

2002

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Environment and Heritage,
the Honourable Dr David Kemp MP)

RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2002

OUTLINE

The purpose of this Bill is to improve the administrative integrity, effectiveness and efficiency of the Renewable Energy (Electricity) Act 2000 (the Act) by:

- Clarifying the definitions used in the Act including the definition of Eligible Renewable Energy Sources and the components of a power station.
- Clarifying the provisions in relation to a relevant acquisition of electricity to ensure that only one entity is made liable in relation to the purchase of a particular quantum of electricity.
- Clarifying the provisions with respect to the claiming of renewable energy certificates associated with solar water heaters and expediting the process by which certificates can be claimed for new solar water heater models as they become commercially available.
- Providing the Renewable Energy Regulator with the power to vary a number of assessments and determinations under the Act, including varying the energy acquisition statement, renewable energy shortfall statement and the 1997 eligible renewable energy baselines for accredited power stations.
- Providing the Renewable Energy Regulator with information gathering powers to enable the effective monitoring and compliance with the provisions of the legislation.
- Allowing for the suspension of an accredited power station under a number of circumstances including where there is thought to be gaming whereby power station outputs are manipulated to increase the number of renewable energy certificates that can be created without increasing renewable energy generation.

FINANCIAL IMPACT STATEMENT

This Amendment Bill does not change the net financial impact of the Renewable Energy (Electricity) Act 2000.

RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2002

NOTES ON CLAUSES

Clause 1 - Short title

1. This is a formal provision specifying the short title of the Bill

Clause 2 - Commencement

2. Subclause 2(1) provides a table indicating when each provision of this Act commences.
3. The table provides that the commencement date for sections 1, 2 and 3 of this Act is the day on which the Act receives Royal Assent, and the commencement day for Schedule 1 of the Act is a single day to be fixed by Proclamation, subject to subclause 2(3).
4. Subclause 2(3) provides for an alternative commencement date for Schedule 1. If Schedule 1 of this Act does not commence within six months of the Act receiving Royal Assent, then it will commence on the first day after the end of this period. The deferral of commencement date is to allow sufficient time for associated amendments to the *Renewable Energy (Electricity) Regulations 2001* (the Regulations) to be made.

Clause 3 - Schedule

5. This clause provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

SCHEDULE 1 – AMENDMENTS

PART 1 – AMENDMENTS

Administrative Decisions (Judicial Review) Act 1977

Item 1: After paragraph (ga) of Schedule 1

6. This item clarifies the avenues for appeal in relation to assessment decisions under the Renewable Energy (Electricity) Act 2000 (the Act). The item removes an avenue

for appeal under the Administrative Decisions (Judicial Review) Act 1977, given the comprehensive objections procedure in relation to both shortfall and shortfall charge assessments included in sections 54 – 65 of the Act. A person who is dissatisfied with an assessment may object in the manner set out in those provisions. In the event that a liable entity is dissatisfied with the Regulator's decision on an objection, the liable entity may seek review of that decision in the Administrative Appeals Tribunal, or appeal to the Federal Court against the decision (section 60).

Renewable Energy (Electricity) Act 2000

Item 2: Section 3

7. This item improves consistency of terminology between sections of the Act.

Item 3: Subsection 5(1)

8. This item defines the term ‘electronic signature’ for the purposes of the Act.

Item 4: Subsection 5(1)

9. This item defines the term ‘eligible renewable energy source’ for the purposes of the Act.

Item 5: Subsection 5(1) (definition of *identification code*)

10. This item removes an unnecessary definition.

Item 6: Subsection 5(1)

11. This item defines the term ‘interest charge’ for the purposes of the Act. This definition assists in giving effect to the new section 70 inserted by item 108 below.

Item 7: Subsection 5(1) (definition of *monitoring warrant*)

1. This item clarifies the meaning of ‘monitoring warrant’ under the Act.

Item 8: Subsection 5(1)

2. This item defines the term ‘nominated person’ under the Act. This definition assists in giving effect to the new section 30B inserted by item 58 below.

Item 9: Subsection 5(1)

3. This item defines the term ‘occupier’ for the purposes of the Act.

Item 10: Subsection 5(1)

4. This item defines the term ‘penalty charge’ for the purposes of the Act. This definition assists in giving effect to the new section 70 inserted by item 108 below.

Item 11: Subsection 5(1)

5. This item defines the term ‘premises’ for the purposes of the Act.

Item 12: Subsection 5(1)

6. This item defines the term ‘registered person’ for the purposes of the Act.

Item 13: Subsection 5(1)

7. This item defines the term ‘register of applications for accredited power stations’ for the purposes of the Act.

Item 14: Subsection 5(1) (paragraph (b) of the definition of *renewable energy shortfall charge related liability*)

8. This item amends the definition of ‘renewable energy shortfall charge related liability’ to assist in giving effect to the new section 70 inserted by item 108 below.

Item 15: Subsection 5(1) (definition of *senior employee*)

9. This item clarifies the meaning of ‘senior employee’ under the Act.

Item 16: Subsection 5(1)

10. This item inserts a definition of ‘stakeholder’ to assist in giving effect to the new sections 30B and 30C inserted by item 58 below.

Item 17: Section 8

11. This item improves consistency of terminology between sections of the Act.

Item 18: Section 8

12. This item clarifies that renewable energy certificates may be created for small generation units.

Item 19: Division 2 of Part 2 (Heading)

13. This item amends the heading to clarify that Division 2 of Part 2 applies to all persons registering under the Act.

Item 20: Subsection 9(2)

14. This item provides that during suspension of a person's registration under the additional grounds contained in the new section 30A, the person cannot be registered.

Item 21: Subsection 13(1)

15. This item clarifies the relationship between a power station and an electricity generation system, and also clarifies the circumstances under which a single registered person can apply for accreditation of the components of an electricity generation system as an accredited power station under the Act.
16. This item, together with items 25, 32, 34, and 58 below improves clarity and ease of application and enforcement of provisions of the Act concerning accreditation of power stations, creation of renewable energy certificates (RECs), and submission of electricity generation returns. This set of items improves consistency of terminology between sections, and clarifies that a power station is a subset of an electricity generation system. The items also concentrate responsibility and authority for accreditation, REC creation, and reporting in a single person and provide that all other co-owners and co-operators must unanimously agree to this person assuming these powers and responsibilities.

Item 22: Paragraph 13(2)(b)

17. This item improves consistency of terminology between sections of the Act.

Item 23: After paragraph 13(2)(b)

18. This item adds a requirement that an application for accreditation must specify all other co-owners and co-operators of the electricity generation system components for which accreditation is being sought.

Item 24: Subparagraph 13(2)(ba)(i)

19. This item improves consistency of terminology between sections of the Act.

Item 25: At the end of subsection 13(2)

20. This item requires that all other co-owners and co-operators consent in writing to the making of the application for accreditation.

Item 26: At the end of subsection 14(1)

21. This item references a new Division 10 to Part 2 (see section 30C under item 58 below) that provides express power for the Regulator to later vary his/her determination of what components are taken to comprise a particular accredited power station.

Item 27: Paragraph 14(2)(a)

22. This item improves consistency of terminology between sections of the Act.

Item 28: After subsection 14(2)

23. This item provides the Regulator the flexibility to determine that components of an electricity generation system, for which accreditation is sought as a new power station, should be considered instead to be an expansion or modification to an already-accredited power station. This item prevents a person from being able to gain accreditation as a separate power station, of components that would more appropriately be considered under the Act to be part of another power station. This item relies on the new section 30C, which empowers the Regulator to vary a decision establishing the boundaries of what constitutes a particular accredited power station, for effective operation. Please see explanation relating to Item 58 for further details.

Item 29: At the end of subsection 14(3)

24. This item brings the attention of readers of the Act to a new Division 12 to Part 2 (see the new section 30F inserted by item 58 below).

Item 30: Subsection 14(4)

25. This item removes redundant references made in Subsection 14(4) in relation to guidelines prescribed in the Regulations.

Item 31: At the end of section 15

26. This item brings the attention of readers of the Act to a new Division 11 to Part 2 (see new sections 30D and 30E inserted by item 58) that provides grounds for suspending the accreditation of a power station.

Item 32: After section 15

27. This item inserts a new section 15A which provides that the registered person who has applied successfully for accreditation of the components of an electricity generation system as an accredited power station becomes the nominated person for that accredited power station.

Item 33: Section 17

28. This item substitutes a new section 17 which clarifies what are eligible renewable energy sources and what are ineligible energy sources under the Act by:

- Removing terms that are redundant and/or not sources, but rather processes or technologies for transforming energy sources into electricity.
- Reordering the list of eligible renewable energy sources so that similar types of sources are grouped together. Examples include geothermal (aquifer and hot dry rocks), biomass (solid and wet wastes and gases sourced from various types of activity)
- Regrouping some of the various types of waste in a clearer manner.
- Ensuring that materials or waste products that are made from fossil fuels or made from products, by-products or wastes from processing of fossil fuels, including where mixed in with any of the eligible renewable energy sources, are ineligible.

29. The Regulations may:

- define the meanings of eligible renewable energy sources, and ineligible energy sources listed in the Act,
- limit the meaning of an eligible renewable energy source, or
- extend the meaning of an ineligible energy source.

These provisions enable regulations to be made to include requirements and conditions in defining the meanings of eligible renewable energy sources, and to prescribe the circumstances in which these conditions can be met in order for these renewable energy sources to be eligible under the Act.

Item 34: Subsection 18(1)

30. This item clarifies that only the nominated person for an accredited power station may create renewable energy certificates for eligible electricity generation in respect of that accredited power station.

Item 35: After subsection 18(1)

31. This item clarifies that a renewable energy certificate cannot be created for any megawatt-hour of electricity where a portion of that megawatt-hour of electricity is generated in one calendar year, and the remainder is generated in the following calendar year.

Item 36: Subsection 18(2)

32. This item acts to make the terminology in subsection 18(2) consistent with the new subsection 18(1) (see item 34 above), by clarifying that it is the nominated person for

that accredited power station who may create the renewable energy certificate referred to in subsection 18(1).

Item 37: Subsection 18(4)

33. This item clarifies that electricity generated by a power station while its accreditation is suspended, or which was generated using energy sources that are not eligible renewable energy sources, is not eligible to earn renewable energy certificates or to contribute towards meeting that power station's 1997 eligible renewable power baseline.

Item 38: At the end of Section 18

34. This item clarifies that while the registration of a registered person who is the nominated person for an accredited power station is suspended, that nominated person may not create any renewable energy certificates during that period of suspension.

Item 39: Section 19

35. This item clarifies that a renewable energy certificate that is entitled to be created for a particular megawatt-hour electricity generated, may be created at any time, including in a later year, after that particular megawatt-hour of electricity has been generated.

Item 40: Subsection 20(1)

36. This item acts primarily to make the timing requirements for submission of an electricity generation return (EGR) in relation to an accredited power station consistent with those for submission of liability- and compliance- related statements by liable entities under the Act.

37. The new section also clarifies who is responsible for submission of this EGR, and acts with item 34 to ensure that both the authority to create renewable energy certificates and the responsibility to submit the EGR are vested in the same person, that is, the nominated person for the particular accredited power station.

Item 41: Paragraph 20(2)(a)

38. This item clarifies that electricity is generated by a power station, for consistency with other provisions of the Act.

Item 42: Paragraph 20(2)(c)

39. This item expands the information to be included in an electricity generation return to clearly distinguish, for tracking and checking purposes, the number of renewable energy certificates created in the reporting year from generation in that year, and the number of renewable energy certificates created in that year from electricity generated in all preceding years.

Item 43: After section 20

40. This item adds a new section 20A which enables electricity generation returns submitted in relation to an accredited power station to be amended either by the Regulator upon own initiative or upon request by the nominated person for that accredited power station. If the Regulator refuses a request by the nominated person to amend an electricity generation return, the Regulator must notify that nominated person accordingly.

Item 44: Subsection 21(1)

41. This item recognizes that given the complexity of electricity generation and dispatch in the National Electricity Market and on other state grids, it is generally not possible to establish clearly whether or not electricity displaced by a particular solar water heater is in fact non-renewable electricity. On these grounds the requirement that a solar water heater displace non-renewable electricity is for practical purposes impossible to enforce. It is therefore removed.

Item 45: Subsection 21(2)

42. This item provides consistency in terminology with the new subsection 21(1) inserted under item 44 above.

Item 46: At the end of section 21

43. This item clarifies that the Regulations may provide that solar water heaters installed where there are no existing water heaters may displace electricity.

Item 47: At the end of section 22

44. Currently, before a new solar water heater model is able to earn renewable energy certificates for eligible installations, details of the new solar water heater, including the number of renewable energy certificates that may be created for eligible installations, must first appear in Schedule 7 of the Regulations.

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45. This item, together with new section 23AA inserted by item 49 below, streamlines administration and shortens the time taken to enable new solar water heater models to be eligible to earn certificates under the Act by removing the need to amend the Regulations to include these new models. Instead, the Regulator will be able to

establish and maintain a register of eligible solar water heaters on the internet or elsewhere as a more rapidly and easily updated alternative to Schedule 7 of the Regulations.

46. The item also enables regulations to be made:

- empowering the Regulator to make written determinations in relation to the number of renewable energy certificates able to be created for a particular solar water heater installation, and
- requiring the Regulator to have regard to prescribed guidelines in making these determinations.

Item 48: After section 22

47. This item inserts new section 22A which ensures that the time period after installation of a solar water heater in which renewable energy certificates can be created for that installation is limited to a maximum of 12 months.

Item 49: After section 23

48. This item inserts new section 23AA which allows for the Regulations to make provision for the Regulator keeping a register of solar water heaters to effectively replace Schedule 7 of the Regulations, which would then become redundant.

Item 50: Subsection 23A(1)

49. This item removes an unintended restriction on the eligibility of installations of small-scale solar photovoltaic, wind or hydro electricity generation units that are not large enough to be classified under the Act as accredited power stations. Accredited power stations using eligible renewable energy sources are not required to displace non-renewable electricity, thus the requirement that these so-called small generation units (SGUs) must do so is inconsistent with the intent of the Act, and is removed.

Item 51: Subsection 23A(2)

50. This item removes a provision rendered redundant by the amendment to subsection 23A(1) under item 50 above.

Item 52: Paragraph 25(2)(b)

51. This item clarifies that a renewable energy certificate must contain the electronic signature of the person who is registered under the Act to create the certificate, rather than the signature of an individual who physically enters the required data onto the Registry on behalf of the registered person.

Item 53: Paragraph 25(2)(c)

52. This item provides that, for administrative clarity, a renewable energy certificate is to contain the date on which the final part of the electricity in relation to that certificate was generated.

Item 54: After Paragraph 25(2)(c)

53. This item improves consistency between information required to be included as part of a renewable energy certificate, and information required to be included in the Register of Renewable Energy Certificates.

Item 55: Subsection 26(3A)

54. This item substitutes a new subsection 26(3A) which provides that the Regulator must not consider whether a certificate is eligible for registration unless the prescribed fee (if any) has been paid.

Item 56: Subsection 29(1)

55. This item ensures that certificates submitted under section 95 of the Act are retired.

Item 57: After section 30

56. This item inserts a new section 30A which provides further grounds for suspension of registration of a registered person.

30A Suspension of registration – other grounds

57. Once created and registered, certificates cannot be revoked. This section enables the Regulator to act to more proactively manage the risk of renewable energy certificates being created contrary to the intent of the Act.

58. Section 30A extends the grounds for suspending a person's registration by empowering the Regulator to suspend the registration of a person:

- if the Regulator believes on reasonable grounds that the person has committed an offence against the Act or the Regulations, or
- if registration is obtained improperly. An example of this is by supplying incorrect information as part of the application for registration.

Item 58 At the end of Part 2

59. This item adds four new Divisions after Division 8 of Part 2. These Divisions deal with processes relating to accredited power stations under the Act.

Division 9-Changing the nominated person for an accredited power station.

30B Changing the nominated person for an accredited power station

60. Under section 30B, which is linked in its effect to new subsection 18(1) inserted by item 34 above, provides a process for changing the nominated person (defined under new subsection 5(1) inserted by item 8 above) for an accredited power station. This provides flexibility for stakeholders (defined under new subsection 5(1) inserted by item 16 above) to be able to replace an existing nominated person to reflect changes in circumstances relating to the accredited power station, such as changes in ownership or operational control.
61. Section 30B provides that the intending successor to the incumbent nominated person must make an application to the Regulator, and provides that all other stakeholders, including the outgoing nominated person where this person remains a stakeholder, must agree in writing to the applicant becoming the new nominated person. If a nominated person is no longer a stakeholder, that person's consent is not required for a new registered person to apply to become the nominated person.
62. Section 30B also enables the Regulator to require other documents to be included as part of an application for a change of nominated person.

Division 10-Varying what constitutes a power station

30C Varying what constitutes a power station

63. Section 30C is linked to new subsection 14(1) inserted by item 26, and addresses a current limitation in the legislation that there is no express power for the Regulator to vary what constitutes an accredited power station for the purposes of the Act to reflect changed circumstances or to correct an error. Currently, it is possible to interpret the Act such that any equipment such as wind turbines that may be added to an existing wind farm, would require separate accreditation as a new power station.
64. The new section sets out what information is to be included in an application to vary the components of an accredited power station, which includes written agreement by all stakeholders to the changes proposed by the applicant.

Division 11-Suspending the accreditation of a power station

65. Two new sections have been included in this new Division to allow for the suspension of the accreditation of a power station in a number of circumstances.
66. The sections include references to new subsection 18(4) which is inserted by item 37.

30D Suspending the accreditation of a power station – interconnected power stations

67. This section provides the Regulator with a power to suspend the accreditation of a power station if satisfied that a gaming arrangement has occurred. The concept of a gaming arrangement involves the co-ordination of power station electricity outputs to increase the number of renewable energy certificates that can be created in a year without equivalent increase in renewable energy generation. Gaming has the potential to significantly dilute the effectiveness of the measure to stimulate the growth of the renewable energy industry and abate greenhouse gas emissions.
68. The section defines the meaning of a ‘gaming arrangement’ and specifies the conditions that must be present before the Regulator may consider suspending the accreditation of a power station. It also requires the Regulator to take into account information that demonstrates that specified indicators of gaming were not the result of a gaming arrangement, in deciding on whether to suspend the accreditation of a power station.

30E Suspending the accreditation of a power station – other grounds

55. This section sets out two other circumstances where the Regulator may suspend the accreditation of a power station. These are:
- failure to provide an electricity generation return in accordance with section 20 of the Act, or
 - belief on reasonable grounds that the power station is being operated in contravention of a Commonwealth, State or Territory law.
56. The section also provides that the Regulator may suspend accreditation in any other circumstances prescribed by the Regulations. A note is included to clarify that renewable energy certificates may not be created from electricity generated by a power station while its accreditation is suspended, nor can this generation be counted as contributing towards meeting the 1997 eligible renewable power baseline for that power station.

Division 12-Varying 1997 eligible renewable power baselines

30F Varying 1997 eligible renewable power baselines

57. This section addresses an inflexibility in the Act that prevents a 1997 baseline which has been set for an accredited power station from being subsequently amended. The section allows the Regulator to vary the 1997 baseline in the circumstances prescribed in the Regulations. Decisions to vary 1997 eligible renewable power baselines are reviewable.

58. The section provides that if the Regulator increases the 1997 baseline for an accredited power station, it will only apply to years following the year in which the determination to increase the baseline was made. If the Regulator reduces the 1997 baseline for an accredited power station it will apply to the year(s) specified in the determination.

Item 59: Subsection 32(2)

59. This item improves consistency in terminology with other sections of the Act.

Item 60: At the end of section 32

60. It is possible under the existing Act, that more than one transaction in a set of transactions occurring in relation to supply of a particular quantum of electricity could be relevant acquisitions under sections 31 to 34 of Part 3 of the Act, and that there would be a liability under the Act in relation to each of those transactions.

61. This item inserts a new subsection 32(3) which has the effect that if the set of transactions includes a transaction which is an acquisition from the National Electricity Market (NEM), then that acquisition will be the only acquisition that gives rise to a liability under the Act. Any other acquisition in relation to that quantum of electricity will not be a relevant acquisition of electricity for the purposes of the Act, despite the operation of any of the other provisions of Part 3.

62. The amendment takes effect commencing from 1 January 2002, as the beginning of the 2002 compliance period, and transitional provisions (see item 164) cover possible double liability situations that may have arisen in relation to the 2001 compliance period.

Item 61: Subsection 33(2)

63. This item improves consistency in terminology with other sections of the Act.

Item 62: Subsection 33(2A)

64. This item removes an existing subsection which is rendered redundant by the new subsection inserted under item 60.

Item 63: Subsection 33(3)

65. This item improves consistency in terminology with other sections of the Act.

Item 64: Subsection 36(2)

66. This item clarifies the meaning of *required renewable energy* in the context of this subsection.

Item 65: Section 38

67. This item improves consistency in terminology with other sections of the Act.

Item 66: Paragraph 39(2)(b)

68. This item clarifies the meaning of terms used in a formula for calculating the default renewable power percentage for a year.

Item: 67: After subsection 39(3)

69. This item inserts a new subsection 39(3A) which provides the Minister with the flexibility, in determining the renewable power percentage (RPP) for a year, to consider an estimate of certain information in relation to eligible renewable electricity generated during previous years if the actual information is not available at the time of consideration by the Minister.

Item 68: Section 40 (table, heading to column 2)

70. This item clarifies that the gigawatt-hour column represents the total interim target for each year and not the additional generation that must be added to the previous year's target.

Item 69: At the end of section 41

71. This item inserts a note to also see section 101, which provides further details concerning a penalty charge to be paid in addition to a charge applicable under section 41.

Items 70 and 71: Subsection 42(1)

72. Under the existing Act, two different types of charge are covered by the term 'additional renewable energy shortfall charge.' To avoid confusion between these two distinct kinds of additional charge, and to prevent confusion with the renewable energy shortfall charge, this item separately identifies these two types of charge as 'penalty charge' applicable under Part 9, and 'interest charge' applicable under section 70 (see also items 6 and 8 for definitions). Several other areas of the Act have been altered to reflect this.

Item 72: At the end of subsection 44(1)

73. This item adds a note which provides a reference link to a new section 45A which is inserted by item 77.

Item 73: Subsection 44(4)

74. This item improves consistency of terminology within section 44.

Item 74: Subsection 44(4)

75. This item improves consistency in terminology with other sections of the Act.

Item 75: Subsection 44(4)

76. This item improves consistency of terminology used in the subsection.

Item 76: Subsection 44(5)

77. This item allows liable entities to either lodge the required fee at the time of submitting the statement, or optionally pay the fee for surrender of renewable energy certificates within a period of 60 days following lodgment of an energy acquisition statement. Where the fee is not paid within 60 days of lodging the statement, this becomes a debt payable to the Commonwealth and is recoverable by the Regulator in a court.

Item 77: After section 45

78. This item inserts a new section 45A.

45A Amending annual energy acquisition statements

79. This new section enables the Regulator to amend an energy acquisition statement (EAS) on his or her own initiative or on the application of the liable entity. The Regulator is to notify the liable entity of a decision to amend their EAS and a decision to amend or to refuse to amend an EAS will be reviewable. Amending an EAS may also require the Regulator to issue a default assessment under section 48 or amend an assessment under section 49.

Item 78: Paragraphs 46(2)(d) and (e)

80. This item substitutes new paragraph 46(2)(d) which recognizes that a liable entity may have a carried forward shortfall for a year or a renewable energy shortfall charge for the year, but not both.

Item 79: Paragraph 47(c)

81. This item reflects the fact that in some circumstances, when lodging a renewable energy shortfall statement, no charge may be payable.

Item 80: Paragraph 47(e)

82. This item substitutes new paragraphs 47(e) and (ea) which improve on current reporting arrangements by ensuring that all renewable energy certificate shortfalls for a year are identified in a liable entity's first renewable energy shortfall statement for that year, even if the shortfall is less than 10% and a renewable energy shortfall charge is not payable.

Item 81: Paragraph 48(1)(b)

83. This item strengthens reporting arrangements relating to total liabilities by allowing the Regulator to make a default assessment for any liable entity that they believe has a renewable energy certificate shortfall for the year that has not lodged a renewable energy shortfall statement.

Item 82: Subsection 48(1)

84. This item reflects the fact that in some circumstances no charge may be payable in relation to a liable entity's renewable energy certificate shortfall for the year.

Item 83: Paragraph 48(2)(c)

85. Similar to item 81, this item strengthens reporting arrangements relating to total liabilities by allowing the Regulator to make a default assessment for any liable entity that they believe has a renewable energy certificate shortfall for the year that has not lodged a renewable energy shortfall statement or an energy acquisition statement.

Item 84: Subsection 48(2)

86. This item reflects the fact that in some circumstances no charge may be payable in relation to a liable entity's renewable energy certificate shortfall for the year.

Item 85: At the end of subsection 49(1)

87. To avoid confusion, this item adds a note to clarify that where the Regulator has made an assessment of the penalty charge owed by a liable entity (see Part 9 of the Act), then the liable entity may not apply to the Regulator to amend this assessment. If the liable entity wishes to dispute the penalty charge, then they can apply for review of that decision under section 66(1).

Item 86: Subsection 49(3)

88. This item clarifies that it is possible for the Regulator to amend an assessment with a view to reducing a liable entity's liability beyond the four year time period allowed where:
- the liable entity has applied for the assessment to be amended within 4 years from the day that the renewable energy shortfall charge became payable; and
 - within that four year period the liable entity lodges all information the Regulator needs to decide the application.

Item 87: Paragraph 49(6)(a)

89. This item rectifies a grammatical error.

Item 88: Paragraph 49(6)(b)

90. This item rectifies a grammatical error.

Item 89: Subsection 50(2) (definition of overpaid amount)

91. As explained under item 70 above under the existing Act, two different types of charge are covered by the term 'additional renewable energy shortfall charge.' To avoid confusion between these two distinct kinds of additional charge, and to prevent confusion with the renewable energy shortfall charge, this item separately identifies these two types of charge as 'penalty charge' applicable under Part 9, and 'interest charge' applicable under section 70 (see also items 6 and 10 for definitions). Several other areas of the Act have been altered to reflect this.

Item 90: Section 52

92. This item has been amended to replace the reference to a 'person' with a reference to a 'liable entity', consistent with the language of the Act.

Item 91: At the end of Part 5

93. This item inserts a new section 53A which clarifies that a liable party that has received an assessment of a penalty charge cannot apply to have this assessment amended under Division 2 of Part 6 of the Act.

Item 92: At the end of section 54

94. This item inserts a new subsection 54(2) which clarifies that a liable party that has received an assessment of a penalty charge cannot make an objection under this Division. If the liable entity wishes to dispute the penalty charge, then they can apply for review of that decision under section 66(1).

Item 93: Section 55

95. The term ‘person’ has been replaced with ‘liable entity’ for consistency with the language used throughout Part 6.

Item 94: Subsection 57(2)

96. The term ‘person’ has been replaced with ‘liable entity’ for consistency with the language used throughout Part 6. The heading of Section 57 is also changed to ‘Requests for extension of time’ in line with the requirement in this section that the liable entity must make a written request to the Regulator to deal with an objection.

Item 95: Subsection 57(4)

97. The term ‘person’ has been replaced with ‘liable entity’ for consistency with the language used throughout Part 6.

Item 96: Subsection 57(6)

98. The term ‘person’ has been replaced with ‘liable entity’ for consistency with the language used throughout Part 6.

Item 97: Subsection 58(3)

99. The term ‘person’ has been replaced with ‘liable entity’ for consistency with the language used throughout Part 6.

Item 98: Section 62

100. The term ‘person’ has been replaced with ‘liable entity’ for consistency with the language used throughout Part 6.

Item 99: Section 65

101. This item inserts a new subsection 65 to clarify that additional renewable shortfall charge is now termed either penalty charge or interest charge (see explanation of item 70).

Item 100: Subsection 66(1) (after table item 3)

102. This item inserts a new item 3A in the Table of reviewable decisions that provides that the Regulator’s decision to amend or to refuse to amend an electricity generation return is a reviewable decision.

Item 101: Subsection 66(1) (table item 5)

103. This item includes a reference to section 30A in the Table of reviewable decisions.

Item 102: Subsection 66(1) (after table item 5)

104. This item inserts new items 5A to 5E in the Table of reviewable decisions to clarify that the new provisions in Division 9, which provide for changing the nominated person for an accredited power station, varying what constitutes a power station, suspending the accreditation of a power station and varying 1997 eligible renewable power baselines, are reviewable decisions.

Item 103: Subsection 66(1) (table item 6)

105. As explained under item 70 above, under the existing Act, two different types of charge are covered by the term ‘additional renewable energy shortfall charge.’ To avoid confusion between these two distinct kinds of additional charge, and to prevent confusion with the renewable energy shortfall charge, this item separately identifies these two types of charge as ‘penalty charge’ applicable under Part 9, and ‘interest charge’ applicable under section 70 (see also items 6 and 8 for definitions). Several other areas of the Act have been altered to reflect this.

Item 104: Subsection 66(1) (table item 7)

106. See explanation of item 103 above.

Item 105: Part 7 (heading)

107. This item deletes the term ‘refunding’ from the title of this Part because the provisions only deal with collection and recovery of charges.

Item 106: Section 68

108. See explanation of item 103 above.

Item 107: Section 68

109. This item substitutes the term ‘that charge’ in section 68 to clarify that this term refers to the penalty charge.

Item 108: Section 70

110. This item substitutes a new section 70 to clarify that the interest charge is only payable in relation to unpaid renewable energy shortfall charge and unpaid penalty charge under Part 9, and that interest is not payable on the interest charge. The interest charge for a day becomes due and payable at the end of the day.

Item 109: Subsection 81(1)

111. This item substitutes a new subsection 81(1). The current subsection 81(1) is too broad and could apply to any receivers and principals. The new subsection narrows application to only those receivers and principals that take possession of a company that is, or has been, a liable entity under the Act.

Item 110: At the end of subsection 85(1)

112. This item adds a new paragraph 85(1)(c) which limits the subdivision so it only applies to agents whose principal is, or has been, a liable entity under the Act.

Item 111: Paragraph 89(3)(a)

113. This item substitutes the word ‘statement’ to clarify the type of information that a liable entity has to provide, such as an energy acquisition statement or a renewable energy shortfall statement.

Item 112: Paragraph 89(3)(b)

114. This item omits the redundant term ‘additional returns’.

Item 113: Paragraph 89(4)(b)

115. This item substitutes the word ‘statement’ to clarify the type of information that a liable entity has to provide, such as an energy acquisition statement or a renewable energy shortfall statement.

Item 114: Subsection 95(2)

116. This item replaces the reference to a ‘return’ with a reference to a ‘statement’, which is consistent with the language used in the Act.

Item 115: Subsection 96(2)

117. This item clarifies that the amount of renewable energy shortfall charge referred to in subsection 96(2) is the amount which was paid by the liable entity.

Item 116: Subsection 99(1)

118. As explained under item 70, under the existing Act, two different types of charge are covered by the term ‘additional renewable energy shortfall charge.’ To avoid confusion between these two distinct kinds of additional charge, and to prevent confusion with the renewable energy shortfall charge, this item separately identifies these two types of charge as ‘penalty charge’ applicable under Part 9, and ‘interest charge’ applicable under section 70 (see also items 6 and 8 for definitions). Several other areas of the Act have been altered to reflect this.

Item 117: Subsection 99(2)

119. See explanation of item 116 above.

Item 118: Subsection 99(3)

120. As explained under the existing Act, two different types of charge are covered by the term ‘additional renewable energy shortfall charge.’ To avoid confusion between these two distinct kinds of additional charge, and to prevent confusion with the renewable energy shortfall charge, this item separately identifies these two types of charge as ‘penalty charge’ applicable under Part 9, and ‘interest charge’ applicable under section 70 (see also items 6 and 10 for definitions). Several other areas of the Act have been altered to reflect this.

Item 119: Subsection 99(4)

121. See explanation of item 118 above.

Item 120: Subsection 100(1)

122. See explanation of item 118 above.

Item 121: Section 101

123. See explanation of item 118 above.

Item 122: Subsection 102(1)

124. See explanation of item 118 above.

Item 123 Section 103

125. See explanation of item 118 above.

Item 124: After subsection 107(1)

126. This item inserts a new subsection 107 (1A) which allows the Regulator to also appoint, as authorised officers, other persons appointed or employed by the Commonwealth, State or Territory so that there is a larger pool of people the Regulator may draw on to assist with auditing tasks.

Item 125: Subsection 110(1)

127. This item inserts a new subsection 110(1) which extends the monitoring powers of an authorised officer to enable him or her to enter premises to determine whether the Act or the Regulations have been complied with. As information is also provided by liable entities in accordance with the Regulations, it is necessary that the monitoring provisions be extended so that authorised officers can substantiate such information.

Item 126: paragraph 111(1)(b)

128. This item adds the words ‘ or the regulations’ to paragraph 111(1)(b) to ensure that an authorised officer has the power to examine any activity on the premises to substantiate information provided for the purposes of complying with the Regulations.

Item 127: Paragraph 111(1)(c)

129. This item adds the words ‘ or the regulations’ to paragraph 111(1)(c) to ensure that an authorised officer has the power to examine any thing on the premises to substantiate information provided for the purposes of complying with the Regulations.

Item 128: Paragraph 111(1)(e)

130. This item adds the words ‘ or the regulations’ to paragraph 111(1)(e) to ensure that an authorised officer has the power to inspect any document on the premises to substantiate information provided for the purposes of complying with the Regulations.

Item 129: Subparagraph 111(1)(h)(iii)

131. This item deletes the term ‘that’ for grammatical reasons.

Item 130: Subsection 111(2)

132. This item replaces an existing phrase with language that is consistent with the objectives of Section 110.

Item 131: Paragraph 112(1)(a)

133. This item adds the words ‘ or the regulations’ to paragraph 112(1)(a) to ensure that where an authorised officer has entered premises with the consent of the occupier, the authorised officer may request the occupier to answer any questions related to the provision of information under the Regulations.

Item 132: Paragraph 112(2)(a)

134. This item adds the words ‘ or the regulations’ to paragraph 112(2)(a) to ensure that where an authorised officer has entered premises by authority of a monitoring warrant, the authorised officer may require the occupier to answer any questions related to the provision of information under the Regulations.

Item 133: Paragraph 114(a)

135. This item replaces an existing phrase with language that is consistent with and clarifies the link to section 112. As section 112 enables authorised officers to request the occupier of premises to answer any questions relating to a range of matters, then the offence provisions should relate to the answering of those questions.

Item 134: Paragraph 114(b)

136. This item substitutes the term ‘answer’ for ‘evidence’ to ensure consistency in terminology with Section 112.

Item 135: Paragraph 114(c)

137. This item substitutes the term ‘answer’ for ‘evidence’ to ensure consistency in terminology with Section 112.

Item 136: Subsection 119(1)

138. This item replaces ‘premises in respect of which it is being executed’ with ‘warrant premises’ to simplify the language of subsection 119(1) and for consistency with the definition of *warrant premises* as defined in section 5(1) of the Act.

Item 137: Paragraph 120(2)(a)

139. As information is also provided by liable entities in accordance with the Regulations, this item extends the monitoring provisions so that authorised officers can substantiate such information.

Item 138: Subsection 125(2)

140. As information is also provided by liable entities in accordance with the Regulations, it is necessary that authorised officers be provided with monitoring warrants to substantiate such information.

Item 139: After Part 11

141. Currently, information-gathering powers under the Act are restricted to authorised officers, and may only be exercised when premises have been entered. This item adds a new Part 11A and comprises sections 125A to 125F which provide the Regulator with new information-gathering powers consistent with those contained in other Commonwealth legislation such as the *Textile, Clothing and Footwear Strategic Program Act 1999* and the *Diesel and Alternative Fuel Grants Scheme Act 1999*.

Part 11A – Information-gathering powers

125A Regulator may obtain information and documents

142. Section 125A provides that under certain circumstances the Regulator is empowered to require a person to give information and evidence and produce documents relevant to the operation of the Act. The section also requires that the Regulator give written notice to this person when exercising powers under this section, and requires that this notice set out the effect of specific provisions of the Act.

143. This section also creates an offence for failure by the person to comply with a requirement under subsection (2).

125B Self-incrimination

144. This section provides that an individual is not excused from providing information, evidence or documentation under Part 11A on the grounds of self-incrimination, or of exposure of the individual to a penalty. However, the section also sets limits on the circumstances under which this information, evidence or documentation, or anything deriving from it can be used in evidence against the individual in criminal proceedings.

125C Copies of Documents

145. This section provides the Regulator with powers in relation to inspecting, copying and taking extracts of documents produced under Part 11A.

125D Regulator may retain documents

146. This section sets out powers and responsibilities of the Regulator in relation to possession of a document produced under Part 11A, and the entitlements of a person otherwise entitled to possession of the document.

125E False or misleading evidence

147. This section sets out the grounds on which a person is guilty of an offence of providing false and misleading evidence in relation to section 125A, and sets a maximum penalty of 12 months imprisonment for this offence.

125F False or misleading documents

148. This section sets out the grounds on which a person is guilty of an offence of providing false or misleading documents under section 125A, and sets a maximum penalty of 12 months imprisonment for this offence.

Item 140: Paragraph 126(1)(b)

149. The Regulator is head of a statutory agency called the Office of the Renewable Energy Regulator (see section 151 of the Act). This item substitutes a new paragraph 126(1)(b) to clarify that the secrecy provisions of Part 12 of the Act apply to the staff of the Office of the Renewable Energy Regulator.

Item 141: Section 128

150. This item substitutes the phrase ‘for the purposes of this Act’ to clarify the meaning of this section and enable disclosure of protected information or production of protected documents to a court in the course of a criminal investigation under the Act.

Item 142: Subsection 130(1)

151. This item substitutes the phrase ‘for the purposes of this Act’. This is to clarify the meaning of this subsection and enable disclosure by the Regulator or a person authorised by the Regulator to divulge information obtained, or produce in court a document obtained under or for the purposes of the Act, where necessary to do so for the purpose of the Act.

Item 143: Paragraph 132(1)(b)

152. This provision is currently worded so broadly that protected information could be divulged in relation to any matter. This item narrows the application of the provision to those matters that relate to the Act.

Item 144: Paragraph 138(b)

153. This item requires that the name of the ‘nominated person’ for the accredited power station is to be included in the register of accredited power stations.

Item 145: Paragraph 140(a)

154. This item clarifies that the number that appears on renewable energy certificates is a unique identification code (see section 25 of the Act).

Item 146: Paragraph 141A(b)

155. This item clarifies that the contents of the ‘register of applications for accredited power stations’ is to include the location of those components of an electricity generation system for which accreditation as an accredited power station is being sought.

Item 147: Paragraph 141A(d)

156. This amendment is to correct a typographical error in the Act.

Item 148: At the end of subsection 147(3)

157. This item inserts a new paragraph 147(3)(e) which provides for the Regulator to be removed from office if he or she fails, without reasonable excuse, to notify the Minister of any conflicts of interest.

Item 149: After section 147

158. This item inserts a new section 147A which provides that the Regulator must give the Minister written notice of all his or her interests that could conflict with their ability to undertake their functions as Regulator.

Item 150: Subsection 148(3)

159. This item removes a redundant reference to the Consolidated Revenue Fund which is covered by section 157.

Item 151: Subsection 160(1)

160. This item corrects a typographical error in the Act.

Item 152: Subsection 161(2)

161. This item repeals subsection 161(2) which will expedite the regulation making process by removing the requirement for draft new or amended regulations to be made available for public comment for 30 days before they are made.

PART 2 – APPLICATION AND TRANSITIONAL PROVISIONS

Item 153: Application – assessments

162. This item provides that review under the Administrative Decisions (Judicial Review) Act 1977 of the assessment-related decisions under the Renewable Energy (Electricity) Act 2000 that are detailed in item 1, is not available for decisions made after the commencement of the amendment under item 1.

Item 154: Application – creation of renewable energy certificates

163. This item clarifies that amendments inserted by items listed under this item relating to the creation of renewable energy certificates only apply to renewable energy certificates created after these amendments commence.

Item 155: Application – charges

164. This item clarifies that amendments inserted by items listed under this item relating to the amounts that a liable entity becomes liable to pay only apply to amounts that become liable for payment after these amendments commence.

Item 156: Application – applications for accreditation of a power station

165. This item clarifies that amendments inserted by the items listed under this item relating to applications for accreditation of a power station only apply for applications made after these amendments commence.

Item 157: Application – electricity generation

166. This item clarifies that amendments under item 33 relating to electricity generated only apply for electricity generated after these amendments commence.

Item 158: Application – solar water heaters

167. This item ~~states~~ provides that amendments inserted by the items listed under this item relating to solar water heaters apply to those solar water heaters installed after commencement of these amendments.

Item 159: Application – small generation units

168. The existing requirement that renewable energy certificates can only be created for the installation of small generation units that displace non-renewable electricity is inconsistent with the rest of the Act in that no other eligible renewable energy source

must demonstrate it displaces non-renewable electricity. This has prevented persons who have installed small generation units from being eligible to create renewable energy certificates. To address this problem, this item provides that the amendments to small generation units apply to those installed since the commencement of the Renewable Energy (Electricity) Act 2000.

Item 160: Application – registration of renewable energy certificates

169. This item provides that amendments inserted by item 55 relating registration of renewable energy certificates applies only to notifications made to the Regulator that certificates have been created, after the commencement of these amendments.

Item 161: Application – relevant acquisitions of electricity

170. This item provides that the amendments under items 60 and 62 apply to remove a potential double liability in relation to acquisitions of electricity occurring from the year commencing 1 January 2002 onwards.

Item 162: Application – secrecy

171. This item provides that amendments inserted by the items listed under this item apply in relation to proceedings instituted after the commencement of these items.

Item 163: Transitional – accredited power stations

172. Because there are already a number of existing accredited power stations, it has been necessary to introduce some transitional arrangements which are inserted by this item. These include:

- giving the Regulator 28 days to approve, in writing, a nominated person for each existing accredited power station. In this regard it should be noted that the approved person must be a stakeholder in the accredited power station;
- providing a definition of stakeholder for the purposes of this Act; and
- ensuring that the Regulator's decision on this matter is reviewable. This means that any other stakeholder in relation to that accredited power station who has not been approved as the 'nominated person' may request the Regulator to review his or her decision.

Item 164: Transitional – relevant acquisitions of electricity

173. This transitional provision and the application provision under item 161 do not change the liability of an entity that has made a wholesale or notional wholesale acquisition of electricity in the year 2001. However, an entity which would not have incurred a liability if the amendments under items 60 and 62 had applied to

acquisitions for 2001, could use the renewable energy certificates it has submitted to reduce another liable entity's renewable energy certificate shortfall for 2001.