

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Renewable Energy (Electricity)
Amendment Bill 2009**

No. , 2009

(Climate Change and Water)

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
Schedule 1—Amendment of the Renewable Energy (Electricity) Act 2000		4
Schedule 2—Partial exemptions from liability to charge		7
	<i>Renewable Energy (Electricity) Act 2000</i>	7
Schedule 3—Amendments relating to the transition of State renewable energy target schemes		14
	Part 1—Amendments relating to constitutional corporations	14
	<i>Renewable Energy (Electricity) Act 2000</i>	14
	Part 2—Transitional provisions	15

1 **A Bill for an Act to amend the *Renewable Energy***
2 ***(Electricity) Act 2000, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Renewable Energy (Electricity)*
6 *Amendment Act 2009*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The day on which this Act receives the Royal Assent.	
3. Schedule 2	At the same time as section 3 of the <i>Carbon Pollution Reduction Scheme Act 2009</i> commences.	
4. Schedule 3, Part 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence before 1 July 2011, they commence on that day.	
5. Schedule 3, item 3	The day after this Act receives the Royal Assent.	
6. Schedule 3, item 4	1 February 2010.	1 February 2010
7. Schedule 3, item 5	The day after this Act receives the Royal Assent.	
8. Schedule 3, items 6 and 7	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 9 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
9. Schedule 3, items 8 and 9	1 February 2010.	1 February 2010

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

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

1
2
3
4
5

3 Schedule(s)

Each Act 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.

1
2 **Schedule 1—Amendment of the Renewable**
3 **Energy (Electricity) Act 2000**
4

5 **1 Section 3**

6 Omit:

7 (b) to reduce emissions of greenhouse gases; and

8 Substitute:

9 (b) to reduce emissions of greenhouse gases in the
10 electricity sector; and

11 **2 Section 4**

12 Omit “1 January 2021”, substitute “1 January 2031”.

13 **3 Subsection 5(1)**

14 Insert:

15 *kW* means kilowatt.

16 **4 Section 23B**

17 Before “The number”, insert “(1)”.

18 Note: The following heading to new subsection 23B(1) is inserted “*Number of certificates*”.

19 **5 Section 23B**

20 Before “each”, insert “subject to subsection (2),”.

21 **6 At the end of section 23B**

22 Add:

23 *Regulations may multiply number of certificates*

- 24 (2) The regulations may provide that, in the circumstances specified by
25 the regulations, the number of certificates that may be created in
26 relation to a small generation unit that is installed during a period

specified in column 1 of an item in the following table is to be multiplied by the number specified in column 2 of the item.

Note: The regulations may make provision in relation to the time at which a small generation unit is taken to have been installed (see subsection 23A(2)).

Multiplier for certificates for small generation units		
Item	Column 1 Period	Column 2 Number
1	9 June 2009 to 30 June 2010	5
2	1 July 2010 to 30 June 2011	5
3	1 July 2011 to 30 June 2012	5
4	1 July 2012 to 30 June 2013	4
5	1 July 2013 to 30 June 2014	3
6	1 July 2014 to 30 June 2015	2

(3) However, the regulations may provide for a number of certificates to be multiplied only if the certificates relate to the first 1.5kW of the rated power output of the small generation unit.

(4) For the purposes of this Act, a certificate created in accordance with the regulations as mentioned in subsection (2) has a value of 1 MWh (even though the certificate does not actually represent 1 MWh).

7 Application of amendments of section 23B

The amendments made by items 4 to 6 apply to small generation units installed on or after 9 June 2009.

8 Section 40 (table item dealing with 2010 and later years)

Repeal the item, substitute:

2010	12500
2011	14400
2012	16300
2013	18200
2014	20100
2015	22000
2016	26600

2017	31200
2018	35800
2019	40400
2020	45000
2021	45000
2022	45000
2023	45000
2024	45000
2025	45000
2026	45000
2027	45000
2028	45000
2029	45000
2030	45000

1 **9 Section 162**

2 Repeal the section, substitute:

3 **162 Review of operation of renewable energy legislation**

- 4 (1) The Minister must cause an independent review of the operation of
5 the following to be undertaken as soon as practicable after
6 31 December 2013:
- 7 (a) this Act;
 - 8 (b) the regulations;
 - 9 (c) the *Renewable Energy (Electricity) (Charge) Act 2000*.
- 10 (2) The review must be undertaken by a person who, in the Minister's
11 opinion, possesses appropriate qualifications to undertake the
12 review.
- 13 (3) The person undertaking the review must give the Minister a written
14 report of the review before 30 June 2014.
- 15 (4) The Minister must cause a copy of the report to be tabled in each
16 House of the Parliament within 15 sitting days of that House after
17 the day on which the report is given to the Minister.
- 18 (5) The report is not a legislative instrument.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Schedule 2—Partial exemptions from liability to charge

Renewable Energy (Electricity) Act 2000

1 At the end of section 3

Add:

<p>A partial exemption relating to one or more emissions-intensive trade-exposed activities may be taken into account in working out a liable entity’s renewable energy certificate shortfall for a year. If it is, it will reduce the renewable energy shortfall charge otherwise payable.</p>

2 Subsection 5(1)

Insert:

emissions-intensive trade-exposed activity means an activity that is taken to be an emissions-intensive trade-exposed activity under the emissions-intensive trade-exposed assistance program.

3 Subsection 5(1)

Insert:

emissions-intensive trade-exposed assistance program has the same meaning as in the *Carbon Pollution Reduction Scheme Act 2009*.

4 Subsection 5(1)

Insert:

partial exemption, in relation to a liable entity, means a partial exemption for a year, calculated under section 38B, that is used in working out the entity’s renewable energy certificate shortfall for the year under section 38.

5 Subsection 5(1)

Insert:

1 *partial exemption certificate* means a certificate issued under
2 section 46B.

3 **6 Section 38 (method statement, after step 1)**

4 Insert:

5 Step 1A. Subtract from the total electricity acquired the amount 6 of the liable entity's partial exemption for the year.

7 **7 Section 38 (method statement, step 2)**

8 Omit “the total electricity acquired”, substitute “the result of step 1A”.

9 **8 After Division 1 of Part 4**

10 Insert:

11 **Division 1A—Partial exemption from liability to charge**

12 **38A Object**

13 The object of this Division is to provide a partial exemption from
14 the renewable energy shortfall charge for liable entities in respect
15 of emissions-intensive trade-exposed activities.

16 **38B Amount of partial exemption**

17 The amount of a liable entity's partial exemption for a year is the
18 total, in MWh, of all amounts stated in partial exemption
19 certificates:

- 20 (a) issued in relation to the liable entity for the year; and
21 (b) included in the liable entity's energy acquisition statement
22 for the year.

23 **38C Information about partial exemptions to be published on
24 Authority's website**

25 (1) If a liable entity receives a partial exemption for a year, the
26 Authority must, before 1 October in the following year, publish on
27 its website:

- 28 (a) the name of the entity; and

- 1 (b) the value in dollars, estimated by the Authority, of the
2 amount of the entity's partial exemption for the year; and
3 (c) such other information in relation to the partial exemption as
4 is required by the regulations.
- 5 (2) The Authority must also publish on its website such other
6 information in relation to partial exemptions as is required by the
7 regulations.
- 8 (3) If a liable entity's partial exemption is later reduced or increased,
9 the Authority must correct the information on its website.

10 **9 At the end of subsection 39(3)**

11 Add:

12 ; and (d) all partial exemptions expected to be claimed for the year.

13 **10 Subsection 39(4) (formula)**

14 Repeal the formula, substitute:

15
$$\left(\begin{array}{l} \text{Total electricity} \\ \text{acquired under} \\ \text{relevant acquisitions} \\ \text{during the year, in MWh} \end{array} - \begin{array}{l} \text{Total of all} \\ \text{partial exemptions} \\ \text{for the year,} \\ \text{in MWh} \end{array} \right) \times \begin{array}{l} \text{Renewable} \\ \text{power percentage} \\ \text{for the year} \end{array}$$

16 **11 Part 5 (heading)**

17 Repeal the heading, substitute:

18 **Part 5—Statements, certificates and assessments**

19 **12 After paragraph 44(2)(b)**

20 Insert:

21 (ba) whether the liable entity wishes to claim a partial exemption
22 for the year; and

23 **13 After paragraph 44(3)(a)**

24 Insert:

25 (aa) if the liable entity wishes to claim a partial exemption for the
26 year—include:

27 (i) a copy of each partial exemption certificate issued to the
28 liable entity for the year in relation to an

- 1 emissions-intensive trade-exposed activity carried on by
2 the liable entity during the year; and
3 (ii) for each partial exemption certificate issued to another
4 person in relation to the liable entity for the year and
5 given to the liable entity—a copy of each partial
6 exemption certificate; and

7 **14 After Division 1 of Part 5**

8 Insert:

9 **Division 1A—Partial exemption certificates**

10 **46A Application for partial exemption certificate**

- 11 (1) A prescribed person may apply to the Authority for a certificate (a
12 *partial exemption certificate*) for a year in relation to:
13 (a) an emissions-intensive trade-exposed activity which is, or is
14 to be, carried on at a site during the year; and
15 (b) either:
16 (i) a person who is, or will be, a liable entity from whom
17 electricity is, or will be, acquired for use at the site in
18 the activity; or
19 (ii) if the prescribed person is, or will be, a liable entity—
20 the prescribed person.
21 (2) The application must:
22 (a) be in a form approved by the Authority; and
23 (b) include any information prescribed by the regulations; and
24 (c) be lodged with the Authority in the time and manner
25 prescribed by the regulations; and
26 (d) be signed by or on behalf of the applicant.
27 (3) The regulations may provide that information required to be
28 included in an application must be verified by statutory declaration.

29 **46B Partial exemption certificates**

- 30 (1) If an application is made under section 46A in respect of a year, the
31 Authority must issue the applicant with a partial exemption
32 certificate for the year that sets out, in relation to the liable entity

- 1 mentioned in the application (as referred to in paragraph
2 46A(1)(b)):
- 3 (a) the amount of the liable entity's partial exemption for the
4 year in relation to the emissions-intensive trade-exposed
5 activity and site mentioned in the application, calculated
6 according to a method prescribed by the regulations; and
7 (b) any other information prescribed by the regulations.
- 8 (2) The Authority must issue the certificate within the period
9 prescribed by the regulations.
- 10 (3) A certificate issued under subsection (1) is not a legislative
11 instrument.

12 **46C Amending partial exemption certificates**

- 13 (1) The Authority may amend a partial exemption certificate if the
14 person to whom the certificate is issued requests, in writing, an
15 amendment.
- 16 (2) In deciding whether to amend a partial exemption certificate under
17 subsection (1), the Authority:
- 18 (a) must have regard to the matters prescribed by the regulations;
19 and
20 (b) may have regard to any other matter that it considers
21 relevant.
- 22 (3) The Authority may also amend a partial exemption certificate on
23 its own initiative in circumstances prescribed by the regulations.
- 24 (4) If the Authority refuses to amend a partial exemption certificate
25 upon a request by a person, the Authority must notify the person
26 accordingly.
- 27 Note: An amendment of a partial exemption certificate under this section
28 may also result in the Authority issuing an assessment under
29 section 48 or amending an assessment under section 49.

30 **15 Subsection 66(1) (after table item 5E)**

31 Insert:

32

5F	to amend, or to refuse to amend, a partial exemption	section 46C	the person to whom the certificate is issued.
----	---	-------------	--

certificate

1 **16 Subsection 160(1)**

2 Repeal the subsection, substitute:

3 (1) A person (the *record-keeper*) who:

4 (a) is a registered person; or

5 (b) is a liable entity; or

6 (c) has been issued with a partial exemption certificate;

7 must keep records that record and explain all transactions and other
8 acts engaged in, or required to be engaged in, by the record-keeper
9 under this Act.

10 Note: The heading to section 160 is altered by omitting “**and liable entities**” and substituting
11 “, **liable entities and holders of partial exemption certificates**”.

12 **17 After subsection 160(3)**

13 Insert:

14 (3A) The records kept by a person who has been issued with a partial
15 exemption certificate must include any documents relevant to
16 ascertaining:

17 (a) a matter to which the certificate relates; and

18 (b) any other prescribed matter.

19 **18 Paragraph 160(4)(b)**

20 Repeal the paragraph, substitute:

21 (b) in the case of records kept by a liable entity—so that the
22 liable entity’s liability under this Act can be readily
23 ascertained; and

24 (c) in the case of records kept by a person who has been issued
25 with a partial exemption certificate—so that matters to which
26 the certificate relates can be readily ascertained.

27 **19 Subsection 160(5)**

28 Omit “registered person, or a liable entity,”, substitute “record-keeper”.

29 **20 Subsection 160(6)**

30 Omit “registered person or liable entity” (wherever occurring),
31 substitute “record-keeper”.

1 **21 Subsection 160(7)**

2 Repeal the subsection, substitute:

3 (7) A person commits an offence if the person fails to comply with a
4 requirement under this section.

5 Penalty: 30 penalty units.

1

2 **Schedule 3—Amendments relating to the**
3 **transition of State renewable energy**
4 **target schemes**

4

5 **Part 1—Amendments relating to constitutional**
6 **corporations**

6

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

7

8 **1 Subsection 5(1)**

8

9 Insert:

9

10 *constitutional corporation* means a corporation to which
11 paragraph 51(xx) of the Constitution applies.

10

11

12 **2 At the end of Part 1**

12

13 Add:

13

14 **7B Constitutional basis**

14

15 To the extent that this Act applies in relation to a constitutional
16 corporation, the operation of this Act is based on the following
17 legislative powers:

15

16

17

18 (a) the legislative power that the Commonwealth Parliament has
19 under paragraph 51(xx) of the Constitution;

18

19

20 (b) any other legislative power that the Commonwealth
21 Parliament has under the Constitution.

20

21

22 **7C Immunity from State laws**

22

23 A constitutional corporation need not comply with any law of a
24 State that substantially corresponds to this Act.

23

24

1

2

Part 2—Transitional provisions

3

3 Definitions

4

In this Part:

5

accredited power station has the same meaning as in the
Commonwealth Act.

6

7

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

8

9

Commonwealth regulator:

10

(a) at any time before section 3 of the *Carbon Pollution Reduction Scheme Act 2009* commences—means the Regulator (within the meaning of the Commonwealth Act);
and

11

12

13

14

(b) at any time after the *Carbon Pollution Reduction Scheme Act 2009* commences—means the Authority (within the meaning of the *Australian Climate Change Regulatory Authority Act 2009*).

15

16

17

18

renewable energy certificate has the same meaning as in the
Commonwealth Act.

19

20

small generation unit has the same meaning as in the Commonwealth
Act.

21

22

State Act means a law of a State that substantially corresponds to the
Commonwealth Act.

23

24

State certificate means a certificate, created under a State Act, that is
substantially the same as a renewable energy certificate.

25

26

State regulator means a person or body appointed under a State Act that
has substantially the same kind of functions under the State Act as the
Commonwealth regulator has under the Commonwealth Act.

27

28

29

4 Continuation of existing accreditations

30

(1) If a power station was, immediately before the day on which this item
commences, accredited under a State Act and not already accredited
under the Commonwealth Act:

31

32

33

(a) the power station is taken to be eligible for accreditation
under section 15 of the Commonwealth Act; and

34

Schedule 3 Amendments relating to the transition of State renewable energy target schemes

Part 2 Transitional provisions

- 1 (b) the Commonwealth regulator is taken to have made a
2 determination under paragraph 14(1)(a) of the
3 Commonwealth Act that the components of the power station
4 (as accredited under the State Act) are to be taken to be a
5 power station for the purposes of the Commonwealth Act;
6 and
7 (c) the Commonwealth regulator is taken to have approved an
8 application for accreditation on the day on which this item
9 commences.
- 10 (2) To avoid doubt, subsection 14(3) of the Commonwealth Act applies in
11 relation to an application mentioned in paragraph (1)(b) of this item.
- 12 (3) If a person was, immediately before the day on which this item
13 commences, a nominated person for a power station under a State Act:
14 (a) the person is taken to be:
15 (i) a registered person (unless the person is already a
16 registered person under the Commonwealth Act); and
17 (ii) a nominated person for the power station;
18 under the Commonwealth Act on and after the day on which
19 this item commences; and
20 (b) the Commonwealth regulator is taken to have approved an
21 application for the person to be registered on the day on
22 which this item commences (unless the person is already a
23 registered person under the Commonwealth Act).
- 24 (4) To avoid doubt, section 12 of the Commonwealth Act applies in relation
25 to an application mentioned in paragraph (3)(b) of this item as if the
26 person were the applicant.

27 **5 Existing accreditations not to continue if notice given**

28 A nominated person for a power station under a State Act may notify
29 the Commonwealth regulator, in writing by 30 November 2009, that
30 subitems 4(1) and (3) of this Schedule do not apply in relation to the
31 power station. A notice has effect accordingly.

32 **6 Conversion of State certificates to renewable energy**
33 **certificates**

- 34 (1) If, before 15 May 2010, a State regulator for a State gives written notice
35 to the Commonwealth regulator that a State certificate has been
36 surrendered:
-

- 1 (a) under a provision of the State Act of the State that
2 substantially corresponds to section 28A of the
3 Commonwealth Act; and
4 (b) after 1 April 2010; and
5 (c) for the purposes of this subitem;
6 then the Commonwealth regulator must, before 15 June 2010:
7 (d) create a renewable energy certificate in respect of the State
8 certificate; and
9 (e) register the renewable energy certificate under section 26 of
10 the Commonwealth Act.
- 11 (2) If, on or after 15 May 2010 but before 2 November 2010, a State
12 regulator for a State gives written notice to the Commonwealth
13 regulator that a State certificate has been surrendered:
14 (a) under a provision of the State Act of the State that
15 substantially corresponds to section 28A of the
16 Commonwealth Act; and
17 (b) after 1 April 2010; and
18 (c) for the purposes of this subitem;
19 then the Commonwealth regulator must, before 1 December 2010:
20 (d) create a renewable energy certificate in respect of the State
21 certificate; and
22 (e) register the renewable energy certificate under section 26 of
23 the Commonwealth Act.
- 24 (3) A notice under subitem (1) or (2) must:
25 (a) be in the prescribed form; and
26 (b) include any information prescribed by the regulations.
- 27 (4) Despite subitems (1) and (2), a renewable energy certificate may only
28 be created for a State certificate once.
- 29 (5) For the purposes of a renewable energy certificate created in respect of
30 a State certificate under subitem (1) or (2):
31 (a) the renewable energy certificate is treated as if it had been
32 created under a prescribed provision of the Commonwealth
33 Act; and
34 (b) the person who created the State certificate is treated as
35 having created the renewable energy certificate; and
-

Schedule 3 Amendments relating to the transition of State renewable energy target schemes

Part 2 Transitional provisions

- 1 (c) subject to paragraph (6)(c), the person who owned the State
2 certificate, immediately before it was surrendered under the
3 State Act, is treated as the owner of the renewable energy
4 certificate.
- 5 (6) Section 26 of the Commonwealth Act applies in relation to a renewable
6 energy certificate created under subitem (1) or (2) as if:
7 (a) subsections (2), (3), (3A), (5) and (6) were ignored; and
8 (b) the Commonwealth regulator had determined that the
9 renewable energy certificate is eligible for registration under
10 subsection (4); and
11 (c) for the purposes of recording the ownership of the renewable
12 energy certificate as mentioned in subsection (4)—the owner
13 of the renewable energy certificate had created the certificate.
- 14 (7) A renewable energy certificate created in respect of a State certificate
15 under subitem (1) or (2) is not a certificate for the purpose of
16 section 23F of the Commonwealth Act.
- 17 (8) If a renewable energy certificate is created in respect of a State
18 certificate under subitem (1) or (2), the register of renewable energy
19 certificates maintained under section 135 of the Commonwealth Act
20 must also contain the year in which the State certificate was created.
- 21 *Notice of conversion to be given by Commonwealth regulator*
- 22 (9) The Commonwealth regulator must notify, in writing, the following
23 persons that a renewable energy certificate has been created in respect
24 of a State certificate and registered under section 26 of the
25 Commonwealth Act:
26 (a) the creator of the State certificate;
27 (b) the relevant State regulator;
28 (c) if the owner of the renewable energy certificate is not the
29 creator of the State certificate—the owner of the renewable
30 energy certificate.
- 31 (10) The Commonwealth regulator must provide the notice as soon as
32 practicable after the renewable energy certificate has been registered
33 under section 26 of the Commonwealth Act.

7 No criminal liability for Commonwealth regulator

1 Nothing in item 6 makes the Commonwealth regulator liable to be
2 prosecuted for an offence.

3 **8 Renewable energy certificate must not be created if State**
4 **certificate created**

5 Despite section 18 of the Commonwealth Act, a nominated person
6 (within the meaning of the Commonwealth Act) for an accredited power
7 station must not create a renewable energy certificate for any electricity
8 generated by the power station if a State certificate has been created in
9 relation to that electricity.

10 **9 Transitional regulations**

11 (1) The Governor-General may make regulations prescribing matters:

- 12 (a) required or permitted by this Part to be prescribed; or
13 (b) necessary or convenient to be prescribed for carrying out or
14 giving effect to this Part.

15 (2) Without limiting subitem (1), regulations of a transitional nature may be
16 made in relation to the following matters:

- 17 (a) matters arising from the amendment or repeal of a State Act;
18 (b) exemptions from fees payable under regulations;
19 (c) the number of renewable energy certificates that may be
20 created in relation to a small generation unit.