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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Climate Change, Energy Efficiency and Water,
Senator the Honourable Penelope Ying Yen Wong)

RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2010

GENERAL OUTLINE

Purpose

The purpose of the Renewable Energy (Electricity) Amendment Bill 2010 (the Bill) is to separate the Renewable Energy Target (RET) scheme into two parts – the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme (SRES). The changes will provide greater certainty for households, large-scale renewable energy projects and installers of small-scale renewable energy systems such as solar panels and solar water heaters. The enhanced scheme will further strengthen the Government's commitment that the equivalent of at least 20 per cent of Australia's electricity will come from renewable sources by 2020.

In particular, the Bill will:

- create separate small-scale and large-scale obligations on liable entities and two new categories of renewable energy certificates – large-scale generation certificates and small-scale technology certificates.
- require the Renewable Energy Regulator (the Regulator) to:
 - establish an optional 'clearing house' to transfer certificates from owners of small-scale installations to liable entities at \$40;
 - set a small-scale technology percentage annually, based on the estimated amount of small-scale technology certificates expected to be created in that year;
- require liable entities to surrender renewable energy certificates from small-scale technologies (in line with a new annual small-scale technology percentage) in quarterly increments throughout a compliance year to encourage the frequent transfer of renewable energy certificates;
- allow for the effective rate of assistance for emissions-intensive, trade-exposed (EITE) activities to be preserved;
- adjust the profile of annual targets to be met by renewable energy certificates from large-scale generation to take account of the renewable energy certificates from small-scale technologies and to remove the proportion of the annual targets for the inclusion of waste coal mine gas until eligibility of that source is set in regulations;
- amend the provisions relating to waste coal mine gas eligibility to allow for the commencement of eligibility of waste coal mine gas in the RET to be determined by regulations; and
- make a number of technical amendments to:
 - deliver the new small-scale scheme, including to enable regulations to prescribe the small-scale technology percentage;
 - establish transitional arrangements for the treatment of existing banked renewable energy certificates and renewable energy certificates from forward contracts;
 - insert new provisions to strengthen the compliance and enforcement regime, including establishing civil penalties.

Background

The legislation underpinning the scheme comprises the *Renewable Energy (Electricity) Act 2000* (the Act); the *Renewable Energy (Electricity) Charge Act 2000* (the Charge Act); and the *Renewable Energy (Electricity) Regulations 2001* (the Regulations).

Under the Act, wholesale purchasers of electricity ('liable entities') 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 by generators of renewable energy. One renewable energy certificate generally represents one megawatt-hour (MWh) of electricity from eligible renewable energy sources. Installations of solar water heaters and small generation units (including rooftop solar panels, small wind turbines and micro-hydro systems) are able to create renewable energy certificates under deeming arrangements prescribed in the Regulations. Once registered, the renewable energy certificates are able to be traded and sold to liable entities who may surrender them to the Regulator to demonstrate their compliance under the scheme and avoid paying the shortfall charge. The Charge Act sets the level of the shortfall charge for those liable entities who do not surrender sufficient renewable energy certificates.

Details of the Bill are set out in the [Attachment](#).

FINANCIAL IMPACT STATEMENT

The Office of the Renewable Energy Regulator (ORER) will receive an additional \$6 million in 2010-11 to implement the changes outlined in this Bill. This includes \$4.5 million in capital funding to modify and expand the existing information technology system to enable the ORER to implement the clearing house functions.

The impact on Government revenue is dependent on any change in the number of renewable energy certificates that are traded. Administered revenue is received by the ORER from a number of statutory fees including fees for the creation and surrender of renewable energy certificates.

REGULATION IMPACT STATEMENT

ASSESSING THE PROBLEM

Electricity generation accounts for more than one-third of Australia's current greenhouse gas emissions, so Australia's transition to a low pollution future will require a significant transformation in this sector.

Renewable energy sources such as wind, solar and geothermal will be a key part of the climate change solution, and Australia has vast potential in these areas.

The Renewable Energy Target (RET) scheme has been designed to deliver on the Commonwealth Government's commitment that 20 per cent of Australia's electricity supply will come from renewable sources by 2020.

The RET scheme will help to transform the electricity sector and drive the shift to low pollution electricity generation by accelerating the deployment of a range of both small and large-scale renewable energy technologies like wind, solar PV, biomass, geothermal power and solar hot water over the next two decades. The RET scheme also brings all state and territory renewable energy targets into a single national scheme.

There is concern that the inclusion of small-scale technologies and their impact on the renewable energy certificate (REC) market is delaying investment in large-scale renewable energy projects. The RET scheme annual targets are set in section 40 of the Act and can be met through the creation of RECs by either small- or large-scale generation. In the early years of the scheme, the annual targets increase at a slower rate until 2015 then increase more rapidly to reach the 45,000 gigawatt-hours by 2020 target. This is to allow time for industry to develop its capacity in the early years in order to meet the significantly higher later targets.

RET legislation and design

Amendments to implement the expanded national RET was passed by the Commonwealth Parliament on 20 August 2009. Building on the existing legislative framework, the RET creates a guaranteed market for additional renewable energy deployment using a mechanism of tradeable RECs.

Demand for RECs is created by a legal obligation that is placed on parties who buy wholesale electricity, that is, retailers and large users of electricity. Liable entities are required to source an increasing percentage of their electricity purchases from renewable energy to meet annual targets which are legislated in terms of gigawatt-hours of renewable energy. One REC is generally equivalent to one megawatt-hour (MWh) of renewable energy. Liable parties can acquire and surrender RECs to demonstrate compliance. Alternatively, they would be required to pay a shortfall charge of \$65/MWh from 2010.

The national expanded RET increases the previous Mandatory Renewable Energy Target by more than four times from 9,500 gigawatt-hours to 45,000 gigawatt-hours in 2020, with the target maintained at this level until 2030. The annual targets under the expanded RET scheme commenced on 1 January 2010.

The supply of RECs is created by renewable energy power stations, as well as small generation units including small-scale solar panels, small wind turbines and micro hydro systems, and solar water heaters. RECs provide a financial incentive to invest in renewable energy technologies. The RET scheme includes Solar Credits which provide multiple RECs for each MWh of energy produced by small generation units.

The Office of the Renewable Energy Regulator (ORER) oversees the implementation of the RET scheme, including the accreditation of renewable energy generators, overseeing the validation of RECs created by power stations, solar water heaters and small generation units.

The COAG Review of Specific RET Issues

In designing the RET scheme through the Council of Australian Governments (COAG), and during the passage of the RET legislation, some specific issues were raised that required further analysis and consultation with stakeholders. These issues were referred for inclusion in the COAG Review of Specific RET Issues (the COAG Review), to be completed by end-2009.

In particular, the review considered:

- whether any new small-scale renewable technologies that are not currently eligible should be included in the RET, as well as the eligibility of heat pumps;
- whether changes should be made to the current provisions that allow for exemption from liabilities based on ‘self-generation’, which mainly affect off-grid remote resource projects;
- whether the Solar Credits or a similar mechanism under the RET should be used to provide incentives for off-grid renewable generation; and
- factors that may be impacting upon the Renewable Energy Certificate (REC) market in the short and long term.

Further to those issues, the Australian Government announced on 24 November 2009 that the current COAG Review would also consider whether new waste coal mine gas projects should be eligible under the RET; and whether annual targets under the RET should be increased to offset additional RECs not backed by generation as part of the ‘Solar Credits’ mechanism.

The Communiqué from the most recent COAG meeting held on 19/20 April 2010 notes:

“the Commonwealth announcement of 26 February 2010 to make significant changes to the Renewable Energy Target (RET) scheme, involving two separate parts – the Small-scale Renewable Energy Scheme and the Large-scale Renewable Energy Target. These changes are intended to address concerns being considered by the COAG Review of Specific RET Issues regarding Renewable Energy Certificate (REC) prices and additional RECs not backed by generation as part of the Solar Credits mechanism. The remaining matters within the scope of the review will be finalised for consideration by COAG at its next meeting.”

The issue

The Australian Government wants a well-functioning REC market that delivers on the Government’s commitment to ensure that 20 per cent of Australia’s electricity supply comes from renewable sources by 2020. The targets under the RET are set to increase more than four times, to reach 45,000 gigawatt-hours by 2020. These larger targets will significantly boost the demand for RECs over the medium term and will place upward pressure on the REC price, driving investment to the required level of renewable energy generation to meet the Government’s 20 per cent by 2020 commitment.

The total quantity of renewable energy generation that will be required under the RET is significant as the annual targets increase in the period to 2020. The COAG Review identified factors affecting REC prices, including:

- the increase in the supply of RECs created by the higher uptake of solar water heaters and heat pumps, driven by Commonwealth and state subsidies, and the expectation that this trend may continue;
- domination of the spot market by small industry players, such as solar water heater providers, who regularly sell RECs for liquidity reasons; and
- the perception that there is a large quantity of banked RECs, and that most liable entities will not need to purchase additional RECs to satisfy their obligations for the 2009 calendar year.

There is concern that the inclusion of small-scale technologies and their impact on the REC market is delaying investment in large scale renewable energy projects.

OBJECTIVES OF GOVERNMENT ACTION

The objective is to support a well-functioning REC market that incentivises the deployment of large and small-scale renewable energy generation projects to meet an overall target of 20 per cent renewable energy by 2020.

OPTIONS THAT MAY ACHIEVE THE OBJECTIVES

There are three broad options to amend the RET scheme to achieve the objective and respond to the concerns outlined above.

Option 1 – status quo: maintain the current profile of annual targets in the RET scheme that reach 45,000 GWh in 2020.

Option 2 - increase the annual targets under the RET to increase support for renewable energy generation in the early years of the RET but maintain an overall target of 20 per cent renewable energy by 2020.

Option 3 - make a structural change to the RET to separate large-scale generation from small-scale generation¹. Large-scale technology would be supported by the RET through a separate, quarantined target that takes account of the estimate of the deployment of small-scale technologies, with the total large-scale target reaching 41 million RECs (41,000 gigawatt-hours) by 2020. Small-scale generation would be supported by receiving RECs at a fixed price, initially set at \$40 in nominal terms and then reviewed in 2014.

IMPACT ANALYSIS — COSTS, BENEFITS AND RISKS

Who is affected

For the purpose of this analysis, four broad categories of stakeholders have been identified:

- Liable entities - wholesale purchasers of electricity that are required to surrender RECs every year in order to meet the annual renewable energy target. Liable entities are usually electricity retailers, and in some cases are large organisations that use significant amounts of electricity, and therefore make wholesale purchases directly from the grid.

¹ Large-scale refers to a power generation system accredited as a *power station* by the Regulator. Small-scale refers to all other generation and electricity displacement systems.

- REC creators - entities that generate RECs from eligible sources. REC creators can range from organisations involved in running large-scale renewable energy projects, to families installing solar panels on their roofs.
- Electricity end users - retail purchasers and users of electricity. Electricity end users range from households to big businesses.
- Technology manufacturers or installers – those entities involved in manufacturing or installing the renewable energy technologies – sometimes manufacturers also act as installers. Two examples are a company that builds and installs wind turbines and a company that sells solar water heaters.

Compliance costs

Two stakeholder groups incur *compliance* costs under the RET scheme:

- Liable entities – must comply with the registration, reporting, record keeping and audit requirements of the Act.
- REC creators – if they choose to participate in the scheme, then they must also comply with the requirements for the creation and transfer of RECs.

There will be minimal additional *compliance* costs for liable entities as the amendments will not significantly change:

- who is required to participate as a liable entity;
- record keeping requirements;
- compliance requirements such as audits; or
- procedural requirements such as registration and reporting to the regulator.

Fees are collected by the Regulator for the creation and surrender of RECs – of eight cents per transaction. Under Options 2 and 3, this cost would be more than balanced for *REC creators* by the value of the RECs they receive; historically this has been between \$15 and \$50. For *liable entities* that have to surrender RECs each year, the eight cent fee would present a minor additional compliance cost if the annual targets were increased as per Option 2 or the scheme was separated under Option 3.

In addition, under Option 3 there may be a small increase in costs for liable entities relating to the changed administrative arrangements for the small-scale component of the scheme.

Economic impacts

Annual targets

Option 1 would maintain the status quo and not pursue any reform options targeted at achieving a better functioning REC market.

Option 2 would significantly boost demand for RECs over the period to 2020 and thereby significantly increase renewable energy generation in the period to 2020 providing an increased revenue stream for the renewable energy sector.

While the targets would be increased, the competition between renewable energy generators to create the RECs would continue unchanged.

Under Option 3, the Government would maintain its overall commitment to achieve at least 45,000 gigawatt-hours (GWh), and therefore 20 per cent renewable energy, in 2020. This would be through the combination of a 41,000 GWh large-scale target, plus the amount of small-scale generation induced by the fixed price regime. The target for large-scale generation would be adjusted downward by 4,000 GWh per year, to take account of the separate support mechanism for small-scale technologies.

The rate of subsidy for the small-scale segment would be set with a REC price of \$40.

While the fixed-price segment would add some uncertainty about the quantum of RECs (for liable entities), it would remove uncertainty about the price of RECs payable in respect of small-scale systems. This would remove the impact of the unanticipated uptake of small-scale technologies on the REC market and increase certainty for large-scale technology developers.

Risks

A risk regarding Option 3 is the possibly open-ended commitment to small-scale generation with cost impacts for the liable entities. The proposed approach attempts to mitigate this risk by monitoring the uptake in the market and reviewing the fixed price in 2014. In addition, annual targets could be set with a 'true-up' in the following year.

CONCLUSION AND RECOMMENDED OPTION

Option 3 is supported as it would provide legislative certainty to large-scale renewable energy developers while still supporting the deployment of small-scale renewable energy technologies.

The proposal maintains the Commonwealth's commitment to ensure 20 per cent of Australia's electricity supply is from renewable sources by 2020.

IMPLEMENTATION AND REVIEW

The proposals will require changes to the RET legislation. The changed scheme could commence in January 2011.

A full statutory review of the RET scheme is planned for 2014. The Government will also commission an independent review in 2012, which will include participation by the energy market bodies, to provide recommendations to the Government as to possible mechanisms for setting the fixed price for small-scale RECs under the scheme that could apply from 1 January 2014. The review would consider:

- the development of a framework in which REC prices in the future are set by an independent regulator;
- options to ensure consistent national assistance by incorporating consideration of state and territory assistance in setting small-scale REC prices;
- changes in the costs of the technologies; and
- the impact of the small-scale REC price and levels of small-scale technology deployment on the electricity market, including electricity prices.

The review would also consider a framework for determining eligibility under the RET, particularly for small-scale technologies.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short Title

1. This clause is a formal provision specifying the title of the amendment Act.

Clause 2 - Commencement

2. This clause sets out that sections 1 to 3 and anything in the Act not elsewhere covered by this clause commence the day the Act receives the Royal Assent. The clause further provides that Schedule 1, Part 1 commences on 1 January 2011; and Schedule 1, Part 2 and Schedule 2 both commence the day after the Act receives the Royal Assent.

Clause 3 - Schedule(s)

3. This is a formal clause providing that each Act specified in the Schedule is amended or repealed as set out in the applicable items in the Schedule, and other items in the Schedule have effect according to its terms.

SCHEDULE 1 – AMENDMENTS

PART 1 – MAIN AMENDMENTS

Renewable Energy (Electricity) Act 2000

Overview of Part 1, Schedule 1

4. The amendments to Part 1 of Schedule 1 have been developed to retain many of the existing provisions and concepts as they apply equally to the new large-scale and small-scale components of the Act. Often it has been necessary to create parallel large-scale and small-scale provisions to deal with the differences between the two components. There are also some additional provisions necessary to deal with elements of the small-scale component. Where multiple changes are necessary to ensure an existing section picks up the new concepts, the amendments generally replace that provision as a whole so that the reader can see the effect of the amendments. Unless otherwise indicated, this is not intended to change the interpretation of the provision from the provision it replaces. The following table outlines the key existing provisions of the Act which have been altered by the split and maps them into general, large-scale and small-scale provisions.

Existing section	General	Large-scale provisions	Small-scale provisions
Division 4 of Part 2 allows for the creation of renewable energy certificates.	Division 4 of Part 2 allows for the creation of renewable energy certificates as well as Part 2A (clearing house).	Subdivision A of Division 4 of Part 2 allows for the creation of large-scale generation certificates.	Subdivisions B and BA of Part 2 and Part 2A (clearing house) allow for the creation of small-scale technology certificates.
Section 36 sets out the charge payable by a liable entity.	N/A	Section 36 sets out the large-scale generation shortfall charge.	Section 38AB sets out the small-scale generation shortfall charge.
Section 37 sets out the amount of the charge.	N/A	Section 37 sets out the amount of the large-scale charge.	Section 38AC sets out the amount of the small-scale charge.
Section 38 sets out the determination of a renewable energy certificate shortfall.	N/A	Section 38 determines a large-scale generation shortfall.	Section 38AE sets out the determination of quarterly shortfalls. 38AA provides definitional concepts and 38AF – 38AI allow for changes to be made to the basis of quarterly surrenders.
Sections 38A – 38C deal with partial exemptions.	Sections 38A – 38C deal with partial exemptions for both liabilities.	N/A	N/A

Existing section	General	Large-scale provisions	Small-scale provisions
Section 39 sets the renewable power percentage and section 40 provides the targets.		Section 39 sets the renewable power percentage and section 40 provides the targets.	Section 40A sets the small-scale technology percentage. Section 40B requires an estimate of the small-scale power percentage to be published for the next two years. Section 40C requires the Regulator to notify liable entities on quarterly liabilities.
Sections 41 – 43 relate to other charge issues.	Sections 41 – 43 relate to other charge issues.	N/A	N/A
Section 44 relates to the lodgement of an annual energy acquisition statement.	Section 44 relates to the lodgement of an annual energy acquisition statement.	Section 44A relates to the surrender of large-scale generation certificates in an energy acquisition statement.	Section 45 relates to the surrender of small-scale technology certificates on a quarterly basis and in an energy acquisition statement.
Subsection 44(5) allows for fees to be prescribed in relation to the surrender of certificates.	Section 45E allows for fees to be prescribed for the surrender of certificates.	N/A	N/A
Section 45 places restrictions on which certificates may be surrendered.	Section 45D places restrictions on which certificates may be surrendered.	N/A	N/A
Subsection 45A(1) allows for a person to request amendment of their statement.	Section 45A provides for the amendment of an energy acquisition statement at the request of a liable entity.	N/A	N/A
Subsection 45A(2) allows for the Regulator to amend a statement on their own initiative.	Section 45B allows for the amendment of a statement on the Regulator’s initiative. Section 45C allows for an entity to surrender additional certificates in response to a Regulator initiated amendment.	N/A	N/A
Section 46 provides for an annual renewable energy shortfall statement.	Section 46 provides for two types of shortfall statement.	N/A	N/A

Existing section	General	Large-scale provisions	Small-scale provisions
Sections 46A to 46C provide for partial exemption certificates.	Sections 46A to 46C provide for partial exemption certificates.	N/A	N/A
Section 47 turns a shortfall statement into an assessment.	N/A	Section 47 turns a large-scale generation shortfall statement into an assessment.	Section 48A turns a small-scale technology shortfall statement into an assessment.
Section 48 provides for default assessments.	N/A	Section 48 provides for default assessments for a large-scale generation shortfall.	Section 48B provides for default assessments for a small-scale technology shortfall.
Sections 49 – 53A relates to amendments of assessments and other matters.	Sections 49 – 53A relates to amendments of assessments and other matters.	N/A	N/A
Part 6 relates to objections.	Part 6 relates to objections.	N/A	N/A
Part 7 relates to the collection and recovery of the charge.	Part 7 relates to the collection and recovery of the charge. Section 67 clarifies when the large-scale and small-scale charges are payable.	N/A	N/A
Part 8 relates to refunds of the renewable energy shortfall charge.	N/A	Part 8 relates to refunds of the large-scale generation shortfall charge.	N/A
Section 99 relates to a penalty charge.	N/A	Section 99 relates to a penalty charge for large-scale liability.	Section 99A relates to a penalty charge for small-scale liability.
Section 134 relates to publication of shortfalls.	Section 134 relates to publication of large-scale and small-scale shortfalls.	Subsection 134(1) deals with large-scale shortfalls.	Subsection 134(2) deals with small-scale shortfalls.
Section 140 relates to the register of renewable energy certificates.	N/A	Section 140 relates to the register of large-scale generation certificates.	Section 141AA relates to the register of small-scale technology certificates.

Overview of items 1 to 38

- Items 1 to 38 amend the definitions in the Act to accommodate the separation of the scheme into large-scale and small-scale components. The essential approach has been to keep the existing terms as umbrella concepts that include both large-scale and small-scale elements. For instance, ‘renewable energy certificate’ remains a core concept in the Act. However, there are now two subcategories of *renewable energy certificate*: *large-scale generation certificates* (relating to existing certificates, generation from power stations and solar water heaters and

small generation units installed up to 31 December 2010) and *small-scale technology certificates* (relating to solar water heaters and small generation units installed after 1 January 2011). The relationship between the existing and new concepts is summarised in the following table.

Existing concept	Umbrella concept	Large-scale concept	Small-scale concept
Renewable Energy Certificate or Certificate	Renewable Energy Certificate or Certificate	Large-scale generation certificate	Small-scale technology certificate
Relevant acquisitions	Relevant acquisitions	N/A	N/A
Partial exemption	Partial exemption	N/A	N/A
Required renewable energy	N/A	Required large-scale renewable energy	N/A
Renewable power percentage	N/A	Renewable power percentage	Small-scale technology percentage
Energy acquisition statement	Energy acquisition statement	N/A	N/A
Carried forward surplus	N/A	Carried forward surplus	Quarterly surplus
Carried forward shortfall	N/A	Carried forward shortfall	N/A
Renewable energy certificate shortfall	N/A	Large-scale generation shortfall	Small-scale technology shortfall (made up of quarterly shortfalls)
Renewable energy shortfall statement	Renewable energy shortfall statement	Large-scale generation shortfall statement	Small-scale technology shortfall statement
Renewable energy shortfall charge	Renewable energy shortfall charge	Large-scale generation shortfall charge	Small-scale technology shortfall charge
Renewable energy shortfall charge related liability	Renewable energy shortfall charge related liability	N/A	N/A
Register of renewable energy certificates	N/A	Register of large-scale technology certificates	Register of small-scale generation certificates
N/A	Additional surrender notice	N/A	N/A (also surrender instruments)
N/A	N/A	N/A	First quarter, second quarter, third quarter and fourth quarter
N/A	N/A	N/A	Required surrender amount, assessment year's reduced acquisitions, previous year's reduced acquisitions and surrendered amount

Item 1 - Subsection 5(1)

6. This item provides that a definition for the term *additional surrender notice* is given by section 45C.

Item 2 - Subsection 5(1)

7. This item provides that a definition for the term *assessment year's reduced acquisitions* is given by section 38AA. This is an liable entity's relevant acquisitions less their partial exemptions.

Item 3 - Subsection 5(1) (definition of *certificate*)

8. This item amends the definition of *certificate* so that it refers to all *renewable energy certificates*.

Item 4 - Subsection 5(1)

9. This item defines the new term *clearing house* as having the meaning given by section 30J. This term relates to the functions of the Regulator in facilitating payments for the transfer of small-scale technology certificates between parties.

Item 5 - Subsection 5(1)

10. This item defines the new term *clearing house transfer list* as having the meaning given by subsection 30L(2). This term relates to the list of small-scale technology certificates ready to be transferred by the *clearing house*.

Item 6 - Subsection 5(1)

11. This item provides that a definition for the term *first quarter* is given by section 38AA. This term relates to the quarterly surrender obligations for small-scale technology certificates.

Item 7 - Subsection 5(1)

12. This item provides that a definition for the term *fourth quarter* is given by section 38AA. This term relates to the quarterly surrender obligations for small-scale technology certificates.

Item 8 - Subsection 5(1)

13. This item notes that the term *GST* has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*. As the Regulator is involved in a number of transactions, the definition draws attention to section 177-1 of that Act which concerns the Commonwealth's notional liability for GST. This will ensure that the arrangements for notional liability will not impede the intended operation of the GST regime for the participants in the clearing house and the GST status of the various transactions.

Item 9 - Subsection 5(1)

14. This item defines a new term *large-scale generation certificate* as a certificate created under Subdivision A of Division 4 of Part 2. This new term is in recognition of there now being two types of certificates. Large-scale generation certificates refer to those certificates created from the generation of electricity by accredited power stations.
15. Transitional provisions in Schedule 2 also have the effect that certificates from small generation units and solar water heaters installed before 1 January 2011 are taken to be *large-scale generation certificates* and some *small-scale technology certificates* may become *large-scale generation certificates* where they relate to pre-existing contracts.

Item 10 - Subsection 5(1)

16. This item defines a new term *large-scale generation shortfall* as having the meaning given by section 38. This new term is in recognition of there now being two types of shortfall - one for each of the large-scale and small-scale obligations.

Item 11 - Subsection 5(1)

17. This item defines a new term *large-scale generation shortfall charge* as having the meaning given by section 36. This new term is in recognition of there now being two types of shortfall charge - one for each of the large-scale and small-scale obligations.

Item 12 - Subsection 5(1)

18. This item defines a new term *large-scale generation shortfall statement* as having the meaning given by section 46. This new term is in recognition of there now being two types of shortfall statement – one for each of the large-scale and small-scale obligations.

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

19. This item amends the definition of *partial exemption* to refer to the two types of shortfalls - *large-scale generation shortfall* and *small-scale technology shortfall*. This clarifies that a single partial exemption amount (in megawatt-hours) will apply in relation to both the large-scale and small-scale liabilities. The regulations relating to partial exemptions will be updated to ensure that the effective assistance rates are consistent with the policy intent of the existing regulations.

Item 14 - Subsection 5(1)

20. This item defines a new term *previous year's reduced acquisitions* as having the meaning given by section 38AA. This relates to the previous year's relevant acquisitions less partial exemptions as assessed by 1 April in a year.

Item 15 - Subsection 5(1)

21. This item defines a new term *quarter* as having the meaning given by section 38AA. This term relates to the calculation of quarterly surrender amounts for small-scale technology certificates by liable entities.

Item 16 - Subsection 5(1)

22. This item defines a new term *quarterly shortfall* has the meaning given by section 38AE. This term relates to the calculation of the quarterly shortfall amounts for small-scale technology certificates by liable entities.

Item 17 - Subsection 5(1)

23. This item defines a new term *quarterly surplus* has the meaning given by section 38AE. This term relates to the calculation of quarterly surrender amounts for small-scale technology certificates by liable entities.

Item 18 - Subsection 5(1)

24. This item defines the new term *register of large-scale generation certificates* as having the meaning given by section 140. This new term is in recognition of there now being two types of register – one for each of the large-scale and small-scale certificates.

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

25. This item repeals the definition for the term *register of renewable energy certificates* as there will now be two registers – one for each of the two types of certificates.

Item 20 - Subsection 5(1)

26. This item defines the new term *register of small-scale technology certificates* as having the meaning given by section 141AA. This new term is in recognises there will now be two types of register – one for each of the large-scale and small-scale certificates.

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

27. This item provides that the term *renewable energy certificate* is now an umbrella term for two types of certificate - *large-scale generation certificate* and *small-scale technology certificate*.

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

28. This item repeals the definition for the term *renewable energy certificate shortfall* in recognition of there now being two new types of shortfall – one for each of the large-scale and small-scale obligations.

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

29. This item provides that the term *renewable energy shortfall charge* is now an umbrella term for two types of shortfall charge - *large-scale generation shortfall charge* and *small-scale technology shortfall charge*.

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

30. This item provides that the term *renewable energy shortfall statement* is now an umbrella term for two types of shortfall statement - *large-scale generation shortfall statement* and *small-scale technology shortfall statement*.

Item 25 - Subsection 5(1)

31. This item defines the term *required large-scale renewable energy* as having the meaning given by section 38.

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

32. This item repeals the definition of the term *required renewable energy* which is to be replaced with the concept of *required large-scale renewable energy*.

Item 27 - Subsection 5(1)

33. This item defines the new term *required surrender amount* as having the meaning given by section 38AE. This term relates to the quarterly surrender obligations for the small-scale technology obligation.

Item 28 - Subsection 5(1)

34. This item defines the term *second quarter* as having the meaning given by section 38AA. This term relates to the quarterly surrender obligations for small-scale technology certificates.

Item 29 - Subsection 5(1)

35. This item defines a new term *small-scale technology certificate* as being a certificate created under Subdivision B or BA of Division 4 of Part 2 or under section 30P. This term relates to certificates created from the installation of solar water heaters and small generation units either by owners or installers of systems or by the Regulator.

Item 30 - Subsection 5(1)

36. This item defines the new term *small-scale technology percentage* as having the meaning given by section 40A. This term relates to the quarterly surrender obligations for small-scale technology certificates.

Item 31 - Subsection 5(1)

37. This item defines the new term *small-scale technology shortfall* as having the meaning given by section 38AD. This new term is in recognition of there now being two types of shortfall - one for each of the large-scale and small-scale obligations.

Item 32 - Subsection 5(1)

38. This item defines the new term *small-scale technology shortfall charge* as having the meaning given by section 38AB. This new term is in recognition of there now being two types of shortfall charge - one for each of the large-scale and small-scale obligations.

Item 33 - Subsection 5(1)

39. This item defines the new term *small-scale technology shortfall statement* as having the meaning given by section 46. This new term is in recognition of there now being two types of shortfall statement - one for each of the large-scale and small-scale obligations.

Item 34 - Subsection 5(1)

40. This item defines the new term *surrendered amount* as having the meaning given by section 38AE. This new term relates to the quarterly surrender obligations for liable entities for the small-scale technology certificates.

Item 35 - Subsection 5(1)

41. This item defines the new term *surrender instrument* as having the meaning given by subsection 45(1). This new term relates to the surrender of small-scale technology certificates.

Item 36 - Subsection 5(1)

42. This item defines the new term *surrender period* as having the meaning given by section 38AA. This new term relates to the surrender of small-scale technology certificates.

Item 37 - Subsection 5(1)

43. This item notes that the term *taxable supply* has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*. As the Regulator is involved in a number of transactions, the definition draws attention to section 177-1 of that Act which concerns the Commonwealth's notional liability for GST. This will ensure that the arrangements for notional liability will not impede the intended operation of the GST regime for the participants in the clearing house and the GST status of the various transactions.

Item 38 - Subsection 5(1)

44. This item defines the term *third quarter* as having the meaning given by section 38AA. This term relates to the quarterly surrender obligations for small-scale technology certificates.

Item 39 - Section 8

45. This item inserts an overview about the two types of *renewable energy certificate*: *large-scale generation certificates* created in relation to the generation of electricity by accredited power stations; and *small-scale technology certificates* created in relation to the installation of solar water heaters and small generation units.

Item 40 - At the end of section 8

46. This item inserts an overview noting that Part 2A relates to the *clearing house* facility for the transfer of certificates and the Regulator's power to create or cancel *small-scale technology certificates*.

Item 41 - Division 4 of Part 2 (heading)

47. This item replaces the heading of Division 4 with 'Creation of renewable energy certificates' to clarify that it relates to the creation of all *renewable energy certificates*, whether *large-scale generation certificates* or *small-scale technology certificates*.
48. This item also inserts a new section 17B to provide an overview of Division 4 relating to the creation of *renewable energy certificates* and the two types of certificates that may be created - *large-scale generation certificates* (as outlined in Subdivision A) or *small-scale technology certificates* (as outlined in Subdivisions B and BA).
49. The item also notes that the Division relates to the limited ability of the Regulator to create *small-scale technology certificates* under Part 2A and other requirements relating to the requirement for people who create certificates under Subdivision B or BA to submit returns relating to the creation of the certificates and offence and civil penalty provisions relating to the improper creation of certificates.

Item 42 - Subdivision A of Division 4 of Part 2 (heading)

50. This item replaces the heading of Subdivision A to with 'Large-scale generation certificates for accredited power stations' to specify that this Subdivision relates only to the creation of *large-scale generation certificates* and not *small-scale technology certificates*.
51. This item also inserts a new section 17C which specifies that *renewable energy certificates* created by electricity generation from accredited power stations are *large-scale generation certificates* for the purpose of this Subdivision.

Item 43 - Subdivision B of Division 4 of Part 2 (heading)

52. This item replaces the heading of Subdivision B with ‘Small-scale technology certificates for solar water heaters’ to specify that this Subdivision relates only to the creation of *small-scale technology certificates* from the installation of solar water heaters.
53. This item also inserts a new section 20B which specifies that *renewable energy certificates* created from the installation of solar water heaters are *small-scale technology certificates* for the purpose of this Subdivision.

Item 44 - Subdivision BA of Division 4 of Part 2 (heading)

54. This item replaces the heading of Subdivision BA with ‘Small-scale technology certificates for small generation units’ to specify that this Subdivision relates only to the creation of *small-scale technology certificates* from the installation of small-scale renewable energy systems referred to as *small generation units*.
55. This item also inserts a new section 23AB that specifies that *renewable energy certificates* created from the installation of *small generation units* are *small-scale technology certificates* for the purpose of this Subdivision.

Item 45 - Subsection 25(1)

56. This item replaces the reference in subsection 25(1) to certificates to clarify that this subsection refers to *large-scale generation certificates*.
57. This item will also amend the heading of section 25 to be ‘Form and content of large-scale generation certificates’.

Item 46 - Subsection 25A(1)

58. This item replaces the reference in subsection 25(1) to certificates to clarify that this subsection refers to *small-scale technology certificates*.
59. This item will also amend the heading to section 25A to be ‘Form and content of small-scale technology certificates’.

Item 47 - Paragraph 25A(2)(f)

60. This item replaces paragraph 25A(2)(f) to require that *small-scale technology certificates* contain details of whether they are created in relation to solar water heaters or small generation units.

Item 48 - At the end of section 25A

61. This item inserts a new subsection 25A(3) to clarify that section 25A does not apply in relation to *small-scale technology certificates* that the Regulator is required to create under section 30P for the purposes of providing them to a liable party when there are no *small-scale technology certificates* available for purchase in the *clearing house*.

Item 49 - Subsection 26(4)

62. This item replaces the reference to the ‘register of renewable energy certificates’ to the ‘register of large-scale generation certificates or the register of small-scale technology certificates (as appropriate)’ to require that when registering a *renewable energy certificate*, the Regulator must register that certificate on the register that accords with the specific type of certificate.

Item 50 - At the end of section 26

63. This item inserts a new subsection 26(7) to clarify that section 26 does not apply in relation to a *small-scale technology certificate* that the Regulator is required to create under section 30P for the purposes of providing it to a purchaser when there are no *small-scale technology certificates* available for purchase in the *clearing house*.

Item 51 - Section 27

64. This item inserts a reference to subsection 30P(3) to specify that certificates that have been registered under subsection 30P(3) for the purposes of providing it to a purchaser when there are no *small-scale technology certificates* in the *clearing house*, may be transferred to any person.

Item 52 - At the end of Section 27

65. This item inserts a note at the end of section 27 noting that subsection 30P(3) deals with the registration of certificates created by the Regulator for purchase through the *clearing house*.

Item 53 - At the end of section 28

66. This item inserts a new subsection 28(4) to clarify that section 28 (which relates to notifying the Regulator of certificate transfers) does not apply in relation to the transfer of *small-scale technology certificates* at the top of the *clearing house transfer list* that the Regulator is required to transfer under subsections 30N(2) or 30P(4).

Item 54 - Section 28A (notes 1 and 2)

67. This item replaces the notes that refer to either the *register of large-scale generation certificates* or the *register of small-scale technology certificates* depending on the type of certificate being surrendered. This item also replaces the reference to ‘certificates that may be surrendered under sections 44 and 95’ to other references under which certificates can also be surrendered.

Item 55 - Subsection 29(1)

68. This item removes the reference to section 44 relating to the surrender of certificates and replaces it with a reference to where a certificate is surrendered under Subdivision A of Division 1 of Part 5.

Item 56 - Paragraphs 30D(1)(d) and (3)(b)

69. This item replaces the reference to ‘certificates’ with *large-scale generation certificates* in recognition of the creation of separate *large-scale generation certificates* and *small-scale technology certificates*.

Item 57 - Subsection 30D(6)

70. This item replaces the reference to ‘certificates’ with *large-scale generation certificates* in recognition of the creation of separate *large-scale generation certificates* and *small-scale technology certificates*.

Item 58 - After Part 2

71. This item inserts a new Part 2A in relation to the establishment and operation of a *clearing house* to manage the transfer of *small-scale technology certificates*. The *clearing house* will not operate for *large-scale generation certificates*.

Division 1 – Preliminary

72. The new Division 1 provides an overview of Part 2A. *Small-scale technology certificates* will be created, validated and registered in accordance with the current processes operated by the Regulator (with the exception of those created by the Regulator under section 30P). The creation, transfer and surrender of certificates will be recorded on the Registry. Information about certificates in the Registry will be publicly accessible.
73. Transfer of certificates through the clearing house is voluntary as some liable entities may wish to surrender certificates they create, are transferred to them from their customers or otherwise acquired on the market, to acquit their obligation without going through the *clearing house*.
74. The *clearing house* will effectively set the market price as it stands ready to facilitate the transfer of all *small-scale technology certificates* at the fixed price of \$44 (GST inclusive). The *clearing house* would manage the sale of all certificates offered to it, and deliver certificates at \$44 (GST inclusive) to purchasers.
75. If there are not enough certificates in the *clearing house* to match demand, the *clearing house* will be able to create certificates and deliver them to purchasers. When the next certificate is entered into the *clearing house* it will immediately be cancelled, the seller paid and the *register of small-scale technology certificates* amended to show that the transferred certificate is no longer valid.

Division 2 – Regulator to establish and operate clearing house

76. The new section 30J empowers the Regulator to establish and operate a *clearing house* for *small-scale technology certificates*.

Division 3 – Entering certificates into the clearing house

77. Section 30K allows for holders or creators of *small-scale technology certificates* to apply to enter certificates into the *clearing house* for sale. A person that creates the certificate, rather than just being the registered owner, can only apply to enter it into the *clearing house* provided that the person has both created the certificate and advised the Regulator that it has

been created (subsection 30K(1)). This allows for applications to be made as soon as a certificate is created.

78. Subsection 30K(2) provides that applications must be in writing and in a form and manner approved by the Regulator and must include additional information and documents that may be specified in the Regulations. Examples of such information or documents may include things such as:
- a) proof of identity;
 - b) details of registry accounts;
 - c) ABN and GST status; and
 - d) bank account details.
79. Section 30L provides that if an application is made in accordance with the correct procedures and the certificate is registered or becomes registered, then the Regulator must include the certificate on the *clearing house transfer list*. The Regulator has no grounds to reject an application other than if the application is made incorrectly or the certificate is not, or does not become, registered.
80. The Regulator will maintain a *clearing house transfer list* of certificates available for transfer through the *clearing house* (subsection 30L(2)). Certificates will be placed on the list in the order the applications are received. This is to ensure that certificates are transferred to purchasers on a 'first in first out' basis and to minimise the time that any one certificate is on the *clearing house transfer list*.
81. Certificates registered after the application is received will be placed on the transfer list once they are registered rather than when the application is received.
82. The Regulator must remove certificates from the *clearing house transfer list* if they are withdrawn by the registered owner, transferred (section 30N) or cancelled (section 30P). Other circumstances under which the Regulator may withdraw certificates from the *clearing house* or remove a certificate from the *clearing house transfer list* may be set out in regulations (section 30U). Once the certificate is on the *clearing house transfer list* the Regulator must alter the registry to indicate that it is in the *clearing house* and undertake any other steps set out in the Regulations (section 30L).
83. Inclusion on the *clearing house transfer list* does not prevent the transfer of certificates to other persons and such a transfer does not affect a certificate's position on the *clearing house transfer list* (subsection 30L(4)). There will be additional notification requirements relating to such transfers to ensure that account information is updated appropriately to ensure that the correct person is paid for the transfer of the certificate.
84. Subsection 30L(5) clarifies that the *clearing house transfer list* is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is included to assist readers.

Division 4 – Purchase of certificates through the clearing house

85. The new Division 4 outlines the requirements relating to the purchase of *small-scale technology certificates* from the *clearing house*. In most cases, purchasers of such certificates will be liable entities.

86. A person may apply to purchase certificates from the clearing house, (subsection 30M(1)) unless they are specifically prevented from doing so by the regulations (subsection 30M(2)). The regulations may provide either general circumstances or relate to specific persons or particular circumstances. Circumstances where a person may not be entitled to make an application may include not having a registry account.
87. Applications must be in writing in a form approved by the Regulator (subsection 30M(3)).
88. The Regulations may also set out a fee to accompany the application (paragraph 30M(3)(d)).
89. The application must also be accompanied by \$44 (GST inclusive) for each certificate.
90. If a purchaser makes an application to purchase a certificate and there is a certificate on the list, the Regulator must transfer the certificate at the top of the list (subsection 30N(2)). The Regulator must as soon as possible inform the purchaser in writing, pay the seller and alter the register to show the purchaser as the owner (subsection 30N(3)).
91. The amount that the Regulator must pay the seller depends on whether there is a taxable supply by the seller to the purchaser. This ensures GST registered and unregistered sellers are treated equitably.
92. The transfer of ownership is completed once the *register of small scale technology certificates* is altered.
93. If a purchaser makes an application to the clearing house and there is no certificate on the transfer list then the Regulator is empowered to and must create a certificate (subsection 30P(2)).
94. Once the Regulator creates the certificate the certificate is valid. The Regulator must give notice in writing to the purchaser, create an entry in the registry and record the purchaser as the owner of the certificate (subsection 30P(3)).
95. The power of the Regulator to create and cancel certificates in these circumstances allows the Regulator to ensure that there is always a supply of certificates available to purchasers by, in effect, temporarily increasing the supply of certificates, or 'borrowing certificates from the future'. In order to reduce this temporary supply the Regulator must cancel the next certificate registered in the *clearing house*. This is achieved by immediately cancelling the certificate, paying the seller and updating the *register of small-scale technology certificates* to show that the transferred certificate is no longer valid (paragraph 30P(4)(b)). The creation and cancellation of certificates in this manner does not impact on the *small-scale technology percentage* for the year which is set with reference to the certificates created in relation to solar water heaters and small generation units.
96. The amount paid by the Regulator will depend on whether the transaction constitutes a taxable supply.
97. Section 30Q requires that *small-scale technology certificates* created by the Regulator are created in an electronic form approved in writing by the Regulator and each certificate will indicate the year and date it was created, the fact that it was created by the Regulator, and a unique identifying reference number.

Payments and GST

98. The supply of *renewable energy certificates* for consideration is a taxable supply if the requirements of the *A New Tax System (Goods and Services Tax) Act 1999* are satisfied.
99. Purchasers will not have control over which certificates are allocated to them from the *clearing house*. They may be allocated a certificate which the seller did not transfer as a taxable supply. In these circumstances the purchaser will not be entitled to claim an input tax credit because the transfer to the purchaser did not include GST.
100. Paragraph 30M(3)(c) provides that an application for a certificate must be accompanied by \$44. This price includes \$4 of GST where the transfer of the certificate by the Regulator to the applicant is a taxable supply.
101. If the purchaser is registered for GST or required to be registered for GST the Regulator will transfer the certificate to the purchaser and it is intended that the Regulator will supply the purchaser with a tax invoice, as appropriate. It is expected that this will allow the purchaser to claim input tax credits on any GST paid. It is possible that a purchaser may be allocated a certificate from a seller that is not registered for GST. In this case the purchaser will be unable to claim input tax credits. In order for the GST exclusive price to be fixed at \$40, the Regulator will refund \$4 when it transfers the certificate to the purchaser. It is intended that the *clearing house* will be an intermediary arrangement provided for under section 153-50 of the *A New Tax System (Goods and Services Tax) Act 1999*.
102. Subsection 30N(4) specifies the amount that the Regulator must pay the seller. This amount will be dependent on whether the transfer is a taxable supply.
103. If the transfer is a taxable supply by the seller to the purchaser the amount is \$44. The seller will remit \$4 to the Australian Tax Office (ATO) and the purchaser will be entitled to claim an input tax credit of \$4.
104. If the transfer is not a taxable supply by the seller to the purchaser the amount is \$40 and there will be no GST collected or eligibility to claim an input tax credit.
105. Certificates may also be purchased where there is no certificate on the clearing house transfer list in the circumstances provided by section 30P. Paragraph 30P(5) specifies the amount that the Regulator must pay the seller. This amount will be dependent on whether the seller's transfer of the certificate to the Regulator is a taxable supply.
106. If the transfer is a taxable supply by the seller to the Regulator the amount is \$44. The seller would remit \$4 to the ATO and the Regulator will claim an input tax credit of \$4.
107. If the transfer is not a taxable supply by the seller to the Regulator the amount is \$40. The seller would not be liable for GST and would not remit \$4 to the ATO. The Regulator would not be entitled to claim an input tax credit by the Regulator.

Division 5 – Renewable Energy Special Account

108. In order to comply with the *Financial Management and Accountability Act 1997* a Special Account, the *Renewable Energy Special Account*, to handle transactions in relation to the clearing house, will be established (section 30R). A Special Account is an appropriation mechanism that sets aside an amount within the Consolidated Revenue Fund (CRF) to be expended for specific purposes.

109. All amounts received by the Regulator for the purchase of certificates must be credited to the *Renewable Energy Special Account* (section 30S).
110. Section 30T sets out that the purposes of the *Renewable Energy Special Account* are to:
- a) pay for the amounts in relation to the transfer of certificates (paragraph 30N(3));
 - b) pay amounts in relation to the transfer of certificates (subparagraph 30P(4)(b)(ii));
 - c) refund amounts under regulations (subparagraph 30U(2)(i)); and
 - d) pay amounts of GST for which the Regulator is liable (section 30P).

Division 6 – Other matters

111. Section 30U allows for the detailed policies, procedures and rules for setting up and operating the *clearing house* to be prescribed in regulations. The regulations may include provisions relating to:
- a) the timing when applications may be made;
 - b) the timing for processing applications;
 - c) procedures for the withdrawal of certificates from the *clearing house* by registered owners;
 - 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) how and when information about the *clearing house* is published, including publication of the *clearing house transfer list* and how records of the clearing house are to be kept;
 - g) information on fees that may be payable in connection with the services offered by the *clearing house*; and
 - h) how refunds may be calculated.
112. The list of issues in subsection 30U(2) is not intended to limit the issues which may need to be dealt with by regulation under subsection 30U(1).

Item 59 - Before Division 1 of Part 4

113. This item inserts a new Division 1AA relating to the *renewable energy shortfall charge*.
114. This item also inserts a new section 34A which provides an overview of the Part as it relates to the two types of shortfall charges that apply to liable entities - the *large-scale generation shortfall charge* and the *small-scale technology shortfall charge*. This item also specifies what is taken into account in determining the amount of *large-scale generation shortfall charge* or *small-scale technology shortfall charge* that would apply to a liable entity.

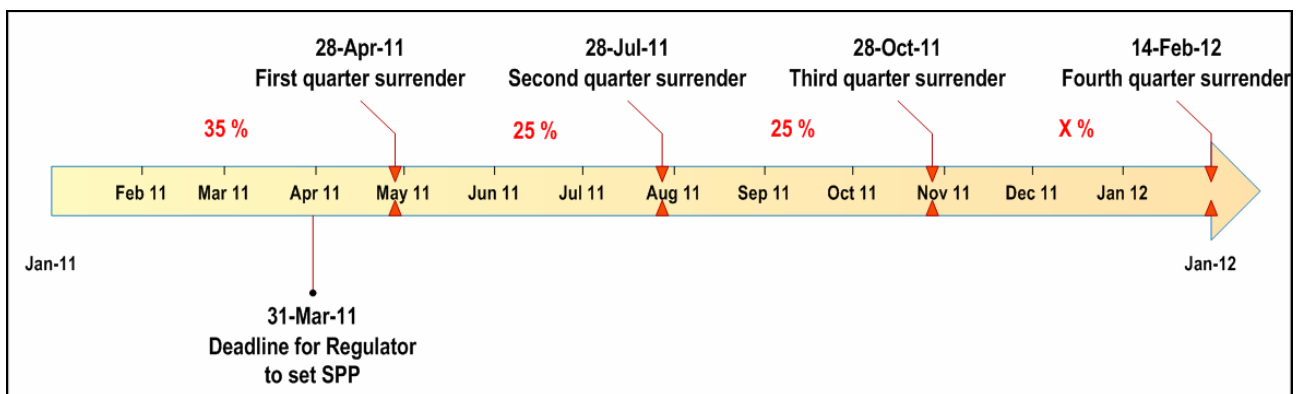
Item 60 - Before section 35

115. This item inserts a new heading ‘Subdivision A – Liable entities’ to allow for an additional subdivision to be added relating to the *large-scale generation shortfall charge*.

Item 61 - Sections 36 to 38

116. This item includes several amendments to sections 36 to 38 to replace the sections relating to the shortfall charge (or charge) with separate sections relating to the *large-scale generation shortfall charge* and inserts new sections 38AA to 38AI relating to the *small-scale technology shortfall charge*, to reflect the two separate obligations.
117. A *large-scale generation shortfall charge* is payable by a liable entity if it has a *large-scale generation shortfall* for a year where it has not met the requirement to surrender their proportion of *large-scale generation certificates* to meet its annual liability. This section largely maintains the features of the previous renewable energy shortfall charge but clarifies that it relates specifically to a liable entity’s obligations to surrender certificates from large-scale generation. Accordingly, the replacement sections 36 to 38 amend the terminology in the existing sections but are intended to operate in the same manner.
118. In particular, this item specifies that if a liable entity has a *large-scale generation shortfall*, it is required to pay a shortfall charge, unless the shortfall is less than 10 per cent of the liable entity’s annual liability to surrender *large-scale generation certificates*. Where the liable entity’s *large-scale generation shortfall* for a year is less than 10 per cent of its total liability for year, the shortfall is carried over to the following year.
119. The *large-scale generation shortfall charge* for a liable entity is calculated by a liable entity’s *large-scale generation shortfall* multiplied by the *rate of charge* as specified in section 6 of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*.
120. Section 38 continues to outline a method statement to specify how a liable entity’s *large-scale generation shortfall* is calculated, incorporating a liable entity’s *relevant acquisitions* net of any *partial exemptions* and the *renewable power percentage*.
121. This item also inserts new sections 38AA to 38AI in relation to the calculation of a liable entity’s *small-scale technology shortfall*. A liable entity will be liable to pay a *small-scale technology shortfall charge* if it does not surrender *small-scale technology certificates* on a quarterly basis. The structure is similar to the *large-scale generation shortfall charge*.
122. There are four surrender periods throughout the year, 28 days after the end of each quarter for the first three quarters and then up to 14 February of the following year for the *fourth quarter*, which is the time that the liable entity is required to lodge their *energy acquisition statement* to advise the Regulator of their relevant acquisitions for the year just passed. These quarterly surrender periods are intended to encourage the timely purchase of *small-scale technology certificates* by liable entities. Subsection 38AA(7) provides that the 28 April, 28 July and 28 October deadlines are not moved when those dates fall on a Saturday, Sunday or public holiday. This ensures there is no overlap of surrender periods.
123. The *small-scale technology shortfall charge* for a liable entity is calculated by a liable entity’s *small-scale technology shortfall* multiplied by the *rate of charge* as specified in section 6 of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*.

124. This item outlines four method statements for calculating a liable entity's *small-scale technology shortfall* in each quarter. The required surrender amount is higher in the first quarter of a year (35 per cent of relevant acquisitions) to encourage the timely transfer of *small-scale technology certificates* that are in the *clearing house*. It is also noted that 28 April is itself a third of the way through the year, rather than a quarter.
125. Ordinarily, the number of *small-scale technology certificates* that a liable entity is required to surrender is determined with reference to the *small-scale technology percentage* and the liable entity's previous year's reduced acquisitions (total relevant acquisitions less any partial exemptions for that year). The required surrender amount also takes into account any extra *small-scale technology certificates* that the liable entity surrendered in the previous quarter which was surplus to its liability. A liable entity's 'previous year's reduced acquisitions' is determined with reference to their last *energy acquisition statement* (as it was at 1 April in the year). This ensures liable entities know exactly what their quarterly surrender obligations will be for the first three quarters of the year and there are no additional compliance costs with working out quarterly acquisitions.
126. In the fourth quarter, a liable entity's *quarterly shortfall* is calculated using a different method, based on the actual reduced acquisitions in the current compliance year to 'true-up' any difference between the previous year's reduced acquisitions on which the first three quarter liabilities have been based and the actual reduced acquisitions for the current compliance year.



127. The number of *small-scale technology certificates* to be surrendered each quarter will be calculated as per:

$$\begin{aligned}
 \text{1}^{\text{st}} \text{ quarter liability} &= (\text{previous year's relevant acquisitions} - \text{previous year's partial exemptions}) \times 35\% \times \text{STP}^2 \\
 \text{2}^{\text{nd}} \text{ quarter liability} &= (\text{previous year's relevant acquisitions} - \text{previous year's partial exemptions}) \times 25\% \times \text{STP} \\
 \text{3}^{\text{rd}} \text{ quarter liability} &= (\text{previous year's relevant acquisitions} - \text{previous year's partial exemptions}) \times 25\% \times \text{STP} \\
 \text{4}^{\text{th}} \text{ quarter liability} &= [(\text{current year's relevant acquisitions} - \text{current year's partial exemptions}) \times \text{STP}] - (\text{1}^{\text{st}}, \text{2}^{\text{nd}} \text{ \& } \text{3}^{\text{rd}} \text{ quarter liability})
 \end{aligned}$$

² *Small-scale Technology Percentage – see item 66*

$$\text{Therefore, total annual liability} = (\text{actual relevant acquisitions} - \text{actual partial exemptions}) \times \text{STP}$$

128. Where a liable entity surrenders fewer *small-scale technology certificates* in any one quarter than required to, it will incur a *quarterly shortfall*. If a liable entity surrenders more *small-scale technology certificates* than it is required to for the quarter, the surplus is carried over and taken into account in the next quarter as a *quarterly surplus*. It is not possible to cancel out a shortfall for the first three quarters when annual liability is assessed as this would undermine the quarterly surrender model.
129. The item also inserts a new section 38AF which provides an option for liable entities that have a ‘previous year’s reduced acquisitions’ number but wish to use a different basis for quarterly surrender. They may apply to the Regulator for a different amount to be used instead. The Regulator must consider the application and make a decision in accordance with the section and any associated regulations. The Regulator may approve a different number to that proposed, but this cannot be less than proposed or more than the liable entity’s existing baseline (so that there is no disadvantage to the applicant). The Regulator’s decisions under the section are subject to the appeal process in section 66. This section is intended to accommodate a significant reduction in acquisitions which may make the use of the previous year’s baseline inappropriate.
130. Subsection 38AF(7) states that if actual reduced acquisitions are greater than the approved number by more than the prescribed percentage the actual reduced acquisitions are applied instead. This ensures that the Regulator will not be gamed by liable entities attempting to inappropriately reduce or avoid *quarterly shortfalls*.
131. A similar provision applies in the new section 38AG where a liable entity has not lodged an *energy acquisition statement* for the previous year and the liable entity applies to the Regulator for a proposed amount to apply instead. As these entity’s are essentially ‘new entrants’ to the scheme and may have only started part way through a year, a different baseline may be applied for in relation to each quarter. Section 38AH provides a default rule for these persons whereby actual reduced acquisitions apply other than in relation to a quarter when no relevant acquisitions were made (which is treated as zero).
132. A number of subsections clarify that the Regulator’s determinations are not legislative instruments (subsections 38AF(4) and 38AG(4)). These provisions are included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* (and so this is not a substantive exemption from that Act).
133. Section 38AI provides the specific requirements for applications to the Regulator for a proposed amount to be used instead of relevant acquisitions. This is consistent with other application provisions in the Act (such as section 46A).

Example

In 2010 a retailer acquired 1,000,000 MWh and had partial exemptions for 200,000 MWh. Their 2010 reduced acquisitions would therefore be 800,000 MWh. As the 2010 renewable power percentage is 5.98% the retailer needs to surrender $800,000 \times 5.98\% = 47,840$ *renewable energy certificates* by 14 February 2011. It does so by lodging its energy acquisition statement on or before that date.

If the small power percentage was set at 4% for 2011, by 14 April 2011 the Regulator would notify the retailer of their assumed quarterly liability under section 38AE. This would be $800,000 \text{ MWh} \times 35\% \times 4\% = 11,200$ for the first quarter and 8,000 for each of the second and third quarters (based upon $800,000 \text{ MWh} \times 25\% \times 4\%$).

By 28 April 2011 the retailer surrendered 12,000 small-scale technology certificates and thus had a quarterly surplus of 800 for the first quarter. By 28 July 2011 the retailer surrendered another 7000 small-scale technology certificates. This would result in a quarterly shortfall of 200 small-scale technology certificates for the second quarter ($8,000 - 7,000 - 800 = 200$).

By 28 October 2011 the retailer surrenders 8,000 certificates and thus has a no quarterly surplus or shortfall for the third quarter.

After 2011 is over the retailer determines that they have made relevant acquisitions of 900,000 MWh and have partial exemptions of 150,000 MWh. Their actual reduced acquisitions is therefore $900,000 - 150,000 = 750,000 \text{ MWh}$. The retailer's total small-scale liability is therefore $4\% \times 750,000 = 30,000$. The fourth quarter required surrender amount is then $30,000 - 11,200 - 8,000 - 8,000 = 2,800$. If the retailer surrenders 2,800 small-scale technology certificates in its energy acquisition statement by 14 February 2012 it will have no quarterly shortfall for the fourth quarter. However, it will still have a shortfall of 200 certificates from the second quarter and will thus need to lodge a small-scale technology shortfall statement in respect of those 200 certificates.

The retailer would also surrender large-scale generation certificates in its energy acquisition statement. The number of these would be based upon the 2011 renewable power percentage which would be set to achieve 10,400 GWh of renewable energy (as set out in section 40).

Item 62 - Section 38A

134. This item replaces the reference to the *renewable energy shortfall charge* with the *large-scale generation shortfall charge* and *small-scale technology shortfall charge* to clarify the two separate charges that apply to each liable entity.

Item 63 - Division 2 of Part 4 (heading)

135. This item replaces the heading with 'Renewable power percentage for large-scale generation shortfall charge' to specify that it only relates to the renewable power percentage for determining large-scale generation liability.

Item 64 - Subsection 39(1)

136. This item is to clarify that the renewable power percentage specified in the regulations relates only to this subsection on large-scale generation.

Item 65 - Paragraph 39(3)(d)

137. This item replaces the reference in paragraph 39(3)(d) to all partial exemptions expected to be claimed for the year with the amount estimated as the amount of all partial exemptions that will be claimed for the year, to clarify that the Minister must take into consideration an estimate of the partial exemptions likely to be claimed in determining the renewable power percentage.

Item 66 - After Division 2 of Part 4

138. This item inserts a new Division 2A, ‘Small-scale technology percentage for small-scale technology shortfall charge’. The item also inserts new section 40A to provide for the regulations to specify a *small-scale technology percentage* for use by liable entities in calculating their small-scale liability. As is currently the case, the Regulator will be expected to provide advice to the Minister on what the percentage should be. It is also envisaged that other expertise will also be drawn upon in developing the estimate. The regulations prescribing a percentage for a year must be made on or before 31 March in the year.
139. The structure of section 40A is designed to replicate the structure of section 39 which deals with the *renewable power percentage*. In particular, subsection 40A(3) sets out the core estimates that need to be taken into account in setting a percentage designed to result in all *small-scale technology certificates* created in a year being surrendered in relation to that year’s liability. Essentially this means that the percentage would ordinarily be determined by the estimate of *small-scale technology certificates* that are expected to be created in the year divided by the total of expected relevant acquisitions less expected partial exemptions. However, the extent to which the previous estimate of these three variables resulted in more or less *small-scale technology certificates* being surrendered for the previous year is taken into account in setting the following year’s percentage. This true-up mechanism is designed to ensure that over time all *small-scale technology certificates* will be required to be surrendered. The result of this is that the denominator for calculating the renewable power percentage and *small-scale technology percentage* should be the same.
140. This item also includes a formula for determining the default *small-scale technology percentage* if the regulations do not prescribe a percentage for the year starting on 1 January 2012 or a later year.

Item 67 - Division 3 of Part 4 (heading)

141. This item replaces the heading ‘Other provisions related to the charge’ with ‘Other provisions related to renewable energy shortfall charge’.
142. This item also inserts a new section 40B which requires the Regulator to publish an estimate of the *small-scale technology percentage* for the two years following the current compliance year before 31 March of the current year. This estimate is intended to provide liable entities with an indication of their potential liability over the forward two years to assist liable entities in managing their small-scale liabilities into the future, but is not a binding percentage.
143. This item also inserts a new section 40C which requires the Regulator to provide a liable entity written notice of the estimated amount of *small-scale technology certificates* they are required to surrender for the first three quarters of the current year where the liable entity has provided an *energy acquisition statement*.
144. In making the estimate, the Regulator is to disregard any determination made where the liable entity made an application to have a different amount apply for their previous year’s reduced acquisitions other than the last year’s reduced acquisitions (subsection 40C(2)). This will ensure the estimates are not delayed.

Item 68 - Paragraph 41(b)

145. This item replaces the reference to ‘renewable energy certificate shortfall’ with *large-scale generation shortfall* or *small-scale technology shortfall* to reflect the two separate obligations to surrender *large-scale generation certificates* and *small-scale technology certificates*.

Item 69 - Division 1 of Part 5

146. This item replaces Division 1 and inserts a new Division 1AA. Section 43A provides an overview of the part that relates to a liable entity’s obligation to lodge an annual *energy acquisition statement* and a *renewable energy shortfall statement* where a liable entity has a *large-scale generation shortfall* or a *small-scale technology shortfall*.
147. This item also replaces sections 44, 45, 45A and 46 and inserts new sections 44A, 45B, 45C, 45D and 45E in relation to annual *energy acquisition statements* and surrender of certificates to reflect the separate requirements for the large-scale and small-scale obligations and clarify the operation of the existing provisions.
148. The item largely maintains the current provisions in section 44 in relation to the provision of *energy acquisition statements* to the Regulator and clarifies certain details that may be provided, along with additional requirements in relation to a liable entity’s separate large-scale and small-scale obligation. This item clarifies the information that is required to be provided by a liable entity in its *energy acquisition statement*, the form of that statement and the accompanying certificates it is required to surrender. The Regulator will need to approve a new form to cater for the new information for the 2011 compliance year assessed in early 2012.
149. Section 44A clarifies the manner in which *large-scale generation certificates* are surrendered through the *energy acquisition statement* consistent with existing practice.
150. Section 45 details the requirements of liable entities to provide notice to the Regulator when it surrenders *small-scale technology certificates* for the first three quarters of a year and then as part of the annual *energy acquisition statement* for the fourth quarter surrender. This will assist both the Regulator and liable entities to manage compliance with the requirement to surrender *small-scale technology certificates*. Fees relating to quarterly surrender may be paid annually to minimise compliance costs.
151. Consistent with subsection 45A(1) of the current Act, section 45A provides that a liable entity may apply for an amendment to an *energy acquisition statement* within 12 months of lodging that statement. This could be because they have discovered a metering error relevant to their acquisitions. A liable entity may also apply to surrender more certificates to avoid a *large-scale generation shortfall* or the fourth quarter liability relating to the small-scale obligation. As it is important that a liable entity does not use this process to delay compliance, the Regulator has a discretion as to whether or not to accept any proposed amendments. Subsection 45A(9) clarifies that the amendment process does not allow for surrendered certificates to be returned to a liable entity. This is consistent with section 45A of the current Act.
152. Consistent with subsection 45A(2) of the current Act, section 45B provides that the Regulator may amend an *energy acquisition statement* on its own initiative within four years of lodgement. This could be because the Regulator has identified an error in an entity’s reported acquisitions. These amendments cannot increase or reduce the number of certificates a liable party has surrendered.

153. Section 45C clarifies that where an *energy acquisition statement* is amended by the Regulator and this increases the liable entity's liability, the liable entity has an opportunity to surrender additional certificates to avoid the relevant shortfall charge. This must be done within 30 days of receiving notice of the amendment.
154. Section 45D provides for limits on the certificates that may be surrendered under the Division. This is consistent with section 45 of the current Act. In particular, a certificate must have been created before the end of the assessment year. The only exception to this rule is for certificates purchased through the *clearing house* (where a person may not be able to guarantee which vintage year of certificate they will be acquiring).
155. Section 45E provides for fees in relation to the surrender of certificates consistent with subsections 44(5), (7) and (8) of the current Act.
156. A number of provisions clarify that notices are not legislative instruments (subsections 44A(4), 45(6), 45A(6) and 45C(6)). These provisions are included to assist readers, as the notice is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* (and so this is not a substantive exemption from the Act).
157. This item also inserts a new Subdivision B to deal with the annual *renewable energy shortfall statements* which clarifies that there are two types of shortfall statements for the large-scale generation and small-scale technology obligations. The requirements for lodging a *large-scale generation shortfall statement* for a year are largely the same as the current provisions. Additional requirements relate to the requirement to lodge a *small-scale technology shortfall statement* in the event of a shortfall.

Item 70 - Subsection 46C(4) (note)

158. This item inserts an additional reference in the note to reflect a new section 48B.

Item 71 - Sections 47 and 48

159. This item splits the division into three new subdivisions: 'Subdivision A – Large-scale generation shortfall charge'; 'Subdivision B – Small-scale technology shortfall charge'; and 'Subdivision C – Other provisions relating to assessments'.
160. This item replaces the current provisions relating to assessments of liability by the Regulator with new provisions which retain many of the same features but reflect the two types of shortfall in relation to a liable entity's separate large-scale and small-scale obligations.

Item 72 - Section 52

161. This item adds a reference to new section 48B to the notice of assessment provisions.

Item 73 - Subsection 66(1) (after table item 5DA)

162. This item inserts an additional reviewable decision that a person can request the Regulator to review. The decision relates to the Regulator's assessment of a liable entity's application to use a proposed amount instead of the previous year's reduced acquisitions or the default rule in section 38AH when calculating their amounts for quarterly surrender of *small-scale technology certificates*.

Item 74 - Subsection 66(1) (cell at table item 5E, column headed “made under ...”)

163. This item adds a reference to new section 45B to the table of reviewable decisions.

Item 75 - Section 67

164. This item replaces section 67 which relates to when a shortfall charge is payable with new provisions which retain many of the same features but reflect the two types of shortfall in relation to a *liable entity's* separate large-scale and small-scale obligations.

Item 76 - Part 8 (heading)

165. This item replaces the current heading with ‘Refunding large-scale generation shortfall charge’ to clarify that refunding the charge under this part relates only to the shortfall charge incurred for the large-scale obligation. It is not appropriate to allow for refunding of the *small-scale technology shortfall charge* as this would undermine quarterly surrender.

Item 77 - Paragraph 95(1)(a)

166. This item replaces the term ‘renewable energy shortfall charge’ with ‘*large-scale generation shortfall charge*’ to specify that it relates only to the large-scale obligation.

Item 78 - Paragraph 95(1)(b)

167. This item replaces the term ‘certificates’ with ‘*large-scale generation certificates*’ to specify that it relates only to the large-scale obligation.

Item 79 - Subsection 95(2)

168. This item replaces ‘renewable energy shortfall statement’ with ‘*large-scale generation shortfall statement*’ to specify that it relates only to the large-scale obligation.

Item 80 - Subsection 95(2)

169. This item replaces ‘renewable energy shortfall charge’ with ‘*large-scale generation shortfall charge*’ to specify that it relates only to the large-scale obligation.

Item 81 - Subsection 95(3)

170. This item replaces ‘certificate is’ with ‘*large-scale generation certificates are*’ to specify that it relates only to the large-scale obligation.

Item 82 - Subsection 96(1)

171. This item replaces ‘certificate surrendered’ with ‘*large-scale generation certificate surrendered*’ to specify that it relates only to the large-scale obligation.

Item 83 - Subsection 96(1)

172. This item replaces ‘renewable energy shortfall charge’ with ‘*large-scale generation shortfall charge*’ to specify that it relates only to the large-scale obligation.

Item 84 - Subsection 96(2)

173. This item replaces ‘certificates surrendered’ with ‘*large-scale generation certificates surrendered*’ to specify that it relates only to the large-scale obligation.

Item 85 - Subsection 96(2)

174. This item replaces ‘renewable energy shortfall charge’ with ‘*large-scale generation shortfall charge*’ to specify that it relates only to the large-scale obligation.

Item 86 - Section 97

175. This item replaces ‘surrender certificates’ with ‘surrender *large-scale generation certificates*’ to specify that it relates only to the large-scale obligation.

Item 87 - Section 97

176. This item replaces ‘renewable energy certificate shortfall’ with ‘*large-scale generation shortfall*’ to specify that it relates only to the large-scale obligation.

Item 88 - Section 98

177. This item replaces ‘certificates’ with ‘*large-scale generation certificates*’ to specify that it relates only to the large-scale obligation.

Item 89 - Section 99

178. This item replaces section 99 in relation to the penalty charge for failure to provide statements or information to reflect that this provision relates separately to information on the large-scale and small-scale shortfall charges. This item retains the same features that currently apply under the penalty provisions but creates two distinct sections for the separate penalty charge in relation to a *liable entity’s* large-scale and small-scale shortfall charge.

179. This item also inserts a new section 99A relating to the penalty charge for failure to provide statements or information for the *small-scale technology shortfall charge*. Both sections clarify that only one trigger for requiring a penalty charge would apply for each year.

Item 90 - Section 134

180. This item replaces section 134 in relation to information that the Regulator may publish to separate the provisions to reflect the separate *large-scale shortfall charge* information and insert new provisions in regard to publishing *small-scale technology shortfall charge* information.

Item 91 - Paragraph 135(c)

181. This item replaces paragraph 135(c) which relates to the ‘register of renewable energy certificates’ to include two separate references to the *register of large-scale generation certificates* and the *register of small-scale technology certificates*.

Item 92 - Division 4 of Part 13 (heading)

182. This item replaces the heading ‘The register of renewable energy certificates’ with ‘the register of large-scale generation certificates’ to specify that the Division relates only to *large-scale generation certificates*.

Item 93 - Section 140

183. This item replaces the reference to the ‘register of renewable energy certificates’ with ‘*register of large-scale generation certificates*’ to specify that the section relates only to *large-scale generation certificates*.

Item 94 - Paragraph 140(a)

184. This item replaces the reference to ‘renewable energy certificate’ with ‘*large-scale generation certificate*’ to specify that it relates only to *large-scale generation certificates*.

Item 95 - Subsection 141(3)

185. This item replaces a subsection relating to the form of the register of certificates with a general provision requiring the Regulator to ensure that the registry is kept up to date.

Item 96 - After Division 4 of Part 13

186. This item inserts a new Division 4A (including new sections 141AA and 141AB) relating to the register of small-scale technology certificates which replicates many of the features of the current renewable energy certificate registry and specifies that a separate registry must be kept for small-scale technology certificates as well as large-scale generation certificates. The provisions also require that the register must also contain information on small-scale technology certificates created by the Regulator to lend to liable entities where there are not enough certificates in the clearing house.

Item 97 - Paragraph 156(2)(a)

187. This item replaces the reference to other sections to a number of new sections to clarify that the Regulator may not delegate its functions or powers in relation to those sections. This maintains the effect of the existing non-delegable functions and powers with the new section numbering.

Item 98 - Paragraph 160(2)(c)

188. This item replaces the reference to ‘certificates’ with ‘*large-scale generation certificates* and *small-scale technology certificates*’ to capture the two types of certificates that may be created.

Item 99 - Paragraph 162(1)(c)

189. This item replaces paragraph 162(1)(c) relating to the *Renewable Energy (Electricity) (Charge) Act 2000* with two separate references to the two different charge Acts for the large-scale and small-scale obligations.

PART 2—OTHER AMENDMENTS

Renewable Energy (Electricity) Act 2000

Overview of Part

190. Part 2 of Schedule 1 provides for a number of amendments to the Act which are proposed to commence on the day after the Royal Assent. These amendments deal with improving the enforcement and compliance framework in the Act, information issues associated with partial exemptions and minor technical amendments. These issues are important to clarify for the existing scheme and are made more important in the context of the amendments made by Part 1 of Schedule 1.

Enforcement

191. The existing enforcement and compliance framework has been successful in promoting general compliance with the requirements of the Act since it was enacted in 2000. The changes will make the enforcement framework stronger by the introduction of a civil penalty regime, enforceable undertakings, injunctions, executive officer liability and a number of minor clarifications. This will bring the legislation in line with other similar Commonwealth legislation and create a more flexible and cost effective framework for the Regulator to take action to extract pecuniary penalties for non-compliance and remedy issues of non-compliance that occur.

Partial exemptions

192. The partial exemption provisions are dependent upon the Government having the necessary information to list an activity as an emissions-intensive trade-exposed activity and set a baseline of electricity intensity for that activity. Proposed section 46D would introduce a regime for the necessary information to be requested from corporations. If a corporation does not wish to comply with the request it is then prohibited from seeking a partial exemption certificate in respect of the relevant activity for a period of five years.

Waste coal mine gas eligibility

193. Waste coal mine gas is included as an eligible source in the Act for a specified period commencing on 1 July 2011 as a transitional measure in recognition of the planned cessation of the NSW Greenhouse Gas Reduction Scheme (GGAS). The annual targets were increased to accommodate *renewable energy certificates* created by existing waste coal mine gas generators to ensure they do not crowd out renewable energy generation.

194. As the inclusion of waste coal mine gas in the scheme has the potential to result in ‘double-dipping’ if waste coal mine gas projects were to receive assistance from GGAS and under the Act, the Bill makes a number of amendments to allow for the eligibility of waste coal mine gas to create *renewable energy certificates* to be postponed until such time as GGAS ceases. The amendments allow for the commencement of eligibility of waste coal mine gas to be determined by making regulations specifying a start date.

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

195. This item repeals the definition of Australian Greenhouse Office that related to the Australian Government agency that previously was responsible for the administration of the Act but that no longer exists. Its functions have been taken over by the Department of Climate Change and Energy Efficiency.

Item 101 - Subsection 5(1)

196. This item defines a new term *civil penalty order* as having the meaning given by the new subsection 154B(2).

Item 102 - Subsection 5(1)

197. This item defines a new term *civil penalty provision* as referring to provisions declared by the Act to be ‘civil penalty provisions’. This will include proposed sections 24A and 24B.

Item 103 - Subsection 5(1)

198. This item defines a new term *engage in conduct* as doing an act or omitting to do an act. This term is used in the new civil penalty provisions.

Item 104 - Subsection 5(1)

199. This item defines a new term *executive officer* of a body corporate as referring to directors, chief executive officers, chief financial officers or secretaries of body corporates. This is consistent with other Commonwealth legislation.

Item 105 - Subsection 5(1)

200. This item defines a new term *Federal Court* as meaning the Federal Court of Australia.

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

201. This item repeals the definition of Head of the Australian Greenhouse Office, a Commonwealth agency position that no longer exists.

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

202. This item broadens the definition of *offence against this Act* to also include any offences against the regulations, and to account for the possibility that the amendments may increase the likelihood that people will engage in fraudulent conduct or the provision of false or misleading statements as set out in the Criminal Code. Such an offence could involve, for example, the provision of false or misleading statements in applications relating to the claims for partial exemption certificates. The proposed definition will more accurately reflect the offences which exist in relation to the Act and conduct which relates to the Act.

Item 108 - Subsection 6(2)

203. This item ensures that the Crown is not liable to a pecuniary penalty under the Act and therefore indemnifies the Crown from being ordered by a court to pay the Commonwealth a pecuniary penalty (a civil penalty order) as set out in clause 154B. This is consistent with other Commonwealth legislation.

Item 109 - Subsection 13(2A)

204. This item removes the specific deadline (of 30 June 2010) for the receipt of applications for accreditation as a power station using waste coal mine gas from the Act and instead allows for regulations to be made specifying this date.

Item 110 - Subsection 15A(3)

205. This item removes the specific deadline (of 31 December 2010) for the decision of the Regulator on applications for accreditation as a power station using waste coal mine gas from the Act and instead provides that this date will be six months after the date specified in regulations under subsection 13(2A).

Item 111 - Subparagraph 17A(1)(a)(i)

206. This item repeals the subparagraph relating to the start date (1 July 2011) for when the generation of electricity by accredited power stations from waste coal mine gas becomes eligible. This item further allows for regulations to be made specifying the start date. This is consistent with the current provision which allows for the 1 July 2011 start date to be deferred by regulation.

Item 112 - At the end of section 17A

207. This item clarifies the intent of the previous items 109 to 111 by specifying that if regulations are not made to prescribe a start date for eligibility of waste coal mine gas, then it is not an eligible source under the Act.

Item 113 - Section 19

208. This item allows for the Regulator to allow for the creation of certificates beyond the end of the year after the year of generation. Section 19 currently requires that certificates can only be created from accredited power stations up to the end of the year after the year of generation. For instance, generation in January 2009 can only result in the creation of certificates up until 31 December 2010. This is important for ensuring timely creation of certificates and promoting market transparency. However, the amendment will allow for more flexibility in situations where circumstances beyond the control of the relevant power station have meant that the time limit could not be complied with.

Item 114 - Section 19 (note)

209. This item updates the note by referencing both the offences and the new civil penalty provisions relating to the creation of certificates covered in Subdivision C.

Item 115 - At the end of subsection 21(1)

210. This item inserts a note to cross reference the subsection (which relates to the creation of certificates from the installation of solar water heaters) with the provisions that relate to offences and civil penalties relating to the creation of certificates outlined in Subdivision C.

Item 116 - After subsection 21(1)

211. This item inserts a new subsection 21(1A) to clarify that regulations may prescribe conditions that solar water heaters and their installation must meet in order for certificates to be created, such as in relation to safety and technical quality matters. Under this subsection, the

regulations may also require the provision of specific information or documentation in relation to the solar water heater (e.g. a statement of compliance) and that the information be supported by statutory declaration. This provision will ensure that the regulations can continue to create a clear and robust framework around the appropriate creation of certificates from solar water heaters.

Item 117 - Subsection 22(2)

212. This item would replace subsection 22(2) of the Act with a new subsection which clarifies the nature of the ‘written determinations’ referred to in the existing paragraph 22(2)(a). It clarifies that the regulations 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;
 - 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.
213. In particular, it is expected that the methodology for determining the number of *renewable energy certificates* that a particular type of solar hot water system will create will in future be set out in a legislative instrument which is registered on the Federal Register of Legislative Instruments. This will improve the transparency and accessibility of the Regulator’s current methodology and practice relating to these matters. However, it is not intended that this change would substantially change the current approach of the Regulator in this area.

Item 118 - At the end of subsection 23A(1)

214. This item inserts a note to cross reference the provisions that relate to offences and civil penalties relating to the creation of certificates outlined in Subdivision C.

Item 119 - After subsection 23A(1)

215. This item inserts two new subsections relating to when certificates can be created for small generation units. The new subsection 23A(1A) allows for regulations to prescribe conditions small generation units and their installation must meet in order for *renewable energy certificates* to be created, for example relating to safety and technical quality matters. Under this subsection, the regulations may also require the provision of specific information or documentation in relation to the solar water heater (e.g. a statement of compliance) and that the information be supported by statutory declaration.
216. Subsection 23A(1B) clarifies that regulations made under subsection 23A(1A) may include conditions relating to small generation units after installation, such as requiring that such systems remain operational for the second and subsequent one or five year ‘deeming’ intervals.

Item 120 - At the end of Subdivision C of Division 4 of Part 2

217. This item will insert section 24A (Improper creation of certificates – civil penalty) and section 24B (False etc. information resulting in improper creation of certificates under Subdivision B or BA—civil penalty) in the Act.

218. Section 24A will create a civil penalty for creating certificates without an entitlement to do so. It mirrors the criminal penalty provision in section 24. The key difference is that, as a civil penalty provision, civil penalty actions will be able to be undertaken by the Regulator and will only need to be proved to a civil standard of proof. The criminal penalty will remain in section 24 for the more serious offenders, but the civil penalty regime will provide a more practical mechanism for the Regulator to manage non-compliance.
219. While the Regulator needs to validate *renewable energy certificates* under section 26, there remains a risk that certificates get created and validated when they were not entitled to be created. A strong civil penalty regime will ensure that if certificates are improperly created, the Regulator will be able to take swift and cost effective action against the creator. This will ensure that there remains a culture of compliance for registered persons and the potential penalties for non-compliance will ensure that registered persons put in place appropriate systems to avoid the improper creation of certificates.
220. There are a number of ways in which certificates may be improperly created. For instance, an accredited power station may generate electricity from an eligible energy source as well as a fossil fuel (such as natural gas). A power station could thus attempt to claim that natural gas fired generation has created certificates when the Act does not allow this to occur. For small-scale systems, it is possible that a system may not actually be installed at a particular address, may not meet the relevant standard to be eligible under the scheme or may breach another condition relevant to the ability to create certificates. A person may also use the wrong system information to create more certificates than they are entitled to create.
221. It is important that all of these issues are able to be dealt with appropriately by the Regulator. In most cases to date where a mistake has been made, the Regulator has worked with the individuals or companies involved to resolve the issue. This can include ensuring the system is installed appropriately or surrendering certificates under section 28A equivalent to those which should not have been validated.
222. Section 154M will make this provision a strict liability offence which is consistent with the offence currently provided by subsection 24(1) of the Act. This is important given the information asymmetries which exist in relation to the Regulator investigating and gathering evidence in relation to non-compliance with the Act and regulations. Nonetheless, section 154N will make clear that the mistake of fact defence still applies in relation to the prosecution of the civil penalty.
223. Subsection 24A(2) will provide for ancillary contraventions where a person may:
- a) aid, abet, counsel or procure a contravention of subsection (1);
 - b) induce, whether by threats or promises or otherwise, a contravention of subsection (1);
 - 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).
224. This is not a strict liability provision, but it will provide a clear deterrent to those persons who may benefit from encouraging breaches of the Act.
225. Section 24B will create a civil penalty provision in relation to providing false or misleading information to another person who relies on that information to create certificates in relation

to solar water heaters and small generation units. For instance, if an agent honestly relies on inaccurate information to create certificates they may not be liable to the offences created by section 24 and 24A or equivalent offences against the Criminal Code (because of the mistake of fact defence). Accordingly, this provision will impose civil liability on a person who provides that information in the circumstances where certificate creation was intended to result from that provision of information. Ancillary contraventions will also apply (see subsection 24B(2)).

Item 121 - Subsection 30A(1)

226. This item replaces a reference to regulations in subsection 30A(1) to refer instead to the new civil penalty provisions. Section 30A prescribes a number of circumstances when the Regulator may suspend the registration of a person under the Act. As creation of certificates is dependent on registration, this is a significant compliance tool for the Regulator. The amendment would allow contravention of a civil penalty provision to be a ground for the suspension of registration for up to 12 months.

Item 122 - Section 40

227. This item creates a new subsection 40(1) that requires the annual targets for *required GWh of renewable source electricity* to be subject to the new subsections 40(2), 40(3) and 40(4).

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

228. This item replaces the annual targets for *required GWh of renewable source electricity* in the table for the period 2011 to 2030 with revised targets that no longer include the amounts that were added for eligible waste coal mine gas. Specifically, the item:

- a) reduces the targets from 2011 to 2030 by 4,000 GWh in recognition of the separate liability now imposed in relation to small-scale technologies; and
- b) further reduces the annual target in 2011 by 425 GWh and the following years' targets by 850 GWh per year (to remove waste coal mine gas elements).

229. The profile of annual targets relates to the quantity of large-scale renewable electricity generation that is required to be sourced by liable entities which increases each year from 2011 to reach 41,000 GWh in 2020. The annual targets are maintained at 41,000 GWh each year until the scheme ends at the end of 2030.

230. In 2009 waste coal mine gas was included as an eligible source in the Act for a specified period commencing on 1 July 2011 as a transitional measure in recognition of the planned cessation of the NSW GGAS. The annual targets were increased to accommodate certificates created by existing waste coal mine gas generators to ensure they do not crowd out renewable energy generation.

231. As the inclusion of waste coal mine gas in the scheme has the potential to result in 'double-dipping' if waste coal mine gas projects were to receive assistance from GGAS and under the Act, the amendments made by item 111 allow for the eligibility of waste coal mine gas to create certificates to be postponed until such time as GGAS ceases. The change in the targets made by this item ensures that the liability under the Act is not increased in the period before waste coal mine gas is eligible.

232. The dual purpose of this amendment has meant that it is included in Part 2 of Schedule 1 rather than Part 1. However, the targets contained in the amendment assume that Part 1 of Schedule 1 comes into effect on 1 January 2011.

Item 124 - At the end of section 40

233. This item inserts three new subsections that allow for the targets reduced by item 123 to be automatically increased should regulations be made under subparagraph 17A(1)(a)(i) that specify a start date (the *WCMG start day*) for the eligibility of waste coal mine gas.

234. Subsection 40(3) specifies a formula for the amount the annual targets in the table in subsection 40(1) would be increased:

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

235. For example, if regulations were made that specified that waste coal mine gas was eligible from 1 July 2012, the annual target for 2012 (12,300 GWh) would be increased by:

$$850 \text{ GWh} \times \frac{183}{366} = 425 \text{ GWh}$$

236. Subsection 40(4) further specifies that should regulations be made to make waste coal mine gas an eligible source, the number of GWh that the annual targets in the table should be increased by for later years is 850 GWh.

237. Subsection 40(5) provides that if waste coal mine gas is made eligible after regulations setting the renewable power percentage for the year are made, those regulations are still valid despite the fact that the *required GWh of renewable source electricity* for that year would have changed.

Item 125 - After paragraph 46A(2)(b)

238. This item ensures that an application for a partial exemption certificate must include any documents or reports prescribed by the regulations. For instance, it may be important to require an audit report in relation to applications which seek a significant level of partial exemption.

Item 126 - Subsection 46B(1)

239. This item provides that the Regulator can only issue *partial exemption certificates* under subsection 46B(1) subject to the application of section 46E (which relates to circumstances in which partial exemption certificates cannot be issued).

Item 127 - At the end of Division 1A of Part 5

240. This item inserts three new sections relating to the issuance of *partial exemption certificates* for emissions-intensive trade-exposed activities under the Act.

241. The effectiveness and fairness of the emissions-intensive trade-exposed assistance in the Act depends on the Government having the necessary audited information in relation to particular activities to determine eligibility and an allocative baseline per unit of product. The Department of Climate Change and Energy Efficiency has already received audited information with regard to a number of potential activities which is sufficient to make these decisions. There remain, however, a number of potential emissions-intensive trade-exposed activities which will still need to be formally assessed. It will be important for the

Government to receive comprehensive information from an industry so that historical information can be the primary input into the decision making process. Quality historical information will reduce the necessity for detailed comparison of international information to assist in the determination of eligibility and baselines which may disadvantage parties who have fully complied with the information request.

242. The new section 46D provides for circumstances where an entity has come forward and both requested an assessment of an emissions-intensive trade-exposed activity and provided information in support of that request and the Government is not able to make a decision to include that activity in the regulations without formally requesting information of particular companies who have information relevant to that assessment. The Minister may accordingly issue notices to a constitutional corporation to provide information and audit reports relevant to the question of whether the activity is an emissions-intensive trade-exposed activity and what its electricity baseline should be. Such a power is limited to the circumstances where an emissions-intensive trade-exposed activity is not yet listed in the regulations. It is intended that such a power would only be exercised as a last resort in circumstances where a potential recipient of assistance is unwilling to provide the necessary information.
243. Subsections 46D(3) and (5) provide that the Minister's information requests must give at least 30 days for compliance if only information is requested and 60 days if a report is also requested to accompany that information.
244. Section 46E provides that a refusal or failure to comply with a notice issued under section 46D will render that constitutional corporation ineligible for *partial exemption certificates* for the first five years which begin after the date of the notice if they were capable of complying with the notice and the Minister informs the Regulator that the non-compliance was significant (the request time). This is proportionate to the potential for the withholding of such information to result in windfall gains for a particular entity over the period.
245. Section 46F will ensure that the Minister may also disclose this information to the Regulator to assist them with their functions and powers under the Act and regulations.

Item 128 - Subsection 72(1)

246. This item ensures consistency with other references to the *renewable energy shortfall charge* in other parts of the Act.

Item 129 - At the end of paragraph 73(1)(d)

247. This item ensures the provisions for third party recovery apply to money owed in relation to a civil penalty order as it currently does to money owed in relation to criminal penalties and other matters.

Item 130 - Subparagraph 111(1)(h)(ii)

248. This item inserts a reference to civil penalty provision into the monitoring powers as a reason why a thing may need to be secured.

Item 131 - Subsection 125B(2)

249. This item inserts a reference to a civil penalty order to the protection against self-incrimination provisions outlined in section 125B.

Item 132 - Paragraph 132(1)(a)

250. This item repeals the paragraph that refers to the Australian Greenhouse Office and officers of that office. The Australian Greenhouse Office no longer exists as an Australian Government agency. Those functions are now performed by the Department of Climate Change and Energy Efficiency. This item amends the section to refer to the Minister, the Secretary of the Department and officers of the Department authorised by the Secretary.

Item 133 - Paragraphs 154(1)(a) and (3)(a)

251. This item provides that a person is not guilty of an offence for the failure to provide documents if that has occurred under section 46D (which requires the provision of information requested by the Minister in relation to partial exemption arrangements).

Item 134 - After Part 15

252. This item inserts two new Parts in the Act: 'Part 15A - Civil penalties' and 'Part 15B -Other Remedies'.

Part 15A - Civil penalties

253. The proposed regulatory framework for civil penalties in Part 15A is consistent with that provided for in other Commonwealth legislation (see Part 5 of the *National Greenhouse and Energy Reporting Act 2007*, Part 6.3 of the *Personal Properties Securities Act 2009* and Division 4 of Part 8 of the *Water Act 2007*). It allows for the new civil penalty provisions created in sections 24A and 24B to be prosecuted by the Regulator in a court of civil jurisdiction to a civil standard of proof.

254. Section 154A provides that references to a *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.

255. It is considered appropriate that a wide range of courts have jurisdiction to hear civil penalty proceedings. However, state or territory magistrates courts will not be involved given that a number of technical issues may be involved.

256. Section 154A also defines the term penalty unit by reference to section 4AA of the *Crimes Act 1914*. Currently, a penalty unit is \$110.

257. Section 154B establishes the ability for a *Court* to make a civil penalty order to pay the Commonwealth a pecuniary penalty. Accordingly, it is for the *Court* to determine whether a person has contravened a civil penalty provision and to order the person to pay a penalty.

258. The maximum amount of the pecuniary penalty is specified, as are the matters which the court may have regard to in determining the amount of the penalty. They include the nature and extent of the contravention, previous contraventions, and, in the case of a body corporate, whether it has exercised due diligence to avoid the contravention. These factors reflect the approach indicated in *A Guide to Framing Commonwealth Offences, Civil Penalties and*

Enforcement Powers. They follow the *Australian Law Reform Commission Report 95: Principled Regulation: Federal Civil and Administrative Penalties in Australia*. They also include the question of whether a person in breach of section 24A has surrendered certificates under section 28A to compensate for improper creation of certificates.

259. Generally, the maximum penalty is 500 penalty units for a body corporate and 100 penalty units for other persons. In relation to subsection 24A, the maximum penalties for contraventions involving more than 100 certificates are higher. For an individual, it is 1 penalty unit for each improperly created certificate up to a maximum of 10,000 penalty units. It is five times this amount for a corporation. The per certificate individual penalty is consistent with the criminal penalty amount currently prescribed by section 24(1) (although that provision has no maximum amount). A per certificate maximum is appropriate as the economic value of improperly creating certificates is directly proportionate to the number of certificates which may be improperly created.
260. Section 154C will provide that only the Regulator may apply for a civil penalty order and this does not exclude the operation of the *Director of Public Prosecutions Act 1983*. Section 154D will provide that two or more proceedings may be heard together. Section 154E will provide that proceedings for a civil penalty order may be started no later than 6 years after the contravention. Section 154F will provide that the Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.
261. Section 154G will provide that the Court must not make a civil penalty order against a person for contravening a civil penalty provision if the person has been convicted of an offence for conduct that is substantially the same as the conduct constituting the contravention. This is relevant to the application of sections 24 and 24A as well as related Criminal Code breaches.
262. Sections 154H and 154J will clarify the interaction between criminal and civil proceedings. Section 154K will provide that evidence given in proceedings for a civil penalty order is not admissible in criminal proceedings
263. Section 154L provides for a mistake of fact defence to civil penalty provisions. It provides that a person is not liable to have a civil penalty order made against him or her for a contravention of a civil penalty provision if the person considered whether or not facts existed and was under a mistaken but reasonable belief about those facts and had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision. A person who wishes to rely on the relevant subsections bears an evidential burden in relation to that matter.
264. Section 154M is a state of mind provision which has the effect of making sections 24A and 24B strict liability. It is reasonable to expect those subject to the provision will take steps to guard against any inadvertent contravention and the information asymmetries would make general enforcement difficult if the various states of mind needed to be established. This is consistent with the current criminal penalty provided by subsection 24(1).
265. Division 2 of Part 15A will establish a regime for civil liability of executive officers of a corporation where they knew, or were reckless or negligent as to whether, a civil penalty provision would be contravened, were in a position to influence the corporation but failed to take all reasonable steps to prevent the contravention. These executive officer provisions are similar to those in other Commonwealth legislation (such as Division 4 of Part 5 of the *National Greenhouse and Energy Reporting Act 2007*). Section 154P will provide guidance as to what 'all reasonable steps' includes. These provisions are intended to ensure that there is

appropriate corporate governance to prevent breaches of the Act and executive officers are held accountable for their role in breaches of the Act.

266. The maximum penalty level for this accessorial liability is determined by reference to the underlying breach by the corporation. Extended accessorial liability is appropriate in this context. The aim is to ensure that compliance with the Act is taken seriously at a high level within corporations. Liability is not being imposed simply because the person is an officeholder at the relevant time but requires a degree of blame before a civil penalty can be imposed.

Part 15B—Other remedies

Division 1 – Enforceable undertakings

267. Division 1 of Part 15B provides for an enforceable undertakings regime. Enforceable undertakings are part of a number of Commonwealth enforcement regimes (see Division 3 of Part 5 of the *National Greenhouse and Energy Reporting Act 2007*, Division 4 of Part 6.3 of the *Personal Properties Securities Act 2009*, Part 5.8 of the *Radiocommunications Act 1992* and Division 6 of Part 8 of the *Water Act 2007*). They allow persons who may not have complied with the Act in the past to agree to a number of measures to ensure compliance, future compliance or rectify non-compliance. In particular, paragraph 154Q(1)(d) allows for persons who have created certificates they were not entitled to create to agree to surrender certificates under section 28A to compensate for that creation. Section 154S provides for the enforcement of an undertaking in the Federal Court.

Division 2—Injunctions

268. Division 2 of Part 15B provides for injunctions in relation to conduct, or a refusal or failure, that would constitute an offence against the Act or contravention of a civil penalty provision. Applications may be made in the Federal Court by the Regulator or a person aggrieved by the conduct. Section 154S achieves this in a similar manner to other injunction powers (such as section 147 of the *Gene Technology Act 2000*).

Item 135 - Paragraph 156(2)(b)

269. This item will insert Parts 15A and 15B in the list of matters that cannot be delegated to a contractor under section 156. This is consistent with other enforcement-related provisions.

Item 136 - After section 160

270. This item will include sections 160A (Prescribing matters by reference to other instruments) and 160B (Administrative decisions under the regulations) into the Act.
271. Section 160A will allow the regulations to refer to documents as in force from time to time. This will allow the regulations to refer to the current Australian Standards without constant regulation changes. Where a document is incorporated by reference, the section will require that document to be made available on the Regulator's website unless there are copyright issues involved. Given the development of the renewable energy industry this power is appropriate to ensure that the regulatory system is kept up to date with industry development and innovation.
272. Section 160B provides for regulations to make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator. This removes any doubt as to whether or not the regulations may confer significant administrative decision making functions on the Regulator to implement the framework established by the Act.

SCHEDULE 2—APPLICATION, SAVING AND TRANSITIONAL PROVISIONS

PART 1—PROVISIONS RELATING TO MAIN AMENDMENTS

Item 1 - Definitions

273. This item defines a number of terms used throughout Part 1 of Schedule 2, including:

- a) *amended REE Act* defined as the *REE Act* as in force after the *reform commencement* (i.e. after 1 January 2011);
- b) *old REE Act* defined as the *REE Act* as in force immediately before the *reform commencement* (i.e. immediately before 1 January 2011);
- c) *REE Act* refers to the *Renewable Energy (Electricity) Act 2000*;
- d) *reform commencement* refers to the commencement of Part 1 of Schedule 1 which is 1 January 2011;
- e) *reform transitional provisions* defined as the provisions in this Part and any regulations made under Part 3 that relate to any of the amendments made by Part 1 of Schedule 1; and
- f) *Schedule 1* refers to Schedule 1 to this Act.

Item 2 - Application of amendments relating to liability to charge

274. This item mandates that the amendments made by items 59 to 89 of Schedule 1 relating to the obligations of liable entities only apply from the year starting on the *reform commencement*, that is for the 2011 compliance year. Accordingly, liability relating to 2010 and earlier years will be determined in accordance with the *old REE Act* provisions. It is intended that the forms and regulations for assessing 2010 liability will be preserved by regulations. Therefore, the documentation and assessments required by 14 February 2011 deadline for the 2010 acquisitions will not be impacted by the amendments.

Item 3 - Application of amendments relating to creation of certificates

275. This item mandates that the amendments made by 39 to 48 of Schedule 1 relating to the creation of certificates only apply from the year starting on the *reform commencement*, that is from 1 January 2011.

Item 4 - Certificates created before the reform commencement

276. This item is a transitional provision that clarifies that *renewable energy certificates* created under the *REE Act* before the *reform commencement* (i.e. before 1 January 2011) will be treated as *large-scale generation certificates*. This includes all certificates created in relation accredited power stations and solar water heaters and small generation units. This is intended to ensure that there is adequate liquidity in the large-scale market.

277. Subitem (2) clarifies that this does not impact on certificates which have already been surrendered before 1 January 2011.

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

278. This item is a transitional provision that clarifies that *renewable energy certificates* created under the REE Act from installations of solar water heaters and small generation units made before the *reform commencement* (i.e. before 1 January 2011) will be treated as *large-scale generation certificates*. This is intended to ensure that there is adequate liquidity in the large-scale market. It ensures that persons who have installed small generation units before 1 January 2011 and have utilised 1 or 5 year deeming are not adversely impacted by the changes as they will continue to create large-scale generation certificates in accordance with the regulations in force at the end of 2010.

Item 6 - References in contracts to renewable energy certificates

279. This item provides that for contracts entered into before the Royal Assent, any references in the contract to a ‘renewable energy certificate’ or ‘certificate’, within the meaning of the *old REE Act* are taken to refer to *large-scale generation certificates*. This is important as the Act will now provide that both *large-scale generation certificates* and *small-scale technology certificates* are a form of *renewable energy certificate*.

280. The item ensures that the nature of contractual arrangements relating to *renewable energy certificates* are not adversely impacted by the change in terminology (such as resulting in ambiguity as to whether *small-scale technology certificates* or *large-scale generation certificates* could be supplied to comply with a contractual obligation). In this context the *large-scale generation certificates* have corresponding utility for the purposes of the Act as did all *renewable energy certificates* before the split. It is possible that the regulations may need to provide for particular cases where this is not appropriate.

281. Subitem (2) further provides that this is subject to whether any contrary intention to the above is expressed in the contract or agreed by the parties. Subitem (4), however, states if a contract referred to certificates as being created in relation to solar water heaters or small-generation units is not, that by itself, would not be a contrary intention for the purpose of subitem (3).

282. A contrary intention may arise in a number of circumstances. For instance, a person may have entered into a contract to assign the rights of certificate creation for a particular system to be installed after 1 January 2011. It could readily be assumed that this was clearly intended to be in relation to the types of *renewable energy certificates* which are able to be created from such as system (i.e. small-scale technology certificates).

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

283. This item provides for the recognition of rights in ‘pre-existing contracts’ for the transfer of certificates created from the installation of solar water heaters and small generation units. The provisions allow for the regulations to establish a mechanism where either party to such a contract may apply to the Regulator to have their contract recognised under the section. If their contract meets the requirements outlined below then the regulations will be able to provide that the small-scale technology certificates transferred under the contract become *large-scale generation certificates*. The intention of this item is to limit the impact of the changes on genuine contractual agreements that were made based on the existing design of the scheme.

284. Subitem (1) set the requirements for such contracts as:

- a) the contract is or was entered into on or before 25 February 2010 (before the date the Government announced of the changes intended to be made to the Act);
- b) the contract is in writing;
- c) the contract requires one of the parties to the contract to transfer *renewable energy certificates* to another party on or after 1 January 2011;
- d) because of item 6 of Schedule 2, the *renewable energy certificates* that are required to be transferred under the contract are *large-scale generation certificates*;
- e) the contract either implies or explicitly states that the certificates are created from the installation of solar water heaters or small-generation units (for instance a contract with an aggregator who conducts a business of acquiring certificates from small-scale installers and on-selling those to liable parties could be assumed to relate to certificates created from the installation of small-scale technologies) ;
- f) the contract does not solely relate to certificates created before 1 January 2011 or certificates from solar water heaters or small generation units installed before 1 January 2011 (for instance a contract for supply in January 2011 may be designed to relate to certificates created from 2010 or earlier so that they may be used for liability on or before 14 February 2011).

285. For example, an agent who creates *renewable energy certificates* on behalf of the owners of solar water heaters and small-generation units may have signed a contract with a liable entity in January 2010 for the delivery of 300 *renewable energy certificates* on 1 July 2011, 1 January 2012 and 1 July 2012. The contract may have just specified ‘renewable energy certificates’ as the deliverable item, without any particular reference to how these were to be created. The context of this arrangement was the liable entity’s future obligations to surrender certificates under the *old REE Act* which did not have any fixed price component. Because the seller was an agent who carries on a business relating to the creation of certificates from solar water heaters and small generation units, this would provide clarity that the context of the contract created an expectation that the certificates would come from those technologies.

286. Because of item 6, the contractual obligation will require the agent to supply *large-scale generation certificates* on the three dates. As the agent does not carry on the business of running a power station to create *large-scale generation certificates* it would be inequitable if the agent was forced to purchase *large-scale generation certificates* to meet their contractual obligation. The transitional provision has been designed to ensure that both parties to the contract are effectively in the position they would have been had the amendments not been made.

287. Subitem (2) provides for regulations to be made specifying that some or all of the certificates, when they are transferred under such a contract, to become *large-scale generation certificates*. The intention is for regulations to recognise contractual obligations for the transfer of certificates created from solar water heaters and small generation units in a market with no fixed price that would have occurred regardless of the amendments being made.

288. The regulations will be developed in consultation with affected parties to ensure that they provide an appropriate transitional mechanism such that the rights of each party to the contract are not adversely impacted. The regulations will deal with questions of detail (such that only genuine contractual relationships are recognised and transfers relating to existing

certificates are not covered). A priority will be placed on getting the regulations into place as early as is practicable to provide market certainty and allow for individual contracts to be assessed.

289. As a *small-scale technology certificate* will be regarded as a *large-scale generation certificate* after transfer and will be deemed to have been a *large-scale generation certificate* from its creation, those certificates will not need to be taken into account for the purposes of setting the *small-scale technology percentage* under section 40A.
290. Subitem (3) further provides that regulations may be made specifying information or documents that applicants must provide to the Regulator including verification by statutory declaration. In addition, regulations may provide for the Regulator to make consequential changes to the *register of small-scale technology certificates* and the *register of large-scale generation certificates* to recognise any transfers that occur under this provision. In particular, some adjustment may need to be made to the information relating to a certificate to ensure that it can be appropriately listed on the *register of large-scale generation certificates* (such as the reference to the eligible energy source).

Item 8 - The register of renewable energy certificates

291. This item provides the existing ‘register of renewable energy certificates’ under the *old REE Act* to transition to the *register of large-scale generation certificates*.
292. Subitem (2) further allows for the Regulator to amend that register if 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.

Item 9 - No effect on time of creation or on number of certificates that can be created

293. This item clarifies that the reform transitional provisions do not impact: the number of certificates that can be created, the time when certificates can be created or the validity of certificates created. For instance, the transitional arrangements do not provide for any double dipping or changes to the year of any certificates. Certificates which have been created but not yet validated under section 26 are also not somehow validated by the transitional provisions and similarly certificates refused registration are not made valid by the changes.

Item 10 - Application of section 40C

294. This item clarifies that the new section 40C (relating to the requirement for the Regulator to give liable entities an estimate of their required quarterly *small-scale technology certificate* surrender amounts) only applies in relation to *energy acquisition statements* lodged after 1 January 2011. This means that the first estimates will occur by 14 April 2011.

PART 2—PROVISIONS RELATING TO OTHER AMENDMENTS

Item 11 - Application of amendment made by 113 of Schedule 1

295. This item clarifies that the amendment made by item 113 of Schedule 1 (relating to when *large-scale generation certificates* may be created) applies to the year of generation that started on 1 January 2008 and later years of generation. Accordingly, the Regulator may extend the certificate creation period back until 1 January 2008 (but no earlier).

Item 12 - Saving provision relating to amendment made by item 117 of Schedule 1

296. This item clarifies that regardless of the amendment made by item 117 of Schedule 1 to subsection 22(2) (relating to regulations to be made in relation to certificates created from installations of solar water heaters), regulations made under that section continue until such time that new regulations are made. Accordingly, regulations 19A and 19B will remain valid until they are replaced.

Item 13 - Application of amendment made by 134 of Schedule 1

297. This item clarifies that the new civil penalty and injunction provisions cannot be used against a person in relation to conduct that occurred before the commencement of Schedule 1, the day after the Royal Assent.

PART 3—REGULATIONS

Item 14 - Regulations may deal with transitional etc. matters

298. This item allows for regulations to be made relating to the transitional, saving or application nature of the amendments being made, including conferring a decision making power on the Regulator. It is recognised that a number of issues may need to be dealt with by regulation, particularly with respect to forms and other delegated instruments associated with 2010 liability. This item provides a broad power to deal with whatever issues may need to be addressed.

Item 15 - Regulations

299. This item allows for the Governor-General to make regulations specifically required or permitted under Schedule 2 or necessary or convenient to give effect to the provisions outlined in Schedule 2.

PART 4—OTHER MATTERS

Item 16 - Compensation for acquisition of property

300. This item clarifies that if any of the amendments result in an *acquisition of property* from a person otherwise than on *just terms*, the Commonwealth would be liable to pay a reasonable amount of compensation to the person. Further it provides that if the Commonwealth and the person cannot agree on the amount of the compensation, that person may institute proceedings in a court to determine an appropriate amount of compensation.
301. This item also defines the terms *acquisition of property* and *just terms* as having the same meaning as in paragraph 51(xxxi) of the Constitution.
302. The Government considers that the amendments and proposed transitional arrangements will be adequate to avoid any potential claims under this item.