



# **Renewable Energy (Electricity) Amendment Act 2010**

**No. 69, 2010**

**An Act to amend the *Renewable Energy (Electricity)  
Act 2000*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Renewable Energy (Electricity) Amendment Act 2010

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## **An Act to amend the *Renewable Energy (Electricity) Act 2000*, and for related purposes**

[Assented to 28 June 2010]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Renewable Energy (Electricity) Amendment Act 2010*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2010
2. Schedule 1, Part 1	1 January 2011.	1 January 2011
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent.	29 June 2010
4. Schedule 2	The day after this Act receives the Royal Assent.	29 June 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

- (1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

## **Schedule 1—Amendments**

### **Part 1—Main amendments**

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

##### **1 Subsection 5(1)**

Insert:

*additional surrender notice* has the meaning given by section 45C.

##### **2 Subsection 5(1)**

Insert:

*assessment year's reduced acquisitions* has the meaning given by section 38AA.

##### **3 Subsection 5(1) (definition of *certificate*)**

Omit “created under Division 4 of Part 2”.

##### **4 Subsection 5(1)**

Insert:

*clearing house* has the meaning given by section 30J.

##### **4A Subsection 5(1)**

Insert:

*clearing house price* has the meaning given by section 30LA.

##### **5 Subsection 5(1)**

Insert:

*clearing house transfer list* has the meaning given by subsection 30L(2).

##### **6 Subsection 5(1)**

Insert:

*first quarter* has the meaning given by section 38AA.

**7 Subsection 5(1)**

Insert:

*fourth quarter* has the meaning given by section 38AA.

**8 Subsection 5(1)**

Insert:

*GST* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (including as provided by section 177-1 of that Act).

Note: Section 177-1 of the *A New Tax System (Goods and Services Tax) Act 1999* provides for the Commonwealth's notional liability to pay GST.

**8A Subsection 5(1)**

Insert:

*GST inclusive clearing house price* has the meaning given by section 30LA.

**9 Subsection 5(1)**

Insert:

*large-scale generation certificate* means a certificate created under Subdivision A of Division 4 of Part 2.

Note: These certificates relate to generation of electricity by accredited power stations.

**10 Subsection 5(1)**

Insert:

*large-scale generation shortfall* has the meaning given by section 38.

**11 Subsection 5(1)**

Insert:

*large-scale generation shortfall charge* has the meaning given by section 36.

**12 Subsection 5(1)**

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Insert:

*large-scale generation shortfall statement* has the meaning given by section 46.

**13 Subsection 5(1) (definition of *partial exemption*)**

Omit “renewable energy certificate shortfall for the year under section 38”, substitute “large-scale generation shortfall or small-scale technology shortfall for the year”.

**14 Subsection 5(1)**

Insert:

*previous year’s reduced acquisitions* has the meaning given by section 38AA.

Note: See also sections 38AF, 38AG and 38AH.

**15 Subsection 5(1)**

Insert:

*quarter* has the meaning given by section 38AA.

**16 Subsection 5(1)**

Insert:

*quarterly shortfall* has the meaning given by section 38AE.

**17 Subsection 5(1)**

Insert:

*quarterly surplus* has the meaning given by section 38AE.

**18 Subsection 5(1)**

Insert:

*register of large-scale generation certificates* has the meaning given by section 140.

**19 Subsection 5(1) (definition of *register of renewable energy certificates*)**

Repeal the definition.

**20 Subsection 5(1)**

Insert:

*register of small-scale technology certificates* has the meaning given by section 141AA.

**21 Subsection 5(1) (definition of *renewable energy certificate*)**

Repeal the definition, substitute:

*renewable energy certificate* means a large-scale generation certificate or a small-scale technology certificate.

**22 Subsection 5(1) (definition of *renewable energy certificate shortfall*)**

Repeal the definition.

**23 Subsection 5(1) (definition of *renewable energy shortfall charge*)**

Repeal the definition, substitute:

*renewable energy shortfall charge* means large-scale generation shortfall charge or small-scale technology shortfall charge.

**24 Subsection 5(1) (definition of *renewable energy shortfall statement*)**

Repeal the definition, substitute:

*renewable energy shortfall statement* means a large-scale generation shortfall statement or a small-scale technology shortfall statement.

**25 Subsection 5(1)**

Insert:

*required large-scale renewable energy* has the meaning given by section 38.

**26 Subsection 5(1) (definition of *required renewable energy*)**

Repeal the definition.

**27 Subsection 5(1)**

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Insert:

*required surrender amount* has the meaning given by section 38AE.

## **28 Subsection 5(1)**

Insert:

*second quarter* has the meaning given by section 38AA.

## **29 Subsection 5(1)**

Insert:

*small-scale technology certificate* means a certificate created under Subdivision B or BA of Division 4 of Part 2 or under section 30P.

Note 1: Certificates created under Subdivision B or BA of Division 4 of Part 2 relate to the installation of solar water heaters and small generation units.

Note 2: Certificates created under section 30P are created by the Regulator for purchase through the clearing house.

## **30 Subsection 5(1)**

Insert:

*small-scale technology percentage* has the meaning given by section 40A.

## **31 Subsection 5(1)**

Insert:

*small-scale technology shortfall* has the meaning given by section 38AD.

## **32 Subsection 5(1)**

Insert:

*small-scale technology shortfall charge* has the meaning given by section 38AB.

## **33 Subsection 5(1)**

Insert:

*small-scale technology shortfall statement* has the meaning given by section 46.

### 34 Subsection 5(1)

Insert:

*surrendered amount* has the meaning given by section 38AE.

### 35 Subsection 5(1)

Insert:

*surrender instrument* has the meaning given by subsection 45(1).

### 36 Subsection 5(1)

Insert:

*surrender period* has the meaning given by section 38AA.

### 37 Subsection 5(1)

Insert:

*taxable supply* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (including as provided by section 177-1 of that Act).

Note: Section 177-1 of the *A New Tax System (Goods and Services Tax) Act 1999* provides for the Commonwealth's notional liability to pay GST.

### 38 Subsection 5(1)

Insert:

*third quarter* has the meaning given by section 38AA.

### 39 Section 8

After:

This Part deals with the creation, trading and extinguishing of renewable energy certificates.
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Insert:

There are 2 types of renewable energy certificates:
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- (a) large-scale generation certificates, which are created in relation to the generation of electricity by accredited power stations; and
- (b) small-scale technology certificates, which are created in relation to the installation of solar water heaters and small generation units.

#### **40 At the end of section 8**

Add:

See also Part 2A (clearing house for small-scale technology certificates), which:

- (a) provides a clearing house facility for the transfer of small-scale technology certificates; and
- (b) gives the Regulator a limited power to create or cancel small-scale technology certificates.

#### **41 Division 4 of Part 2 (heading)**

Repeal the heading, substitute:

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

#### **Subdivision AA—Preliminary**

##### **17B Overview of Division**

This Division deals with the creation of certificates, known as renewable energy certificates.

There are 2 types of renewable energy certificates:

- (a) large-scale generation certificates, which are created in relation to the generation of electricity by accredited power stations (see Subdivision A); and

- (b) small-scale technology certificates, which are created in relation to the installation of solar water heaters and small generation units (see Subdivisions B and BA).

Small-scale technology certificates can also be created by the Regulator under Part 2A (clearing house for small-scale technology certificates).

Subdivision B requires people who create certificates under Subdivision B or BA to submit returns relating to the creation of the certificates.

Subdivision C contains offence and civil penalty provisions relating to the improper creation of certificates.

#### **42 Subdivision A of Division 4 of Part 2 (heading)**

Repeal the heading, substitute:

#### **Subdivision A—Large-scale generation certificates for accredited power stations**

##### **17C Large-scale generation certificates**

Certificates created under this Subdivision are large-scale generation certificates.

#### **43 Subdivision B of Division 4 of Part 2 (heading)**

Repeal the heading, substitute:

#### **Subdivision B—Small-scale technology certificates for solar water heaters**

##### **20B Small-scale technology certificates**

Certificates created under this Subdivision are small-scale technology certificates.

#### **44 Subdivision BA of Division 4 of Part 2 (heading)**

Repeal the heading, substitute:

## **Subdivision BA—Small-scale technology certificates for small generation units**

### **23AB Small-scale technology certificates**

Certificates created under this Subdivision are small-scale technology certificates.

### **45 Subsection 25(1)**

Omit “Certificates under Subdivision A of Division 4”, substitute “Large-scale generation certificates”.

Note: The heading to section 25 is replaced by the heading “**Form and content of large-scale generation certificates**”.

### **46 Subsection 25A(1)**

Omit “Certificates under Subdivision B or BA of Division 4”, substitute “Small-scale technology certificates”.

Note: The heading to section 25A is replaced by the heading “**Form and content of small-scale technology certificates**”.

### **47 Paragraph 25A(2)(f)**

Repeal the paragraph, substitute:

- (f) a statement that the certificate was created in relation to a solar water heater, or that it was created in relation to a small generation unit (as appropriate); and

### **48 At the end of section 25A**

Add:

- (3) This section does not apply in relation to a small-scale technology certificate created by the Regulator under section 30P.

### **49 Subsection 26(4)**

Omit “register of renewable energy certificates”, substitute “register of large-scale generation certificates or the register of small-scale technology certificates (as appropriate)”.

### **50 At the end of section 26**

Add:

(7) This section does not apply in relation to a small-scale technology certificate created by the Regulator under section 30P.

**51 Section 27**

After “26”, insert “or subsection 30P(3)”.

**52 At the end of section 27**

Add:

Note: Subsection 30P(3) deals with registration of small-scale technology certificates created by the Regulator for purchase through the clearing house.

**53 At the end of section 28**

Add:

(4) This section does not apply in relation to a transfer of a small-scale technology certificate by or to the Regulator under subsection 30N(2) or 30P(4).

**54 Section 28A (notes 1 and 2)**

Repeal the notes, substitute:

Note 1: The name of the current registered owner of each certificate is in the register of large-scale generation certificates or the register of small-scale technology certificates (as appropriate).

Note 2: Certificates can also be surrendered:  
(a) under Subdivision A of Division 1 of Part 5; or  
(b) if they are large-scale generation certificates—under section 95.

**55 Subsection 29(1)**

Omit “44 or”, substitute “Subdivision A of Division 1 of Part 5, or section”.

**56 Paragraphs 30D(1)(d) and (3)(b)**

Omit “certificates”, substitute “large-scale generation certificates”.

**57 Subsection 30D(6)**

Omit “certificates”, substitute “large-scale generation certificates”.

**58 After Part 2**

Insert:

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## **Part 2A—Clearing house for small-scale technology certificates**

### **Division 1—Preliminary**

#### **30H Overview of Part**

This Part provides for the Regulator to establish and operate a clearing house for the transfer of small-scale technology certificates.

### **Division 2—Regulator to establish and operate clearing house**

#### **30J Regulator to establish and operate clearing house**

The Regulator is to establish and operate a facility (the *clearing house*) for the transfer of small-scale technology certificates in accordance with this Part.

### **Division 3—Entering certificates into the clearing house**

#### **30K Application for certificate to be entered into the clearing house**

- (1) A person who:
  - (a) is the registered owner of a small-scale technology certificate; or
  - (b) has both:
    - (i) created a small-scale technology certificate; and
    - (ii) advised the Regulator of the creation of the certificate under subsection 26(2);may apply to the Regulator for the certificate to be entered into the clearing house.
- (2) The application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and

- (c) be accompanied by any information required by the regulations; and
- (d) be accompanied by any documents required by the regulations.

### **30L Regulator to enter certificate into the clearing house**

- (1) If:
  - (a) an application is made in accordance with section 30K in relation to a small-scale technology certificate; and
  - (b) the certificate is or becomes registered in the register of small-scale technology certificates;the Regulator must enter the certificate into the clearing house by including the certificate on the clearing house transfer list in accordance with the regulations.
- (2) The *clearing house transfer list* is a list, maintained by the Regulator in accordance with the regulations, of the certificates that are available for transfer through the clearing house. The list must be maintained so that:
  - (a) subject to paragraph (b), certificates are included on the list in the order in which applications relating to the certificates are received (with the certificates to which the most recent applications relate at the bottom of the list); and
  - (b) if a certificate to which an application relates does not become registered until after the application was received, paragraph (a) applies as if the application was received when the certificate was registered; and
  - (c) a certificate must be removed from the list if:
    - (i) the certificate is withdrawn from the clearing house; or
    - (ii) the certificate is transferred under section 30N; or
    - (iii) the certificate is cancelled under section 30P.

Note: Regulations under section 30U may allow the Regulator to remove certificates from the list in other circumstances.
- (3) If the Regulator includes a certificate on the clearing house transfer list, the Regulator must:
  - (a) alter the register of small-scale technology certificates to show that the certificate is in the clearing house; and
  - (b) take such other steps as are prescribed by the regulations.

- (4) While a certificate is on the clearing house transfer list, the certificate may still be transferred by its registered owner to another person otherwise than under this Part. Despite that transfer, the certificate will remain on the clearing house transfer list, and may be dealt with under this Part, unless the new registered owner withdraws the certificate from the clearing house.

Note: See also sections 27 (certificates may be transferred) and 28 (Regulator to be notified of transfer).

- (5) The clearing house transfer list is not a legislative instrument.

## **Division 4—Purchase of certificates through the clearing house**

### **30LA Clearing house price etc.**

- (1) The *clearing house price* is:
- (a) subject to paragraph (b)—\$40; or
  - (b) if the Minister, by legislative instrument, specifies a lesser amount as being the clearing house price for the purpose of this subsection—the amount so specified.
- (2) The *GST inclusive clearing house price* is the amount equal to 110% of the clearing house price.
- (3) Before making an instrument under paragraph (1)(b), the Minister:
- (a) must take into consideration:
    - (i) whether the total value, in MWh, of small-scale technology certificates created in 2015 exceeded or is expected to exceed 6,000,000; and
    - (ii) any changes to the costs of small generation units and solar water heaters; and
    - (iii) the extent to which owners of small generation units and solar water heaters contribute to the costs of small generation units and solar water heaters; and
    - (iv) the impact of the clearing house price, and the number of small generation units and solar water heaters installed, on the electricity market, including on electricity prices; and
  - (b) may take into consideration any other matters that the Minister considers relevant.

- (4) If the Minister is considering a matter mentioned in paragraph (3)(a), the Minister must obtain, and take into consideration, independent advice about that matter.
- (5) An instrument made under paragraph (1)(b) must not be expressed to commence earlier than the first 1 April following the making of the instrument.
- (6) If:
  - (a) an instrument is made under paragraph (1)(b); and
  - (b) on a particular day (the *tabling day*), a copy of the instrument is tabled before a House of the Parliament under section 38 of the *Legislative Instruments Act 2003*;then, on or as soon as practicable after the tabling day, the Minister must cause to be tabled before that House a written statement setting out the Minister's reasons for making the instrument.

### **30M Application for purchase of certificate through the clearing house**

- (1) Subject to subsection (2), a person may apply to the Regulator to purchase a small-scale technology certificate.
- (2) The regulations may provide that certain persons are not entitled (either generally or in particular circumstances) to make an application.
- (3) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) be accompanied by the GST inclusive clearing house price; and
  - (d) be accompanied by any fee required by the regulations.

### **30N If there is a certificate on the clearing house transfer list— Regulator to transfer certificate**

#### *Scope*

- (1) This section applies if:

- (a) a person (the *purchaser*) has made an application in accordance with section 30M to purchase a small-scale technology certificate; and
- (b) there is a small-scale technology certificate on the clearing house transfer list.

*Regulator to transfer certificate at top of clearing house transfer list*

- (2) The Regulator must transfer the certificate that is at the top of the clearing house transfer list to the purchaser on behalf of the person (the *seller*) who, immediately before the transfer, was the registered owner of that certificate.
- (3) If the Regulator transfers a certificate under subsection (2), the Regulator must, as soon as practicable:
  - (a) give the purchaser notice in writing of the transfer; and
  - (b) pay the seller the amount specified in subsection (4); and
  - (c) alter the register of small-scale technology certificates to show the purchaser as the owner of the certificate.
- (4) For the purposes of paragraph (3)(b), the amount is:
  - (a) if the transfer of the certificate is a taxable supply by the seller to the purchaser—the GST inclusive clearing house price; or
  - (b) if the transfer of the certificate is not a taxable supply by the seller to the purchaser—the clearing house price.
- (5) Ownership of the certificate transfers to the purchaser when the register of small-scale technology certificates is altered in accordance with paragraph (3)(c).

**30P If there is no certificate on the clearing house transfer list—  
Regulator to create certificate**

*Scope*

- (1) This section applies if:
  - (a) a person (the *purchaser*) has made an application in accordance with section 30M to purchase a small-scale technology certificate; and

- (b) there is no small-scale technology certificate on the clearing house transfer list.

*Regulator to create certificate*

- (2) The Regulator must create a small-scale technology certificate for the purchaser.
- (3) If the Regulator creates a certificate under subsection (2):
  - (a) the certificate is valid; and
  - (b) the Regulator must, as soon as practicable:
    - (i) give the purchaser notice in writing of the creation of the certificate; and
    - (ii) create an entry for the certificate in the register of small-scale technology certificates and record the purchaser as the owner of the certificate.

*Cancellation of next certificate included on clearing house transfer list*

- (4) If a certificate is created under subsection (2), the following provisions apply:
  - (a) the next small-scale technology certificate (the ***transferred certificate***) that is included on the clearing house transfer list is, immediately after being so included, taken to be transferred to the Regulator by the person (the ***seller***) who was its registered owner immediately before it was included on the list;
  - (b) the Regulator must, as soon as practicable:
    - (i) cancel the transferred certificate; and
    - (ii) pay the seller the amount specified in subsection (5); and
    - (iii) alter the entry relating to the transferred certificate in the register of small-scale technology certificates to show that the transferred certificate is no longer valid.
- (5) For the purposes of subparagraph (4)(b)(ii), the amount is:
  - (a) if the transfer to the Regulator of the transferred certificate constitutes a taxable supply by the seller to the Regulator—the GST inclusive clearing house price; or

- (b) if the transfer to the Regulator of the transferred certificate does not constitute a taxable supply by the seller to the Regulator—the clearing house price.

### **30Q Form and content of certificates created by the Regulator**

- (1) Certificates created by the Regulator under subsection 30P(2) are to be created in an electronic form approved in writing by the Regulator.
- (2) Each certificate is to contain:
  - (a) the year; and
  - (b) a statement to the effect that the certificate was created by the Regulator under section 30P; and
  - (c) a number in an unbroken sequence that is used for all certificates created by the Regulator in that year and that starts at one and has increments of one; and
  - (d) the date on which the certificate was created.

## **Division 5—Renewable Energy Special Account**

### **30R Renewable Energy Special Account**

- (1) The Renewable Energy Special Account is established by this section.
- (2) The Renewable Energy Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

### **30S Credits to the Renewable Energy Special Account**

There must be credited to the Renewable Energy Special Account amounts equal to amounts received by the Regulator under paragraph 30M(3)(c) in relation to the purchase of certificates.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

### **30T Purposes of the Renewable Energy Special Account**

The purposes of the Renewable Energy Special Account are as follows:

- (a) paying amounts under paragraph 30N(3)(b) in relation to the transfer of certificates;
- (b) paying amounts under subparagraph 30P(4)(b)(ii) in relation to the transfer of certificates;
- (c) refunding amounts under regulations made for the purpose of paragraph 30U(2)(i);
- (d) paying amounts of GST for which the Regulator is liable because of the creation of certificates for purchasers under section 30P.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

## **Division 6—Other matters**

### **30U Regulations about the operation of the clearing house**

- (1) The regulations may prescribe the policies, procedures and rules that apply in relation to the establishment and operation of the clearing house.
- (2) In particular, the regulations may deal with any or all of the following matters:
  - (a) the time when applications may be made;
  - (b) the time within which, and the manner by which, applications must be dealt with;
  - (c) the withdrawal of certificates from the clearing house;
  - (d) the circumstances in which the Regulator may remove a certificate from the clearing house transfer list other than under paragraph 30L(2)(c);
  - (e) the timing and methods of payment of amounts;
  - (f) the publication of information about the clearing house, including publication of the clearing house transfer list;
  - (g) the keeping of records by the Regulator in relation to the operation of the clearing house;
  - (h) the fees that are payable in relation to matters connected with the clearing house (including matters connected with the



Regulator's powers and functions in relation to the clearing house and the clearing house transfer list);

- (i) the payment of refunds in the following circumstances:
  - (i) a small-scale technology certificate is transferred to a purchaser under section 30N but the transfer is not a taxable supply by the seller to the purchaser;
  - (ii) a small-scale technology certificate is created for a purchaser under section 30P but the creation of the certificate is not a taxable supply by the Regulator to the purchaser.

## **59 Before Division 1 of Part 4**

Insert:

### **Division 1AA—Preliminary**

#### **34A Overview of Part**

This Part deals with liability to renewable energy shortfall charge.

Subdivision A of Division 1 defines who is a liable entity.

There are 2 types of renewable energy shortfall charge:

- (a) large-scale generation shortfall charge (see Subdivision B of Division 1), which is calculated by reference to a liable entity's relevant acquisitions of electricity, its partial exemptions, the number of large-scale generation certificates it surrenders and the renewable energy power percentage; and
- (b) small-scale technology shortfall charge (see Subdivision C of Division 1), which is calculated by reference to a liable entity's relevant acquisitions of electricity, its partial exemptions, the number of small-scale technology certificates it surrenders and the small-scale technology percentage.

Division 1A deals with the determination of the amount (if any) of a liable entity's partial exemption from charge.

Division 2 deals with the renewable power percentage for large-scale generation shortfall charge.

Division 2A deals with the small-scale technology percentage for small-scale technology charge.

Division 3 deals with other matters related to renewable energy shortfall charge.

## 60 Before section 35

Insert:

### Subdivision A—Liable entities

## 61 Sections 36 to 38

Repeal the sections, substitute:

### Subdivision B—Large-scale generation shortfall charge

## 36 Large-scale generation shortfall charge payable by liable entity

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

Note: Large-scale generation shortfall charge is imposed by the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*.

### 37 Amount of charge

The amount of large-scale generation shortfall charge payable by a liable entity is worked out using the formula:

Large-scale generation shortfall × Rate of charge

where:

**rate of charge** is the rate of charge as specified in section 6 of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*.

### 38 Determination of large-scale generation shortfall

The following method statement shows how to work out a liable entity's **large-scale generation shortfall** for a year:

*Method statement*

- Step 1. Work out the total amount, in MWh, of electricity acquired by the liable entity during the year under relevant acquisitions.
- Step 2. Subtract from the total electricity acquired the amount of the liable entity's partial exemption for the year.
- Step 3. Multiply the result of step 2 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 large-scale renewable energy** for the year.
- Step 4. Subtract the total value, in MWh, of large-scale generation certificates surrendered for that year, under Subdivision A of Division 1 of Part 5, by the liable entity from the required large-scale renewable energy for the year.

Result: If the result is greater than zero, the liable entity has a large-scale generation shortfall for the year equal to the result.

If the result is zero, the liable entity does not have a large-scale generation shortfall for the year.

If the result is less than zero, the liable entity has a *carried forward surplus* for the year equal to the result (expressed as a positive).

### Subdivision C—Small-scale technology shortfall charge

#### 38AA Interpretive provisions relating to liability for small-scale technology shortfall charge etc.

- (1) This section defines expressions that are used in provisions that deal with the determination of a liable entity's liability to small-scale technology shortfall charge for a year (the *assessment year*), and related matters.

*Assessment year's reduced acquisitions*

- (2) The *assessment year's reduced acquisitions* is the amount worked out by subtracting the amount of the liable entity's partial exemption (if any) for the assessment year from the total amount, in MWh, of electricity acquired during the assessment year by the liable entity under relevant acquisitions.

*Previous year's reduced acquisitions*

- (3) The *previous year's reduced acquisitions* is the amount worked out by subtracting the amount of the liable entity's partial exemption (if any) for the previous year from the amount, in MWh, of electricity acquired by the liable entity during the previous year under relevant acquisitions.
- (4) For the purpose of subsection (3):
  - (a) the amount, in MWh, of electricity acquired during the previous year by the liable entity under relevant acquisitions is taken to be the amount stated as having been so acquired in the liable entity's energy acquisition statement for the

previous year (taking account of any amendments to that statement that were made before 1 April in the assessment year); and

- (b) the amount of the liable entity's partial exemption for the previous year is taken to be the total amount of partial exemption claimed in the liable entity's energy acquisition statement for the previous year (taking account of any amendments to that statement that were made before 1 April in the assessment year); and
- (c) if, for any reason, the liable entity has not lodged an energy acquisition statement for the previous year before 1 April in the assessment year, the liable entity is taken not to have any previous year's reduced acquisitions.

Note: If paragraph (4)(c) applies, the liable entity may make an application under section 38AG to have an amount apply as if it were the previous year's reduced acquisitions. If the entity does not do so, the default rule in section 38AH will apply.

*The quarters of a year*

- (5) Each year consists of **quarters** as follows:
  - (a) January, February and March in the year (the **first quarter**);
  - (b) April, May and June in the year (the **second quarter**);
  - (c) July, August and September in the year (the **third quarter**);
  - (d) October, November and December in the year (the **fourth quarter**).

*The surrender period for a quarter*

- (6) The **surrender period** for a quarter of a year is as follows (inclusive of the specified dates):
  - (a) for the first quarter—the period from 15 February to 28 April in the year;
  - (b) for the second quarter—the period from 29 April to 28 July in the year;
  - (c) for the third quarter—the period from 29 July to 28 October in the year;
  - (d) for the fourth quarter—the period from 29 October in the year to the time by which the liable entity is required to lodge an energy acquisition statement for the year.

Note: The period described in paragraph (6)(d) will end on 14 February in the next year, unless the Regulator allows a later day under paragraph 44(1)(b).

- (7) Section 36 of the *Acts Interpretation Act 1901* does not affect the time when the surrender period for the first, second or third quarter of a year ends.

### **38AB Small-scale technology shortfall charge payable by liable entity**

- (1) If a liable entity has a small-scale technology shortfall for a year, ***small-scale technology shortfall charge*** is payable in respect of the shortfall.
- (2) Small-scale technology shortfall charge imposed in respect of a liable entity's small-scale technology shortfall for a year is payable by the liable entity.

Note: Small-scale technology shortfall charge is imposed by the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*.

### **38AC Amount of charge**

The amount of small-scale technology shortfall charge payable by a liable entity is worked out using the formula:

Small-scale technology shortfall × Rate of charge

where:

***rate of charge*** is the rate of charge as specified in section 6 of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*.

### **38AD Determination of small-scale technology shortfall**

- (1) A liable entity's ***small-scale technology shortfall*** for a year is to be worked out by adding together the quarterly shortfalls (if any) calculated in relation to the entity for the quarters of the year under section 38AE.
- (2) If the result is a positive amount, the liable entity has a small-scale technology shortfall for the year equal to the result.

- (3) If the result is zero, the liable entity does not have a small-scale technology shortfall for the year.

### **38AE Quarterly shortfalls for the quarters of a year**

#### *First quarter of year*

- (1) The following method statement shows how to work out a liable entity's quarterly shortfall for the first quarter of a year (the *assessment year*).

#### *Method statement*

Step 1. Work out 35% of the previous year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards). The result is the ***required surrender amount***.

Step 2. Add together:

- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the first quarter; and
- (b) the amount of any quarterly surplus that the liable entity has for the fourth quarter of the previous year.

The result is the ***surrendered amount***.

Step 3. Subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a ***quarterly shortfall*** for the first quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the first quarter of the assessment year.

If the result is less than zero, the liable entity has a **quarterly surplus** for the first quarter of the assessment year equal to the result (expressed as a positive).

*Second quarter of the assessment year*

- (2) The following method statement shows how to work out a liable entity's quarterly shortfall for the second quarter of the assessment year.

*Method statement*

Step 1. Work out 25% of the previous year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards). The result is the **required surrender amount**.

Step 2. Add together:

- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the second quarter; and
- (b) the amount of any quarterly surplus that the liable entity has for the first quarter of the assessment year.

The result is the **surrendered amount**.

Step 3. Subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a **quarterly shortfall** for the second quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the second quarter of the assessment year.



If the result is less than zero, the liable entity has a **quarterly surplus** for the second quarter of the assessment year equal to the result (expressed as a positive).

*Third quarter of the assessment year*

- (3) The following method statement shows how to work out a liable entity's quarterly shortfall for the third quarter of the assessment year.

*Method statement*

Step 1. Work out 25% of the previous year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards). The result is the **required surrender amount**.

Step 2. Add together:

- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the third quarter; and
- (b) the amount of any quarterly surplus that the liable entity has for the second quarter of the assessment year.

The result is the **surrendered amount**.

Step 3. Subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a **quarterly shortfall** for the third quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the third quarter of the assessment year.

If the result is less than zero, the liable entity has a **quarterly surplus** for the third quarter of the assessment year equal to the result (expressed as a positive).

*Fourth quarter of the assessment year*

- (4) The following method statement shows how to work out a liable entity's quarterly shortfall for the fourth quarter of the assessment year.

*Method statement*

- Step 1. Work out the assessment year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards).
- Step 2. Subtract from the amount worked out under step 1 the total of the required surrender amounts for the first, second and third quarters of the assessment year. The result (which may be less than zero) is the **required surrender amount**.
- Step 3. Add together:
- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the fourth quarter; and
  - (b) the amount of any quarterly surplus that the liable entity has for the third quarter of the assessment year.

The result is the **surrendered amount**.

Step 4. If the required surrender amount is zero or greater, subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a ***quarterly shortfall*** for the fourth quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the fourth quarter of the assessment year.

If the result is less than zero, the liable entity has a ***quarterly surplus*** for the fourth quarter of the assessment year equal to the result (expressed as a positive amount).

Step 5. If the required surrender amount is less than zero, add together that amount (expressed as a positive) to the surrendered amount.

Result: The liable entity has a ***quarterly surplus*** for the fourth quarter of the assessment year equal to the result.

**38AF Energy acquisition statement lodged for previous year:  
application to have amount apply instead of previous  
year's reduced acquisitions**

- (1) If the liable entity lodged an energy acquisition statement for the previous year before 1 April in the assessment year, the liable entity may apply to the Regulator to have an amount (the ***proposed amount***) apply instead of the previous year's reduced acquisitions for the purpose of applying section 38AE to the assessment year.
- (2) The application must:
  - (a) specify the proposed amount; and
  - (b) be made before 1 October in the assessment year.

Note: For other provisions relating to the making of applications, see section 38AI.

- (3) The Regulator must consider the application and must, in writing:

- (a) determine that the proposed amount, or a different amount, is to apply instead of the amount of the previous year's reduced acquisitions; or
  - (b) refuse to make such a determination.
- (4) A determination under subsection (3) is not a legislative instrument.
- (5) In relation to the Regulator's power to determine an amount that is different from the proposed amount:
  - (a) a different amount determined by the Regulator must not be less than the proposed amount and must not exceed the previous year's reduced acquisitions; and
  - (b) before determining a different amount, the Regulator must:
    - (i) invite the liable entity to comment on the amount that the Regulator proposes to determine; and
    - (ii) consider the liable entity's comments (if any).
- (6) If the Regulator determines an amount under paragraph (3)(a) then, subject to subsection (7), section 38AE applies to the entity and the assessment year as if the amount determined were the previous year's reduced acquisitions.
- (7) If the assessment year's reduced acquisitions exceed the amount determined by more than the prescribed percentage of the amount determined, then:
  - (a) subsection (6) does not apply; and
  - (b) references in section 38AE to the previous year's reduced acquisitions are instead taken to be references to the assessment year's reduced acquisitions.

For this purpose, the *prescribed percentage* is the percentage prescribed by the regulations for the purpose of this subsection.
- (8) The Regulator must give the liable entity written notice of the Regulator's decision in relation to the application.
- (9) The Regulator must comply with any requirements prescribed by the regulations in relation to the exercise of the Regulator's functions or powers under this section.

**38AG No energy acquisition statement lodged for previous year:  
application to have amount apply as if it were previous  
year's reduced acquisitions**

- (1) If, for any reason, the liable entity did not lodge an energy acquisition statement for the previous year before 1 April in the assessment year, the liable entity may apply to the Regulator to have an amount (the *proposed amount*) apply as if it were the previous year's reduced acquisitions for the purpose of applying subsection 38AE(1), (2) or (3) to a quarter (the *relevant quarter*) of the assessment year.

Note 1: Different amounts may be proposed by the liable entity, and different amounts may be determined by the Regulator, in relation to different quarters of the assessment year.

Note 2: If the liable entity does not make an application under this section, the default rule in section 38AH will apply.

- (2) The application must:
- (a) specify the proposed amount for the relevant quarter; and
  - (b) be made before the end of the assessment year.

Note: For other provisions relating to the making of applications, see section 38AI.

- (3) The Regulator must consider the application and must, in writing:
- (a) determine that the proposed amount, or a different amount, is to apply for the relevant quarter as if it were the previous year's reduced acquisitions; or
  - (b) refuse to make such a determination.

- (4) A determination under subsection (3) is not a legislative instrument.

- (5) In relation to the Regulator's power to determine an amount that is different from the proposed amount for the relevant quarter:
- (a) a different amount determined by the Regulator must not be less than the proposed amount; and
  - (b) before determining a different amount, the Regulator must:
    - (i) invite the liable entity to comment on the amount that the Regulator proposes to determine; and
    - (ii) consider the liable entity's comments (if any).

- (6) If the Regulator determines an amount for the relevant quarter under paragraph (3)(a), then subsection 38AE(1), (2) or (3) (as the case requires) applies to the relevant quarter as if the amount determined were the previous year's reduced acquisitions.
- (7) The Regulator must give the liable entity written notice of the Regulator's decision in relation to the application.
- (8) The Regulator must comply with any requirements prescribed by the regulations in relation to the exercise of the Regulator's functions or powers under this section.

**38AH No energy acquisition statement lodged for previous year: default rule**

- (1) This section applies, in relation to the first, second or third quarter (the *relevant quarter*) of the assessment year, if:
  - (a) for any reason, the liable entity did not lodge an energy acquisition statement for the previous year before 1 April in the assessment year; and
  - (b) either:
    - (i) the liable entity did not make an application under section 38AG before the end of the assessment year in relation to the relevant quarter; or
    - (ii) the liable entity made such an application in relation to the relevant quarter, but the Regulator refused to make a determination under paragraph 38AG(3)(a) in relation to that quarter.
- (2) If this section applies, then subsection 38AE(1), (2) or (3) (as the case requires) applies to the relevant quarter as if the amount specified in whichever of the following paragraphs applies were the previous year's reduced acquisitions:
  - (a) if the liable entity made relevant acquisitions of electricity in the relevant quarter—the amount of the assessment year's reduced acquisitions;
  - (b) if the liable entity did not make any relevant acquisitions of electricity in the relevant quarter—zero.

**38AI General provisions relating to applications under sections 38AF and 38AG**

*Requirements for applications*

- (1) An application under section 38AF or 38AG must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) include any information required by the regulations; and
  - (d) be accompanied by any documents required by the regulations; and
  - (e) be accompanied by any report required by the regulations; and
  - (f) be accompanied by any fee required by the regulations.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.

*Regulator may require further information*

- (3) The Regulator may, by written notice given to a liable entity that has made an application under section 38AF or 38AG, require the entity to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (4) If the entity breaches the requirement, the Regulator may, by written notice given to the entity:
  - (a) refuse to consider the application; or
  - (b) refuse to take any action, or any further action, in relation to the application.

**62 Section 38A**

Omit “the renewable energy shortfall charge”, substitute “large-scale generation shortfall charge and small-scale technology shortfall charge”.

**63 Division 2 of Part 4 (heading)**

Repeal the heading, substitute:

## Division 2—Renewable power percentage for large-scale generation shortfall charge

### 64 Subsection 39(1)

After “specified in the regulations”, insert “for the purpose of this subsection”.

### 65 Paragraph 39(3)(d)

Repeal the paragraph, substitute:

- (d) the amount estimated as the amount of all partial exemptions that will be claimed for the year.

### 66 After Division 2 of Part 4

Insert:

## Division 2A—Small-scale technology percentage for small-scale technology shortfall charge

### 40A Regulations to specify small-scale technology percentage

- (1) The *small-scale technology percentage* for a year is the percentage prescribed by the regulations for the purpose of this subsection. The regulations prescribing a percentage for a year must be made on or before 31 March in the year.
- (2) If the regulations do not prescribe a percentage for the year starting on 1 January 2012 or a later year, the *small-scale technology percentage* for that year is the rate worked out using the formula:

$$\text{Previous year's small-scale technology percentage} \times \frac{\text{Certificate value for previous year}}{\text{Certificate value for year before previous year}}$$

where:

*certificate value for previous year* is the total value, in MWh, of small-scale technology certificates created in the previous year.

*certificate value for year before previous year* is the total value, in MWh, of small-scale technology certificates created in the year before the previous year.



- (3) Before the Governor-General makes a regulation under subsection (1) specifying the small-scale technology percentage for a year (the *current year*), the Minister must take into consideration:
- (a) the estimated value, in MWh, of small-scale technology certificates that will be created in the current year under Subdivisions B and BA of Division 4 of Part 2; and
  - (b) the amount estimated as the amount of electricity that will be acquired under relevant acquisitions during the current year; and
  - (c) the amount estimated as the amount of all partial exemptions that will be claimed for the current year; and
  - (d) if the current year is the year commencing on 1 January 2012 or a later year:
    - (i) the amount by which the previous year's estimate under paragraph (a) exceeded, or was exceeded by, the value, in MWh, of small-scale technology certificates that were created in that year under Subdivisions B and BA of Division 4 of Part 2; and
    - (ii) the amount by which the previous year's estimate under paragraph (b) exceeded, or was exceeded by, the amount of electricity that was acquired under relevant acquisitions during that year; and
    - (iii) the amount by which the previous year's estimate under paragraph (c) exceeded, or was exceeded by, the amount of partial exemptions that were claimed for the previous year.
- (4) If, at the time the Minister takes into consideration the matters referred to in subsection (3), the amount referred to in subparagraph (3)(d)(i), (ii) or (iii) is not known, then the Minister may take into consideration an estimate of that amount instead.
- (5) A failure to comply with subsection (3) does not affect the validity of the regulations.

## **67 Division 3 of Part 4 (heading)**

Repeal the heading, substitute:

### **Division 3—Other provisions related to renewable energy shortfall charge**

#### **40B Regulator to publish estimate of small-scale technology percentage**

- (1) Before 31 March in each year, the Regulator must publish on its website an estimate of the small-scale technology percentage for each of the next 2 years.
- (2) An estimate published under this section:
  - (a) does not in any way bind the Regulator, the Commonwealth or any other person; and
  - (b) does not in any way affect the determination of a liable entity's liability to small-scale technology shortfall charge for a year.

#### **40C Regulator to give liable entity estimate of current year's required surrender amounts for first 3 quarters**

- (1) If a liable entity lodges an energy acquisition statement for a year before 1 April in the next year (the *current year*), the Regulator must, before 15 April in the current year, give the liable entity written notice of the amounts that the Regulator estimates will be the liable entity's required surrender amounts under section 38AE for the first, second and third quarters of the current year.
- (2) In making an estimate under subsection (1), the Regulator is to disregard any determination made by the Regulator under section 38AF on or after 1 April in the current year.
- (3) An estimate given to a liable entity under this section:
  - (a) does not in any way bind the Regulator, the Commonwealth or any other person; and
  - (b) does not in any way affect the determination of the liable entity's liability to small-scale technology shortfall charge for a year.

#### **68 Paragraph 41(b)**

Omit "renewable energy certificate shortfall", substitute "large-scale generation shortfall or small-scale technology shortfall".

## **69 Division 1 of Part 5**

Repeal the Division, substitute:

### **Division 1AA—Preliminary**

#### **43A Overview of Part**

This Part deals with various matters relating to the determination of a liable entity's liability to renewable energy shortfall charge.

Subdivision A of Division 1 requires the lodgment of annual energy acquisition statements by liable entities. The entity may surrender renewable energy certificates for the year (or for the quarters of the year) in the statement. The entity may surrender additional certificates in certain circumstances.

Subdivision B of Division 1 requires the lodgment of annual renewable energy shortfall statements by entities that have large-scale generation shortfalls or small-scale technology shortfalls.

Division 1A deals with the issue and amendment of partial exemption certificates.

Division 2 deals with the assessment of liability to renewable energy shortfall charge, and for the amendment of assessments. It also deals with other related matters.

### **Division 1—Statements**

#### **Subdivision A—Annual energy acquisition statements**

##### **44 Annual energy acquisition statements**

- (1) A liable entity that acquired electricity under a relevant acquisition during a year (the *assessment year*) must lodge an energy acquisition statement for the year on or before:
  - (a) 14 February in the next year; or
  - (b) any later day allowed by the Regulator.

Note: For amendment of such statements, see section 45A.

- (2) The statement must set out:
    - (a) the name and postal address of the liable entity; and
    - (b) the amount, in MWh, of electricity acquired by the liable entity under relevant acquisitions during the assessment year; and
    - (c) whether the liable entity wishes to claim a partial exemption for the assessment year (see also subsection (3)); and
    - (d) the large-scale charge information (see subsection (4)); and
    - (e) the small-scale charge information (see subsection (5)); and
    - (f) any other information required by the regulations.
  - (3) If the liable entity wishes to claim a partial exemption for the assessment year, the statement must be accompanied by:
    - (a) a copy of each partial exemption certificate issued to the liable entity for the assessment year in relation to an emissions-intensive trade-exposed activity carried on by the liable entity during the year; and
    - (b) a copy of each partial exemption certificate issued to another person in relation to the liable entity for the assessment year and given to the liable entity.
  - (4) For the purpose of paragraph (2)(d), the **large-scale charge information** is:
    - (a) the value, in MWh, of large-scale generation certificates being surrendered for the assessment year under section 44A; and
    - (b) the amount of any carried forward shortfall or carried forward surplus that the liable entity had for the previous year; and
    - (c) the amount of any carried forward surplus that the liable entity has for the assessment year.
  - (5) For the purpose of paragraph (2)(e), the **small-scale charge information** is:
    - (a) for each of the quarters of the assessment year—the value, in MWh, of small-scale technology certificates that have been or are being surrendered for the quarter under section 45 during the surrender period for the quarter; and
    - (b) the amounts of any quarterly surpluses and quarterly shortfalls that the liable entity has for the quarters of the assessment year; and
-

- (c) the amount of any quarterly surplus that the liable entity had for the fourth quarter of the previous year; and
  - (d) if the Regulator has, under section 38AF, determined an amount that is to apply instead of the previous year's reduced acquisitions—the amount so determined; and
  - (e) if the Regulator has, under section 38AG, determined an amount that is to apply, for a quarter of the assessment year, as if it were the previous year's reduced acquisitions—the amount so determined for that quarter; and
  - (f) if section 38AH applies in relation to a quarter of the assessment year—a statement as to whether the liable entity made any relevant acquisitions of electricity in that quarter.
- (6) 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.

#### **44A Surrender of large-scale generation certificates in energy acquisition statement**

- (1) A liable entity may surrender large-scale generation certificates for a year by including details of the large-scale generation certificates (the *identified certificates*) that it is surrendering for the year in its energy acquisition statement for the year.

Note: For limitations on the certificates that can be surrendered, see section 45D.

- (2) The identified certificates are taken to be surrendered when the energy acquisition statement is lodged, other than any of those certificates that cannot be surrendered because of section 45D.
- (3) The Regulator must, by notice in writing given to the liable entity, advise the entity of:
- (a) the number of the identified certificates that (taking account of section 45D) are able to be surrendered for the year; and
  - (b) the fee payable by the entity under section 45E in respect of the surrender of those certificates.
- (4) A notice under subsection (3) is not a legislative instrument.

## 45 Surrender of small-scale technology certificates in quarterly surrender instrument

*Surrender of small-scale technology certificates on a quarterly basis*

- (1) A liable entity may surrender small-scale technology certificates for a quarter of a year by including details of the small-scale technology certificates (the *identified certificates*) that it is surrendering for the quarter in whichever of the following (the *surrender instrument*) applies:
  - (a) for the first, second or third quarter of the year—a notice that:
    - (i) is in a form approved by the Regulator; and
    - (ii) is lodged, before the end of the surrender period for the quarter, in accordance with the regulations; and
    - (iii) is signed by or on behalf of the liable entity;
  - (b) for the fourth quarter of the year—the liable entity’s energy acquisition statement for the year.

Note: For limitations on the certificates that can be surrendered, see section 45D.

- (2) The identified certificates are taken to be surrendered when the surrender instrument is lodged, other than any of those certificates that cannot be surrendered because of section 45D.

*Regulator to give liable entity notice relating to surrenders for first, second or third quarter*

- (3) After the liable entity has lodged the surrender instrument for the first, second or third quarter, the Regulator must, by notice in writing given to the liable entity, advise the liable entity of the number of the identified certificates for the quarter that (taking account of section 45D) are able to be surrendered for the quarter.

*Regulator to give liable entity notice relating to total surrenders for the year*

- (4) After the liable entity has lodged its energy acquisition statement for the year, the Regulator must, by notice in writing given to the liable entity, advise the liable entity of:

- (a) the number of the identified certificates for each quarter of the year that (taking account of section 45D) are or were able to be surrendered for the quarter; and
- (b) the fee payable by the entity under section 45E in respect of the surrender of those certificates.

*Notices are not legislative instruments*

- (5) A notice under subsection (3) or (4) is not a legislative instrument.

#### **45A Amending energy acquisition statement at request of liable entity**

- (1) The Regulator may amend an energy acquisition statement for a year if the liable entity requests, in writing, an amendment within 12 months of lodging the statement.

Note: An amendment of an energy acquisition statement under this section may also result in the Regulator issuing an assessment under section 48 or 48B or amending an assessment under section 49.

- (2) If the Regulator refuses to amend an energy acquisition statement under subsection (1) upon a request by a liable entity, the Regulator must notify the entity accordingly.

*Amendment to surrender additional certificates*

- (3) The liable entity may, under subsection (1), request an amendment to its energy acquisition statement for a year to:
  - (a) surrender additional large-scale renewable energy certificates for the year (subject to section 45D); or
  - (b) surrender additional small-scale technology certificates for the fourth quarter of the year (subject to section 45D).

Note 1: Small-scale technology certificates for the first 3 quarters of the year are surrendered by notices under paragraph 45(1)(a). Those notices cannot be amended.

Note 2: This subsection does not limit the kinds of amendment that the liable entity may request.

- (4) The request must include details of the additional certificates (the *identified certificates*) that the liable entity wishes to surrender for the year or the quarter.

- (5) If the Regulator agrees to the request (in whole or in part) the Regulator must, by notice in writing to the liable entity, advise the entity of:
- (a) the number of the identified certificates in relation to which the following subparagraphs are satisfied:
    - (i) the Regulator agrees to make the amendment to surrender the certificates;
    - (ii) the certificates (taking account of section 45D) are able to be surrendered for the year or the quarter; and
  - (b) the fee payable by the entity under section 45E in respect of the surrender of the certificates (the *agreed certificates*) in relation to which subparagraphs (a)(i) and (ii) are satisfied.
- (6) A notice under subsection (5) is not a legislative instrument.
- (7) Subject to subsection (8), the agreed certificates are taken to have been surrendered when the Regulator makes the amendment of the energy acquisition statement.
- (8) If the agreed certificates are small-scale technology certificates, then, for the purpose of determining the number of such certificates surrendered by the entity during the surrender period for the fourth quarter, the certificates are taken to have been surrendered during that period.

*No amendment to reduce number of certificates surrendered*

- (9) An energy acquisition statement cannot be amended under this section to reduce the number of certificates previously surrendered.

#### **45B Amending energy acquisition statement on Regulator's own initiative**

- (1) The Regulator may amend an energy acquisition statement for a year on the Regulator's own initiative if the amendment is made within 4 years of the liable entity lodging the statement.

Note: An amendment of an energy acquisition statement under this section may also result in the Regulator issuing an assessment under section 48 or 48B or amending an assessment under section 49.

- (2) The Regulator must give the liable entity written notice of the amendment.



- (3) An energy acquisition statement cannot be amended under this section to increase or reduce the number of certificates previously surrendered.

**45C Surrender of additional certificates if energy acquisition statement amended on Regulator's own initiative**

- (1) This section applies if a liable entity's energy acquisition statement for a year is amended under section 45B so that either of the following, if calculated on the basis of the amounts and other information contained in the statement, is greater than it would have been if the amendment had not been made:
- (a) the liable entity's large-scale generation shortfall for the year;
  - (b) the liable entity's quarterly shortfall for the fourth quarter of the year.
- (2) The liable entity may (subject to section 45D) surrender additional certificates for the year or quarter by giving the Regulator a notice (an *additional surrender notice*) that:
- (a) includes details of the certificates (the *identified certificates*) being surrendered; and
  - (b) is in a form approved by the Regulator; and
  - (c) is lodged with the Regulator, in accordance with the regulations, within the period of 30 days beginning on the day on which the liable entity received notice of the amendment; and
  - (d) is signed by or on behalf of the liable entity.
- (3) Subject to subsection (4), the identified certificates are taken to be surrendered when the additional surrender notice is lodged.
- (4) If the identified certificates are small-scale technology certificates, then, for the purpose of determining the number of such certificates surrendered by the entity during the surrender period for the fourth quarter, the certificates are taken to have been surrendered during that period.
- (5) The Regulator must, by notice in writing given to the liable entity, advise the entity of:
- (a) the number of the identified certificates that (taking account of section 45D) are able to be surrendered for the year or quarter; and

(b) the fee payable by the entity under section 45E in respect of the surrender of those certificates.

(6) A notice under subsection (5) is not a legislative instrument.

#### **45D Limitations on certificates that can be surrendered under this Subdivision**

##### *Large-scale generation certificates*

- (1) A liable entity cannot surrender a large-scale generation certificate for a year under this Subdivision unless:
- (a) the certificate was created before the end of the year; and
  - (b) the liable entity is recorded in the register of large-scale generation certificates as the owner of the certificate at whichever of the following times applies:
    - (i) for surrender under section 44A—the time when the energy acquisition statement is lodged;
    - (ii) for surrender under section 45A—the time when the Regulator makes the amendment of the energy acquisition statement;
    - (iii) for surrender under section 45C—the time when the additional surrender notice is lodged; and
  - (c) the certificate is valid at the time that applies under paragraph (b).

##### *Small-scale technology certificates*

- (2) A liable entity cannot surrender a small-scale technology certificate for a quarter of a year under this Subdivision unless:
- (a) either:
    - (i) the liable entity acquired the certificate under Division 4 of Part 2A (purchase of certificates through the clearing house); or
    - (ii) if subparagraph (i) does not apply—the certificate was created before the end of the year; and
  - (b) the liable entity is recorded in the register of small-scale technology certificates as the owner of the certificate at whichever of the following times applies:
    - (i) for surrender under section 45—the time when the surrender instrument for the quarter is lodged;

- (ii) for surrender under section 45A—the time when the Regulator makes the amendment of the energy acquisition statement;
  - (iii) for surrender under section 45C—the time when the additional surrender notice is lodged; and
  - (c) the certificate is valid at the time that applies under paragraph (b).
- (3) The liable entity cannot surrender a small-scale technology certificate for a quarter of the year under this Subdivision if, at the time that applies under paragraph (2)(b), the certificate is on the clearing house transfer list (see section 30L).

#### **45E Fees for surrender of certificates under this Subdivision**

- (1) The regulations may prescribe the fee payable for the surrender of a certificate under this Subdivision.
- (2) If a liable entity is given a notice under section 44A, 45, 45A or 45C advising the entity of the fee payable in respect of the surrender of certificates, the liable entity must pay the fee within the period of 28 days beginning on the day the entity receives the notice.
- (3) If the fee specified in the notice is unpaid at the end of that period of 28 days, it is a debt due to the Commonwealth and is recoverable by the Regulator in a court of competent jurisdiction.

#### **Subdivision B—Annual renewable energy shortfall statements**

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

- (1) There are 2 different types of *renewable energy shortfall statement*:
  - (a) a *large-scale generation shortfall statement* (see subsections (2) and (3)); and
  - (b) a *small-scale technology shortfall statement* (see subsections (4) and (5)).

*Large-scale generation shortfall statement*

- (2) A liable entity that has a large-scale generation shortfall for a year (the **assessment year**) must lodge a large-scale generation shortfall statement for the year on or before:
- (a) 14 February in the next year; or
  - (b) any later day allowed by the Regulator.
- (3) The statement must set out:
- (a) the name and postal address of the liable entity; and
  - (b) the liable entity's large-scale generation shortfall for the assessment year; and
  - (c) the amount of any carried forward shortfall or carried forward surplus that the liable entity had for the previous year; and
  - (d) either:
    - (i) the amount of carried forward shortfall that the liable entity has for the assessment year; or
    - (ii) the amount of large-scale generation shortfall charge that is payable by the liable entity for the assessment year; and
  - (e) any other information required by the regulations.

*Small-scale technology shortfall statement*

- (4) A liable entity that has a small-scale technology shortfall for a year (the **assessment year**) must lodge a small-scale technology shortfall statement for the year on or before:
- (a) 14 February in the next year; or
  - (b) any later day allowed by the Regulator.
- (5) The statement must set out:
- (a) the name and postal address of the liable entity; and
  - (b) the liable entity's small-scale technology shortfall for the assessment year; and
  - (c) the amount of small-scale technology shortfall charge that is payable by the liable entity for the assessment year; and
  - (d) any other information required by the regulations.

*General requirements for statements*

- (6) A statement under this section 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.

**70 Subsection 46C(4) (note)**

After “section 48”, insert “or 48B”.

**71 Sections 47 and 48**

Repeal the sections, substitute:

**Subdivision A—Large-scale generation shortfall charge**

**47 First large-scale generation shortfall statement taken to be assessment of large-scale generation shortfall charge**

- (1) This section applies if:
- (a) a liable entity lodges a large-scale generation shortfall statement for a year (the *assessment year*); and
  - (b) a large-scale generation shortfall statement has not previously been lodged, and an assessment of large-scale generation shortfall charge has not previously been made, for the assessment year in relation to the liable entity.
- (2) The statement has effect as an assessment of the liable entity’s large-scale generation shortfall for the assessment year and of the large-scale generation shortfall charge (if any) payable on the shortfall.
- (3) The assessment is taken to have been made on 14 February in the next year or the day on which the statement was lodged, whichever is the later.
- (4) The large-scale generation shortfall specified in the statement is taken to be the liable entity’s large-scale generation shortfall for the assessment year.

- (5) The amount of large-scale generation shortfall charge (if any) specified in the statement is taken to be the amount of large-scale generation shortfall charge payable by the liable entity for the assessment year.
- (6) 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 of large-scale generation shortfall charge**

- (1) If a liable entity has lodged an energy acquisition statement for a year but:
  - (a) the liable entity has not lodged a large-scale generation shortfall statement for the year; and
  - (b) the Regulator is of the opinion that the liable entity has a large-scale generation shortfall for the year;the Regulator may make an assessment of the liable entity's large-scale generation shortfall for the year, and of the large-scale generation shortfall charge (if any) payable on the shortfall.
- (2) If:
  - (a) a liable entity has not lodged a large-scale generation 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 has a large-scale generation shortfall for the year;the Regulator may make an assessment of the liable entity's large-scale generation shortfall for the year, and of the large-scale generation shortfall charge (if any) payable on the shortfall.
- (3) For the purpose of making an assessment under subsection (1) or (2):
  - (a) the liable entity's large-scale generation shortfall is taken to be the amount that, in the Regulator's opinion, might reasonably be expected to be the shortfall; and
  - (b) in the case of an assessment under subsection (1)—the Regulator is to take into account any large-scale generation certificates surrendered by the liable entity under Subdivision A of Division 1 for the year; and

- (c) in the case of an assessment under subsection (2)—the Regulator is to assume that the liable entity did not surrender any large-scale generation certificates under Subdivision A of Division 1 for the year.
- (4) Large-scale generation 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 next year.
- (5) An assessment for a year under this section cannot be made until after 14 February in the next year.

### **Subdivision B—Small-scale technology shortfall charge**

#### **48A First small-scale technology shortfall statement taken to be assessment of small-scale shortfall charge**

- (1) This section applies if:
  - (a) a liable entity lodges a small-scale technology shortfall statement for a year (the *assessment year*); and
  - (b) a small-scale technology shortfall statement has not previously been lodged, and an assessment of small-scale shortfall charge has not previously been made, for the assessment year in relation to the liable entity.
- (2) The statement has effect as an assessment of the liable entity's small-scale technology shortfall for the assessment year and of the small-scale technology shortfall charge payable on the shortfall.
- (3) The assessment is taken to have been made on 14 February in the next year or the day on which the statement was lodged, whichever is the later.
- (4) The small-scale technology shortfall specified in the statement is taken to be the liable entity's small-scale technology shortfall for the assessment year.
- (5) The amount of small-scale technology shortfall charge specified in the statement is taken to be the amount of small-scale technology shortfall charge payable by the liable entity for the assessment year.

- (6) 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.

**48B Default assessments of small-scale technology shortfall charge**

- (1) If a liable entity has lodged an energy acquisition statement for a year but:
- (a) the liable entity has not lodged a small-scale technology shortfall statement for the year; and
  - (b) the Regulator is of the opinion that the liable entity has a small-scale technology shortfall for the year;
- the Regulator may make an assessment of the liable entity's small-scale technology shortfall for the year, and of the small-scale technology shortfall charge payable on the shortfall.
- (2) If:
- (a) a liable entity has not lodged a small-scale technology 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 has a small-scale technology shortfall for the year;
- the Regulator may make an assessment of the liable entity's small-scale technology shortfall for the year, and of the small-scale technology shortfall charge payable on the shortfall.
- (3) For the purpose of making an assessment under subsection (1) or (2):
- (a) the liable entity's small-scale technology shortfall is taken to be the amount that, in the Regulator's opinion, might reasonably be expected to be the shortfall; and
  - (b) the Regulator is to take into account any small-scale technology certificates surrendered by the liable entity for any of the quarters of the year under Subdivision A of Division 1.
- (4) Small-scale technology 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 next year.



- (5) An assessment for a year under this section cannot be made until after 14 February in the next year.

### **Subdivision C—Other provisions relating to assessments**

#### **72 Section 52**

After “section 48”, insert “or 48B”.

#### **73 Subsection 66(1) (after table item 5DA)**

Insert:

5DB	to refuse to determine an amount, or to determine an amount that is different from the proposed amount	section 38AF or 38AG	the applicant for a determination.
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#### **74 Subsection 66(1) (cell at table item 5E, column headed “made under ...”)**

After “45A”, insert “or 45B”.

#### **75 Section 67**

Repeal the section, substitute:

### **67 When renewable energy shortfall charge is payable**

#### *Large-scale generation shortfall charge*

- (1) Large-scale generation shortfall charge for a year is payable:
- (a) if, on or before 14 February in the next year, the liable entity lodges a large-scale generation shortfall statement for that year—on that day; or
  - (b) if, after that day, the liable entity lodges a large-scale generation shortfall statement for that year—on the day on which the statement is lodged.

Note: For when large-scale generation shortfall charge is payable if the liable entity does not lodge a large-scale generation shortfall statement, see subsection 48(4).

#### *Small-scale technology shortfall charge*

- (2) Small-scale technology shortfall charge for a year is payable:

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

Note: For when small-scale technology shortfall charge is payable if the liable entity does not lodge a small-scale technology shortfall statement, see subsection 48B(4).

## 76 Part 8 (heading)

Repeal the heading, substitute:

## **Part 8—Refunding large-scale generation shortfall charge**

### 77 Paragraph 95(1)(a)

Omit “renewable energy shortfall charge”, substitute “large-scale generation shortfall charge”.

Note: The heading to section 95 is altered by omitting “charge” and substituting “large-scale generation shortfall charge”.

### 78 Paragraph 95(1)(b)

Omit “certificates”, substitute “large-scale generation certificates”.

### 79 Subsection 95(2)

Omit “renewable energy shortfall statement”, substitute “large-scale generation shortfall statement”.

### 80 Subsection 95(2)

Omit “renewable energy shortfall charge”, substitute “large-scale generation shortfall charge”.

### 81 Subsection 95(3)

Omit “certificate is”, substitute “large-scale generation certificates are”.

### 82 Subsection 96(1)

Omit “certificate surrendered”, substitute “large-scale generation certificate surrendered”.

**83 Subsection 96(1)**

Omit “renewable energy shortfall charge”, substitute “large-scale generation shortfall charge”.

**84 Subsection 96(2)**

Omit “certificates surrendered”, substitute “large-scale generation certificates surrendered”.

**85 Subsection 96(2)**

Omit “renewable energy shortfall charge”, substitute “large-scale generation shortfall charge”.

**86 Section 97**

Omit “surrender certificates”, substitute “surrender large-scale generation certificates”.

**87 Section 97**

Omit “renewable energy certificate shortfall”, substitute “large-scale generation shortfall”.

**88 Section 98**

Omit “certificates”, substitute “large-scale generation certificates”.

**89 Section 99**

Repeal the section, substitute:

**99 Penalty charge for failure to provide statements or information relevant to large-scale generation shortfall charge**

- (1) A liable entity, other than a government body, is liable to pay, by way of penalty, penalty charge if the liable entity refuses or fails to provide, when and as required under this Act any of the following for a year (the *assessment year*):
  - (a) an energy acquisition statement for the assessment year;
  - (b) a large-scale generation shortfall statement for the assessment year;
  - (c) information relevant to assessing the liable entity’s liability to pay large-scale generation shortfall charge for the assessment year.

**Schedule 1** Amendments  
**Part 1** Main amendments

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Note: If the liable entity refuses or fails to lodge an energy acquisition statement, the liable entity is also liable to penalty charge under section 99A.

- (2) A liable entity is liable to pay, by way of penalty, penalty charge if:
- (a) the liable entity is liable to pay large-scale generation shortfall charge for a year (the *assessment year*); and
  - (b) the liable entity fails to keep a record in relation to the assessment 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 assessment year:
    - (i) the amount of electricity acquired under relevant acquisitions during the assessment year;
    - (ii) the value, in MWh, of large-scale generation certificates surrendered for the assessment year;
    - (iii) any carried forward shortfall or carried forward surplus for the previous year;
    - (iv) any carried forward surplus for the assessment year.
- (3) A liable entity is liable to pay, by way of penalty, penalty charge if:
- (a) the liable entity is liable to pay large-scale generation shortfall charge for a year (the *assessment 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)(b) that were specified in an energy acquisition statement for the assessment year.
- (4) Subject to subsection (5), the penalty charge payable under subsection (1), (2) or (3) is equal to double the amount of large-scale generation shortfall charge payable by the entity for the assessment year.
- (5) If a liable entity has already become liable to penalty charge under this section because of a particular refusal or failure that relates to a year, the liable entity is not liable to any further amount of penalty charge under this section because of any other refusal or failure that relates to the same year.

**99A Penalty charge for failure to provide statements or information relevant to small-scale technology shortfall charge**

- (1) A liable entity, other than a government body, is liable to pay, by way of penalty, penalty charge if the liable entity refuses or fails to provide, when and as required under this Act any of the following for a year (the *assessment year*):
- (a) an energy acquisition statement for the assessment year;
  - (b) a small-scale technology shortfall statement for the assessment year;
  - (c) information relevant to assessing the liable entity's liability to pay small-scale technology shortfall charge for the assessment year.
- Note: If the liable entity refuses or fails to lodge an energy acquisition statement, the liable entity is also liable to penalty charge under section 99.
- (2) A liable entity is liable to pay, by way of penalty, penalty charge if:
- (a) the liable entity is liable to pay small-scale technology shortfall charge for a year (the *assessment year*); and
  - (b) the liable entity fails to keep a record in relation to the assessment 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 assessment year:
    - (i) the amount of electricity acquired under relevant acquisitions during the assessment year;
    - (ii) the value, in MWh, of small-scale technology certificates surrendered for the quarters of the assessment year.
- (3) A liable entity is liable to pay, by way of penalty, penalty charge if:
- (a) the liable entity is liable to pay small-scale technology shortfall charge for a year (the *assessment 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)(b) that were specified in an energy acquisition statement for the assessment year.
- (4) Subject to subsection (5), the penalty charge payable under subsection (1), (2) or (3) is equal to double the amount of

small-scale technology shortfall charge payable by the entity for the assessment year.

- (5) If a liable entity has already become liable to penalty charge under this section because of a particular refusal or failure that relates to a year, the liable entity is not liable to any further amount of penalty charge under this section because of any other refusal or failure that relates to the same year.

## 90 Section 134

Repeal the section, substitute:

### 134 Regulator may publish certain information

*Information relating to large-scale generation shortfall charge*

- (1) The Regulator may publish:
- (a) a list of each liable entity that has a large-scale generation shortfall for a particular year; and
  - (b) both of the following:
    - (i) the amount of each liable entity's large-scale generation shortfall for that year;
    - (ii) the proportion of that shortfall relative to the liable entity's required large-scale renewable energy for that year; and
  - (c) the total of the large-scale generation shortfalls for that year.

*Information relating to small-scale technology shortfall charge*

- (2) The Regulator may publish:
- (a) a list of each liable entity that has a small-scale technology shortfall for a particular year; and
  - (b) the amount of each liable entity's small-scale technology shortfall for that year; and
  - (c) the total of the small-scale technology shortfalls for that year.

## 91 Paragraph 135(c)

Repeal the paragraph, substitute:

- (c) the register of large-scale generation certificates;
- (ca) the register of small-scale technology certificates;

**92 Division 4 of Part 13 (heading)**

Repeal the heading, substitute:

**Division 4—The register of large-scale generation certificates**

**93 Section 140**

Omit “register of renewable energy certificates”, substitute “register of large-scale generation certificates”.

Note: The heading to section 140 is altered by omitting “**register of renewable energy certificates**” and substituting “**register of large-scale generation certificates**”.

**94 Paragraph 140(a)**

Omit “renewable energy certificate”, substitute “large-scale generation certificate”.

**95 Subsection 141(3)**

Repeal the subsection, substitute:

- (3) The Regulator must ensure that the register is kept up-to-date.

**96 After Division 4 of Part 13**

Insert:

**Division 4A—The register of small-scale technology certificates**

**141AA Contents of register of small-scale technology certificates**

The register of small-scale technology certificates is to contain:

- (a) the unique identification code of each valid small-scale technology certificate; and
- (b) the year in which the certificate was created; and
- (c) if the certificate was created otherwise than by the Regulator under section 30P:
  - (i) the name of the person who created the certificate; and
  - (ii) a statement that the certificate was created in relation to a solar water heater other than an air source heat pump water heater, or that it was created in relation to an air

- source heat pump water heater, or that it was created in relation to a small generation unit (as appropriate); and
- (d) if the certificate was created by the Regulator under section 30P—a statement to that effect; and
  - (e) the name of the current registered owner, and each previous registered owner, of each certificate; and
  - (f) any other information that the Regulator considers appropriate.

#### **141AB 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) The Regulator must ensure that the register is kept up-to-date.

#### **97 Paragraph 156(2)(a)**

Omit “41, 48,”, substitute “38AF, 38AG, 41, 48, 48B,”.

#### **98 Paragraph 160(2)(c)**

Omit “certificates”, substitute “large-scale generation certificates and small-scale technology certificates”.

#### **99 Section 162**

Repeal the section, substitute:

#### **162 Biennial review of operation of renewable energy legislation**

- (1) The Minister must cause an independent review of the following to be undertaken as soon as practicable after 30 June 2012 and every 2 years after that date:
  - (a) the operation of this Act and the scheme constituted by this Act;
  - (b) the operation of the regulations;
  - (c) the operation of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*;
  - (d) the operation of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*;
  - (e) the diversity of renewable energy access to the scheme constituted by this Act, to be considered with reference to a



cost benefit analysis of the environmental and economic impact of that access.

- (2) A review must be undertaken by a person who, in the Minister's opinion, possesses appropriate qualifications to undertake the review.
- (3) The person undertaking a review must give the Minister a written report of the review before 31 December in that year.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.
- (5) The report is not a legislative instrument.

## Part 2—Other amendments

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

#### 99A Subsection 5(1)

Insert:

*air source heat pump water heater* means a device that uses a vapour compression cycle incorporating a compressor, an evaporator that collects energy from the latent and sensible heat of the atmosphere and a condenser that delivers heat either directly or indirectly to a hot water storage container.

#### 100 Subsection 5(1) (definition of *Australian Greenhouse Office*)

Repeal the definition.

#### 101 Subsection 5(1)

Insert:

*civil penalty order* has the meaning given by subsection 154B(2).

#### 102 Subsection 5(1)

Insert:

*civil penalty provision* means a provision declared by this Act to be a civil penalty provision.

#### 103 Subsection 5(1)

Insert:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to do an act.

#### 104 Subsection 5(1)

Insert:

*executive officer* of a body corporate means:

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- (a) a director of the body corporate; or
- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

**105 Subsection 5(1)**

Insert:

*Federal Court* means the Federal Court of Australia.

**106 Subsection 5(1) (definition of *Head of the Australian Greenhouse Office*)**

Repeal the definition.

**107 Subsection 5(1) (definition of *offence against this Act*)**

Repeal the definition, substitute:

*offence against this Act* includes:

- (a) an offence against the regulations; and
- (b) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to this Act or the regulations.

**108 Subsection 6(2)**

Repeal the subsection, substitute:

- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

**109 Subsection 13(2A)**

Omit “30 June 2010”, substitute “the day prescribed by the regulations for the purpose of this subsection”.

**110 Subsection 15A(3)**

Omit “on or before 31 December 2010”, substitute “before the end of the period of 6 months starting on the day referred to in subsection 13(2A)”.

**111 Subparagraph 17A(1)(a)(i)**

Repeal the subparagraph, substitute:

- (i) starting on the day prescribed by the regulations for the purpose of this subparagraph; and

**112 At the end of section 17A**

Add:

- (4) If the regulations do not prescribe a day for the purpose of subparagraph (1)(a)(i), no waste coal mine gas is eligible WCMG.

**113 Section 19**

Omit all the words from and including “and before”, substitute:

and before:

- (a) the end of the year after the year of generation; or
- (b) any later day allowed by the Regulator.

**114 Section 19 (note)**

Repeal the note, substitute:

Note: For offences and civil penalties related to the creation of certificates, see Subdivision C.

**115 At the end of subsection 21(1)**

Add:

Note: For offences and civil penalties related to the creation of certificates, see Subdivision C.

**116 After subsection 21(1)**

Insert:

(1A) The regulations:

- (a) may provide that certificates cannot be created in relation to a solar water heater unless particular conditions are satisfied in relation to the solar water heater or its installation; and
- (b) without limiting paragraph (a), may:
  - (i) require information or documents to be given to the Regulator in relation to a solar water heater or its installation; and

- (ii) provide that information or documents required to be given to the Regulator must be verified by statutory declaration.

#### **116A At the end of section 21**

Add:

- (4) If a solar water heater is an air source heat pump water heater, certificates may only be created for the installation of such an air source heat pump water heater if it has a volumetric capacity of not more than 425 litres.

#### **117 Subsection 22(2)**

Repeal the subsection, substitute:

- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may:
  - (a) provide for the Regulator to determine the number of certificates that may be created for a particular installation of a solar water heater; and
  - (b) prescribe requirements to be complied with in relation to the making of such a determination, which may include a requirement that a determination is to be made in accordance with a legislative instrument made by the Regulator; and
  - (c) prescribe other matters relating to such a determination or legislative instrument.

#### **118 At the end of subsection 23A(1)**

Add:

Note: For offences and civil penalties related to the creation of certificates, see Subdivision C.

#### **119 After subsection 23A(1)**

Insert:

- (1A) The regulations:
  - (a) may provide that certificates cannot be created in relation to a small generation unit unless particular conditions are satisfied in relation to the small generation unit or its installation; and
  - (b) without limiting paragraph (a), may:

- (i) require information or documents to be given to the Regulator in relation to a small generation unit or its installation; and
  - (ii) provide that information or documents required to be given to the Regulator must be verified by statutory declaration.
- (1B) To avoid doubt, regulations under subsection (1A) may impose conditions to be complied with in relation to a small generation unit after its installation.

Note: For example, conditions may be imposed so that certificates cannot be created in relation to a small generation unit unless the unit remains functional.

### **119A After section 23A**

Insert:

#### **23AAA Regulations to establish scheme for inspection of new installations of small generation units**

- (1) The regulations must establish a scheme for the inspection of the installation of small generation units for which certificates have been created.
- (2) Without limiting subsection (1), regulations made under that subsection must provide, for small generation units installed after the commencement of this section:
  - (a) that each year a statistically significant selection of small generation units that were installed during that year must be inspected for conformance with Australian standards and any other standards or requirements relevant to the creation of certificates in relation to that small generation unit;
  - (b) that an inspection of a small generation unit is to be carried out by a person or organisation who:
    - (i) is independent of the person or organisation who designed and/or installed that small generation unit; and
    - (ii) does not have a conflict of interest in relation to that small generation unit or administration of the matters being inspected;
  - (c) for the transfer of information, about any failures to comply with standards or other requirements relevant to the creation

of certificates in relation to small generation units, to State, Territory or Commonwealth bodies with responsibility for the enforcement and administration of those standards or requirements.

**119B Subsection 23B(2)**

After “multiplied by”, insert “a number that does not exceed”.

**119C Subsection 23B(3)**

After “However,”, insert “subject to subsections (3A) and (3C),”.

**119D After subsection 23B(3)**

Insert:

(3A) However, in the case of an off-grid small generation unit, the regulations must provide for a number of certificates to be multiplied only if the certificates relate to the first 20kW of the rated power output of the unit.

(3B) In subsection (3A):

*off-grid small generation unit* means:

- (a) a small generation unit at least 1 kilometre from the nearest main-grid line; or
- (b) in the case of a small generation unit less than 1 kilometre from a main-grid line—the owner has provided written evidence from the local network service provider that the total cost of connecting the unit to the main-grid is more than \$30,000, making it uneconomic to connect the unit to the main-grid.

(3C) The regulations must provide that the number of certificates that may be created under subsection (3A) as a result of a multiplier in subsection (2) for a period specified in column 1 of an item in the following table must not exceed the number specified in column 2 of the item.

**Schedule 1** Amendments  
**Part 2** Other amendments

---

<b>Maximum number of certificates created under subsection (3A)</b>		
<b>Item</b>	<b>Column 1 Period</b>	<b>Column 2 Number</b>
1	1 July 2010 to 30 June 2011	250,000
2	1 July 2011 to 30 June 2012	250,000
3	1 July 2012 to 30 June 2013	200,000
4	1 July 2013 to 30 June 2014	150,000
5	1 July 2014 to 30 June 2015	100,000

**119E Subsection 23B(3)**

Omit “the first 1.5kW”, substitute “not more than the first 3kW”.

**120 At the end of Subdivision C of Division 4 of Part 2**

Add:

**24A Improper creation of certificates—civil penalty**

- (1) A person must not create a certificate if the person is not entitled to create the certificate.

*Ancillary contraventions*

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).

*Civil penalty provisions*

- (3) Subsections (1) and (2) are *civil penalty provisions*.

Note: Division 1 of Part 15A provides for pecuniary penalties for breaches of civil penalty provisions.



**24B False etc. information resulting in improper creation of certificates under Subdivision B or BA—civil penalty**

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the person provides information to another person (the *second person*) in relation to, or in relation to the installation of, a solar water heater or a small generation unit; and
  - (b) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) omits a matter or thing without which the information is misleading in a material particular; and
  - (c) the second person relies on the information to create certificates under Subdivision B or BA in relation to the solar water heater or small generation unit; and
  - (d) it could reasonably be expected that the second person would so rely on the information; and
  - (e) the second person's reliance on the information results in the second person creating certificates under that Subdivision, in relation to the solar water heater or small generation unit, that the second person is not entitled to create.

*Ancillary contraventions*

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).

*Civil penalty provisions*

- (3) Subsections (1) and (2) are *civil penalty provisions*.

Note: Division 1 of Part 15A provides for pecuniary penalties for breaches of civil penalty provisions.

**121 Subsection 30A(1)**

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**Schedule 1 Amendments**  
**Part 2 Other amendments**

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Omit “or the regulations”, substitute “or has contravened a civil penalty provision”.

Note: The heading to subsection 30A(1) is altered by adding at the end “*or civil penalty provision contravened*”.

**122 Section 40**

Omit all the words from and including “The” to and including “table:”, substitute:

- (1) Subject to subsections (2) to (4), the *required GWh of renewable source electricity* for a year is as set out in the following table:

**123 Section 40 (table items dealing with 2011 to 2030 (inclusive))**

Repeal the items, substitute:

2011	10400
2012	12300
2013	14200
2014	16100
2015	18000
2016	22600
2017	27200
2018	31800
2019	36400
2020	41000
2021	41000
2022	41000
2023	41000
2024	41000
2025	41000
2026	41000
2027	41000
2028	41000
2029	41000
2030	41000

**124 At the end of section 40**

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Add:

*Adjustment of targets according to number of valid certificates as at the end of 2010*

- (1A) If, as at the end of the year 2010, the total value, in GWh, of valid renewable energy certificates exceeds 34,500, the table in subsection (1) has effect in accordance with the following paragraphs:
- (a) the number of GWh specified in the table for each of the following years is taken to be increased by half of the excess:
    - (i) the year 2012;
    - (ii) the year 2013;
  - (b) the number of GWh specified in the table for each of the following years is taken to be reduced by one quarter of the excess:
    - (i) the year 2016;
    - (ii) the year 2017;
    - (iii) the year 2018;
    - (iv) the year 2019.
- (1B) As soon as practicable after the end of the year 2010, the Regulator must publish on its website the total value referred to in subsection (1A).

*Adjustment of targets if there is a WCMG start day*

- (2) If the regulations prescribe a day (the **WCMG start day**) for the purpose of subparagraph 17A(1)(a)(i), the table in subsection (1) has effect (after first taking account of subsection (1A)) in accordance with subsections (3) and (4).
- (3) The number of GWh specified in the table for the year that includes the WCMG start day is taken to be increased by the amount worked out using the formula:

$$850 \text{ GWh} \times \frac{\text{Remaining days in the year}}{\text{Number of days in the year}}$$

where:

*remaining days in the year* means the number of days in the year after the WCMG start day.

- (4) The number of GWh specified in the table in subsection (1) for each later year, other than any year after 2020, is taken to be increased by 850 GWh.
- (5) If, for the year in which the WCMG start day occurs, regulations were made before that day specifying the renewable power percentage for the year, the validity of those regulations is not affected by the fact that the required GWh of renewable source electricity for the year changed, because of subsection (3), after the regulations were made.

#### **124B After Division 2 of Part 4**

Insert:

### **Division 2AA—Emerging renewable energy technologies**

#### **40AB Inclusion of emerging renewable energy technologies**

The Minister may, by legislative instrument, determine that an emerging renewable energy technology be included as a renewable energy technology for the purpose of the scheme constituted by this Act.

#### **125 After paragraph 46A(2)(b)**

Insert:

- (ba) be accompanied by any documents required by the regulations; and
- (bb) be accompanied by any report required by the regulations; and

#### **126 Subsection 46B(1)**

After “Regulator must”, insert “(subject to section 46E)”.

#### **127 At the end of Division 1A of Part 5**

Add:

#### **46D Minister may obtain information from corporation**

- (1) This section applies to a corporation to which paragraph 51(xx) of the Constitution applies if:
  - (a) a person (who may be the corporation) has:
    - (i) indicated to the Commonwealth that the person believes that an activity should be made an emissions-intensive trade-exposed activity; and
    - (ii) provided information to the Commonwealth in support of that belief that satisfies any requirements of regulations made for the purpose of this paragraph; and
  - (b) that activity is not an emissions-intensive trade-exposed activity; and
  - (c) the Minister believes on reasonable grounds that the corporation has information that relates to the activity and that is likely to assist the Commonwealth with either or both of the following:
    - (i) deciding whether the activity should be made an emissions-intensive trade-exposed activity;
    - (ii) deciding how any partial exemption in relation to the activity should be calculated (if the activity is made an emissions-intensive trade-exposed activity).

##### *Request for information and report*

- (2) The Minister may, by written notice given to the corporation:
  - (a) request the corporation to give to the Minister, within the period and in the manner and form specified in the notice, any such information; and
  - (b) request that the information be accompanied by a report specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 60 days after the notice is given.

##### *Request for information*

- (4) The Minister may, by written notice given to the corporation, request the corporation to give to the Minister, within the period and in the manner and form specified in the notice, any such information.

- (5) A period specified under subsection (4) must not be shorter than 30 days after the notice is given.

**46E No partial exemption certificates to be issued to corporation for 5 years if Minister’s request not complied with**

- (1) This section applies if:
- (a) a corporation is given a request under subsection 46D(2) or (4) at a particular time (the *request time*); and
  - (b) the corporation is capable of complying with the request; and
  - (c) the corporation refuses or fails to comply with the request; and
  - (d) the Minister notifies the Regulator, in writing, that the Minister considers that the non-compliance is significant.
- (2) No partial exemption certificates are to be issued to the corporation in relation to the activity for:
- (a) the first year that begins after the request time; and
  - (b) any of the next 4 years after that year.

**46F Disclosure of information to the Regulator**

*Scope*

- (1) This section applies to information obtained under section 46D.

*Disclosure*

- (2) The Minister may disclose the information to the Regulator for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, of the Regulator under this Act and the regulations.

*Other powers of disclosure not limited*

- (3) This section does not, by implication, limit the Minister’s powers to disclose the information to a person other than the Regulator.

**128 Subsection 72(1)**

After “renewable energy shortfall”, insert “charge”.

**129 At the end of paragraph 73(1)(d)**

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Add “, or following the making of a civil penalty order against the debtor”.

**130 Subparagraph 111(1)(h)(ii)**

After “*Crimes Act 1914*”, insert “, or of the contravention of a civil penalty provision”.

**131 Subsection 125B(2)**

After “criminal proceedings”, insert “, or proceedings for a civil penalty order,”.

**132 Paragraph 132(1)(a)**

Repeal the paragraph, substitute:

- (a) the Minister, the Secretary of the Department or an officer of the Department authorised by the Secretary for the purpose of this Part; or

**133 Paragraphs 154(1)(a) and (3)(a)**

After “this Act”, insert “(other than section 46D)”.

**134 After Part 15**

Insert:

**Part 15A—Civil penalties**

**Division 1—Civil penalty orders**

**154A Definitions**

- (1) In this Division:

***Court*** means:

- (a) the Federal Court; or
- (b) the Federal Magistrates Court; or
- (c) the Supreme Court of a State or Territory; or
- (d) a District Court or County Court of a State.

***penalty unit*** has the meaning given by section 4AA of the *Crimes Act 1914*.

- (2) The jurisdiction conferred by this Division on the Supreme Court of a Territory is conferred to the extent that the Constitution permits.

### 154B Civil penalty orders

*Court may make civil penalty order*

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a ***civil penalty order***.

*Amount of penalty for contravention of subsection 24A(1)*

- (3) The pecuniary penalty for a contravention by an individual of subsection 24A(1) must not be more than the greater of:
- (a) 1 penalty unit for each renewable energy certificate to which the contravention relates, up to a maximum of 10,000 penalty units; and
  - (b) 100 penalty units.
- (4) The pecuniary penalty for a contravention by a body corporate of subsection 24A(1) must not be more than the greater of:
- (a) 5 penalty units for each renewable energy certificate to which the contravention relates, up to a maximum of 50,000 penalty units; and
  - (b) 500 penalty units.

*Amount of penalty for contravention of subsection 154N(1)*

- (5) The pecuniary penalty for a contravention, by an executive officer of a body corporate, of subsection 154N(1) must not be more than the maximum pecuniary penalty that could be imposed on the officer under this section if the officer had committed the contravention referred to in paragraph 154N(1)(a).



*Amount of penalty for contravention of any other civil penalty provision*

- (6) The pecuniary penalty for a contravention by a person of a civil penalty provision, other than subsection 24A(1) or 154N(1), must not be more than:
- (a) if the person is an individual—100 penalty units; or
  - (b) if the person is a body corporate—500 penalty units.

*Matters to be taken into account by Court in determining amount of penalty*

- (7) In determining the pecuniary penalty, in accordance with this section, for a contravention by a person of a civil penalty provision, the Court may have regard to all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and
  - (e) the extent to which the person has cooperated with the authorities; and
  - (f) if the person is a body corporate:
    - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
    - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
    - (iii) whether the body corporate had a corporate culture conducive to compliance; and
  - (g) if the contravention is of subsection 24A(1)—whether the person has surrendered any renewable energy certificates under section 28A to compensate for the contravention.

*Civil enforcement of penalty*

- (8) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to

recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

**154C Who may apply for a civil penalty order**

- (1) Only the Regulator may apply for a civil penalty order.
- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

**154D Two or more proceedings may be heard together**

The Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**154E Time limit for application for an order**

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

**154F Civil evidence and procedure rules for civil penalty orders**

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**154G Civil proceedings after criminal proceedings**

The Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**154H Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

#### **154J Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

#### **154K Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings**

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

#### **154L Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

### **154M State of mind**

#### *Scope*

- (1) This section applies to proceedings for a civil penalty order against a person for a contravention of any of the following civil penalty provisions:
- (a) subsection 24A(1);
  - (b) subsection 24B(1).

#### *State of mind*

- (2) In the proceedings, it is not necessary to prove:
- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (3) Subsection (2) does not affect the operation of section 154L.

## **Division 2—Liability of executive officers of bodies corporate**

### **154N Civil penalties for executive officers of bodies corporate**

- (1) If:
-

- (a) a body corporate contravenes a civil penalty provision; and
  - (b) an executive officer of the body corporate knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention;
- the officer contravenes this subsection.
- (2) For the purposes of subsection (1), the officer is *reckless* as to whether the contravention would occur if:
- (a) the officer is aware of a substantial risk that the contravention would occur; and
  - (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.
- (3) For the purposes of subsection (1), the officer is *negligent* as to whether the contravention would occur if the officer's conduct involves:
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
  - (b) such a high risk that the contravention would occur;
- that the conduct merits the imposition of a pecuniary penalty.

*Civil penalty provision*

- (4) Subsection (1) is a *civil penalty provision*.

Note: Division 1 provides for pecuniary penalties for breaches of civil penalty provisions.

### **154P Reasonable steps to prevent contravention**

- (1) For the purposes of section 154N, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):

- (i) that the body corporate arranges regular professional assessments of the body corporate's compliance with civil penalty provisions;
  - (ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
  - (iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with civil penalty provisions in so far as those requirements affect the employees, agents or contractors concerned; and
- (b) what action (if any) the officer took when he or she became aware of the contravention.

(2) This section does not limit section 154N.

## **Part 15B—Other remedies**

### **Division 1—Enforceable undertakings**

#### **154Q Acceptance of undertakings**

- (1) The Regulator may accept any of the following undertakings:
- (a) a written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the associated provisions, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the associated provisions, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act, the regulations or the associated provisions, or is unlikely to contravene this Act, the regulations or the associated provisions, in the future;
  - (d) a written undertaking given by a person that the person will surrender one or more renewable energy certificates under section 28A, to compensate for the creation of one or more certificates that the person was not entitled to create.
- (2) The undertaking must be expressed to be an undertaking under this section.

- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Regulator.
- (4) The Regulator may, by written notice given to the person, cancel the undertaking.
- (5) The Regulator must publish the undertaking on its website.
- (6) In this section:
  - associated provisions* means sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and 137.2 of the *Criminal Code*, in so far as those sections relate to:
    - (a) this Act; or
    - (b) the regulations.

### **154R Enforcement of undertakings**

- (1) If:
  - (a) a person has given an undertaking under section 154Q; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the Regulator considers that the person has breached the undertaking;the Regulator may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Regulator, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

## Division 2—Injunctions

### 154S Injunctions

- (1) If a person has engaged, is engaging, or is about to engage in any conduct that is or would be:
  - (a) an offence against this Act or the regulations; or
  - (b) a contravention of a civil penalty provision;the Federal Court may, on the application of the Regulator or any other aggrieved person, grant an injunction restraining the person from engaging in the conduct.
- (2) If:
  - (a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and
  - (b) the refusal or failure is, or would be:
    - (i) an offence against this Act or the regulations; or
    - (ii) a contravention of a civil penalty provision;the Federal Court may, on the application of the Regulator or any other aggrieved person, grant an injunction requiring the person to do the thing.
- (3) The power of the Federal Court to grant an injunction may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.
- (4) The Federal Court may discharge or vary an injunction granted under this section.
- (5) The Federal Court may grant an interim injunction pending a determination of an application under subsection (1).
- (6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Federal Court.

### 135 Paragraph 156(2)(b)

Omit “and 14”, substitute “, 14, 15A and 15B”.

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### **136 After section 160**

Insert:

#### **160A Prescribing matters by reference to other instruments**

- (1) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.
- (2) Subsection (1) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.
- (3) If the regulations make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.
- (4) Subsection (3) does not apply if the publication would infringe copyright.

#### **160B Administrative decisions under the regulations**

The regulations may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

### ***Renewable Energy (Electricity) Regulations 2001***

#### **138 Paragraph 22ZA(4)(a)**

Repeal the paragraph.

## Schedule 2—Application, saving and transitional provisions

### Part 1—Provisions relating to main amendments

#### 1 Definitions

In this Part:

*amended REE Act* means the REE Act as in force after the reform commencement.

*old REE Act* means the REE Act as in force immediately before the reform commencement.

*REE Act* means the *Renewable Energy (Electricity) Act 2000*.

*reform commencement* means the commencement of Part 1 of Schedule 1.

*reform transitional provisions* means:

- (a) the provisions of this Part; and
- (b) any provisions of regulations made under Part 3 of this Schedule that relate to any of the amendments and repeals made by Part 1 of Schedule 1.

*Schedule 1* means Schedule 1 to this Act.

#### 2 Application of amendments relating to liability to charge

The amendments made by items 59 to 89 of Schedule 1 apply in relation to liability to charge under the REE Act, and related matters, for the year starting on the reform commencement and later years.

#### 3 Application of amendments relating to creation of certificates

Subject to the other reform transitional provisions, the amendments made by items 39 to 48 of Schedule 1 apply in relation to the creation of certificates on or after the reform commencement.

#### 4 Certificates created before the reform commencement

- (1) For the purposes of the amended REE Act, renewable energy certificates created under the REE Act before the reform commencement are taken to be large-scale generation certificates

(including certificates that were created in relation to solar water heaters and small generation units).

- (2) This item does not apply to a certificate that ceased to be valid before the reform commencement.

### **5 Certificates created after reform commencement for small-scale technology installed before that commencement**

- (1) This item applies in relation to a solar water heater or small generation unit if:
- (a) the heater or unit was installed, or is taken to have been installed, before the reform commencement; and
  - (b) the period (the *certificate creation period*) within which, under old REE Act (and regulations under that Act), certificates could be created in relation to the heater or unit had not ended by that commencement.
- (2) For the remainder of the certificate creation period, Subdivision B or BA (as the case requires) of Division 4 of Part 2 of the amended REE Act applies in relation to the heater or the unit. However, certificates created in relation to the heater or unit are taken to be large-scale generation certificates.

### **6 References in contracts to renewable energy certificates**

- (1) This item applies to a contract that was entered into before this Act received the Royal Assent.
- (2) Subject to subitem (3), a reference in the contract to a renewable energy certificate, or to a certificate, within the meaning of the old REE Act is taken, on and after the reform commencement, to be a reference to a large-scale generation certificate within the meaning of the amended REE Act (including a certificate that is taken to be a large-scale generation certificate by any of the other reform transitional provisions).
- (3) Subitem (2) has effect subject to:
- (a) any contrary intention expressed in the contract; and
  - (b) any agreement to a contrary effect by the parties to the contract; and
  - (c) the regulations.

- (4) The fact that a contract refers to certificates as being created in relation to solar water heaters or small generation units is not, by itself, a contrary intention for the purpose of subitem (3).

## **7 Contracts for the supply of certificates relating to small-scale technology**

- (1) This item applies in relation to a contract if:
- (a) the contract is or was entered into on or before 25 February 2010; and
  - (b) the contract is in writing; and
  - (c) the contract requires one of the parties to the contract to transfer renewable energy certificates (however described) to another party on or after the reform commencement; and
  - (d) because of item 6, the renewable energy certificates that are required to be transferred under the contract are large-scale generation certificates; and
  - (e) either:
    - (i) the contract refers to the certificates as being created in relation to solar water heaters or small generation units; or
    - (ii) it is clear from the context of the contract that the parties expect the certificates to be created in relation to solar water heaters or small generation units; and
  - (f) the contract does not solely relate to certificates that either:
    - (i) have been or will be created before the reform commencement; or
    - (ii) will be created after the reform commencement in relation to solar water heaters or small generation units that were installed before the reform commencement.
- (2) The regulations may provide for some or all of the certificates, when they are transferred under the contract, to become, and to be taken to have been, large-scale generation certificates.
- (3) Without limiting subitem (2), the regulations may do any of the following:
- (a) require information or documents to be given to the Regulator in relation to the contract or the certificates;
  - (b) provide that information or documents required to be given to the Regulator must be verified by statutory declaration;

- (c) provide for the Regulator to make consequential changes to the register of small-scale technology certificates and the register of large-scale generation certificates.

## **8 The register of renewable energy certificates**

- (1) The register of renewable energy certificates under the old REE Act continues, on and after the reform commencement, as the register of large-scale generation certificates under the amended REE Act.
- (2) The Regulator may make any changes to that register that the Regulator considers appropriate because of any of the following:
  - (a) the change of name of the register;
  - (b) the fact that the certificates included in the register are, under the amended REE Act, known as large-scale generation certificates;
  - (c) the fact that, because of the reform transitional provisions, the register will also include certificates created in relation to some solar water heaters and small generation units.

## **9 No effect on time of creation or on number of certificates that can be created**

Unless a contrary intention appears, nothing in the reform transitional provisions:

- (a) increases the number of certificates that a person may create;  
or
- (b) changes the time at which a certificate was created before the reform commencement; or
- (c) affects the question whether a certificate created before the reform commencement is valid.

## **10 Application of section 40C**

Section 40C of the amended REE Act applies in relation to energy acquisition statements lodged, after the reform commencement, for the year that commenced on 1 January 2010 and later years.

## **Part 2—Provisions relating to other amendments**

### **11 Application of amendment made by item 113 of Schedule 1**

The amendment made by item 113 of Schedule 1 to this Act applies to the year of generation that started on 1 January 2008 and later years of generation.

### **12 Saving provision relating to amendment made by item 117 of Schedule 1**

Despite the amendment made by item 117 of Schedule 1 to this Act, regulations in force for the purpose of subsection 22(1) of the *Renewable Energy (Electricity) Act 2000* immediately before the commencement of that item continue in force, after that commencement, until the first regulations made under that subsection after that commencement take effect.

### **13 Application of amendment made by item 134 of Schedule 1**

Neither of the following can be made against a person in relation to conduct, or a refusal or failure, that occurred before the commencement of item 134 of Schedule 1 to this Act:

- (a) a civil penalty order under section 154B of the *Renewable Energy (Electricity) Act 2000* as in force after the commencement of that item;
- (b) an injunction under section 154S of that Act as so in force.

## **Part 3—Regulations**

### **14 Regulations may deal with transitional etc. matters**

- (1) The regulations may include provisions dealing with matters of a transitional, saving or application nature relating to any of the amendments and repeals made by this Act.
- (2) Regulations made for the purpose of subitem (1) may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

### **15 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted under this Schedule to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

## Part 4—Other matters

### 16 Compensation for acquisition of property

- (1) If the amendments made by this Act, or the provisions of this Schedule or the regulations, would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:  
*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.  
*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

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*[Minister's second reading speech made in—  
House of Representatives on 12 May 2010  
Senate on 15 June 2010]*