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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Renewable Energy (Electricity)
Amendment Bill 2010**

No. , 2010

(Climate Change, Energy Efficiency and Water)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

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

Commencement information

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

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

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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Schedule 1—Amendments

Part 1—Main amendments

Renewable Energy (Electricity) Act 2000

1 Subsection 5(1)

Insert:

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

2 Subsection 5(1)

Insert:

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

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

Omit “created under Division 4 of Part 2”.

4 Subsection 5(1)

Insert:

clearing house has the meaning given by section 30J.

5 Subsection 5(1)

Insert:

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

6 Subsection 5(1)

Insert:

first quarter has the meaning given by section 38AA.

7 Subsection 5(1)

Insert:

fourth quarter has the meaning given by section 38AA.

1 **8 Subsection 5(1)**

2 Insert:

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

6 Note: Section 177-1 of the *A New Tax System (Goods and Services Tax) Act*
7 *1999* provides for the Commonwealth's notional liability to pay GST.

8 **9 Subsection 5(1)**

9 Insert:

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

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

14 **10 Subsection 5(1)**

15 Insert:

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

18 **11 Subsection 5(1)**

19 Insert:

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

22 **12 Subsection 5(1)**

23 Insert:

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

26 **13 Subsection 5(1) (definition of *partial exemption*)**

27 Omit "renewable energy certificate shortfall for the year under
28 section 38", substitute "large-scale generation shortfall or small-scale
29 technology shortfall for the year".

30 **14 Subsection 5(1)**

1 Insert:

2 *previous year's reduced acquisitions* has the meaning given by
3 section 38AA.

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

5 **15 Subsection 5(1)**

6 Insert:

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

8 **16 Subsection 5(1)**

9 Insert:

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

11 **17 Subsection 5(1)**

12 Insert:

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

14 **18 Subsection 5(1)**

15 Insert:

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

18 **19 Subsection 5(1) (definition of *register of renewable energy***
19 ***certificates*)**

20 Repeal the definition.

21 **20 Subsection 5(1)**

22 Insert:

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

25 **21 Subsection 5(1) (definition of *renewable energy certificate*)**

26 Repeal the definition, substitute:

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

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

3 Repeal the definition.

4 **23 Subsection 5(1) (definition of *renewable energy shortfall***
5 ***charge*)**

6 Repeal the definition, substitute:

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

9 **24 Subsection 5(1) (definition of *renewable energy shortfall***
10 ***statement*)**

11 Repeal the definition, substitute:

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

15 **25 Subsection 5(1)**

16 Insert:

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

19 **26 Subsection 5(1) (definition of *required renewable energy*)**

20 Repeal the definition.

21 **27 Subsection 5(1)**

22 Insert:

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

25 **28 Subsection 5(1)**

26 Insert:

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

28 **29 Subsection 5(1)**

29 Insert:

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

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

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

9 **30 Subsection 5(1)**

10 Insert:

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

13 **31 Subsection 5(1)**

14 Insert:

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

17 **32 Subsection 5(1)**

18 Insert:

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

21 **33 Subsection 5(1)**

22 Insert:

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

25 **34 Subsection 5(1)**

26 Insert:

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

28 **35 Subsection 5(1)**

29 Insert:

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

1 **36 Subsection 5(1)**

2 Insert:

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

4 **37 Subsection 5(1)**

5 Insert:

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

9 Note: Section 177-1 of the *A New Tax System (Goods and Services Tax) Act*
10 *1999* provides for the Commonwealth's notional liability to pay GST.

11 **38 Subsection 5(1)**

12 Insert:

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

14 **39 Section 8**

15 After:

16 This Part deals with the creation, trading and extinguishing of
17 renewable energy certificates.

18 Insert:

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

26 **40 At the end of section 8**

27 Add:

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

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

7 **41 Division 4 of Part 2 (heading)**

8 Repeal the heading, substitute:

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

10 **Subdivision AA—Preliminary**

11 **17B Overview of Division**

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

14 There are 2 types of renewable energy certificates:

- 15 (a) large-scale generation certificates, which are
16 created in relation to the generation of electricity
17 by accredited power stations (see Subdivision A);
18 and
19 (b) small-scale technology certificates, which are
20 created in relation to the installation of solar water
21 heaters and small generation units (see
22 Subdivisions B and BA).

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

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

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

3 **46 Subsection 25A(1)**

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

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

8 **47 Paragraph 25A(2)(f)**

9 Repeal the paragraph, substitute:

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

13 **48 At the end of section 25A**

14 Add:

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

17 **49 Subsection 26(4)**

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

21 **50 At the end of section 26**

22 Add:

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

25 **51 Section 27**

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

27 **52 At the end of section 27**

28 Add:

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

1 **53 At the end of section 28**

2 Add:

- 3 (4) This section does not apply in relation to a transfer of a small-scale
4 technology certificate by or to the Regulator under subsection
5 30N(2) or 30P(4).

6 **54 Section 28A (notes 1 and 2)**

7 Repeal the notes, substitute:

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

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

14 **55 Subsection 29(1)**

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

17 **56 Paragraphs 30D(1)(d) and (3)(b)**

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

19 **57 Subsection 30D(6)**

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

21 **58 After Part 2**

22 Insert:

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

3 **Division 1—Preliminary**

4 **30H Overview of Part**

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

8 **Division 2—Regulator to establish and operate clearing**
9 **house**

10 **30J Regulator to establish and operate clearing house**

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

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

15 **30K Application for certificate to be entered into the clearing house**

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

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

5 **30L Regulator to enter certificate into the clearing house**

- 6 (1) If:
7 (a) an application is made in accordance with section 30K in
8 relation to a small-scale technology certificate; and
9 (b) the certificate is or becomes registered in the register of
10 small-scale technology certificates;
11 the Regulator must enter the certificate into the clearing house by
12 including the certificate on the clearing house transfer list in
13 accordance with the regulations.
- 14 (2) The *clearing house transfer list* is a list, maintained by the
15 Regulator in accordance with the regulations, of the certificates
16 that are available for transfer through the clearing house. The list
17 must be maintained so that:
18 (a) subject to paragraph (b), certificates are included on the list
19 in the order in which applications relating to the certificates
20 are received (with the certificates to which the most recent
21 applications relate at the bottom of the list); and
22 (b) if a certificate to which an application relates does not
23 become registered until after the application was received,
24 paragraph (a) applies as if the application was received when
25 the certificate was registered; and
26 (c) a certificate must be removed from the list if:
27 (i) the certificate is withdrawn from the clearing house; or
28 (ii) the certificate is transferred under section 30N; or
29 (iii) the certificate is cancelled under section 30P.
- 30 Note: Regulations under section 30U may allow the Regulator to remove
31 certificates from the list in other circumstances.
- 32 (3) If the Regulator includes a certificate on the clearing house transfer
33 list, the Regulator must:
34 (a) alter the register of small-scale technology certificates to
35 show that the certificate is in the clearing house; and
36 (b) take such other steps as are prescribed by the regulations.

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

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

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

10 **Division 4—Purchase of certificates through the clearing**
11 **house**

12 **30M Application for purchase of certificate through the clearing**
13 **house**

- 14 (1) Subject to subsection (2), a person may apply to the Regulator to
15 purchase a small-scale technology certificate.
- 16 (2) The regulations may provide that certain persons are not entitled
17 (either generally or in particular circumstances) to make an
18 application.
- 19 (3) An application must:
20 (a) be in writing; and
21 (b) be in a form approved, in writing, by the Regulator; and
22 (c) be accompanied by \$44; and
23 (d) be accompanied by any fee required by the regulations.

24 **30N If there is a certificate on the clearing house transfer list—**
25 **Regulator to transfer certificate**

26 *Scope*

- 27 (1) This section applies if:
28 (a) a person (the *purchaser*) has made an application in
29 accordance with section 30M to purchase a small-scale
30 technology certificate; and
31 (b) there is a small-scale technology certificate on the clearing
32 house transfer list.

- 1 *Regulator to transfer certificate at top of clearing house transfer*
2 *list*
- 3 (2) The Regulator must transfer the certificate that is at the top of the
4 clearing house transfer list to the purchaser on behalf of the person
5 (the *seller*) who, immediately before the transfer, was the
6 registered owner of that certificate.
- 7 (3) If the Regulator transfers a certificate under subsection (2), the
8 Regulator must, as soon as practicable:
9 (a) give the purchaser notice in writing of the transfer; and
10 (b) pay the seller the amount specified in subsection (4); and
11 (c) alter the register of small-scale technology certificates to
12 show the purchaser as the owner of the certificate.
- 13 (4) For the purposes of paragraph (3)(b), the amount is:
14 (a) if the transfer of the certificate is a taxable supply by the
15 seller to the purchaser—\$44; or
16 (b) if the transfer of the certificate is not a taxable supply by the
17 seller to the purchaser—\$40.
- 18 (5) Ownership of the certificate transfers to the purchaser when the
19 register of small-scale technology certificates is altered in
20 accordance with paragraph (3)(c).

21 **30P If there is no certificate on the clearing house transfer list—**
22 **Regulator to create certificate**

23 *Scope*

- 24 (1) This section applies if:
25 (a) a person (the *purchaser*) has made an application in
26 accordance with section 30M to purchase a small-scale
27 technology certificate; and
28 (b) there is no small-scale technology certificate on the clearing
29 house transfer list.

30 *Regulator to create certificate*

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

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

- 10 (4) If a certificate is created under subsection (2), the following
11 provisions apply:
12 (a) the next small-scale technology certificate (the *transferred*
13 *certificate*) that is included on the clearing house transfer list
14 is, immediately after being so included, taken to be
15 transferred to the Regulator by the person (the *seller*) who
16 was its registered owner immediately before it was included
17 on the list;
18 (b) the Regulator must, as soon as practicable:
19 (i) cancel the transferred certificate; and
20 (ii) pay the seller the amount specified in subsection (5);
21 and
22 (iii) alter the entry relating to the transferred certificate in the
23 register of small-scale technology certificates to show
24 that the transferred certificate is no longer valid.
- 25 (5) For the purposes of subparagraph (4)(b)(ii), the amount is:
26 (a) if the transfer to the Regulator of the transferred certificate
27 constitutes a taxable supply by the seller to the Regulator—
28 \$44; or
29 (b) if the transfer to the Regulator of the transferred certificate
30 does not constitute a taxable supply by the seller to the
31 Regulator—\$40.

32 **30Q Form and content of certificates created by the Regulator**

- 33 (1) Certificates created by the Regulator under subsection 30P(2) are
34 to be created in an electronic form approved in writing by the
35 Regulator.

- 1 (2) Each certificate is to contain:
2 (a) the year; and
3 (b) a statement to the effect that the certificate was created by the
4 Regulator under section 30P; and
5 (c) a number in an unbroken sequence that is used for all
6 certificates created by the Regulator in that year and that
7 starts at one and has increments of one; and
8 (d) the date on which the certificate was created.

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

10 **30R Renewable Energy Special Account**

- 11 (1) The Renewable Energy Special Account is established by this
12 section.
13 (2) The Renewable Energy Special Account is a Special Account for
14 the purposes of the *Financial Management and Accountability Act*
15 *1997*.

16 **30S Credits to the Renewable Energy Special Account**

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

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

25 **30T Purposes of the Renewable Energy Special Account**

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

- 28 (a) paying amounts under paragraph 30N(3)(b) in relation to the
29 transfer of certificates;
30 (b) paying amounts under subparagraph 30P(4)(b)(ii) in relation
31 to the transfer of certificates;
32 (c) refunding amounts under regulations made for the purpose of
33 paragraph 30U(2)(i);

- 1 (d) paying amounts of GST for which the Regulator is liable
2 because of the creation of certificates for purchasers under
3 section 30P.

4 Note: See section 21 of the *Financial Management and Accountability Act*
5 1997 (debits from Special Accounts).

6 **Division 6—Other matters**

7 **30U Regulations about the operation of the clearing house**

- 8 (1) The regulations may prescribe the policies, procedures and rules
9 that apply in relation to the establishment and operation of the
10 clearing house.
- 11 (2) In particular, the regulations may deal with any or all of the
12 following matters:
- 13 (a) the time when applications may be made;
- 14 (b) the time within which, and the manner by which, applications
15 must be dealt with;
- 16 (c) the withdrawal of certificates from the clearing house;
- 17 (d) the circumstances in which the Regulator may remove a
18 certificate from the clearing house transfer list other than
19 under paragraph 30L(2)(c);
- 20 (e) the timing and methods of payment of amounts;
- 21 (f) the publication of information about the clearing house,
22 including publication of the clearing house transfer list;
- 23 (g) the keeping of records by the Regulator in relation to the
24 operation of the clearing house;
- 25 (h) the fees that are payable in relation to matters connected with
26 the clearing house (including matters connected with the
27 Regulator's powers and functions in relation to the clearing
28 house and the clearing house transfer list);
- 29 (i) the payment of refunds in the following circumstances:
- 30 (i) a small-scale technology certificate is transferred to a
31 purchaser under section 30N but the transfer is not a
32 taxable supply by the seller to the purchaser;
- 33 (ii) a small-scale technology certificate is created for a
34 purchaser under section 30P but the creation of the
35 certificate is not a taxable supply by the Regulator to the
36 purchaser.

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

2 Insert:

3 **Division 1AA—Preliminary**

4 **34A Overview of Part**

5 This Part deals with liability to renewable energy shortfall charge.

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

7 There are 2 types of renewable energy shortfall charge:

- 8 (a) large-scale generation shortfall charge (see
9 Subdivision B of Division 1), which is calculated
10 by reference to a liable entity's relevant
11 acquisitions of electricity, its partial exemptions,
12 the number of large-scale generation certificates it
13 surrenders and the renewable energy power
14 percentage; and
- 15 (b) small-scale technology shortfall charge (see
16 Subdivision C of Division 1), which is calculated
17 by reference to a liable entity's relevant
18 acquisitions of electricity, its partial exemptions,
19 the number of small-scale technology certificates it
20 surrenders and the small-scale technology
21 percentage.

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

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

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

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

1 **60 Before section 35**

2 Insert:

3 **Subdivision A—Liable entities**

4 **61 Sections 36 to 38**

5 Repeal the sections, substitute:

6 **Subdivision B—Large-scale generation shortfall charge**

7 **36 Large-scale generation shortfall charge payable by liable entity**

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

19 Note: Large-scale generation shortfall charge is imposed by the *Renewable*
20 *Energy (Electricity) (Large-scale Generation Shortfall Charge) Act*
21 *2000*.

22 **37 Amount of charge**

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

25 Large-scale generation shortfall × Rate of charge

26 where:

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

1 **38 Determination of large-scale generation shortfall**

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

4 *Method statement*

5 Step 1. Work out the total amount, in MWh, of electricity
6 acquired by the liable entity during the year under
7 relevant acquisitions.

8 Step 2. Subtract from the total electricity acquired the amount of
9 the liable entity's partial exemption for the year.

10 Step 3. Multiply the result of step 2 by the renewable power
11 percentage for the year and round the result to the nearest
12 MWh (rounding 0.5 upwards). Add to the result any
13 carried forward shortfall from the previous year or
14 subtract any carried forward surplus for the previous
15 year. The result is the liable entity's **required large-scale**
16 **renewable energy** for the year.

17 Step 4. Subtract the total value, in MWh, of large-scale
18 generation certificates surrendered for that year, under
19 Subdivision A of Division 1 of Part 5, by the liable entity
20 from the required large-scale renewable energy for the
21 year.

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

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

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

1 **Subdivision C—Small-scale technology shortfall charge**

2 **38AA Interpretive provisions relating to liability for small-scale**
3 **technology shortfall charge etc.**

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

8 *Assessment year's reduced acquisitions*

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

14 *Previous year's reduced acquisitions*

- 15 (3) The *previous year's reduced acquisitions* is the amount worked
16 out by subtracting the amount of the liable entity's partial
17 exemption (if any) for the previous year from the amount, in MWh,
18 of electricity acquired by the liable entity during the previous year
19 under relevant acquisitions.

- 20 (4) For the purpose of subsection (3):

- 21 (a) the amount, in MWh, of electricity acquired during the
22 previous year by the liable entity under relevant acquisitions
23 is taken to be the amount stated as having been so acquired in
24 the liable entity's energy acquisition statement for the
25 previous year (taking account of any amendments to that
26 statement that were made before 1 April in the assessment
27 year); and
28 (b) the amount of the liable entity's partial exemption for the
29 previous year is taken to be the total amount of partial
30 exemption claimed in the liable entity's energy acquisition
31 statement for the previous year (taking account of any
32 amendments to that statement that were made before 1 April
33 in the assessment year); and
34 (c) if, for any reason, the liable entity has not lodged an energy
35 acquisition statement for the previous year before 1 April in

1 the assessment year, the liable entity is taken not to have any
2 previous year's reduced acquisitions.

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

7 *The quarters of a year*

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

14 *The surrender period for a quarter*

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

26 Note: The period described in paragraph (6)(d) will end on 14 February in
27 the next year, unless the Regulator allows a later day under paragraph
28 44(1)(b).

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

1 **38AB Small-scale technology shortfall charge payable by liable**
2 **entity**

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

9 Note: Small-scale technology shortfall charge is imposed by the *Renewable*
10 *Energy (Electricity) (Small-scale Technology Shortfall Charge) Act*
11 *2010*.

12 **38AC Amount of charge**

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

15 Small-scale technology shortfall × Rate of charge

16 where:

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

20 **38AD Determination of small-scale technology shortfall**

- 21 (1) A liable entity's ***small-scale technology shortfall*** for a year is to be
22 worked out by adding together the quarterly shortfalls (if any)
23 calculated in relation to the entity for the quarters of the year under
24 section 38AE.
- 25 (2) If the result is a positive amount, the liable entity has a small-scale
26 technology shortfall for the year equal to the result.
- 27 (3) If the result is zero, the liable entity does not have a small-scale
28 technology shortfall for the year.

1 **38AE Quarterly shortfalls for the quarters of a year**

2 *First quarter of year*

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

6 *Method statement*

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

12 Step 2. Add together:

13 (a) the total value, in MWh, of small-scale technology
14 certificates surrendered, under Subdivision A of
15 Division 1 of Part 5, by the liable entity during the
16 surrender period for the first quarter; and

17 (b) the amount of any quarterly surplus that the liable
18 entity has for the fourth quarter of the previous
19 year.

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

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

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

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

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

Second quarter of the assessment year

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

Method statement

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

Step 2. Add together:

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

The result is the **surrendered amount**.

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

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

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

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

Third quarter of the assessment year

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

Method statement

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

Step 2. Add together:

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

The result is the **surrendered amount**.

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

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

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

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

Fourth quarter of the assessment year

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

Method statement

Step 1. Work out the assessment year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards).

Step 2. Subtract from the amount worked out under step 1 the total of the required surrender amounts for the first, second and third quarters of the assessment year. The result (which may be less than zero) is the **required surrender amount**.

Step 3. Add together:

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

The result is the **surrendered amount**.

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

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

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

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

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

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

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

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

Note: For other provisions relating to the making of applications, see section 38AI.
- (3) The Regulator must consider the application and must, in writing:

- 1 (a) determine that the proposed amount, or a different amount, is
2 to apply instead of the amount of the previous year's reduced
3 acquisitions; or
4 (b) refuse to make such a determination.
- 5 (4) A determination under subsection (3) is not a legislative
6 instrument.
- 7 (5) In relation to the Regulator's power to determine an amount that is
8 different from the proposed amount:
9 (a) a different amount determined by the Regulator must not be
10 less than the proposed amount and must not exceed the
11 previous year's reduced acquisitions; and
12 (b) before determining a different amount, the Regulator must:
13 (i) invite the liable entity to comment on the amount that
14 the Regulator proposes to determine; and
15 (ii) consider the liable entity's comments (if any).
- 16 (6) If the Regulator determines an amount under paragraph (3)(a) then,
17 subject to subsection (7), section 38AE applies to the entity and the
18 assessment year as if the amount determined were the previous
19 year's reduced acquisitions.
- 20 (7) If the assessment year's reduced acquisitions exceed the amount
21 determined by more than the prescribed percentage of the amount
22 determined, then:
23 (a) subsection (6) does not apply; and
24 (b) references in section 38AE to the previous year's reduced
25 acquisitions are instead taken to be references to the
26 assessment year's reduced acquisitions.
27 For this purpose, the *prescribed percentage* is the percentage
28 prescribed by the regulations for the purpose of this subsection.
- 29 (8) The Regulator must give the liable entity written notice of the
30 Regulator's decision in relation to the application.
- 31 (9) The Regulator must comply with any requirements prescribed by
32 the regulations in relation to the exercise of the Regulator's
33 functions or powers under this section.

1 **38AG No energy acquisition statement lodged for previous year:**
2 **application to have amount apply as if it were previous**
3 **year's reduced acquisitions**

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

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

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

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

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

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

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

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

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

10 **38AH No energy acquisition statement lodged for previous year:**
11 **default rule**

- 12 (1) This section applies, in relation to the first, second or third quarter
13 (the *relevant quarter*) of the assessment year, if:
14 (a) for any reason, the liable entity did not lodge an energy
15 acquisition statement for the previous year before 1 April in
16 the assessment year; and
17 (b) either:
18 (i) the liable entity did not make an application under
19 section 38AG before the end of the assessment year in
20 relation to the relevant quarter; or
21 (ii) the liable entity made such an application in relation to
22 the relevant quarter, but the Regulator refused to make a
23 determination under paragraph 38AG(3)(a) in relation to
24 that quarter.
- 25 (2) If this section applies, then subsection 38AE(1), (2) or (3) (as the
26 case requires) applies to the relevant quarter as if the amount
27 specified in whichever of the following paragraphs applies were
28 the previous year's reduced acquisitions:
29 (a) if the liable entity made relevant acquisitions of electricity in
30 the relevant quarter—the amount of the assessment year's
31 reduced acquisitions;
32 (b) if the liable entity did not make any relevant acquisitions of
33 electricity in the relevant quarter—zero.

1 **38AI General provisions relating to applications under**
2 **sections 38AF and 38AG**

3 *Requirements for applications*

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

15 *Regulator may require further information*

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

25 **62 Section 38A**

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

29 **63 Division 2 of Part 4 (heading)**

30 Repeal the heading, substitute:

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

3 **64 Subsection 39(1)**

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

6 **65 Paragraph 39(3)(d)**

7 Repeal the paragraph, substitute:

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

10 **66 After Division 2 of Part 4**

11 Insert:

12 **Division 2A—Small-scale technology percentage for**
13 **small-scale technology shortfall charge**

14 **40A Regulations to specify small-scale technology percentage**

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

22
$$\text{Previous year's small-scale technology percentage} \times \frac{\text{Certificate value for previous year}}{\text{Certificate value for year before previous year}}$$

23 where:

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

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

- 1 (3) Before the Governor-General makes a regulation under
2 subsection (1) specifying the small-scale technology percentage for
3 a year (the *current year*), the Minister must take into
4 consideration:
- 5 (a) the estimated value, in MWh, of small-scale technology
6 certificates that will be created in the current year under
7 Subdivisions B and BA of Division 4 of Part 2; and
- 8 (b) the amount estimated as the amount of electricity that will be
9 acquired under relevant acquisitions during the current year;
10 and
- 11 (c) the amount estimated as the amount of all partial exemptions
12 that will be claimed for the current year; and
- 13 (d) if the current year is the year commencing on 1 January 2012
14 or a later year:
- 15 (i) the amount by which the previous year's estimate under
16 paragraph (a) exceeded, or was exceeded by, the value,
17 in MWh, of small-scale technology certificates that
18 were created in that year under Subdivisions B and BA
19 of Division 4 of Part 2; and
- 20 (ii) the amount by which the previous year's estimate under
21 paragraph (b) exceeded, or was exceeded by, the
22 amount of electricity that was acquired under relevant
23 acquisitions during that year; and
- 24 (iii) the amount by which the previous year's estimate under
25 paragraph (c) exceeded, or was exceeded by, the amount
26 of partial exemptions that were claimed for the previous
27 year.
- 28 (4) If, at the time the Minister takes into consideration the matters
29 referred to in subsection (3), the amount referred to in
30 subparagraph (3)(d)(i), (ii) or (iii) is not known, then the Minister
31 may take into consideration an estimate of that amount instead.
- 32 (5) A failure to comply with subsection (3) does not affect the validity
33 of the regulations.

34 **67 Division 3 of Part 4 (heading)**

35 Repeal the heading, substitute:

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

3 **40B Regulator to publish estimate of small-scale technology**
4 **percentage**

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

14 **40C Regulator to give liable entity estimate of current year's**
15 **required surrender amounts for first 3 quarters**

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

31 **68 Paragraph 41(b)**

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

1 **69 Division 1 of Part 5**

2 Repeal the Division, substitute:

3 **Division 1AA—Preliminary**

4 **43A Overview of Part**

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

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

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

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

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

21 **Division 1—Statements**

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

23 **44 Annual energy acquisition statements**

24 (1) A liable entity that acquired electricity under a relevant acquisition
25 during a year (the *assessment year*) must lodge an energy
26 acquisition statement for the year on or before:

- 27 (a) 14 February in the next year; or
28 (b) any later day allowed by the Regulator.

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

- 1 (2) The statement must set out:
2 (a) the name and postal address of the liable entity; and
3 (b) the amount, in MWh, of electricity acquired by the liable
4 entity under relevant acquisitions during the assessment year;
5 and
6 (c) whether the liable entity wishes to claim a partial exemption
7 for the assessment year (see also subsection (3)); and
8 (d) the large-scale charge information (see subsection (4)); and
9 (e) the small-scale charge information (see subsection (5)); and
10 (f) any other information required by the regulations.
- 11 (3) If the liable entity wishes to claim a partial exemption for the
12 assessment year, the statement must be accompanied by:
13 (a) a copy of each partial exemption certificate issued to the
14 liable entity for the assessment year in relation to an
15 emissions-intensive trade-exposed activity carried on by the
16 liable entity during the year; and
17 (b) a copy of each partial exemption certificate issued to another
18 person in relation to the liable entity for the assessment year
19 and given to the liable entity.
- 20 (4) For the purpose of paragraph (2)(d), the **large-scale charge**
21 **information** is:
22 (a) the value, in MWh, of large-scale generation certificates
23 being surrendered for the assessment year under section 44A;
24 and
25 (b) the amount of any carried forward shortfall or carried
26 forward surplus that the liable entity had for the previous
27 year; and
28 (c) the amount of any carried forward surplus that the liable
29 entity has for the assessment year.
- 30 (5) For the purpose of paragraph (2)(e), the **small-scale charge**
31 **information** is:
32 (a) for each of the quarters of the assessment year—the value, in
33 MWh, of small-scale technology certificates that have been
34 or are being surrendered for the quarter under section 45
35 during the surrender period for the quarter; and
36 (b) the amounts of any quarterly surpluses and quarterly
37 shortfalls that the liable entity has for the quarters of the
38 assessment year; and
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- 1 (c) the amount of any quarterly surplus that the liable entity had
2 for the fourth quarter of the previous year; and
3 (d) if the Regulator has, under section 38AF, determined an
4 amount that is to apply instead of the previous year's reduced
5 acquisitions—the amount so determined; and
6 (e) if the Regulator has, under section 38AG, determined an
7 amount that is to apply, for a quarter of the assessment year,
8 as if it were the previous year's reduced acquisitions—the
9 amount so determined for that quarter; and
10 (f) if section 38AH applies in relation to a quarter of the
11 assessment year—a statement as to whether the liable entity
12 made any relevant acquisitions of electricity in that quarter.
- 13 (6) The statement must:
14 (a) be in a form approved by the Regulator; and
15 (b) be lodged with the Regulator in accordance with the
16 regulations; and
17 (c) be signed by or on behalf of the liable entity making the
18 statement.

19 **44A Surrender of large-scale generation certificates in energy** 20 **acquisition statement**

- 21 (1) A liable entity may surrender large-scale generation certificates for
22 a year by including details of the large-scale generation certificates
23 (the *identified certificates*) that it is surrendering for the year in its
24 energy acquisition statement for the year.
- 25 Note: For limitations on the certificates that can be surrendered, see
26 section 45D.
- 27 (2) The identified certificates are taken to be surrendered when the
28 energy acquisition statement is lodged, other than any of those
29 certificates that cannot be surrendered because of section 45D.
- 30 (3) The Regulator must, by notice in writing given to the liable entity,
31 advise the entity of:
32 (a) the number of the identified certificates that (taking account
33 of section 45D) are able to be surrendered for the year; and
34 (b) the fee payable by the entity under section 45E in respect of
35 the surrender of those certificates.
- 36 (4) A notice under subsection (3) is not a legislative instrument.

1 **45 Surrender of small-scale technology certificates in quarterly**
2 **surrender instrument**

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

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

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

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

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

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

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

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

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

6 *Notices are not legislative instruments*

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

8 **45A Amending energy acquisition statement at request of liable**
9 **entity**

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

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

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

19 *Amendment to surrender additional certificates*

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

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

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

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

- 1 (5) If the Regulator agrees to the request (in whole or in part) the
2 Regulator must, by notice in writing to the liable entity, advise the
3 entity of:
4 (a) the number of the identified certificates in relation to which
5 the following subparagraphs are satisfied:
6 (i) the Regulator agrees to make the amendment to
7 surrender the certificates;
8 (ii) the certificates (taking account of section 45D) are able
9 to be surrendered for the year or the quarter; and
10 (b) the fee payable by the entity under section 45E in respect of
11 the surrender of the certificates (the *agreed certificates*) in
12 relation to which subparagraphs (a)(i) and (ii) are satisfied.
- 13 (6) A notice under subsection (5) is not a legislative instrument.
- 14 (7) Subject to subsection (8), the agreed certificates are taken to have
15 been surrendered when the Regulator makes the amendment of the
16 energy acquisition statement.
- 17 (8) If the agreed certificates are small-scale technology certificates,
18 then, for the purpose of determining the number of such certificates
19 surrendered by the entity during the surrender period for the fourth
20 quarter, the certificates are taken to have been surrendered during
21 that period.
- 22 *No amendment to reduce number of certificates surrendered*
- 23 (9) An energy acquisition statement cannot be amended under this
24 section to reduce the number of certificates previously surrendered.

25 **45B Amending energy acquisition statement on Regulator's own**
26 **initiative**

- 27 (1) The Regulator may amend an energy acquisition statement for a
28 year on the Regulator's own initiative if the amendment is made
29 within 4 years of the liable entity lodging the statement.
- 30 Note: An amendment of an energy acquisition statement under this section
31 may also result in the Regulator issuing an assessment under
32 section 48 or 48B or amending an assessment under section 49.
- 33 (2) The Regulator must give the liable entity written notice of the
34 amendment.

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

4 **45C Surrender of additional certificates if energy acquisition**
5 **statement amended on Regulator's own initiative**

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

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

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

4 **45D Limitations on certificates that can be surrendered under this**
5 **Subdivision**

6 *Large-scale generation certificates*

7 (1) A liable entity cannot surrender a large-scale generation certificate
8 for a year under this Subdivision unless:

9 (a) the certificate was created before the end of the year; and

10 (b) the liable entity is recorded in the register of large-scale
11 generation certificates as the owner of the certificate at
12 whichever of the following times applies:

13 (i) for surrender under section 44A—the time when the
14 energy acquisition statement is lodged;

15 (ii) for surrender under section 45A—the time when the
16 Regulator makes the amendment of the energy
17 acquisition statement;

18 (iii) for surrender under section 45C—the time when the
19 additional surrender notice is lodged; and

20 (c) the certificate is valid at the time that applies under
21 paragraph (b).

22 *Small-scale technology certificates*

23 (2) A liable entity cannot surrender a small-scale technology certificate
24 for a quarter of a year under this Subdivision unless:

25 (a) either:

26 (i) the liable entity acquired the certificate under Division 4
27 of Part 2A (purchase of certificates through the clearing
28 house); or

29 (ii) if subparagraph (i) does not apply—the certificate was
30 created before the end of the year; and

31 (b) the liable entity is recorded in the register of small-scale
32 technology certificates as the owner of the certificate at
33 whichever of the following times applies:

34 (i) for surrender under section 45—the time when the
35 surrender instrument for the quarter is lodged;

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

12 **45E Fees for surrender of certificates under this Subdivision**

- 13 (1) The regulations may prescribe the fee payable for the surrender of
14 a certificate under this Subdivision.
- 15 (2) If a liable entity is given a notice under section 44A, 45, 45A or
16 45C advising the entity of the fee payable in respect of the
17 surrender of certificates, the liable entity must pay the fee within
18 the period of 28 days beginning on the day the entity receives the
19 notice.
- 20 (3) If the fee specified in the notice is unpaid at the end of that period
21 of 28 days, it is a debt due to the Commonwealth and is
22 recoverable by the Regulator in a court of competent jurisdiction.

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

24 **46 Annual renewable energy shortfall statements**

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

1 *Large-scale generation shortfall statement*

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

21 *Small-scale technology shortfall statement*

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

1 *General requirements for statements*

- 2 (6) A statement under this section must:
- 3 (a) be in a form approved by the Regulator; and
- 4 (b) be lodged with the Regulator in accordance with the
- 5 regulations; and
- 6 (c) be signed by or on behalf of the liable entity making the
- 7 statement.

8 **70 Subsection 46C(4) (note)**

9 After “section 48”, insert “or 48B”.

10 **71 Sections 47 and 48**

11 Repeal the sections, substitute:

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

13 **47 First large-scale generation shortfall statement taken to be**

14 **assessment of large-scale generation shortfall charge**

- 15 (1) This section applies if:
- 16 (a) a liable entity lodges a large-scale generation shortfall
- 17 statement for a year (the *assessment year*); and
- 18 (b) a large-scale generation shortfall statement has not previously
- 19 been lodged, and an assessment of large-scale generation
- 20 shortfall charge has not previously been made, for the
- 21 assessment year in relation to the liable entity.
- 22 (2) The statement has effect as an assessment of the liable entity’s
- 23 large-scale generation shortfall for the assessment year and of the
- 24 large-scale generation shortfall charge (if any) payable on the
- 25 shortfall.
- 26 (3) The assessment is taken to have been made on 14 February in the
- 27 next year or the day on which the statement was lodged, whichever
- 28 is the later.
- 29 (4) The large-scale generation shortfall specified in the statement is
- 30 taken to be the liable entity’s large-scale generation shortfall for
- 31 the assessment year.

- 1 (5) The amount of large-scale generation shortfall charge (if any)
2 specified in the statement is taken to be the amount of large-scale
3 generation shortfall charge payable by the liable entity for the
4 assessment year.
- 5 (6) The statement has effect as if it were a notice of assessment signed
6 by the Regulator and given to the liable entity on the day on which
7 the assessment is taken to have been made.

8 **48 Default assessments of large-scale generation shortfall charge**

- 9 (1) If a liable entity has lodged an energy acquisition statement for a
10 year but:
11 (a) the liable entity has not lodged a large-scale generation
12 shortfall statement for the year; and
13 (b) the Regulator is of the opinion that the liable entity has a
14 large-scale generation shortfall for the year;
15 the Regulator may make an assessment of the liable entity's
16 large-scale generation shortfall for the year, and of the large-scale
17 generation shortfall charge (if any) payable on the shortfall.
- 18 (2) If:
19 (a) a liable entity has not lodged a large-scale generation
20 shortfall statement for a year; and
21 (b) the liable entity has also not lodged an energy acquisition
22 statement for the year; and
23 (c) the Regulator is of the opinion that the liable entity has a
24 large-scale generation shortfall for the year;
25 the Regulator may make an assessment of the liable entity's
26 large-scale generation shortfall for the year, and of the large-scale
27 generation shortfall charge (if any) payable on the shortfall.
- 28 (3) For the purpose of making an assessment under subsection (1) or
29 (2):
30 (a) the liable entity's large-scale generation shortfall is taken to
31 be the amount that, in the Regulator's opinion, might
32 reasonably be expected to be the shortfall; and
33 (b) in the case of an assessment under subsection (1)—the
34 Regulator is to take into account any large-scale generation
35 certificates surrendered by the liable entity under Subdivision
36 A of Division 1 for the year; and

- 1 (c) in the case of an assessment under subsection (2)—the
2 Regulator is to assume that the liable entity did not surrender
3 any large-scale generation certificates under Subdivision A of
4 Division 1 for the year.
- 5 (4) Large-scale generation shortfall charge in relation to an assessment
6 for a year made under this section is taken to have become payable
7 on 14 February in the next year.
- 8 (5) An assessment for a year under this section cannot be made until
9 after 14 February in the next year.

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

11 **48A First small-scale technology shortfall statement taken to be** 12 **assessment of small-scale shortfall charge**

- 13 (1) This section applies if:
14 (a) a liable entity lodges a small-scale technology shortfall
15 statement for a year (the *assessment year*); and
16 (b) a small-scale technology shortfall statement has not
17 previously been lodged, and an assessment of small-scale
18 shortfall charge has not previously been made, for the
19 assessment year in relation to the liable entity.
- 20 (2) The statement has effect as an assessment of the liable entity's
21 small-scale technology shortfall for the assessment year and of the
22 small-scale technology shortfall charge payable on the shortfall.
- 23 (3) The assessment is taken to have been made on 14 February in the
24 next year or the day on which the statement was lodged, whichever
25 is the later.
- 26 (4) The small-scale technology shortfall specified in the statement is
27 taken to be the liable entity's small-scale technology shortfall for
28 the assessment year.
- 29 (5) The amount of small-scale technology shortfall charge specified in
30 the statement is taken to be the amount of small-scale technology
31 shortfall charge payable by the liable entity for the assessment
32 year.

- 1 (6) The statement has effect as if it were a notice of assessment signed
2 by the Regulator and given to the liable entity on the day on which
3 the assessment is taken to have been made.

4 **48B Default assessments of small-scale technology shortfall charge**

- 5 (1) If a liable entity has lodged an energy acquisition statement for a
6 year but:
7 (a) the liable entity has not lodged a small-scale technology
8 shortfall statement for the year; and
9 (b) the Regulator is of the opinion that the liable entity has a
10 small-scale technology shortfall for the year;
11 the Regulator may make an assessment of the liable entity's
12 small-scale technology shortfall for the year, and of the small-scale
13 technology shortfall charge payable on the shortfall.
- 14 (2) If:
15 (a) a liable entity has not lodged a small-scale technology
16 shortfall statement for a year; and
17 (b) the liable entity has also not lodged an energy acquisition
18 statement for the year; and
19 (c) the Regulator is of the opinion that the liable entity has a
20 small-scale technology shortfall for the year;
21 the Regulator may make an assessment of the liable entity's
22 small-scale technology shortfall for the year, and of the small-scale
23 technology shortfall charge payable on the shortfall.
- 24 (3) For the purpose of making an assessment under subsection (1) or
25 (2):
26 (a) the liable entity's small-scale technology shortfall is taken to
27 be the amount that, in the Regulator's opinion, might
28 reasonably be expected to be the shortfall; and
29 (b) the Regulator is to take into account any small-scale
30 technology certificates surrendered by the liable entity for
31 any of the quarters of the year under Subdivision A of
32 Division 1.
- 33 (4) Small-scale technology shortfall charge in relation to an
34 assessment for a year made under this section is taken to have
35 become payable on 14 February in the next year.

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

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

4 **72 Section 52**

5 After “section 48”, insert “or 48B”.

6 **73 Subsection 66(1) (after table item 5DA)**

7 Insert:

8

5DB to refuse to determine an amount, or to determine an amount that is different from the proposed amount section 38AF or 38AG the applicant for a determination.

9 **74 Subsection 66(1) (cell at table item 5E, column headed**
10 **“made under ...”)**

11 After “45A”, insert “or 45B”.

12 **75 Section 67**

13 Repeal the section, substitute:

14 **67 When renewable energy shortfall charge is payable**

15 *Large-scale generation shortfall charge*

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

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

26 *Small-scale technology shortfall charge*

- 27 (2) Small-scale technology shortfall charge for a year is payable:
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- 1 (a) if, on or before 14 February in the next year, the liable entity
2 lodges a small-scale technology shortfall statement for that
3 year—on that day; or
4 (b) if, after that day, the liable entity lodges a small-scale
5 technology shortfall statement for that year—on the day on
6 which the statement is lodged.

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

10 **76 Part 8 (heading)**

11 Repeal the heading, substitute:

12 **Part 8—Refunding large-scale generation shortfall**
13 **charge**

14 **77 Paragraph 95(1)(a)**

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

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

19 **78 Paragraph 95(1)(b)**

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

21 **79 Subsection 95(2)**

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

24 **80 Subsection 95(2)**

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

27 **81 Subsection 95(3)**

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

29 **82 Subsection 96(1)**

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

1 **83 Subsection 96(1)**

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

4 **84 Subsection 96(2)**

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

7 **85 Subsection 96(2)**

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

10 **86 Section 97**

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

13 **87 Section 97**

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

16 **88 Section 98**

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

18 **89 Section 99**

19 Repeal the section, substitute:

20 **99 Penalty charge for failure to provide statements or information**
21 **relevant to large-scale generation shortfall charge**

22 (1) A liable entity, other than a government body, is liable to pay, by
23 way of penalty, penalty charge if the liable entity refuses or fails to
24 provide, when and as required under this Act any of the following
25 for a year (the *assessment year*):

26 (a) an energy acquisition statement for the assessment year;

27 (b) a large-scale generation shortfall statement for the assessment
28 year;

29 (c) information relevant to assessing the liable entity’s liability
30 to pay large-scale generation shortfall charge for the
31 assessment year.

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

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

1 **99A Penalty charge for failure to provide statements or information**
2 **relevant to small-scale technology shortfall charge**

3 (1) A liable entity, other than a government body, is liable to pay, by
4 way of penalty, penalty charge if the liable entity refuses or fails to
5 provide, when and as required under this Act any of the following
6 for a year (the *assessment year*):

- 7 (a) an energy acquisition statement for the assessment year;
8 (b) a small-scale technology shortfall statement for the
9 assessment year;
10 (c) information relevant to assessing the liable entity's liability
11 to pay small-scale technology shortfall charge for the
12 assessment year.

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

16 (2) A liable entity is liable to pay, by way of penalty, penalty charge if:

- 17 (a) the liable entity is liable to pay small-scale technology
18 shortfall charge for a year (the *assessment year*); and
19 (b) the liable entity fails to keep a record in relation to the
20 assessment year containing details of the basis of calculation
21 of the following amounts that were specified in the liable
22 entity's energy acquisition statement for the assessment year:
23 (i) the amount of electricity acquired under relevant
24 acquisitions during the assessment year;
25 (ii) the value, in MWh, of small-scale technology
26 certificates surrendered for the quarters of the
27 assessment year.

28 (3) A liable entity is liable to pay, by way of penalty, penalty charge if:

- 29 (a) the liable entity is liable to pay small-scale technology
30 shortfall charge for a year (the *assessment year*); and
31 (b) the liable entity refuses or fails to produce to the Regulator,
32 when and as required by the Regulator under this Act, a
33 document containing details of the basis of calculation of the
34 amounts referred to in paragraph (2)(b) that were specified in
35 an energy acquisition statement for the assessment year.

36 (4) Subject to subsection (5), the penalty charge payable under
37 subsection (1), (2) or (3) is equal to double the amount of

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

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

8 **90 Section 134**

9 Repeal the section, substitute:

10 **134 Regulator may publish certain information**

11 *Information relating to large-scale generation shortfall charge*

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

22 *Information relating to small-scale technology shortfall charge*

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

29 **91 Paragraph 135(c)**

30 Repeal the paragraph, substitute:

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

1 **92 Division 4 of Part 13 (heading)**

2 Repeal the heading, substitute:

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

5 **93 Section 140**

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

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

10 **94 Paragraph 140(a)**

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

13 **95 Subsection 141(3)**

14 Repeal the subsection, substitute:

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

16 **96 After Division 4 of Part 13**

17 Insert:

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

20 **141AA Contents of register of small-scale technology certificates**

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

- 22 (a) the unique identification code of each valid small-scale
23 technology certificate; and
24 (b) the year in which the certificate was created; and
25 (c) if the certificate was created otherwise than by the Regulator
26 under section 30P:
27 (i) the name of the person who created the certificate; and
28 (ii) a statement that the certificate was created in relation to
29 a solar water heater, or that it was created in relation to a
30 small generation unit (as appropriate); and

- 1 (d) if the certificate was created by the Regulator under
2 section 30P—a statement to that effect; and
3 (e) the name of the current registered owner, and each previous
4 registered owner, of each certificate; and
5 (f) any other information that the Regulator considers
6 appropriate.

7 **141AB Form of register**

- 8 (1) The register must be maintained by electronic means.
9 (2) The register is to be made available for inspection on the internet.
10 (3) The Regulator must ensure that the register is kept up-to-date.

11 **97 Paragraph 156(2)(a)**

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

13 **98 Paragraph 160(2)(c)**

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

16 **99 Paragraph 162(1)(c)**

17 Repeal the paragraph, substitute:

- 18 (c) the *Renewable Energy (Electricity) (Large-scale Generation*
19 *Shortfall Charge) Act 2000*;
20 (d) the *Renewable Energy (Electricity) (Small-scale Technology*
21 *Shortfall Charge) Act 2010*.

1

2 **Part 2—Other amendments**

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

4 **100 Subsection 5(1) (definition of *Australian Greenhouse***
5 ***Office*)**

6 Repeal the definition.

7 **101 Subsection 5(1)**

8 Insert:

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

10 **102 Subsection 5(1)**

11 Insert:

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

14 **103 Subsection 5(1)**

15 Insert:

16 *engage in conduct* means:

17 (a) do an act; or

18 (b) omit to do an act.

19 **104 Subsection 5(1)**

20 Insert:

21 *executive officer* of a body corporate means:

22 (a) a director of the body corporate; or

23 (b) the chief executive officer (however described) of the body
24 corporate; or

25 (c) the chief financial officer (however described) of the body
26 corporate; or

27 (d) the secretary of the body corporate.

28 **105 Subsection 5(1)**

1 Insert:

2 ***Federal Court*** means the Federal Court of Australia.

3 **106 Subsection 5(1) (definition of *Head of the Australian***
4 ***Greenhouse Office*)**

5 Repeal the definition.

6 **107 Subsection 5(1) (definition of *offence against this Act*)**

7 Repeal the definition, substitute:

8 ***offence against this Act*** includes:

- 9 (a) an offence against the regulations; and
10 (b) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4,
11 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to this
12 Act or the regulations.

13 **108 Subsection 6(2)**

14 Repeal the subsection, substitute:

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

17 **109 Subsection 13(2A)**

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

20 **110 Subsection 15A(3)**

21 Omit “on or before 31 December 2010”, substitute “before the end of
22 the period of 6 months starting on the day referred to in subsection
23 13(2A)”.

24 **111 Subparagraph 17A(1)(a)(i)**

25 Repeal the subparagraph, substitute:

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

28 **112 At the end of section 17A**

29 Add:

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

3 **113 Section 19**

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

5 and before:

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

8 **114 Section 19 (note)**

9 Repeal the note, substitute:

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

12 **115 At the end of subsection 21(1)**

13 Add:

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

16 **116 After subsection 21(1)**

17 Insert:

18 (1A) The regulations:

- 19 (a) may provide that certificates cannot be created in relation to a
20 solar water heater unless particular conditions are satisfied in
21 relation to the solar water heater or its installation; and
22 (b) without limiting paragraph (a), may:
23 (i) require information or documents to be given to the
24 Regulator in relation to a solar water heater or its
25 installation; and
26 (ii) provide that information or documents required to be
27 given to the Regulator must be verified by statutory
28 declaration.

29 **117 Subsection 22(2)**

30 Repeal the subsection, substitute:

- 31 (2) Without limiting subsection (1), regulations made for the purpose
32 of that subsection may:

- 1 (a) provide for the Regulator to determine the number of
2 certificates that may be created for a particular installation of
3 a solar water heater; and
4 (b) prescribe requirements to be complied with in relation to the
5 making of such a determination, which may include a
6 requirement that a determination is to be made in accordance
7 with a legislative instrument made by the Regulator; and
8 (c) prescribe other matters relating to such a determination or
9 legislative instrument.

10 **118 At the end of subsection 23A(1)**

11 Add:

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

14 **119 After subsection 23A(1)**

15 Insert:

16 (1A) The regulations:

- 17 (a) may provide that certificates cannot be created in relation to a
18 small generation unit unless particular conditions are satisfied
19 in relation to the small generation unit or its installation; and
20 (b) without limiting paragraph (a), may:
21 (i) require information or documents to be given to the
22 Regulator in relation to a small generation unit or its
23 installation; and
24 (ii) provide that information or documents required to be
25 given to the Regulator must be verified by statutory
26 declaration.

27 (1B) To avoid doubt, regulations under subsection (1A) may impose
28 conditions to be complied with in relation to a small generation
29 unit after its installation.

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

33 **120 At the end of Subdivision C of Division 4 of Part 2**

34 Add:

1 **24A Improper creation of certificates—civil penalty**

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

4 *Ancillary contraventions*

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

14 *Civil penalty provisions*

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

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

18 **24B False etc. information resulting in improper creation of**
19 **certificates under Subdivision B or BA—civil penalty**

- 20 (1) A person (the *first person*) contravenes this subsection if:
21 (a) the person provides information to another person (the
22 *second person*) in relation to, or in relation to the installation
23 of, a solar water heater or a small generation unit; and
24 (b) the information:
25 (i) is false or misleading in a material particular; or
26 (ii) omits a matter or thing without which the information is
27 misleading in a material particular; and
28 (c) the second person relies on the information to create
29 certificates under Subdivision B or BA in relation to the solar
30 water heater or small generation unit; and
31 (d) it could reasonably be expected that the second person would
32 so rely on the information; and
33 (e) the second person's reliance on the information results in the
34 second person creating certificates under that Subdivision, in

1 relation to the solar water heater or small generation unit, that
2 the second person is not entitled to create.

3 *Ancillary contraventions*

4 (2) A person must not:

5 (a) aid, abet, counsel or procure a contravention of
6 subsection (1); or

7 (b) induce, whether by threats or promises or otherwise, a
8 contravention of subsection (1); or

9 (c) be in any way, directly or indirectly, knowingly concerned in,
10 or party to, a contravention of subsection (1); or

11 (d) conspire with others to effect a contravention of
12 subsection (1).

13 *Civil penalty provisions*

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

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

17 **121 Subsection 30A(1)**

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

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

22 **122 Section 40**

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

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

27 **123 Section 40 (table items dealing with 2011 to 2030**
28 **(inclusive))**

29 Repeal the items, substitute:

<u>2011</u>	<u>10400</u>
<u>2012</u>	<u>12300</u>
<u>2013</u>	<u>14200</u>

Schedule 1 Amendments
Part 2 Other amendments

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

1 **124 At the end of section 40**

2 Add:

3 (2) If the regulations prescribe a day (the **WCMG start day**) for the
4 purpose of subparagraph 17A(1)(a)(i), the table in subsection (1)
5 has effect as in accordance with subsections (3) and (4).

6 (3) The number of GWh specified in the table for the year that
7 includes the WCMG start day is taken to be increased by the
8 amount worked out using the formula:

$$9 \quad 850 \text{ GWh} \times \frac{\text{Remaining days in the year}}{\text{Number of days in the year}}$$

10 where:

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

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

10 **125 After paragraph 46A(2)(b)**

11 Insert:

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

16 **126 Subsection 46B(1)**

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

18 **127 At the end of Division 1A of Part 5**

19 Add:

20 **46D Minister may obtain information from corporation**

- 21 (1) This section applies to a corporation to which paragraph 51(xx) of
22 the Constitution applies if:
23 (a) a person (who may be the corporation) has:
24 (i) indicated to the Commonwealth that the person believes
25 that an activity should be made an emissions-intensive
26 trade-exposed activity; and
27 (ii) provided information to the Commonwealth in support
28 of that belief that satisfies any requirements of
29 regulations made for the purpose of this paragraph; and
30 (b) that activity is not an emissions-intensive trade-exposed
31 activity; and
32 (c) the Minister believes on reasonable grounds that the
33 corporation has information that relates to the activity and

- 1 that is likely to assist the Commonwealth with either or both
2 of the following:
- 3 (i) deciding whether the activity should be made an
4 emissions-intensive trade-exposed activity;
 - 5 (ii) deciding how any partial exemption in relation to the
6 activity should be calculated (if the activity is made an
7 emissions-intensive trade-exposed activity).

8 *Request for information and report*

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

17 *Request for information*

- 18 (4) The Minister may, by written notice given to the corporation,
19 request the corporation to give to the Minister, within the period
20 and in the manner and form specified in the notice, any such
21 information.
- 22 (5) A period specified under subsection (4) must not be shorter than 30
23 days after the notice is given.

24 **46E No partial exemption certificates to be issued to corporation for**
25 **5 years if Minister's request not complied with**

- 26 (1) This section applies if:
- 27 (a) a corporation is given a request under subsection 46D(2) or
28 (4) at a particular time (the *request time*); and
 - 29 (b) the corporation is capable of complying with the request; and
 - 30 (c) the corporation refuses or fails to comply with the request;
31 and
 - 32 (d) the Minister notifies the Regulator, in writing, that the
33 Minister considers that the non-compliance is significant.

- 1 (2) No partial exemption certificates are to be issued to the corporation
2 in relation to the activity for:
3 (a) the first year that begins after the request time; and
4 (b) any of the next 4 years after that year.

5 **46F Disclosure of information to the Regulator**

6 *Scope*

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

8 *Disclosure*

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

13 *Other powers of disclosure not limited*

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

16 **128 Subsection 72(1)**

17 After "renewable energy shortfall", insert "charge".

18 **129 At the end of paragraph 73(1)(d)**

19 Add ", or following the making of a civil penalty order against the
20 debtor".

21 **130 Subparagraph 111(1)(h)(ii)**

22 After "*Crimes Act 1914*", insert ", or of the contravention of a civil
23 penalty provision".

24 **131 Subsection 125B(2)**

25 After "criminal proceedings", insert ", or proceedings for a civil penalty
26 order,".

27 **132 Paragraph 132(1)(a)**

28 Repeal the paragraph, substitute:

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

4 **133 Paragraphs 154(1)(a) and (3)(a)**

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

6 **134 After Part 15**

7 Insert:

8 **Part 15A—Civil penalties**

9 **Division 1—Civil penalty orders**

10 **154A Definitions**

- 11 (1) In this Division:

12 *Court* means:

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

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

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

22 **154B Civil penalty orders**

23 *Court may make civil penalty order*

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

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

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

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

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

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

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

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

- 29 (7) In determining the pecuniary penalty, in accordance with this
30 section, for a contravention by a person of a civil penalty
31 provision, the Court may have regard to all relevant matters,
32 including:
33 (a) the nature and extent of the contravention; and

- 1 (b) the nature and extent of any loss or damage suffered as a
2 result of the contravention; and
3 (c) the circumstances in which the contravention took place; and
4 (d) whether the person has previously been found by a court in
5 proceedings under this Act to have engaged in any similar
6 conduct; and
7 (e) the extent to which the person has cooperated with the
8 authorities; and
9 (f) if the person is a body corporate:
10 (i) the level of the employees, officers or agents of the
11 body corporate involved in the contravention; and
12 (ii) whether the body corporate exercised due diligence to
13 avoid the contravention; and
14 (iii) whether the body corporate had a corporate culture
15 conducive to compliance; and
16 (g) if the contravention is of subsection 24A(1)—whether the
17 person has surrendered any renewable energy certificates
18 under section 28A to compensate for the contravention.

19 *Civil enforcement of penalty*

- 20 (8) A pecuniary penalty is a civil debt payable to the Commonwealth.
21 The Commonwealth may enforce the civil penalty order as if it
22 were an order made in civil proceedings against the person to
23 recover a debt due by the person. The debt arising from the order is
24 taken to be a judgment debt.

25 **154C Who may apply for a civil penalty order**

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

29 **154D Two or more proceedings may be heard together**

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

1 **154E Time limit for application for an order**

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

4 **154F Civil evidence and procedure rules for civil penalty orders**

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

7 **154G Civil proceedings after criminal proceedings**

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

12 **154H Criminal proceedings during civil proceedings**

- 13 (1) Proceedings for a civil penalty order against a person for a
14 contravention of a civil penalty provision are stayed if:
15 (a) criminal proceedings are started or have already been started
16 against the person for an offence; and
17 (b) the offence is constituted by conduct that is substantially the
18 same as the conduct alleged to constitute the contravention.
- 19 (2) The proceedings for the order may be resumed if the person is not
20 convicted of the offence. Otherwise, the proceedings for the order
21 are dismissed.

22 **154J Criminal proceedings after civil proceedings**

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

1 **154K Evidence given in proceedings for a civil penalty order not**
2 **admissible in criminal proceedings**

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

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

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

16 **154L Mistake of fact**

17 (1) A person is not liable to have a civil penalty order made against the
18 person for a contravention of a civil penalty provision if:

- 19 (a) at or before the time of the conduct constituting the
20 contravention, the person:
21 (i) considered whether or not facts existed; and
22 (ii) was under a mistaken but reasonable belief about those
23 facts; and
24 (b) had those facts existed, the conduct would not have
25 constituted a contravention of the civil penalty provision.

26 (2) For the purposes of subsection (1), a person may be regarded as
27 having considered whether or not facts existed if:

- 28 (a) the person had considered, on a previous occasion, whether
29 those facts existed in the circumstances surrounding that
30 occasion; and
31 (b) the person honestly and reasonably believed that the
32 circumstances surrounding the present occasion were the
33 same, or substantially the same, as those surrounding the
34 previous occasion.

- 1 (3) A person who wishes to rely on subsection (1) or (2) in
2 proceedings for a civil penalty order bears an evidential burden in
3 relation to that matter.

4 **154M State of mind**

5 *Scope*

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

11 *State of mind*

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

19 **Division 2—Liability of executive officers of bodies**
20 **corporate**

21 **154N Civil penalties for executive officers of bodies corporate**

- 22 (1) If:
23 (a) a body corporate contravenes a civil penalty provision; and
24 (b) an executive officer of the body corporate knew that, or was
25 reckless or negligent as to whether, the contravention would
26 occur; and
27 (c) the officer was in a position to influence the conduct of the
28 body corporate in relation to the contravention; and
29 (d) the officer failed to take all reasonable steps to prevent the
30 contravention;
31 the officer contravenes this subsection.

- 1 (2) For the purposes of subsection (1), the officer is *reckless* as to
2 whether the contravention would occur if:
3 (a) the officer is aware of a substantial risk that the contravention
4 would occur; and
5 (b) having regard to the circumstances known to the officer, it is
6 unjustifiable to take the risk.

- 7 (3) For the purposes of subsection (1), the officer is *negligent* as to
8 whether the contravention would occur if the officer's conduct
9 involves:
10 (a) such a great falling short of the standard of care that a
11 reasonable person would exercise in the circumstances; and
12 (b) such a high risk that the contravention would occur;
13 that the conduct merits the imposition of a pecuniary penalty.

14 *Civil penalty provision*

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

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

18 **154P Reasonable steps to prevent contravention**

- 19 (1) For the purposes of section 154N, in determining whether an
20 executive officer of a body corporate failed to take all reasonable
21 steps to prevent a contravention, a court may have regard to all
22 relevant matters, including:
23 (a) what action (if any) the officer took directed towards
24 ensuring the following (to the extent that the action is
25 relevant to the contravention):
26 (i) that the body corporate arranges regular professional
27 assessments of the body corporate's compliance with
28 civil penalty provisions;
29 (ii) that the body corporate implements any appropriate
30 recommendations arising from such an assessment;
31 (iii) that the body corporate's employees, agents and
32 contractors have a reasonable knowledge and
33 understanding of the requirements to comply with civil
34 penalty provisions in so far as those requirements affect
35 the employees, agents or contractors concerned; and

1 (b) what action (if any) the officer took when he or she became
2 aware of the contravention.

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

4 **Part 15B—Other remedies**

5 **Division 1—Enforceable undertakings**

6 **154Q Acceptance of undertakings**

7 (1) The Regulator may accept any of the following undertakings:

8 (a) a written undertaking given by a person that the person will,
9 in order to comply with this Act, the regulations or the
10 associated provisions, take specified action;

11 (b) a written undertaking given by a person that the person will,
12 in order to comply with this Act, the regulations or the
13 associated provisions, refrain from taking specified action;

14 (c) a written undertaking given by a person that the person will
15 take specified action directed towards ensuring that the
16 person does not contravene this Act, the regulations or the
17 associated provisions, or is unlikely to contravene this Act,
18 the regulations or the associated provisions, in the future;

19 (d) a written undertaking given by a person that the person will
20 surrender one or more renewable energy certificates under
21 section 28A, to compensate for the creation of one or more
22 certificates that the person was not entitled to create.

23 (2) The undertaking must be expressed to be an undertaking under this
24 section.

25 (3) The person may withdraw or vary the undertaking at any time, but
26 only with the consent of the Regulator.

27 (4) The Regulator may, by written notice given to the person, cancel
28 the undertaking.

29 (5) The Regulator must publish the undertaking on its website.

30 (6) In this section:

1 *associated provisions* means sections 134.1, 134.2, 135.1, 135.2,
2 135.4, 136.1, 137.1 and 137.2 of the *Criminal Code*, in so far as
3 those sections relate to:

- 4 (a) this Act; or
5 (b) the regulations.

6 **154R Enforcement of undertakings**

7 (1) If:

- 8 (a) a person has given an undertaking under section 154Q; and
9 (b) the undertaking has not been withdrawn or cancelled; and
10 (c) the Regulator considers that the person has breached the
11 undertaking;

12 the Regulator may apply to the Federal Court for an order under
13 subsection (2).

14 (2) If the Federal Court is satisfied that the person has breached the
15 undertaking, the court may make any or all of the following orders:

- 16 (a) an order directing the person to comply with the undertaking;
17 (b) an order directing the person to pay to the Regulator, on
18 behalf of the Commonwealth, an amount up to the amount of
19 any financial benefit that the person has obtained directly or
20 indirectly and that is reasonably attributable to the breach;
21 (c) any order that the court considers appropriate directing the
22 person to compensate any other person who has suffered loss
23 or damage as a result of the breach;
24 (d) any other order that the court considers appropriate.

25 **Division 2—Injunctions**

26 **154S Injunctions**

27 (1) If a person has engaged, is engaging, or is about to engage in any
28 conduct that is or would be:

- 29 (a) an offence against this Act or the regulations; or
30 (b) a contravention of a civil penalty provision;

31 the Federal Court may, on the application of the Regulator or any
32 other aggrieved person, grant an injunction restraining the person
33 from engaging in the conduct.

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

23 **135 Paragraph 156(2)(b)**

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

25 **136 After section 160**

26 Insert:

27 **160A Prescribing matters by reference to other instruments**

- 28 (1) The regulations may make provision in relation to a matter by
29 applying, adopting or incorporating, with or without modification,
30 a matter contained in an instrument or writing:
31 (a) as in force or existing at a particular time; or
32 (b) as in force or existing from time to time.

Schedule 1 Amendments
Part 2 Other amendments

- 1 (2) Subsection (1) has effect despite anything in subsection 14(2) of
2 the *Legislative Instruments Act 2003*.
- 3 (3) If the regulations make provision in relation to a matter by
4 applying, adopting or incorporating, with or without modification,
5 a matter contained in an instrument or writing, the Regulator must
6 ensure that the text of the matter applied, adopted or incorporated
7 is published on its website.
- 8 (4) Subsection (3) does not apply if the publication would infringe
9 copyright.

10 **160B Administrative decisions under the regulations**

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

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2 **Schedule 2—Application, saving and**
3 **transitional provisions**

4 **Part 1—Provisions relating to main amendments**

5 **1 Definitions**

6 In this Part:

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

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

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

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

14 *reform transitional provisions* means:

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

19 *Schedule 1* means Schedule 1 to this Act.

20 **2 Application of amendments relating to liability to charge**

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

24 **3 Application of amendments relating to creation of**
25 **certificates**

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

29 **4 Certificates created before the reform commencement**

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

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

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

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

8 (1) This item applies in relation to a solar water heater or small generation
9 unit if:

- 10 (a) the heater or unit was installed, or is taken to have been
11 installed, before the reform commencement; and
12 (b) the period (the *certificate creation period*) within which,
13 under old REE Act (and regulations under that Act),
14 certificates could be created in relation to the heater or unit
15 had not ended by that commencement.

16 (2) For the remainder of the certificate creation period, Subdivision B or
17 BA (as the case requires) of Division 4 of Part 2 of the amended REE
18 Act applies in relation to the heater or the unit. However, certificates
19 created in relation to the heater or unit are taken to be large-scale
20 technology certificates.

21 **6 References in contracts to renewable energy certificates**

22 (1) This item applies to a contract that was entered into before this Act
23 received the Royal Assent.

24 (2) Subject to subitem (3), a reference in the contract to a renewable energy
25 certificate, or to a certificate, within the meaning of the old REE Act is
26 taken, on and after the reform commencement, to be a reference to a
27 large-scale generation certificate within the meaning of the amended
28 REE Act (including a certificate that is taken to be a large-scale
29 generation certificate by any of the other reform transitional provisions).

30 (3) Subitem (2) has effect subject to:

- 31 (a) any contrary intention expressed in the contract; and
32 (b) any agreement to a contrary effect by the parties to the
33 contract; and
34 (c) the regulations.

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

4 **7 Contracts for the supply of certificates relating to**
5 **small-scale technology**

- 6 (1) This item applies in relation to a contract if:
7 (a) the contract is or was entered into on or before 25 February
8 2010; and
9 (b) the contract is in writing; and
10 (c) the contract requires one of the parties to the contract to
11 transfer renewable energy certificates (however described) to
12 another party on or after the reform commencement; and
13 (d) because of item 6, the renewable energy certificates that are
14 required to be transferred under the contract are large-scale
15 generation certificates; and
16 (e) either:
17 (i) the contract refers to the certificates as being created in
18 relation to solar water heaters or small generation units;
19 or
20 (ii) it is clear from the context of the contract that the parties
21 expect the certificates to be created in relation to solar
22 water heaters or small generation units; and
23 (f) the contract does not solely relate to certificates that either:
24 (i) have been or will be created before the reform
25 commencement; or
26 (ii) will be created after the reform commencement in
27 relation to solar water heaters or small generation units
28 that were installed before the reform commencement.
- 29 (2) The regulations may provide for some or all of the certificates, when
30 they are transferred under the contract, to become, and to be taken to
31 have been, large-scale generation certificates.
- 32 (3) Without limiting subitem (2), the regulations may do any of the
33 following:
34 (a) require information or documents to be given to the
35 Regulator in relation to the contract or the certificates;
36 (b) provide that information or documents required to be given to
37 the Regulator must be verified by statutory declaration;
-

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

4 **8 The register of renewable energy certificates**

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

17 **9 No effect on time of creation or on number of certificates
18 that can be created**

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

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

27 **10 Application of section 40C**

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

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Part 2—Provisions relating to other amendments

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11 Application of amendment made by item 113 of Schedule 1

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

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

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

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13 Application of amendment made by item 134 of Schedule 1

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

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

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2 **Part 3—Regulations**

3 **14 Regulations may deal with transitional etc. matters**

4 (1) The regulations may include provisions dealing with matters of a
5 transitional, saving or application nature relating to any of the
6 amendments and repeals made by this Act.

7 (2) Regulations made for the purpose of subitem (1) may make provision in
8 relation to a matter by conferring a power to make a decision of an
9 administrative character on the Regulator.

10 **15 Regulations**

11 The Governor-General may make regulations prescribing matters:

12 (a) required or permitted under this Schedule to be prescribed; or

13 (b) necessary or convenient to be prescribed for carrying out or
14 giving effect to this Schedule.

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2 **Part 4—Other matters**

3 **16 Compensation for acquisition of property**

4 (1) If the amendments made by this Act, or the provisions of this Schedule
5 or the regulations, would result in an acquisition of property from a
6 person otherwise than on just terms, the Commonwealth is liable to pay
7 a reasonable amount of compensation to the person.

8 (2) If the Commonwealth and the person do not agree on the amount of the
9 compensation, the person may institute proceedings in a court of
10 competent jurisdiction for the recovery from the Commonwealth of
11 such reasonable amount of compensation as the court determines.

12 (3) In this item:

13 *acquisition of property* has the same meaning as in paragraph 51(xxxi)
14 of the Constitution.

15 *just terms* has the same meaning as in paragraph 51(xxxi) of the
16 Constitution.