

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 380

Issued By Authority Of The Minister For Climate Change And Water

Renewable Energy (Electricity) Amendment Act 2009

*Renewable Energy (Electricity) Amendment (Transitional Provisions)
Regulations 2009*

The *Renewable Energy (Electricity) Act 2000* (the Act) and the *Renewable Energy (Electricity) Amendment Act 2009* (the Amendment Act) establish a Renewable Energy Target (RET) scheme to encourage additional electricity generation from eligible energy sources. The RET creates a guaranteed market for 12,500 gigawatt-hours (GWh) of renewable energy in 2010 rising to 45,000 GWh in 2020, staying at that level until 2030. The RET scheme is designed to ensure that 20 per cent of Australia's electricity supply is generated from renewable sources by 2020.

Item 9 of Schedule 3 to the Amendment Act provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by this Part 2 of the Amendment Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Part.

Under the Act, wholesale purchasers of electricity ('liable parties') are required to meet a share of the renewable energy target in proportion to their share of the national wholesale electricity market. The Act provides for the creation of Renewable Energy Certificates (RECs) by generators of renewable energy. One REC generally represents one megawatt-hour (MWh) of electricity from eligible energy sources.

The *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) provide an administrative framework to implement the Act in relation to power station accreditation, eligibility requirements for renewable energy sources, eligibility requirements for solar water heaters and small generation units, and calculation methods for determining the number of RECs.

The Regulations support the provisions of the Amendment Act that deal with the transition of State legislated renewable energy target schemes into the expanded national RET scheme.

Specifically, the Regulations prescribe matters empowered by the Amendment Act relating to the following:

- the written notice to be provided by a state regulator to the Commonwealth regulator to enable state certificates to be converted to renewable energy certificates under the RET scheme;
- the transfer of registered persons from a State scheme to the Commonwealth scheme, including waiver of fees for registration; and

- the number of renewable energy certificates that may be created for small generation unit installations that would be entitled to create multiple tranches of deemed state certificates under a state scheme;

Consultations were undertaken with state governments, industry and community stakeholders during development of the RET scheme design through the Council of Australian Governments, including arrangements to roll existing state schemes into the expanded national scheme.

Details of the Regulations are set out in the Attachment.

The Amendment Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence as follows:

- for matters relating to a written notice to be provided by a state regulator to the Commonwealth regulator to enable state certificates to be converted to renewable energy certificates under the RET scheme — on the day that item 6 of Schedule 3 to the Amendment Act comes into operation, which is expected to be before May 2010; and
- for matters relating to the transfer of registered persons from a State scheme to the Commonwealth scheme, including waiver of fees for registration; and relating to the number of renewable energy certificates that may be created for small generation unit installations that would be entitled to create multiple tranches of deemed state certificates under a state scheme — on 1 February 2010.

Authority: Item 9 of Schedule 3 to the
Renewable Energy (Electricity)
Amendment Act 2009

Details of the *Renewable Energy (Electricity) Amendment (Transitional Provisions) Regulations 2009*

The details of the Regulations are as follows:

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Renewable Energy (Electricity) Amendment (Transitional Provisions) Regulations 2009*.

Regulation 2 – Commencement

This regulation provides for the proposed Regulations to commence as follows:

- (a) regulations 1, 2 and 3 — on the day after the Regulations are registered on the Federal Register of Legislative Instruments.
- (b) regulations 4 and 5 and Schedule 1 — on the day that item 6 of Schedule 3 to the *Renewable Energy (Electricity) Amendment Act 2009* (the amendment Act) comes into operation, which is to be on a date to be proclaimed, expected to be before May 2010, or on 7 June 2010 if not proclaimed earlier.
- (c) regulations 6 and 7 — on 1 February 2010.

These commencement dates are consistent with the dates of commencement of the relevant sections of the Amendment Act.

Regulation 3 – Definitions

This item inserts definitions for the purposes of the Regulations into the Principal Regulations as follows:

- ***amendment Act*** to mean the *Renewable Energy (Electricity) Amendment Act 2009*.
- ***Commonwealth certificate*** means a renewable energy certificate (REC).
- ***Commonwealth Regulations*** means the *Renewable Energy (Electricity) Regulations 2001*.

This item also inserts a note to clarify that the following expressions used in the Regulations are defined in Part 2 to Schedule 3 to the Amendment Act:

- Commonwealth Act, which means the *Renewable Energy (Electricity) Act 2000*;
- Commonwealth regulator;
- renewable energy certificate;
- small generation unit;
- State Act;
- State certificate; and
- State regulator.

Regulation 4 - Conversion of State certificates

Several amendments are included in Regulation 4. This item inserts:

- subregulation 4(1) which clarifies this regulation is made for subitem 6(3) of Schedule 3 to the Amendment Act – Conversion of State certificates to renewable energy certificates – and prescribes the form of, and required information to be included in, the written notice a State regulator may give to the Commonwealth regulator to indicate that a State certificate has been surrendered as required for the purpose of conversion to a REC;
- subregulation 4(2) which provides that the notice must be in the form set out in Schedule 1 to the Regulations;
- subregulation 4(3) which provides that the notice must state the following:
 - the number of State certificates surrendered that are covered by the written notice;
 - that the State certificates have been surrendered under a provision of the State Act of the State that substantially corresponds to section 28A of the Commonwealth Act;
 - that the State certificates were surrendered after 1 April 2010; and
 - that the State certificates were surrendered for the purposes of subitems 6(1) and 6(2) of Schedule 3 to the amendment Act, that is, for conversion to RECs;
- subregulation 4(4) which requires that the notice must also include specified information listed in this regulation. It is the policy intent that where possible this information may be provided in similar format to the information contained in the State certificate; and
- subregulation 4(5) which requires that the notice must also contain specified information about a person’s existing or proposed registry account under the Commonwealth Act.

Regulation 5 - Prescribed provisions

This item inserts regulation 5 which provides that for the purposes of paragraph 6(5)(a) of Schedule 3 to the amendment Act, the renewable energy certificate is to be treated as if it had been created under the following provisions of the Commonwealth Act:

- for an accredited power station — section 18;
- for a solar water heater — section 23; or
- for a small generation unit — section 23C.

This item implements conversion of the State certificate to a REC, enabling consistency between the REC created and the State certificate from which it derives, and allows for waiver of any relevant fees for creation of the REC in this case.

Regulation 6 - Transfer of registered person from State scheme to Commonwealth scheme

Several amendments are included in regulation 6. This item would insert:

- subregulation 6(1) which clarifies that regulation 6 is made for the purposes of paragraphs 9(2)(a) and 9(2)(b) of Schedule 3 to the Amendment Act;
- subregulation 6(2) which provides that on or after 1 February 2010 but before 2 November 2010, a State regulator may give written notice to the Commonwealth regulator, stating that a registered person under the State Act has requested the State regulator to notify the Commonwealth regulator that the person wishes to be registered under the Commonwealth Act. The written notice must also include the following information and statements:
 - the person’s registration number and account name under the State Act;
 - whether the person is registered as a person who may create certificates or as a person (also known as an ‘agent’) to whom certificates may be assigned; and
 - the person’s postal address, telephone number, fax number (if any) and email address (if any); and
- subregulation 6(3) which provides that:
 - on receipt of a notice in accordance with the requirements of subregulation 6(1), the person is deemed to have made an application under section 10 of the Commonwealth Act; and the Commonwealth regulator is deemed to have approved the application under section 11 of the Commonwealth Act; and
 - as soon as practicable after receipt of the notice, the Commonwealth regulator must register the person under the Commonwealth Act as a person who may create certificates or as a person to whom certificates may be assigned, as the case requires; and must allocate the person a unique registration number; and must advise the person of the number; and
 - the person is, in relation to the deemed application, exempt from the fee prescribed under the Commonwealth Regulations for the making of applications under section 10 of the Commonwealth Act.

Regulation 7 - Number of renewable energy certificates for small generation units

This item inserts provisions to implement the policy intent to transfer to the Commonwealth RET scheme any entitlement under a State scheme, in respect of a small generation unit for which State certificates have been created, to create blocks of deemed State certificates in the future.

Several amendments are included in regulation 7. This item inserts:

- subregulation 7(1) which clarifies that regulation 7 is made for the purposes of paragraph 9(2)(c) of Schedule 3 to the amendment Act;
- subregulation 7(2) which provides that if a person is registered under the Commonwealth Act under regulation 6; and prior to being so registered the person had created certificates under a State Act in relation to a small generation unit; and at the time of registration was not entitled to create any

further certificates in relation to that small generation unit; then the person is not entitled to create any further certificates for the unit under the Commonwealth Act; and

- subregulation 7(3) provides that if a person is registered under the Commonwealth Act under regulation 6; and prior to being so registered the person had created certificates under a State Act in relation to a small generation unit; and at the time of registration was entitled to create further certificates in relation to that small generation unit; then the person is entitled to create the same number of certificates for the unit under the Commonwealth Act.

SCHEDULE 1 – FORM OF NOTICE OF SURRENDER

In accordance with subitems 6(1) and 6(2) of Schedule 3 to the Amendment Act, a State regulator may give written notice to the Commonwealth regulator that states certificates have been surrendered for the purpose of conversion of the certificates to renewable energy certificates. Subitem 6(3) of Schedule 3 to the amendment Act provides that the written notice must be in the prescribed form and include any information prescribed by the proposed Regulations. Subregulations 4(2) to 4(5) of the Regulations set out the requirements of the form and the information to be included.

This item sets out the required format and content of the form for provision of the written notice of surrender of State certificates for conversion to RECs as prescribed under subregulation 4(2).

This form includes the following components:

- statements by an authorised person on behalf of the State regulator that the State certificates under the notice have been surrendered in accordance with each of the requirements under subitems 6(1) or 6(2) of Schedule 3 to the amendment Act, as is relevant;
- an attachment (Attachment 1) that lists in a table the owners of the State Certificates covered under the notice immediately to their surrender, along with, for each person:
 - whether or not the person has an existing Commonwealth registry account enabling the person to create or be assigned renewable energy certificates;
 - details of the existing or intended Commonwealth registry account; and
 - where an account does not yet exist, the person’s contact details. These details are required in order for the Commonwealth regulator to create the new registry account; and
- an attachment (Attachment 2) which comprises a CD ROM containing a list of all State certificates for conversion, along with the information in respect of each certificate as prescribed under regulation 4 of the Regulations. This information is to be presented as a Microsoft ExcelTM spreadsheet and include the following information:
 - unique identification code;
 - year in which each certificate was created;
 - name of person who created the certificate;

- name of person who owned the certificate immediately before it was surrendered;
- name (where applicable) of each previous registered owner of the certificate;
- name of the eligible renewable energy source of the electricity in respect of which the certificate was created;
- whether the certificate is created in respect of electricity generated by a power station or relates to a small generation unit;
- identification code of the relevant power station or small generation unit;
- locational address of power station or small generation unit; and
- if the certificate is created in respect of electricity generated by a power station, the date of generation of that electricity; or if created in respect of a small generation unit, the date of creation of the certificate.