**

- (1) The Regulator may, subject to this section, at any time amend any assessment by making any alterations or additions that the Regulator thinks necessary, whether or not renewable energy shortfall charge has been paid in relation to the assessment.

- (2) Subject to this section, if there has been an avoidance of renewable energy shortfall charge, the Regulator may:
- (a) if the Regulator is of the opinion that the avoidance of the charge is due to fraud or evasion—at any time; or
  - (b) in any other case—within 4 years from the day on which the assessment is made;
- amend the assessment by making any alterations or additions that the Regulator thinks necessary to correct the assessment.
- (3) An amendment effecting a reduction in a liable entity's liability under an assessment is not effective unless it is made within 4 years from the day on which the assessment was made.
- (4) If an assessment has, under this section, been amended in any particular, the Regulator may, within 4 years from the day on which renewable energy shortfall charge became payable under the amended assessment, make, in or in relation to the particular, any further amendment in the assessment that, in the Regulator's opinion, is necessary to effect such reduction in the liable entity's liability under the assessment as is just.
- (5) If:
- (a) a liable entity applies for an amendment of the liable entity's assessment within 4 years from the day that renewable energy shortfall charge became payable under the assessment; and
  - (b) within that period, the liable entity lodges all information the Regulator needs to decide the application;
- the Regulator may amend the assessment when considering the application, even if that period has elapsed.
- (6) Nothing in this section prevents the amendment of an assessment to give effect to:
- (a) the decision on any review or appeal; or
  - (b) its amendment by reduction of any particular following the liable entity's objection or pending any review or appeal.
- (7) Renewable energy shortfall charge under an amended assessment is taken to have become payable:
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- (a) if the amendment is wholly or partly as a result of an error by the Regulator—on the day on which the amended assessment is made; or
- (b) in any other case—on the day on which charge under the original assessment became payable.

**50 Refund of overpaid amounts**

- (1) If, because an assessment is amended, a person's liability to renewable energy shortfall charge is reduced:
  - (a) the amount by which the charge is reduced is taken, for the purposes of section 70, never to have been payable; and
  - (b) the Regulator must:
    - (i) refund any overpaid amount; or
    - (ii) apply any overpaid amount against the person's liability (if any) to the Commonwealth and refund any part of the amount that is not so applied.
- (2) In subsection (1):

*overpaid amount* includes any overpaid amount of additional renewable energy shortfall charge under section 70 or Part 9.

**51 Amended assessment to be an assessment**

Except as otherwise expressly provided by this Act, an amended assessment is taken to be an assessment for all the purposes of this Act.

**52 Notice of assessment**

As soon as practicable after an assessment is made under section 48 or is amended under section 49, the Regulator must give written notice of the assessment or amendment (as the case may be) to the person liable to pay the renewable energy shortfall charge.



### **53 Validity of assessment**

The validity of an assessment is not affected because any provision of this Act has not been complied with.

## **Part 6—Objections, reviews and appeals**

### **Division 1—Objections to and review of assessments**

#### **54 Objections**

A liable entity who is dissatisfied with an assessment may object in the manner set out in this Division.

#### **55 How objections are to be made**

A person making an objection must:

- (a) make it in writing; and
- (b) lodge it with the Regulator within 60 days after the assessment is made; and
- (c) state in it, fully and in detail, the grounds that the person relies on.

#### **56 Limited objection rights in the case of certain amended assessments**

If the objection is made against an amended assessment, then a liable entity's right to object against the amended assessment is limited to a right to object against alterations or additions made as part of the amendment of the assessment.

#### **57 Applications for extension of time**

- (1) If the 60 days specified in paragraph 55(b) have passed, the liable entity may nevertheless lodge the objection with the Regulator together with a written request asking the Regulator to deal with the objection as if it had been lodged within the 60 days.
- (2) The request must state fully and in detail the circumstances concerning, and the reasons for, the person's failure to lodge the objection with the Regulator within the 60 days.

- (3) After considering the request, the Regulator must decide whether to agree to it or refuse it.
- (4) The Regulator must give the person written notice of the Regulator's decision.
- (5) If the Regulator decides to agree to the request, then, for the purposes of this Part, the objection is taken to have been lodged with the Regulator within the 60 days.
- (6) If the Regulator decides to refuse the request, the person may apply to the Administrative Appeals Tribunal for review of the decision.

### **58 Regulator to decide objections**

- (1) If the objection has been lodged with the Regulator within the 60 days, the Regulator must decide whether to:
  - (a) allow it, wholly or in part; or
  - (b) disallow it.
- (2) Such a decision is in this Part called an *objection decision*.
- (3) The Regulator must cause to be served on the person written notice of the Regulator's objection decision.

### **59 Person may require Regulator to make an objection decision**

- (1) This section applies if the objection has been lodged with the Regulator within the 60 days and the Regulator has not made an objection decision by whichever is the later of the following times:
  - (a) the end of the period (the *original 60-day period*) of 60 days after whichever is the later of the following days:
    - (i) the day on which the objection is lodged with the Regulator;
    - (ii) if the Regulator decides under section 57 to agree to a request in relation to the objection—the day on which the decision is made;
  - (b) if the Regulator, by written notice served on the liable entity within the original 60-day period, requires the liable entity to give information relating to the objection—the end of the

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period of 60 days after the Regulator receives that information.

- (2) The liable entity may give the Regulator a written notice requiring the Regulator to make an objection decision.
- (3) If the Regulator has not made an objection decision by the end of the period of 60 days after being given the notice, then, at the end of that period, the Regulator is taken to have made a decision under subsection 58(1) to disallow the objection.

**60 Liable entity may seek review of, or appeal against, Regulator's decision**

If the liable entity is dissatisfied with the Regulator's objection decision, the liable entity may either:

- (a) apply to the Administrative Appeals Tribunal for review of the decision; or
- (b) appeal to the Federal Court against the decision.

Note: Time limits for making applications to the Administrative Appeals Tribunal, and matters related to procedures before that Tribunal are set out in the *Administrative Appeals Tribunal Act 1975*.

**61 Grounds of objection and burden of proof**

In proceedings under this Part on a review before the Administrative Appeals Tribunal or on appeal to the Federal Court:

- (a) the liable entity is, unless the Administrative Appeals Tribunal or the Federal Court otherwise orders, limited to the grounds stated in the objection; and
- (b) the burden of proving that a prescribed decision is incorrect, or that an assessment is excessive, lies on the liable entity.

**62 Time limit for appeals**

An appeal to the Federal Court against an objection decision must be lodged with the Court within 60 days after the person appealing is served with notice of the decision.

### **63 Order of Federal Court on objection decision**

Where the Federal Court hears an appeal against an objection decision under section 60, the Court may make such order in relation to the decision as it thinks fit, including an order confirming or varying the decision.

### **64 Implementation of Federal Court order in respect of objection decision**

- (1) When the order of the Federal Court in relation to the decision becomes final, the Regulator must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.
- (2) For the purposes of subsection (1):
  - (a) if the order is made by the Federal Court constituted by a single Judge and no appeal is lodged against the order within the period for lodging an appeal—the order becomes final at the end of the period; and
  - (b) if the order is made by the Full Court of the Federal Court and no application for special leave to appeal to the High Court against the order is made within the period of 30 days after the order is made—the order becomes final at the end of the period.

### **65 Pending appeal not to affect implementation of decisions**

The fact that an appeal is pending in relation to a decision does not in the meantime interfere with, or affect, the decision and any renewable energy shortfall charge, additional renewable energy shortfall charge or other amount may be recovered as if no appeal were pending.

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## Division 2—Review of other decisions

### 66 Review of decisions

- (1) An affected person in relation to a reviewable decision may request that the Regulator reconsider the decision. The following table sets out the reviewable decisions and, for each decision, sets out the provision under which it is made and the affected person in relation to it.

<b>Table of reviewable decisions</b>			
<b>Item</b>	<b>For a decision ...</b>	<b>made under ...</b>	<b>the affected person is ...</b>
1	to refuse to register a person	section 11	the person.
2	in relation to an application for accreditation of a power station	section 14	the applicant for accreditation.
3	to refuse to accredit a power station	section 15	the applicant for accreditation.
4	not to register a certificate	section 26	the person who created the certificate.
5	to suspend a person's registration	section 30	the registered person.
6	assessing additional renewable shortfall charge	section 102	the liable entity that is liable to pay the additional renewable energy shortfall charge.
7	not to remit, or to remit only a part of, additional renewable energy shortfall charge	section 103	the liable entity that is liable to pay the additional renewable energy shortfall charge.

- (2) The request must be:  
(a) in writing; and

- (b) given to the Regulator within 60 days of the making of the decision.
- (3) The Regulator must reconsider the decision and confirm, vary or set aside the decision.
- Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.
- (4) The Regulator is taken to have confirmed the decision under subsection (3) if the Regulator does not give written notice of the Regulator's decision under that subsection within 60 days of the request.
- (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Regulator under subsection (3) to confirm, vary or set aside the decision.

## **Part 7—Collection, recovery and refunding of charge**

### **Division 1—General rules about collection and recovery**

#### **67 When renewable energy shortfall charge becomes due and payable**

Renewable energy shortfall charge for a year is payable:

- (a) if, on or before 14 February in the following year, the liable entity lodges a renewable energy shortfall statement for that year—on that day; or
- (b) if, after that day, the liable entity lodges a renewable energy shortfall statement for that year—on the day on which the statement is lodged.

#### **68 When additional renewable energy shortfall charge becomes due and payable**

Additional renewable energy shortfall charge under Part 9 becomes payable on the day specified for the purpose in the notice of assessment of the additional charge.

#### **69 Extension of time for payment**

The Regulator may, in such circumstances as the Regulator thinks fit, extend the time for payment of an amount of a renewable energy shortfall charge related liability for such period as the Regulator determines, and, if the Regulator does so, the charge is payable accordingly.

#### **70 Penalty for unpaid renewable energy shortfall charge related liability**

- (1) If any amount of a renewable energy shortfall charge related liability which a liable entity is liable to pay remains unpaid after the time by which it is due to be paid, the liable entity is liable to



pay additional renewable energy shortfall charge on the unpaid amount.

- (2) The liable entity is liable to pay the additional renewable energy shortfall charge for each day in the period that:
  - (a) started at the beginning of the day by which the renewable energy shortfall charge was due to be paid; and
  - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
    - (i) the renewable energy shortfall charge;
    - (ii) additional renewable energy shortfall charge on any of the renewable energy shortfall charge.
- (3) The amount of the additional renewable energy shortfall interest charge for each day is worked out by multiplying the unpaid amount by the general interest charge rate for the day.

#### **71 Recovery of renewable energy shortfall charge related liability**

- (1) A renewable energy shortfall charge related liability that is payable:
  - (a) is a debt due to the Commonwealth; and
  - (b) payable to the Regulator in the manner and at the place prescribed.
- (2) The Regulator may sue in his or her official name in a court of competent jurisdiction to recover an amount of a renewable energy shortfall charge related liability that remains unpaid after it has become due and payable.

#### **72 Service of documents if a person is absent from Australia or cannot be found**

- (1) This section applies if a document needs to be served on a person in respect of a proceeding to recover an amount of a renewable energy shortfall related liability, and the Regulator, after making reasonable inquiries, is satisfied that:
  - (a) the person is absent from Australia and does not have any agent in Australia on whom the document can be served; or

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- (b) the person cannot be found.
- (2) The Regulator may, without the court's leave, serve the document by posting it, or a sealed copy of it, in a letter addressed to the person at any Australian address of the person (including the person's Australian place of business or residence) that is last known to the Regulator.

## **Division 2—Special rules about collection and recovery**

### **Subdivision A—Recovery from a third party**

#### **73 Regulator may collect amounts from third party**

*Amount recoverable under this Subdivision*

- (1) This Subdivision applies if any of the following amounts (the **debt**) is payable to the Commonwealth by a person (the **debtor**) (whether or not the debt has become due and payable):
  - (a) an amount of a renewable energy shortfall charge related liability;
  - (b) a judgment debt for a renewable energy shortfall charge related liability;
  - (c) costs for such a judgment debt;
  - (d) an amount that a court has ordered the debtor to pay to the Regulator following the debtor's conviction for an offence against this Act.

*Regulator may give notice to a person*

- (2) The Regulator may give a written notice to a person (the **third party**) under this section if the third party owes or may later owe money to the debtor.

*Third party regarded as owing money in these circumstances*

- (3) The third party is taken to owe money (the **available money**) to the debtor if the third party:
  - (a) is a person by whom the money is due or accruing to the debtor; or
  - (b) holds the money for, or on account of, the debtor; or
  - (c) holds the money on account of some other person for payment to the debtor; or
  - (d) has authority from some other person to pay the money to the debtor.

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The third party is so taken to owe the money to the debtor even if:

- (e) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
- (f) the condition has not been fulfilled.

*How much is payable under the notice*

- (4) A notice under this section must:
  - (a) require the third party to pay to the Regulator the lesser of, or a specified amount not exceeding the lesser of:
    - (i) the debt; or
    - (ii) the available money; or
  - (b) if there will be amounts of the available money from time to time—require the third party to pay to the Regulator a specified amount, or a specified percentage, of each amount of the available money, until the debt is satisfied.

*When amount must be paid*

- (5) The notice must require the third party to pay an amount under paragraph (4)(a), or each amount under paragraph (4)(b):
  - (a) immediately after; or
  - (b) at or within a specified time after;the amount of the available money concerned becomes an amount owing to the debtor.

*Debtor must be notified*

- (6) The Regulator must send a copy of the notice to the debtor.

*Setting-off amounts*

- (7) If a person other than the third party has paid an amount to the Regulator that satisfies all or part of the debt:
  - (a) the Regulator must notify the third party of that fact; and
  - (b) any amount that the third party is required to pay under the notice is reduced by the amount so paid.

#### **74 Notice to Commonwealth, State or Territory**

If the third party is the Commonwealth, a State or a Territory, the Regulator may give the notice to a person who:

- (a) is employed by the Commonwealth, or by the State or Territory (as appropriate); and
- (b) has the duty of disbursing public money under a law of the Commonwealth, or of the State or Territory (as appropriate).

#### **75 Indemnity**

An amount that the third party pays to the Regulator under this Subdivision is taken to have been authorised by:

- (a) the debtor; and
- (b) any other person who is entitled to all or a part of the amount;

and the third party is indemnified for the payment.

#### **76 Offence**

- (1) The third party must not fail to comply with the Regulator's notice.

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Regulator an amount not exceeding that amount.

#### **Subdivision B—Recovery from liquidator**

#### **77 Liquidator's obligation**

- (1) This Subdivision applies to a person who becomes a liquidator of a company that is, or has been, a liable entity.

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- (2) Within 14 days after becoming liquidator, the liquidator must give written notice of that fact to the Regulator.
- (3) The Regulator must, as soon as practicable, notify the liquidator of the amount (the **notified amount**) that the Regulator considers is enough to discharge any outstanding renewable energy shortfall charge related liabilities that the company has when the notice is given.
- (4) The liquidator must not, without the Regulator's permission, part with any of the company's assets before receiving the Regulator's notice.
- (5) However, subsection (4) does not prevent the liquidator from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
  - (a) the outstanding renewable energy shortfall charge related liabilities;
  - (b) any debts of the company which:
    - (i) are unsecured; and
    - (ii) are not required, by an Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Regulator's notice, the liquidator must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the **ordinary debts**), assets with a value calculated using the formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left[ \frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right]$$

where:

**amount of remaining ordinary debts** means the sum of the company's ordinary debts other than the outstanding renewable energy shortfall charge related liabilities.

- (7) The liquidator must, in his or her capacity as liquidator, discharge the outstanding renewable energy shortfall charge related liabilities, to the extent of the value of the assets that the liquidator is required to set aside.
- (8) The liquidator is personally liable to discharge the liabilities, to the extent of that value, if the liquidator contravenes this section.

### **78 Offence**

The liquidator must not fail to comply with subsection 77(2), (4), (6) or (7).

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

### **79 Joint liability of 2 or more liquidators**

If there are 2 or more persons who become liquidators of the company, the obligations and liabilities under this Subdivision:

- (a) apply to all the liquidators; but
- (b) may be discharged by any of them.

### **80 Liquidator's other obligation or liability**

This Subdivision does not reduce any obligation or liability of a liquidator arising elsewhere.

### **Subdivision C—Recovery from receiver**

#### **81 Receiver's obligation**

- (1) This Subdivision applies to a person (the *receiver*) who, in the capacity of receiver, or of receiver and manager, takes possession of a company's assets for the company's debenture holders.

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- (2) Within 14 days after taking possession of the assets, the receiver must give written notice of that fact to the Regulator.
- (3) The Regulator must, as soon as practicable, notify the receiver of the amount (the **notified amount**) that the Regulator considers is enough to discharge any outstanding renewable energy shortfall charge related liabilities that the company has when the notice is given.
- (4) The receiver must not, without the Regulator's permission, part with any of the company's assets before receiving the Regulator's notice.
- (5) However, subsection (4) does not prevent the receiver from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
  - (a) the outstanding renewable energy shortfall charge related liabilities;
  - (b) any debts of the company which:
    - (i) are unsecured; and
    - (ii) are not required, by an Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Regulator's notice, the receiver must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the **ordinary debts**), assets with a value calculated using the formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left[ \frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right]$$

where:

**amount of remaining ordinary debts** means the sum of the company's ordinary debts other than the outstanding renewable energy shortfall charge related liabilities.



- (7) The receiver must, in his or her capacity as receiver, or as receiver and manager, discharge the outstanding renewable energy shortfall charge related liabilities, to the extent of the value of the assets that the receiver is required to set aside.
- (8) The receiver is personally liable to discharge the liabilities, to the extent of that value, if the receiver contravenes this section.

## **82 Offence**

The receiver must not fail to comply with subsection 81(2), (4), (6) or (7).

Maximum penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

## **83 Joint liability of 2 or more receivers**

If 2 or more persons (the *receivers*) take possession of a company's assets, for the company's debenture holders, in the capacity of receiver, or of receiver and manager, the obligations and liabilities under this Subdivision apply to:

- (a) all the receivers; but
- (b) may be discharged by any of them.

## **84 Receiver's other obligation or liability**

This Subdivision does not reduce any obligation or liability of the receiver or receivers arising elsewhere.

## **Subdivision D—Recovery from agent winding up business for non-resident principal**

### **85 Obligation of agent winding up business for non-resident principal**

- (1) This Subdivision applies to an agent whose principal:

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- (a) is not an Australian resident; and
  - (b) has instructed the agent to wind up so much of the principal's business as is carried on in Australia.
- (2) Within 14 days after receiving the instructions, the agent must give written notice of that fact to the Regulator.
- (3) The Regulator must, as soon as practicable after receiving the notice, notify the agent of the amount (the *notified amount*) that the Regulator considers is enough to discharge any outstanding renewable energy shortfall charge related liabilities that the principal has when the notice is given.
- (4) Before receiving the Regulator's notice, the agent must not, without the Regulator's permission, part with any of the principal's assets that are available for discharging the outstanding renewable energy shortfall charge related liabilities.
- (5) After receiving the notice, the agent must set aside:
- (a) out of the assets available for discharging the outstanding renewable energy shortfall charge related liabilities, assets to the value of the notified amount; or
  - (b) all of the assets so available, if their value is less than the notified amount.
- (6) The agent must, in that capacity, discharge the outstanding renewable energy shortfall charge related liabilities, to the extent of the value of the assets that the agent is required to set aside.
- (7) The agent is personally liable to discharge the liabilities, to the extent of that value, if the agent contravenes this section.

**86 Offence**

A person must not fail to comply with subsection 85(2), (4), (5) or (6).

Maximum penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of penalty units.

### **87 Joint liability of 2 or more agents**

If 2 or more agents are jointly instructed by the principal to wind up the business, the obligations and liabilities under this Subdivision:

- (a) apply to all the agents; but
- (b) may be discharged by any of them.

### **88 Agent's other obligation or liability**

This Subdivision does not reduce any obligation or liability of the agent or agents arising elsewhere.

### **Subdivision E—Recovery from deceased person's estate**

#### **89 Administered estate**

- (1) This section applies if:
  - (a) a person has an outstanding renewable energy shortfall charge related liability when the person dies; and
  - (b) either of the following is granted after the death:
    - (i) probate of the person's will;
    - (ii) letters of administration of the person's estate.
- (2) The Regulator may, in respect of the liability, deal with the trustee of the deceased person's estate as if:
  - (a) the deceased person were still alive; and
  - (b) the trustee were the deceased person.
- (3) Without limiting subsection (2), the trustee must:
  - (a) provide any returns and other information that the deceased person was liable to provide, or would have been liable to provide if he or she were still alive; and
  - (b) provide any additional returns or other information relating to the liability that the Regulator requires; and

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- (c) in the trustee's representative capacity, discharge the liability and any penalty imposed in respect of the liability under this Act for which the deceased person would be liable if he or she were still alive.
- (4) If:
  - (a) the amount of the liability requires an assessment under this Act but the assessment has not been made; and
  - (b) the trustee fails to provide a return or other information in relation to assessing that amount as required by the Regulator;the Regulator may assess that amount. If the Regulator does so, the assessment has the same effect as if it were made under this Act.
- (5) A trustee who is dissatisfied with an assessment under subsection (4) may object in the manner set out in Division 1 of Part 6.
- (6) Division 1 of Part 6 applies in relation to the objection as if the trustee were the deceased person.

**90 Unadministered estate**

- (1) This section applies if neither of the following is granted within 6 months after a person's death:
  - (a) probate of the person's will;
  - (b) letters of administration of the person's estate.
- (2) The Regulator may determine the total amount of outstanding renewable energy shortfall charge related liabilities that the person had at the time of death.
- (3) The Regulator must publish notice of the determination twice in a daily newspaper circulating in the State or Territory in which the person resided at the time of death.
- (4) A notice of the determination is conclusive evidence of the outstanding renewable energy shortfall charge related liabilities, unless the determination is amended.

- (5) A person who is dissatisfied with the determination may object in the manner set out in Division 1 of Part 6 if the person:
  - (a) claims an interest in the estate; or
  - (b) is granted probate of the deceased person's will or letters of administration of the estate.
- (6) Division 1 of Part 6 applies in relation to the objection as if the person making it were the deceased person.

## Division 3—Other matters

### 91 What this Division is about

This Division deals with a person's right to recover from another person an amount paid in discharge of a renewable energy shortfall charge related liability if:

- the person has paid the amount for or on behalf of the other person; or
- the persons are jointly liable to pay the amount.

### 92 Right of recovery if another person is liable

A person who has paid an amount of a renewable energy shortfall charge related liability for or on behalf of another person may:

- (a) recover that amount from the other person as a debt (together with the costs of recovery) in a court of competent jurisdiction; or
- (b) retain or deduct the amount out of money held by the person that belongs to, or is payable to, the other person.

### 93 Right of contribution if persons are jointly liable

- (1) If 2 or more persons are jointly liable to pay an amount of a renewable energy shortfall charge related liability, they are each liable for the whole of the amount.
- (2) If one of the persons has paid an amount of the liability, the person may recover in a court of competent jurisdiction, as a debt, from another of those persons:
  - (a) an amount equal to so much of the amount paid; and
  - (b) an amount equal to so much of the costs of recovery under this section;as the court considers just and equitable.

#### **94 Regulator may authorise amount to be recovered**

- (1) The Regulator may, in writing, authorise a person (the *authorised person*) to recover:
  - (a) the total amount of the outstanding renewable energy shortfall charge related liabilities of a deceased person as determined under section 90 (about unadministered estates); and
  - (b) any reasonable costs incurred by the authorised person in recovering that amount;by seizing and disposing of any property of the deceased person.
- (2) The authorised person may seize and dispose of the property as prescribed by the regulations.

## Part 8—Refunding charge

### 95 Refunding charge in later years

- (1) This Part applies where:
  - (a) a liable entity has paid renewable energy shortfall charge for a year (the *charge year*); and
  - (b) during the allowable refund period, the liable entity surrenders certificates under this section.
- (2) The *allowable refund period* starts immediately after the liable entity lodges the liable entity's return for the year after the charge year and ends 3 years after the liable entity paid the renewable energy shortfall charge.
- (3) The liable entity must specify the charge year in respect of which the certificate is being surrendered.

### 96 Value of certificates surrendered

- (1) The *certificate value* for a certificate surrendered under section 95 is equal to the renewable energy shortfall charge payable in respect of 1 MWh in the charge year specified under subsection 95(3).
- (2) The total of the certificate values of certificates surrendered by a liable entity under section 95 in respect of a year must not exceed the amount of renewable energy shortfall charge for that year.

### 97 Certificates can only be surrendered if there is no shortfall

A liable entity may only surrender certificates under section 95 if, in the year immediately prior to the year in which the certificates are to be surrendered, the liable entity did not have a renewable energy certificate shortfall.



**98 Refund of charge where certificates surrendered**

If a liable entity surrenders certificates under section 95, the Regulator must pay the liable entity the amount worked out using the formula:

Certificate value – Administration fee

where:

*administration fee* is the amount worked out under the regulations.

## Part 9—Penalty charge

### 99 Failure to provide statements or information

- (1) A liable entity, other than a government body, is liable to pay, by way of penalty, additional renewable energy shortfall charge if the liable entity refuses or fails to provide, when and as required under this Act:
  - (a) an energy acquisition statement; or
  - (b) a renewable energy shortfall statement; or
  - (c) information relevant to assessing the liable entity's liability to pay renewable energy shortfall charge for a year.
- (2) A liable entity is liable to pay, by way of penalty, additional renewable energy shortfall charge if:
  - (a) the liable entity is liable to pay renewable energy shortfall charge in relation to a year; and
  - (b) the liable entity fails to keep a record in relation to the year containing details of the basis of calculation of the following amounts that were specified in the liable entity's energy acquisition statement for the year:
    - (i) the amount of electricity acquired under relevant acquisitions during the year; and
    - (ii) the value, in MWh, of renewable energy certificates being surrendered for that year; and
    - (iii) any carried forward shortfall or carried forward surplus for the previous year; and
    - (iv) any carried forward surplus for the current year.
- (3) A liable entity is liable to pay, by way of penalty, additional renewable energy shortfall charge if:
  - (a) the liable entity is liable to pay renewable energy shortfall charge in relation to a year; and
  - (b) the liable entity refuses or fails to produce to the Regulator, when and as required by the Regulator under this Act, a document containing details of the basis of calculation of the

amounts referred to in paragraph (2)(a) that were specified in an energy acquisition statement.

- (4) The additional renewable energy shortfall charge payable under subsection (1), (2) or (3) is equal to double the amount of renewable energy shortfall charge payable by the liable entity for the year.

### **100 False or misleading statements**

- (1) If:
- (a) a liable entity other than a government body:
    - (i) makes a statement that is false or misleading in a material particular to a person for a purpose connected with this Act; or
    - (ii) omits from a statement made to a person for a purpose connected with this Act anything without which the statement is misleading in a material particular; and
  - (b) the renewable energy shortfall charge properly payable by the liable entity exceeds the renewable energy shortfall charge that would have been payable by the liable entity if it were assessed on the basis that the statement were not false or misleading;
- the liable entity is liable to pay, by way of penalty, additional renewable energy shortfall charge equal to double the amount of the excess referred to in paragraph (b).
- (2) A reference in this section to a statement made to a person for a purpose connected with this Act is a reference to a statement made orally, in writing, in a data processing device or in any other form and, for example, includes a statement:
- (a) made in an objection, statement or other document lodged with, given to or prepared for the person; and
  - (b) made in answer to a question asked by the person; and
  - (c) made in any information provided to the person.

**101 Penalty renewable energy shortfall charge where arrangement to avoid renewable energy shortfall charge**

If, under section 41, a liable entity is liable to pay an amount of renewable energy shortfall charge (the *amount payable*) that is greater than the amount that would have been payable if section 41 had not applied to the liable entity (the *notional amount*), the liable entity is also liable to pay, by way of penalty, additional renewable energy shortfall charge worked out using the formula:

$$2 \times \left[ \text{Amount payable} - \text{Notional amount} \right]$$

**102 Assessment of additional renewable energy shortfall charge**

- (1) The Regulator must make an assessment of the additional renewable energy shortfall charge payable by a liable entity under this Part and must, as soon as practicable after the assessment is made, give written notice of the assessment to the liable entity.
- (2) Nothing in this Act is taken to prevent a notice from being incorporated in a notice of any other assessment made in relation to the liable entity under this Act.

**103 Remitting additional renewable energy shortfall charge**

The Regulator may remit all or part of the additional renewable energy shortfall charge payable by a liable entity under this Part, but, for the purposes of applying subsection 33(1) of the *Acts Interpretation Act 1901* to the power of remission conferred by this section, nothing in this Act is taken to prevent the exercise of the power at a time before an assessment is made of the additional renewable energy shortfall charge.

## **Part 10—Administration**

### **104 General administration of Act**

The Regulator has the general administration of this Act.

### **105 Annual report**

After the end of each year, the Regulator must give the Minister a report on the working of this Act during the year for presentation to the Parliament.

## **Part 11—Audit**

### **Division 1—Overview**

#### **106 Overview of Part**

This Part provides a regime for the audit of the affairs of registered persons and liable entities in so far as they relate to this Act.

Division 2 provides for the appointment of authorised officers to undertake audit functions and for the issue of identification for such persons.

Division 3 sets out the powers of authorised officers and Division 4 sets out the obligations imposed on authorised officers in the exercise of those powers.

Division 5 deals with an occupier's rights and responsibilities in circumstances where an authorised officer seeks to exercise audit powers.

Division 6 deals with the procedure for obtaining, and the nature of, monitoring warrants.

## **Division 2—Appointment of authorised officers and identity cards**

### **107 Appointment of authorised officers**

- (1) The Regulator may, in writing, appoint an officer or employee of the Office of the Renewable Energy Regulator to be an authorised officer for the purposes of this Part.
- (2) The Regulator is not to appoint a person as an authorised officer unless the Regulator is satisfied that the person is of sufficient maturity, and has had sufficient training, to properly exercise the powers of an authorised officer.
- (3) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Regulator.

### **108 Identity cards**

- (1) The Regulator must issue an identity card to an authorised officer in the form prescribed by the regulations. The identity card must contain a recent photograph of the authorised officer.
- (2) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

### **109 Offences related to identity cards**

A person is guilty of an offence if:

- (a) the person has been issued with an identity card; and
- (b) the person ceases to be an authorised officer; and
- (c) the person does not, immediately after so ceasing, return the identity card to the Regulator.

Maximum penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Division 3—Powers of authorised officer**

### **Subdivision A—Monitoring powers**

#### **110 Authorised officer may enter premises by consent or under monitoring warrant to check information provided under this Act or to check compliance with the Act**

- (1) For the purposes of substantiating information provided under this Act or of determining whether this Act has been complied with, an authorised officer may:
  - (a) enter any premises at any reasonable time of the day; and
  - (b) exercise the monitoring powers set out in section 111.
- (2) An authorised officer is not authorised to enter premises under subsection (1) unless:
  - (a) the premises are business premises, the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a monitoring warrant.
- (3) If an authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

#### **111 Monitoring powers of authorised officers**

- (1) For the purposes of this Part, the following are the monitoring powers that an authorised officer may exercise in relation to premises under section 110:
  - (a) the power to search the premises for any thing on the premises that may relate to the creation or transfer of certificates or relevant acquisitions of electricity;
  - (b) the power to examine any activity conducted on the premises that may relate to information provided for the purposes of this Act;



- (c) the power to examine any thing on the premises that may relate to information provided for the purposes of this Act;
  - (d) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;
  - (e) the power to inspect any document on the premises that may relate to information provided for the purposes of this Act;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
  - (h) the power to secure a thing that:
    - (i) is found during the exercise of monitoring powers on the premises; and
    - (ii) an authorised officer believes on reasonable grounds affords evidence of the commission of an offence against this Act or the *Crimes Act 1914*; and
    - (iii) that the authorised officer believes on reasonable grounds would be lost, destroyed or tampered with before a warrant can be obtained;until a warrant is obtained to seize the thing;
  - (i) the powers in subsections (2) and (3).
- (2) For the purposes of this Part, **monitoring powers** include the power to operate equipment at premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the premises; and
    - (ii) can be used with the equipment or is associated with it;contains information that is relevant to assessing the correctness of information provided under this Act.
- (3) For the purposes of this Part, **monitoring powers** include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:

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- (a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;
- (b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that:
  - (i) is brought to the premises for the exercise of the power; or
  - (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
- (c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

**Subdivision B—Power of authorised officer to ask questions and seek production in certain circumstances**

**112 Authorised officer may request or require persons to answer questions etc.**

*Requesting*

- (1) If the authorised officer was only authorised to enter premises because the occupier of the premises consented to the entry—the authorised officer may request the occupier to:
  - (a) answer any questions related to the creation or transfer of certificates, relevant acquisitions of electricity or the provision of information under this Act that are put by the authorised officer; and
  - (b) produce any document requested by the authorised officer that is so related.

*Requiring*

- (2) If the authorised officer was authorised to enter the premises by a monitoring warrant—the authorised officer has power to require any person in or on the premises to:

- (a) answer any questions related to the creation or transfer of certificates, relevant acquisitions of electricity or the provision of information under this Act that are put by the authorised officer; and
- (b) produce any document requested by the authorised officer that is so related.

### **113 Failure to provide information to authorised officer**

- (1) A person is guilty of an offence if the person refuses or fails to comply with a requirement under subsection 112(2).

Maximum penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) A person is excused from complying with a requirement of subsection 112(2) if the answer to the question or the production of the document might tend to incriminate the person or expose the person to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

### **114 False or misleading evidence**

A person is guilty of an offence if:

- (a) the person gives evidence to another person; and
- (b) the person does so knowing that the evidence is false or misleading in a material particular; and
- (c) the evidence is given under section 112.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

### **115 False or misleading documents**

- (1) A person is guilty of an offence if:
  - (a) the person produces a document to another person; and

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- (b) the person does so knowing that the document is false or misleading in a material particular; and
- (c) the document is produced in compliance or purported compliance with section 112.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

- (2) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
  - (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

## **Division 4—Obligations and incidental powers of authorised officers**

### **116 Authorised officer must produce identity card on request**

An authorised officer is not entitled to exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and
- (b) the authorised officer fails to comply with the requirement.

### **117 Consent**

- (1) Before obtaining the consent of a person for the purposes of paragraph 110(2)(a), the authorised officer must inform the person that he or she may refuse consent.
- (2) An entry of an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

### **118 Announcement before entry**

An authorised officer executing a monitoring warrant must, before entering premises under the warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

### **119 Details of monitoring warrant to be given to occupier etc. before entry**

- (1) If a monitoring warrant is being executed and the occupier of the premises in respect of which it is being executed or another person who apparently represents the occupier is present at the premises,

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the authorised officer must make available to that person a copy of the warrant.

- (2) The authorised officer must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

Note: Monitoring warrants are issued under section 125.

**120 Use of electronic equipment in exercising monitoring powers**

- (1) An authorised officer or a person assisting that officer may operate electronic equipment already at premises in order to exercise monitoring powers if he or she believes, on reasonable grounds, that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the authorised officer or a person assisting that officer believes, on reasonable grounds, that:
  - (a) there is on the premises material relating to information supplied under this Act that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.
- (3) The authorised officer or a person assisting that officer must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (4) The equipment may be secured:
  - (a) for a period not exceeding 24 hours; or
  - (b) until the equipment has been operated by the expert;whichever first happens.

- (5) If an authorised officer or a person assisting that officer believes, on reasonable grounds, that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of the period.
- (6) The authorised officer or a person assisting that officer must give notice to the occupier of the premises of his or her intention to apply for an extension and the occupier is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) In this section:
  - premises* means:
    - (a) premises that an authorised officer has entered, and remains on, with the consent of the occupier; and
    - (b) warrant premises.

## **121 Compensation for damage to electronic equipment**

- (1) If:
  - (a) damage is caused to equipment as a result of it being operated as mentioned in section 120; and
  - (b) the damage was caused as a result of:
    - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care being exercised by the person operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) The Regulator must pay the owner such reasonable compensation as the owner and the Regulator agree on. If the Regulator and the owner fail to agree, the owner may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

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- (3) Compensation is payable out of money appropriated by the Parliament.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.



## **Division 5—Occupier's rights and responsibilities**

### **122 Occupier entitled to be present during execution of monitoring warrant**

- (1) If a monitoring warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **123 Occupier to provide authorised officer with all facilities and assistance**

The occupier of warrant premises, or another person who apparently represents the occupier, must provide the officer executing the warrant and any person assisting that officer with all reasonable facilities and assistance for the effective exercise of their powers.

### **124 Offences related to warrants**

A person is guilty of an offence if the person fails to comply with the obligation set out in section 123.

Maximum penalty: 10 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Division 6—Warrants**

### **125 Monitoring warrants**

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of substantiating information provided under this Act or of determining whether this Act has been complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
  - (a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in section 111 in relation to the premises; and
  - (b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

## **Part 12—Secrecy**

### **126 Persons to whom Part applies**

- (1) This Part applies to a person who is or has been:
  - (a) the Regulator; or
  - (b) an officer or employee of the branch of the APS under the direct control of the Regulator; or
  - (c) otherwise appointed or employed by, or a provider of services for, the Commonwealth.

#### *Oath or declaration*

- (2) A person to whom this Part applies must, if and when required by the Regulator to do so, make an oath or declaration to maintain secrecy in accordance with this Part.
- (3) The Regulator may determine, in writing:
  - (a) the form of the oath or declaration; and
  - (b) the manner in which the oath or declaration must be made.

### **127 Information may be recorded or divulged only for purposes of Act**

- (1) A person to whom this Part applies is guilty of an offence if the person:
  - (a) makes a record of any protected information; or
  - (b) whether directly or indirectly, divulges or communicates to a person any protected information about another person; and the record is made, or the information is divulged or communicated, other than:
    - (c) under or for the purposes of this Act; or
    - (d) in the performance of duties, as a person to whom this Part applies, under or in relation to this Act.

Maximum penalty: Imprisonment for 2 years.

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Despite 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to a matter specified in paragraph (1)(c) or (d).

**128 Court may not require information or documents**

A person to whom this Part applies is not required:

- (a) to divulge or communicate protected information to a court;  
or  
(b) to produce a protected document in court;  
except where it is necessary to do so for the purpose of implementing this Act.

**129 Information may be divulged to persons performing duties under this Act**

- (1) Nothing in this Act prohibits the Regulator or a person authorised by the Regulator from divulging or communicating any information to a person performing, as a person to whom this Part applies, duties under or in relation to this Act for the purpose of enabling that person to perform those duties.
- (2) Despite 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to a matter specified in subsection (1).

**130 Information may be divulged to court for purposes of this Act**

- (1) Nothing in this Act prohibits the Regulator, or a person authorised by the Regulator, from:
- (a) divulging or communicating to a court any information obtained under or for the purposes of this Act; or  
(b) producing in court a document obtained or made under or for the purposes of this Act;  
where it is necessary to do so for the purpose of implementing this Act.

- (2) Despite 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to a matter specified in subsection (1).

### **131 Information may be divulged with consent of the subject of the information**

This Part does not prohibit the Regulator, or a person authorised by the Regulator, from divulging or communicating any protected information relating to a person, or the affairs of a person, if the person agrees in writing to the divulging or communicating of the information.

- (2) Despite 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to a matter specified in subsection (1).

### **132 Information may be divulged to specified persons or bodies**

This Part does not prohibit the Regulator, or a person authorised by the Regulator, from divulging or communicating any protected information to:

- (a) the Minister, the Head of the Australian Greenhouse Office or an officer of the Australian Greenhouse Office authorised by the Head of the Australian Greenhouse Office for the purposes of this Part; or
  - (b) the Administrative Appeals Tribunal for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (c) an officer of that part of the Agriculture Department known as the Australian Bureau of Agriculture and Resource Economics (*ABARE*) for the purposes of the performance of any of its functions or the exercise of any of *ABARE*'s powers; or
  - (d) the Australian Statistician, or an officer of the Australian Bureau of Statistics, for purposes, limited to statistics, under the *Census and Statistics Act 1905*.
- (2) Despite 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to a matter specified in subsection (1).

**133 Australian Bureau of Statistics to observe secrecy requirements**

If information is divulged or communicated under paragraph 132(d) to the Australian Statistician or to an officer of the Australian Bureau of Statistics, then the information, or the information contained in the document, is taken to be information given for the purposes of the *Census and Statistics Act 1905*.

**134 Regulator may publish certain information**

The Regulator may publish:

- (a) a list of each liable entity that has a renewable energy certificate shortfall for a particular year; and
- (b) the total of the renewable energy certificate shortfalls for a year.

## **Part 13—Registers**

### **Division 1—General**

#### **135 Registers to be maintained**

The Regulator must maintain the following registers:

- (a) the register of registered persons;
- (b) the register of accredited power stations;
- (c) the register of renewable energy certificates;
- (d) the register of applications for accredited power stations.

## **Division 2—The register of registered persons**

### **136 Contents of register of registered persons**

- (1) The register of registered persons is to contain:
  - (a) the name of each registered person; and
  - (b) the registration number for each person; and
  - (c) any other information that the Regulator considers appropriate.
- (2) The register must also contain the following information about any person whose registration is suspended:
  - (a) the name of the person;
  - (b) the person's registration number;
  - (c) the period for which the registration is suspended;
  - (d) any other information that the Regulator considers appropriate.

### **137 Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the Internet.



## **Division 3—The register of accredited power stations**

### **138 Contents of register of accredited power stations**

The register of accredited power stations is to contain:

- (a) the name of each accredited power station; and
- (b) the name of the registered person who operates the accredited power station; and
- (c) the identification code for each accredited power station; and
- (d) any other information that the Regulator considers appropriate.

### **139 Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the Internet.

## **Division 4—The register of renewable energy certificates**

### **140 Contents of register of renewable energy certificates**

The register of renewable energy certificates is to contain:

- (a) the number of each valid renewable energy certificate; and
- (b) the year in which the certificate was created; and
- (c) the name of the person who created the certificate; and
- (d) the name of the current registered owner, and each previous registered owner, of each certificate; and
- (da) the eligible renewable energy source or sources of the electricity covered by the certificate; and
- (e) any other information that the Regulator considers appropriate.

### **141 Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the Internet.
- (3) Any addition to the register must be published on the Internet within 30 days after the Regulator registers a certificate.

## **Division 5—The register of applications for accredited power stations**

### **141A Contents of register of applications for accredited power stations**

The register of applications for accredited power stations is to contain:

- (a) the name of each applicant for an accredited power station; and
- (b) the location of the electricity generation system; and
- (c) the eligible renewable energy source or sources proposed to be used by the power station; and
- (d) any other information that the Registrar considers appropriate.

### **141B Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the Internet.

## **Part 14—Renewable Energy Regulator and Office of the Renewable Energy Regulator**

### **Division 1—Renewable Energy Regulator**

#### **142 Renewable Energy Regulator**

- (1) There is to be a Regulator.
- (2) Whenever a vacancy occurs in the office of Regulator, an appointment must be made to the office as soon as practicable.

#### **143 Appointment of Regulator**

- (1) The Regulator is to be appointed by the Minister by written instrument.
- (2) The Regulator holds office for the period specified in the instrument of appointment. The period must not exceed 7 years.
- (3) The Regulator holds office on a full-time basis.
- (4) The Regulator must not engage in paid employment outside the duties of the Regulator's office without the Minister's approval.
- (5) For the purposes of the *Superannuation Act 1976* and the Trust Deed under the *Superannuation Act 1990*, the minimum retiring age for the Regulator is 55. However, if the instrument of appointment specifies a younger age, then the younger age applies.

#### **144 Remuneration of Regulator**

- (1) The Regulator is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, the Regulator is to be paid the remuneration that is prescribed by the regulations.
- (2) The Regulator is to be paid such allowances as are prescribed by the regulations.

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **145 Recreation leave etc.**

- (1) The Regulator has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Regulator other leave of absence on such terms and conditions as the Minister determines. The terms and conditions may include terms and conditions relating to remuneration.

#### **146 Resignation**

The Regulator may resign by giving the Minister a signed resignation notice.

#### **147 Removal from office etc.**

- (1) The Minister may terminate the appointment of the Regulator for misbehaviour or physical or mental incapacity.
- (2) The Minister may also terminate the appointment of the Regulator if:
- (a) the Regulator is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (b) the Regulator engages, except with the Minister's approval, in paid employment outside the duties of his or her office.
- (3) The Minister must terminate the appointment of the Regulator if the Regulator:
- (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with his or her creditors; or
  - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.
- (4) If the Regulator is:

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- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
  - (b) a member of the superannuation scheme established by the Trust Deed under the *Superannuation Act 1990*;
- the Minister may, with the consent of the Regulator, retire the Regulator from office on the ground of physical or mental incapacity.
- (5) For the purposes of the *Superannuation Act 1976*, the Regulator is taken to have been retired from office on the ground of invalidity if:
    - (a) the Regulator is removed or retired from office on the ground of physical or mental incapacity; and
    - (b) the CSS Board gives a certificate under section 54C of the *Superannuation Act 1976*.
  - (6) For the purposes of the *Superannuation Act 1990*, the Regulator is taken to have been retired from office on the ground of invalidity if:
    - (a) the Regulator is removed or retired from office on the ground of physical or mental incapacity; and
    - (b) the PSS Board gives a certificate under section 13 of the *Superannuation Act 1990*.

**148 Acting appointment**

- (1) The Minister may appoint a person to act as Regulator:
  - (a) if there is a vacancy in the office of Regulator, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Regulator is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or

- (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.
- (3) A person acting under this section is entitled to the same remuneration and allowances as apply to the office of Regulator. The Consolidated Revenue Fund is appropriated for the payment of the remuneration and allowances.

Note: Section 33A of the *Acts Interpretation Act 1901* has rules that apply to acting appointments.

## **Division 2—Office of the Renewable Energy Regulator**

### **149 Establishment**

- (1) There is established an Office called the Office of the Renewable Energy Regulator.
- (2) The Office of the Renewable Energy Regulator consists of the Regulator and the staff referred to in section 151.

### **150 Function**

The function of the Office of the Renewable Energy Regulator is to assist the Regulator in performing the Regulator's functions.

### **151 Staff**

- (1) The staff of the Office of the Renewable Energy Regulator are to be persons engaged under the *Public Service Act 1999*.  
Note: Under section 155, the Regulator may also engage persons under contract.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Regulator and the APS employees assisting the Regulator together constitute a Statutory Agency; and
  - (b) the Regulator is the Head of that Statutory Agency.



## Part 15—Offences

### 152 Application of *Criminal Code*

- (1) The *Criminal Code* applies to all offences against this Act.
- (2) If a maximum penalty is specified:
  - (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
  - (b) at the foot of a subsection of this Act;then:
  - (c) a person who contravenes the section or subsection is guilty of an offence punishable, on conviction, by a penalty not exceeding the specified penalty; or
  - (d) the offence referred to in the section or subsection is punishable, on conviction, by a penalty not exceeding the specified penalty.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If the specified penalty is imprisonment only, section 4B of the *Crimes Act 1914* allows the court to impose a fine instead of imprisonment or in addition to imprisonment.

### 153 False or misleading information

A person is guilty of an offence if the person:

- (a) gives information (whether orally, in writing or in electronic form) to another person who is exercising powers or performing functions under, or in connection with, this Act or the regulations; and
- (b) gives the information knowing that it is false or misleading in a material particular.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

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**154 Failure to provide documents**

- (1) A person is guilty of an offence if:
- (a) the person is required under this Act or the regulations to provide a document (including a statement or return) to the Regulator or to another person within a specified time or by a specified date; and
  - (b) the person does not provide the document by the specified time or the specified date (as the case requires).

Maximum penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person is guilty of an offence if:
- (a) the person is required under this Act or the regulations to provide a document (including a statement or return) to the Regulator or to another person within a specified time or by a specified date; and
  - (b) the person does not provide the document by the specified time or the specified date (as the case requires).

Maximum penalty: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part 16—Miscellaneous**

### **155 Contracting outsiders**

The Regulator, on behalf of the Commonwealth, may engage any person under contract to assist in the performance of any function of the Regulator.

### **156 Delegation**

*Delegation to senior officers of the Office of the Renewable Energy Regulator*

- (1) The Regulator may, by writing, delegate to one or more senior officers of the Office of the Renewable Energy Regulator any or all of the Regulator's functions or powers under this Act.

*Delegation to senior employees of an authorised Commonwealth contractor*

- (2) The Regulator may, by writing, delegate to one or more senior employees of an authorised Commonwealth contractor any or all of the Regulator's functions or powers under this Act, other than the function referred to in:
  - (a) sections 30, 41, 48, 49, 105, 107 and 108; and
  - (b) Parts 6, 7, 9, 11, 12 and 14.

*Delegate subject to direction of Regulator*

- (3) A delegate is, in the performance of a function delegated under subsection (1) or (2), or in the exercise of a power delegated under subsection (1) or (2), subject to the directions of the Regulator.

*Section 70 of the Crimes Act 1914*

- (4) For the purposes of the application of the definition of **Commonwealth officer** in subsection 3(1) of the *Crimes Act 1914* to section 70 of that Act, a person who performs functions, or

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exercises powers, under a delegation under this section is taken to be a person who performs services for the Commonwealth.

**157 Appropriation**

Payments under this Act are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

**158 Judicial notice of signature**

All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, are to take judicial notice of the signature of a person who holds or has held the office of Regulator.

**159 Evidence**

- (1) The mere production of:
  - (a) a notice of assessment; or
  - (b) a document signed by the Regulator purporting to be a copy of a notice of assessment;is conclusive evidence of the due making of the assessment and, except in proceedings under Division 1 of Part 6 on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment are correct.
- (2) A document signed by the Regulator purporting to be a copy of a document issued or given by the Regulator is prima facie evidence that the second-mentioned document was so issued or given.
- (3) A document signed by the Regulator purporting to be a copy of, or an extract from, a renewable energy shortfall statement or a notice of assessment is evidence of the matter set out in the document to the same extent as the original statement or notice, as the case may be, would be if it were produced.
- (4) A certificate signed by the Regulator certifying that a sum specified in the certificate was, on the day of the certificate, payable by a person in relation to an amount of a renewable energy

shortfall charge related liability, is prima facie evidence of the matters stated in the certificate.

- (5) An energy acquisition statement or a renewable energy shortfall statement purporting to be made or signed by or on behalf of a liable entity is evidence that the statement was made by the liable entity or with the liable entity's authority.

### **160 Records to be kept and preserved by registered persons and liable entities**

- (1) A person that is a registered person or a liable entity must keep records that record and explain all transactions and other acts engaged in by the employer, or required to be engaged in by the registered person or liable entity, under this Act.
- (2) The records kept by a registered person must include any documents relevant to ascertaining:
- (a) the amount of electricity generated by the registered person during a year; and
  - (b) the amount of that electricity that was generated from eligible renewable energy sources; and
  - (c) details of all certificates issued by the registered person during the year; and
  - (d) any other prescribed matter.
- (3) The records kept by a liable entity must include any documents relevant to ascertaining:
- (a) the amount of electricity acquired by the liable entity under relevant acquisitions during a year; and
  - (b) any other prescribed matter.
- (4) The records must be kept:
- (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
  - (b) so that the liable entity's liability under this Act can be readily ascertained.

## Section 161

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- (5) A registered person, or a liable entity, who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 5 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is later.
- (6) Nothing in this section requires a registered person or liable entity to retain records if:
  - (a) the Regulator has notified the registered person or liable entity that the retention of the records is not required; or
  - (b) the registered person or liable entity is a company that has gone into liquidation and been finally dissolved.
- (7) A registered person or liable entity who contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

### 161 Regulations

- (1) The Governor-General may make regulations prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;and, in particular, may make regulations prescribing penalties not exceeding a fine of 50 penalty units for offences against the regulations.
- (2) Draft regulations must be available for public comment for a period of not less than 30 days before the regulations are made.

### 162 Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act, including consideration of:
  - (a) the extent to which the Act has:
    - (i) contributed to reducing greenhouse gas emissions; and
    - (ii) encouraged additional generation of electricity from renewable energy sources; and

- (b) the extent to which the policy objectives of this Act have been achieved and the need for any alternative approach; and
  - (c) the mix of technologies that has resulted from the implementation of the provisions of this Act; and
  - (d) the level of penalties provided under this Act; and
  - (e) the need for indexation of the renewable energy shortfall charge to the Consumer Price Index to maintain the real value of the charge and the associated penalty charge; and
  - (f) other environmental impacts that have resulted from the implementation of the provisions of this Act, including the extent to which non-plantation forestry waste has been utilised; and
  - (g) the possible introduction of a portfolio approach, a cap on the contribution of any one source and measures to recognise the relative greenhouse intensities of various technologies; and
  - (h) the level of the overall target and interim targets;
- to be undertaken as soon as practicable after the second anniversary of the commencement of this Act.
- (2) A person who undertakes such a review must give the Minister a written report of the review.
  - (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 12 months after the second anniversary of the commencement of this Act.
  - (4) In this section:
    - independent review*** means a review undertaken by persons who:
      - (a) in the Minister's opinion possess appropriate qualifications to undertake the review; and
      - (b) include one or more persons who are not employed by the Commonwealth or a Commonwealth authority and have not, since the commencement of the Act, provided services to the Commonwealth or a Commonwealth authority under or in connection with a contract.

## **Part 17—Application of Act to 2001**

### **163 Object of Part**

The object of this Part is:

- (a) not to apply this Act to the period of 3 months commencing on 1 January 2001; but
- (b) to apply this Act to the period of 9 months commencing on 1 April 2001 as if that period were the whole of the year commencing on 1 January 2001.

This means that the Act does not apply to electricity generated before 1 April 2001.

### **164 Modification of references to a year**

This Act applies in relation to the year commencing on 1 January 2001 as if all references to a year, to the extent that they are references to the year commencing on 1 January 2001 (including specific references to the year commencing on 1 January 2001), were references to the period of 9 months commencing on 1 April 2001.

### **165 Modification of other references**

This Act applies in relation to the year commencing on 1 January 2001 as if the reference in section 39 to “31 March in the year” were a reference to “30 June in the year”.

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*[Minister’s second reading speech made in—  
House of Representatives on 7 September 2000  
Senate on 12 October 2000]*

(93/00)



**Section 165**

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