

Victorian Renewable Energy Act 2006

Act No. 72/2006

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Victoria

No. 72 of 2006

Victorian Renewable Energy Act 2006[†]

[Assented to 19 September 2006]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The main purpose of this Act is to promote the development of renewable energy generation through the establishment of a scheme that—

- (a) provides for the creation and acquisition of renewable energy certificates; and
- (b) requires the surrender of renewable energy certificates.

2. Commencement

- (1) This Act comes into operation on day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 January 2007, it comes into operation on that day.

3. Definitions

- (1) In this Act—

"accredited power station" means a relevant power station accredited under Division 3 of Part 2;

"approved interstate renewable energy regime" means a law of another State or a Territory approved under section 5;

"arrangement" means—

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct;

"business day" means a day other than a Saturday or Sunday or a public holiday appointed under the **Public Holidays Act 1993**;

"carried forward surplus" has the meaning given by section 64;

"certificate" means a renewable energy certificate created under Division 4 of Part 2;

"certificate surrender notice" means a notice issued under section 72;

"Commonwealth certificate" means a certificate within the meaning of section 5(1) of the Commonwealth scheme;

"Commonwealth nominated person" means a nominated person within the meaning of section 5(1) of the Commonwealth scheme;

"Commonwealth Regulator" means the Regulator within the meaning of section 5(1) of the Commonwealth scheme;

"Commonwealth scheme" means the Renewable Energy (Electricity) Act 2000 of the Commonwealth;

"Commonwealth scheme participant" means—

- (a) a person registered under the Commonwealth scheme; or
- (b) a Commonwealth nominated person;

"Commonwealth scheme power station" means—

- (a) an accredited power station within the meaning of section 5(1) of the Commonwealth scheme; or
- (b) a power station provisionally accredited under Division 2A of Part 2 of the Commonwealth scheme;

"electronic signature" of a person means the person's unique identification in an electronic form that is approved by the ESC under sub-section (3);

"eligible renewable energy source" has the meaning given by section 22;

"energy acquisition statement" has the meaning given by section 67;

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"ESC" means the Essential Services Commission established under section 7 of the **Essential Services Commission Act 2001**;

"ESC rules" means rules made by the ESC under section 113;

"excluded acquisition" has the meaning given by section 56;

"GWh" means gigawatt hour;

"monitoring warrant" means a warrant issued under section 104;

"MW" means megawatt;

"MWh" means megawatt hour;

"NEMMCO" has the same meaning as in the National Electricity (Victoria) Law;

"nominated person", in relation to an accredited power station, means—

- (a) if no approvals have been given under section 48 in relation to the accredited power station—the person who made the application for accreditation; or
- (b) if one or more approvals have been given under that section in relation to the accredited power station—the last person so approved;

"notional scheme acquisition" has the meaning given by section 55;

"occupier" in relation to premises, includes a person present at the premises who is in apparent control of the premises;

"pre-scheme capacity", in relation to an accredited power station, means that part of the capacity of the power station to generate electricity, measured in MW, that is specified by the ESC under section 17 to be pre-scheme capacity;

"premises" includes the following—

- (a) a structure, building or vehicle;
- (b) a place (whether enclosed or built on or not);
- (c) a part of a thing referred to in paragraph (a) or (b);

"produce" includes permit access to;

"protected information" has the same meaning as in section 5(1) of the Commonwealth scheme;

"registered person" means a person registered under Division 1 of Part 2;

"register of accredited power stations" has the meaning given by section 81;

"register of applications for accredited power stations" has the meaning given by section 83;

"register of registered persons" has the meaning given by section 80;

"register of renewable energy certificates" has the meaning given by section 82;

"registration number" has the meaning given by section 11;

"related body corporate" has the same meaning as in section 50 of the Corporations Act;

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"relevant entity" has the meaning given by section 60;

"relevant power station" means a power station—

- (a) situated in Victoria; or
- (b) situated in another State or a Territory in which an approved interstate renewable energy regime applies;

"renewable energy certificate shortfall" has the meaning given by section 64;

"renewable energy shortfall penalty" has the meaning given by section 62;

"renewable power percentage" means the percentage fixed under section 65;

"required GWh of electricity from eligible renewable energy sources" has the meaning given by section 66;

"required renewable energy" has the meaning given by section 64;

"scheme acquisition" means—

- (a) a standard scheme acquisition; or
- (b) a notional scheme acquisition—

but does not include an excluded acquisition;

"scheme capacity", in relation to an accredited power station, means that part of the capacity of the power station to generate electricity, measured in MW, that is specified by the ESC under section 17 to be scheme capacity;

"small generation unit" means a device that—

- (a) generates electricity using an eligible renewable energy source; and
- (b) is situated—
 - (i) in Victoria; or
 - (ii) in another State or a Territory in which an approved interstate renewable energy regime applies; and
- (c) is specified by the ESC rules to be a small generation unit;

"stakeholder", in relation to an accredited power station, means—

- (a) a person who operates the accredited power station (whether alone or together with one or more other persons); or
- (b) a person who owns all, or a part, of the accredited power station (whether alone or together with one or more other persons);

"standard scheme acquisition" has the meaning given by section 54;

"warrant premises", in relation to a monitoring warrant, means the premises to which the warrant relates;

"year" means calendar year.

- (2) For the purposes of this Act, electricity is taken to be a good that can be acquired.
- (3) The ESC may, in writing, approve an electronic form for the purposes of the definition of "electronic signature" in sub-section (1).

4. Objects

The objects of this Act are—

- (a) to encourage additional generation of electricity from renewable energy sources; and
- (b) to encourage investment in the generation of renewable energy and the development of renewable energy technologies; and
- (c) to encourage regional investment and employment; and
- (d) to contribute to the diversity of Victoria's energy supplies; and
- (e) to reduce emissions of greenhouse gases.

5. Approved interstate renewable energy regime

- (1) The Minister, by notice published in the Government Gazette, may approve a law of another State or a Territory to be an approved interstate renewable energy regime.
- (2) The Minister must not approve a law of another State or a Territory to be an approved interstate renewable energy regime unless he or she is satisfied that—
 - (a) the approval of that law would complement, and not detract from, the achievement of the purpose and objects of this Act; and
 - (b) the approval of that law would not impose unreasonable costs on purchasers of electricity in Victoria; and
 - (c) the law promotes the reduction of emissions of greenhouse gases; and
 - (d) the arrangements for the monitoring, and enforcement, of compliance with that law are no less stringent than those under this Act.

6. Crown to be bound

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

7. Extra-territorial operation

It is the intention of the Parliament that the operation of this Act should, so far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
 - (b) things situated outside Victoria, whether in or outside Australia;
 - (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
 - (d) things, acts, transactions and matters, (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.
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PART 2—RENEWABLE ENERGY CERTIFICATES

Division 1—Registration of Persons

8. Who may apply to be registered?

- (1) Any person may apply to the ESC to be registered under this Act.
- (2) An application must—
 - (a) be made in a form and manner required by the ESC; and
 - (b) contain any information required by the ESC; and
 - (c) be accompanied by any documents required by the ESC; and
 - (d) be accompanied by, if required by the ESC—
 - (i) evidence of the kind referred to in section 9(1); and
 - (ii) a relevant undertaking referred to in section 9(2) or 9(3); and
 - (e) be accompanied by the relevant fee (if any) fixed under section 112.

9. ESC may require further information and undertakings from applicants

- (1) The ESC may require from an applicant under section 8 who is a Commonwealth scheme participant, evidence, in writing, that the applicant has agreed with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC—
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- (a) protected information concerning the applicant; or
 - (b) any other information held by the Commonwealth Regulator.
- (2) The ESC may require from an applicant under section 8 who is a Commonwealth scheme participant an undertaking, in such terms as the ESC may require, to the effect of clause 1 of the Schedule.
- (3) The ESC may require from an applicant under section 8 who is not a Commonwealth scheme participant an undertaking, in such terms as the ESC may require, to the effect of clause 2 of the Schedule.

10. ESC to approve or refuse application

- (1) If the ESC receives an application that is properly made under section 8, the ESC must approve the application.
- (2) To avoid doubt—
 - (a) if the person is already registered, the ESC must refuse the application;
 - (b) if a person's registration has been suspended under Division 8, the person cannot be registered during the period of the suspension.

11. ESC to allocate registration numbers

If the ESC approves an application, the ESC must allocate the applicant a unique registration number and advise the applicant of the number.

Division 2—Provisional Accreditation of Power Stations

12. Application for provisional accreditation of a relevant power station

- (1) A registered person may apply to the ESC for provisional accreditation of the proposed components of an electricity generation system that the person considers would, if assembled, be a single relevant power station.
- (2) An application must—
 - (a) be made in a form and manner required by the ESC; and
 - (b) specify the proposed components; and
 - (c) list the eligible renewable energy sources from which electricity is intended to be generated; and
 - (d) contain any other information required by the ESC; and
 - (e) be accompanied by any documents required by the ESC; and
 - (f) be accompanied by the relevant fee (if any) fixed under section 112.
- (3) The ESC may also require from an applicant under this section—
 - (a) who is a Commonwealth scheme participant; and
 - (b) whose application is in respect of components of an electricity generation system that are a Commonwealth scheme power station—

evidence, in writing, that the applicant has agreed with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC—

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- (c) information about the Commonwealth scheme power station; and
 - (d) protected information concerning the applicant; and
 - (e) any other information held by the Commonwealth Regulator.
- (4) The ESC may also require from an applicant under this section who is an applicant under section 12A or 13 of the Commonwealth scheme evidence, in writing, that the applicant has agreed with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC—
- (a) information about the components of the electricity generation system that are also the subject of an application under either of those sections; and
 - (b) protected information concerning the applicant; and
 - (c) any other information held by the Commonwealth Regulator.

13. ESC may give provisional accreditation

- (1) If—
- (a) the ESC receives an application that is properly made under section 12; and
 - (b) the ESC is satisfied that some or all of the proposed components of the system would, if assembled, be a relevant power station for the purposes of this Act—

the ESC must, by written notice given to the applicant—

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- (c) specify which of those proposed components (the "**provisional components**") would, if assembled, be a relevant power station for the purposes of this Act; and
 - (d) specify that, if an application is properly made under section 15 in relation to the relevant power station—
 - (i) the ESC will decide that the components specified in that application are taken to be a relevant power station for the purposes of this Act if the ESC is satisfied that they are not materially different from the provisional components; and
 - (ii) the relevant power station will be eligible for accreditation if section 17(3) is satisfied.
- (2) If—
- (a) the ESC receives an application that is properly made under section 12; and
 - (b) the ESC is not satisfied that some or all of the proposed components of the system would, if assembled, be a relevant power station for the purposes of this Act—
- the ESC must, by written notice given to the applicant, refuse the application.
- (3) ESC rules made for the purposes of section 17, in relation to deciding the components of a relevant power station, apply in a corresponding way to this section.

14. Time limit for deciding applications

- (1) The ESC must decide an application that is properly made under section 12 within—
 - (a) the period of 40 business days beginning on the day the ESC received the application; or
 - (b) if, before the end of that period, the ESC and applicant agree to a longer period—that longer period.
- (2) However, if, during the period applicable under sub-section (1), the ESC, for the purpose of deciding the application, requests information from an applicant, the period between the request and the giving of the information must be disregarded for the purpose of calculating the period applicable under sub-section (1).
- (3) If the ESC has not decided the application within the period applicable under this section, the ESC is taken, at the end of that period, to have made a decision under section 13 refusing the application.

Division 3—Accreditation of Power Stations

15. Application for accreditation

- (1) A registered person may apply to the ESC for accreditation, as an accredited power station, of the components of an electricity generation system that the person considers are a single relevant power station if the person—
 - (a) operates those components (whether alone or together with one or more other persons); or
 - (b) owns all, or a part, of those components (whether alone or together with one or more other persons).

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- (2) The application must—
- (a) be made in a form and manner required by the ESC; and
 - (b) specify those components of the system that the applicant considers are a single relevant power station; and
 - (c) specify each other person (if any) who—
 - (i) operates those components (whether alone or together with one or more other persons); or
 - (ii) owns all, or a part, of those components (whether alone or together with one or more other persons); and
 - (d) list—
 - (i) the eligible renewable energy sources from which electricity is intended to be generated; and
 - (ii) the estimated average annual output from each source (in MWh) listed under sub-paragraph (i); and
 - (iii) the possible scheme capacity; and
 - (iv) the estimated average annual output from each source (in MWh) listed under sub-paragraph (i) utilising the possible scheme capacity listed under sub-paragraph (iii); and
 - (e) contain any other information required by the ESC; and
 - (f) be accompanied by any documents required by the ESC; and
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- (g) if required by the ESC, be accompanied by—
 - (i) evidence of the kind referred to in section 16(2); and
 - (ii) a relevant undertaking referred to in section 16(3) or 16(4); and
 - (h) be accompanied by a statement in writing from each other person (if any) specified under paragraph (c) indicating that the other person agrees to the making of the application; and
 - (i) be accompanied by the relevant fee (if any) fixed under section 112.

16. ESC may require further information and undertakings from applicants

- (1) Sub-sections (2) and (3) apply to an applicant under section 15—
 - (a) who is a Commonwealth scheme participant; and
 - (b) whose application is in respect of components of an electricity generation system that are a Commonwealth scheme power station.
 - (2) The ESC may require from the applicant evidence, in writing, that—
 - (a) the applicant has agreed with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC information about the Commonwealth scheme power station;
 - (b) the applicant has agreed with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC—
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- (i) protected information concerning the applicant; or
 - (ii) any other information held by the Commonwealth Regulator;
- (c) the persons specified in the application in accordance with section 15(2)(c) have agreed with the applicant that they will each agree with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC—
- (i) protected information concerning them; or
 - (ii) any other information held by the Commonwealth Regulator.
- (3) The ESC may require from the applicant an undertaking, in such terms as the ESC may require, to the effect of clause 3 of the Schedule.
- (4) The ESC may require from an applicant under section 15 who is not a Commonwealth scheme participant at the time of the application an undertaking, in such terms as the ESC may require, to the effect of clause 4 of the Schedule.

17. ESC to decide certain matters

- (1) If the ESC receives an application that is properly made under section 15, the ESC must—
 - (a) decide, in accordance with the ESC rules, which components of the system are to be taken to be a relevant power station for the purposes of this Act; and
 - (b) decide whether the relevant power station is eligible for accreditation.

Note: A decision under sub-section (1)(a) may be varied: see Division 10.

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- (2) If—
- (a) the ESC gave a person a notice under section 13(1) in relation to the relevant power station; and
 - (b) the ESC is satisfied that the components specified in the application under section 15 are not materially different from the provisional components specified under section 13(1)—
- the ESC must decide, under sub-section (1)(a) of this section, that the components specified in the application under section 15 are taken to be a relevant power station for the purposes of this Act.
- (3) A relevant power station is eligible for accreditation if—
- (a) some or all of the electricity generated by the relevant power station is generated from an eligible renewable energy source; and
 - (b) the relevant power station satisfies any requirements specified in the ESC rules.
- (4) However, a relevant power station is not eligible for accreditation if the ESC is satisfied that a previous decision under sub-section (1)(a) should be varied to include the components of the system specified in the application for accreditation.
- (5) If the ESC decides that the relevant power station is eligible for accreditation, the ESC must also specify in its decision—
- (a) in accordance with sub-section (6), the pre-scheme capacity (if any) of the relevant power station; and
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- (b) in accordance with sub-section (7), the scheme capacity of the relevant power station; and
 - (c) any energy sources used by the relevant power station that are not eligible renewable energy sources.
 - (6) The ESC must, in accordance with the ESC rules, specify that part of the power station's capacity (if any) that has been utilised to generate electricity on a commercial basis before 1 January 2007.
 - (7) The ESC must, in accordance with the ESC rules, specify how much of the power station's capacity to generate electricity, measured in MW, is in excess of the power station's pre-scheme capacity.
 - (8) To avoid doubt—
 - (a) the ESC rules may provide that a relevant power station includes components that are integral to the operation of the relevant power station or to the generation of electricity by the relevant power station; and
 - (b) the pre-scheme capacity for an accredited power station may be nil.
 - (9) In this section—

"commercial basis", in relation to the generation of electricity, means the generation of electricity—

 - (a) for sale to another person for the primary purpose of earning revenue;
 - (b) primarily for use by the person generating it or a related body corporate.
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18. ESC to approve or refuse application

If the ESC decides that a relevant power station is eligible for accreditation, the ESC must approve the application. In any other case, the ESC must refuse the application.

Note: The accreditation of an accredited power station may be suspended: see Division 11.

19. Time limit for deciding applications

- (1) The ESC must decide an application that is properly made under section 15 within—
 - (a) the period of 40 business days beginning on the day the ESC received the application; or
 - (b) if, before the end of that period, the ESC and applicant agree to a longer period—that longer period.
- (2) However, if, during the period applicable under sub-section (1), the ESC, for the purpose of deciding the application, requests information from an applicant, the period between the request and the giving of the information must be disregarded for the purpose of calculating the period applicable under sub-section (1).
- (3) If the ESC has not decided the application within the period applicable under sub-section (1), the ESC is taken, at the end of that period, to have made a decision under section 18 refusing the application.

20. Nominated person for accredited power station

If the ESC approves an application, the applicant becomes the nominated person for the accredited power station.

Note: The nominated person for the accredited power station is able to create certificates for electricity generated by the accredited power station: see section 26. The nominated person may change: see Division 9.

21. ESC to allocate identification codes

If the ESC approves an application, the ESC must allocate the accredited power station a unique identification code and advise the applicant of the code.

22. What is an eligible renewable energy source?

The following energy sources are "**eligible renewable energy sources**"—

- (a) hydro;
 - (b) wave;
 - (c) tide;
 - (d) ocean;
 - (e) wind;
 - (f) solar (other than solar energy used in a device primarily for heating water);
 - (g) geothermal-aquifer;
 - (h) hot dry rock;
 - (i) energy crops;
 - (j) wood waste;
 - (k) agricultural waste;
 - (l) waste from processing of agricultural products;
 - (m) food waste;
 - (n) food processing waste;
 - (o) bagasse;
 - (p) black liquor;
 - (q) biomass-based components of municipal solid waste;
 - (r) landfill gas;
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- (s) sewage gas and biomass-based components of sewage;
 - (t) any other energy source specified by Order under section 24.

23. What is not an eligible renewable energy source?

Despite section 22, the following energy sources are not eligible renewable energy sources—

- (a) fossil fuels;
- (b) materials or waste products derived from fossil fuels.

24. Specification of energy sources as eligible renewable energy sources

The Governor in Council, by Order published in the Government Gazette, may specify an energy source (other than an energy source specified in section 22(a) to (s) or section 23) to be an eligible renewable energy source.

25. ESC rules may provide for or in relation to meaning of energy sources

- (1) For the purposes of this Act, the ESC rules may provide that an energy source referred to in section 22 or 23 has the meaning specified in the ESC rules.
- (2) For the purposes of this Act, the ESC rules may make provision for and in relation to limiting the meaning of an energy source referred to in section 22.
- (3) For the purposes of this Act, the ESC rules may make provision for and in relation to extending the meaning of an energy source referred to in section 23.

Division 4—Creation of Certificates

Subdivision 1—Electricity Generation

26. Creating certificates for additional renewable electricity

- (1) The nominated person for an accredited power station may create a certificate for each whole MWh of electricity generated by the power station utilising scheme capacity—
 - (a) on and from the day on which electricity is first generated utilising scheme capacity; and
 - (b) subject to section 37, until the day that is 15 elapsed years after the day referred to in paragraph (a).
 - (2) A certificate must not be created in respect of a whole MWh of electricity generated partly in one year and partly in the following year utilising scheme capacity.
 - (3) If the amount of electricity generated by an accredited power station during a year utilising scheme capacity is less than 1 MWh but greater than or equal to 0.5 MWh, the nominated person for the power station may create 1 certificate in respect of the electricity generated during the year.
 - (4) The amount of electricity generated by an accredited power station utilising scheme capacity is to be worked out in accordance with the ESC rules.
 - (5) Electricity is to be excluded from all calculations under this section—
 - (a) to the extent that the electricity was generated using any energy sources that are not eligible renewable energy sources; or
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- (b) to the extent that the electricity was generated during any period of suspension of the accreditation of the accredited power station under Division 11.
- (6) The nominated person for an accredited power station must not create any certificates during any period of suspension of the person's registration under Division 8.

Note: See also section 38 (offences for improper creation of certificates).

27. When certificates may be created

A certificate may be created at any time after the generation of the final part of the electricity in relation to which it is created and before the end of the year after the year of generation.

Note: For the offence related to the improper creation of certificates, see section 38.

28. Certificates must not be created if Commonwealth certificates already created

A nominated person must not create a certificate for any electricity generated utilising scheme capacity if that capacity has been utilised to generate electricity in relation to which a Commonwealth certificate has been created.

29. Electricity generation returns

- (1) The nominated person for an accredited power station must give an electricity generation return for a year to the ESC on or before—
- (a) 14 March in the following year; or
 - (b) any later day allowed by the ESC.

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- (2) The return must include details of—
 - (a) the amount of electricity generated by the power station during the year utilising scheme capacity; and
 - (b) the amount of that electricity that was generated during the year using eligible renewable energy sources; and
 - (c) the number of certificates created during the year in respect of the electricity generated by the power station during the year utilising scheme capacity; and
 - (d) the number of certificates created during the year in respect of any electricity generated by the power station during the previous year utilising scheme capacity; and
 - (e) any other information specified by the ESC rules.
- (3) A return must also be audited in accordance with the ESC rules before it is given to the ESC.

Subdivision 2—Small Generation Units

30. When a certificate may be created

- (1) If a small generation unit is installed on or after 1 January 2007, certificates may be created after the small generation unit is installed.
- (2) The ESC rules may make provision in relation to the time at which a small generation unit is taken to have been installed.

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- (3) The ESC rules may make provision in relation to—
- (a) the time when a right to create certificates in relation to a small generation unit arises; and
 - (b) the period within which certificates may be created in relation to a small generation unit.

31. How many certificates may be created

The number of certificates (each representing 1 MWh) that may be created in relation to a small generation unit is to be determined in accordance with the ESC rules.

32. Who may create a certificate?

- (1) The owner of the small generation unit at the time that a right to create a certificate or certificates arises in relation to the small generation unit is entitled to create the certificate or certificates.
- (2) However, the owner may, by written notice, and in accordance with the ESC rules, assign the right to create the certificate or certificates to another person. If the owner does this, the owner is not entitled to create the certificate or certificates but the person to whom the right was assigned is entitled to create the certificate or certificates.
- (3) Despite sub-sections (1) and (2) a person who is not registered must not create a certificate that relates to the small generation unit.

33. No other certificates to be created

A registered person must not create certificates under Subdivision 1 in respect of electricity generated by a small generation unit, unless an election is made under section 35 in relation to that unit.

34. Certificates must not be created if Commonwealth certificates already created

- (1) A registered person must not create a certificate in relation to a small generation unit if a Commonwealth certificate has been created in relation to that small generation unit.
- (2) A registered person must not create a certificate in relation to a small generation unit if a Commonwealth certificate has been created in relation to electricity generated by that generation unit.

35. Election to not create certificates under this Subdivision

- (1) In this section—
"qualifying small generation unit" means a small generation unit of a kind specified in the ESC rules for the purposes of this section.
- (2) The owner of a qualifying small generation unit at the time that it is installed may give the ESC a notice in writing electing that this Subdivision does not apply to the creation of certificates that relate to the unit.
- (3) The owner must make the election within the period of 20 business days beginning on the day the unit is installed and before any certificates are created under this Subdivision that relate to the unit.
- (4) If an election is made, a person must not create certificates under this Subdivision that relate to the unit.

Note: A person may be able to create certificates under Subdivision 1 that relate to the unit.

- (5) An election must not be varied or revoked.

36. Small generation unit returns

- (1) If the sum of the number of certificates created by a person during a year under this Subdivision exceeds 250, the person must give a return for the year to the ESC on or before—
 - (a) 14 March in the following year; or
 - (b) any later day allowed by the ESC.
- (2) The return must include details of—
 - (a) the number of certificates the person created under each of those Subdivisions during the year; and
 - (b) the number of certificates the person is entitled to create under this Subdivision because of rights assigned to the person under section 32(2) during the year; and
 - (c) any other information specified by the ESC rules.
- (3) A return must also be audited in accordance with the ESC rules before it is given to the ESC.

Subdivision 3—End of Right to Create Certificates

37. No certificates can be created on or after 1 January 2031

No certificates can be created under—

- (a) Subdivision 1 in respect of electricity generated; or
- (b) Subdivision 2 in respect of a small generation unit installed—

on or after 1 January 2031.

Subdivision 4—Improper Creation of Certificates

38. Improper creation of certificates—offences

- (1) A person who is not entitled under this Act to create a certificate must not create a certificate.

Penalty: 60 penalty units in the case of an individual;

240 penalty units in the case of a body corporate.

- (2) In determining whether a person was not entitled to create a certificate under this Act, the fact that the certificate has been registered by the ESC under section 41 is to be disregarded.

Note: This ensures that a person cannot raise as relevant evidence the fact that a certificate has been registered.

Division 5—Form and Registration of Certificates

39. Form and content of certificates—accredited power stations

- (1) Certificates under Subdivision 1 of Division 4 are to be created in an electronic form approved in writing by the ESC.

- (2) Each certificate is to contain—

- (a) a unique identification code; and
 - (b) the electronic signature of the registered person who created the certificate; and
 - (c) the date on which the final part of the electricity was generated; and
 - (d) details of the eligible renewable energy source or sources of that electricity; and
 - (e) the date on which the certificate was created.
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- (3) A certificate's unique identification code is to consist of the following in the following order—
- (a) the registered person's registration number;
 - (b) the accredited power station's identification code;
 - (c) the year;
 - (d) a number in an unbroken sequence, that is used for all certificates issued in respect of electricity generated by the accredited power station in that year, that starts at one and has increments of one.

40. Form and content of certificates—small generation units

- (1) Certificates under Subdivision 2 of Division 4 are to be created in an electronic form approved in writing by the ESC.
- (2) Each certificate is to contain—
 - (a) a unique identification code; and
 - (b) the electronic signature of the registered person who created the certificate; and
 - (c) the date on which the small generation unit concerned was installed; and
 - (d) details of the eligible renewable energy source in respect of which the certificate was created; and
 - (e) the date on which the certificate was created.

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- (3) A certificate's unique identification code is to consist of the following in the following order—
- (a) the registered person's registration number; and
 - (b) a number in an unbroken sequence that is used for all certificates created by the registered person in that year and that starts at one and has increments of one.

41. Certificates must be registered

- (1) A certificate is not valid until it has been registered by the ESC.
 - (2) If the ESC is notified that a certificate has been created, the ESC must decide whether the certificate is eligible for registration.
 - (3) A certificate is not eligible for registration unless the ESC has been paid the relevant fee (if any) fixed under section 112 for the registration of the certificate.
 - (4) If the ESC decides that a certificate is eligible for registration, the ESC must create an entry for the certificate in the register of renewable energy certificates and record the person who created the certificate as the owner of the certificate.
 - (5) If the ESC decides that a certificate is not eligible for registration, or has been improperly created, the ESC must—
 - (a) not register the certificate; and
 - (b) notify the person who created the certificate.
 - (6) The ESC may at any time (whether before or after the registration of a certificate) require the person who created the certificate to provide to the ESC a written statement containing such information as the ESC requires in connection with the creation of the certificate. The person who created the
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certificate must provide the statement within the period (not being a period of less than 10 business days) specified by the ESC.

Division 6—Transfer of Certificates

42. Certificates may be transferred

- (1) Certificates that have been registered under section 41 may be transferred to any person.
- (2) To avoid doubt, a certificate may be transferred to a person who does not acquire the electricity generated to which the certificate relates.

43. ESC to be notified

- (1) The ESC must be notified of each transfer of a certificate.
- (2) The notification must be by electronic transmission in the manner specified, in writing, by the ESC.
- (3) The notification must be accompanied by the relevant fee (if any) fixed under section 112.
- (4) When the ESC is notified, the ESC must alter the register of certificates to show the transferee as the owner of the certificate.

Division 7—Retirement of Certificates

44. Owner may surrender certificate

- (1) The owner of a certificate may surrender the certificate to the ESC under this section.

Note 1: The register of renewable energy certificates must contain the name of the current owner of each certificate.

Note 2: Certificates must also be surrendered under section 67 and may also be required to be surrendered in accordance with a certificate surrender notice, or under a court order under section 73 or 74.

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- (2) The owner of a certificate must, at the same time, give the ESC reasons, in writing, why they are surrendering the certificate.
 - (3) A certificate surrendered under this section must not be included in an energy acquisition statement.

45. Retirement of certificates

- (1) If a certificate is surrendered under section 44 or 67, or in compliance with a surrender certificate notice or an order under section 73 or 74, the certificate ceases to be valid.
- (2) On a certificate ceasing to be valid, the ESC must alter the entry relating to the certificate in the register of certificates to show that the certificate is no longer valid.

Division 8—Suspension of Registration

46. Suspension of registration—conviction for improper creation of certificates

- (1) If a registered person has been convicted of an offence under section 38, the ESC may suspend the person's registration for such period (not exceeding 2 years) as the ESC considers appropriate in all of the circumstances.
- (2) If a person whose registration has previously been suspended under sub-section (1) is convicted of another offence under section 38, the ESC may suspend the person's registration for such period (including permanently) as the ESC considers appropriate in all of the circumstances.

47. Suspension of registration—other grounds

- (1) The ESC may, by written notice, suspend the registration of a registered person if the ESC believes on reasonable grounds that the person—
 - (a) has committed an offence against this Act; or
 - (b) has breached an undertaking given to the ESC under Division 1.
- (2) A registration that is suspended under sub-section (1) is suspended for such period (not exceeding 12 months) as the ESC considers appropriate in all of the circumstances. That period must be specified in the notice.
- (3) The ESC may, by written notice, suspend the registration of a registered person if the registration was obtained improperly.
- (4) A registration that is suspended under sub-section (3) is suspended for such period (including permanently) as the ESC considers appropriate in all of the circumstances. That period must be specified in the notice.

Division 9—Changing the Nominated Person for an Accredited Power Station

48. Changing the nominated person for an accredited power station

- (1) A registered person who is a stakeholder in relation to an accredited power station may apply to the ESC for approval to become the nominated person for the power station.

Note: The nominated person is able to create certificates in respect of electricity generated by the power station: see section 26.

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- (2) The application must—
- (a) be made in a form and manner required by the ESC; and
 - (b) contain any information required by the ESC; and
 - (c) be accompanied by any documents required by the ESC; and
 - (d) if required by the ESC, be accompanied by—
 - (i) evidence of the kind referred to in section 16(2); and
 - (ii) an undertaking in the form of a relevant undertaking referred to in section 16(3) or 16(4); and
 - (e) be accompanied by a statement in writing from each other stakeholder indicating that the other stakeholder agrees to the making of the application; and
 - (f) be accompanied by the relevant fee (if any) fixed under section 112.
- (3) If the ESC receives an application that is properly made, the ESC must, by writing, approve the applicant as the nominated person for the accredited power station.
- (4) Otherwise, the ESC must refuse to so approve the applicant and must notify the applicant accordingly.
- (5) For the purposes of sub-section (2)(d)(i) and (ii) section 16 applies to an application under this section as if—
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- (a) a reference in that section to the applicant were a reference to an applicant under this section; and
 - (b) in section 16(2)(c) and clause 4(c) of the Schedule, a reference to persons specified in the application under section 15(2)(c) were a reference to other stakeholders.

Division 10—Varying what Constitutes a Power Station

49. Varying what constitutes an accredited power station

- (1) The ESC may, by writing, vary a decision under section 17(1)(a). The ESC may do so only in relation to an accredited power station.
- (2) The ESC may only do so upon application by the nominated person for the accredited power station.
- (3) The application must—
 - (a) be made in a form and manner required by the ESC; and
 - (b) contain any information required by the ESC; and
 - (c) be accompanied by any documents required by the ESC; and
 - (d) be accompanied by the relevant fee (if any) under section 112.
- (4) If the ESC refuses the application, the ESC must notify, in writing, the applicant accordingly.

Division 11—Suspending the Accreditation of a Relevant Power Station

50. Suspending the accreditation of a relevant power station—interconnected power stations

- (1) The ESC may, by written notice, suspend the accreditation of an accredited power station if—
- (a) the power station is part of a group of interconnected power stations; and
 - (b) at any time one or more of the power stations (an "**excess station**") in the group generates electricity utilising its scheme capacity; and
 - (c) the ESC is satisfied that at the time the excess station generates electricity utilising its scheme capacity ("**the relevant time**"), one or more of the power stations (a "**shortfall station**") in the group generates less electricity than it would have generated but for a gaming arrangement; and
 - (d) the ESC is satisfied that more certificates were able to be created in relation to electricity generated at the relevant time than would have been able to be created but for the gaming arrangement.
- (2) The accreditation is suspended for such period (including permanently) as the ESC considers appropriate in all of the circumstances. That period must be specified in the notice.

Note: Any electricity generated by the power station while its accreditation is suspended is to be excluded from all calculations under section 26: see section 26(5).

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- (3) Two or more power stations form a "**group of interconnected power stations**" if—
- (a) each power station is able to generate electricity utilising a particular supply (the "**relevant supply**") of an eligible renewable energy source; and
 - (b) each of the power stations is owned or operated by the same person (whether alone or together with another person).
- (4) In deciding whether or not to suspend the accreditation of an accredited power station under sub-section (1), the ESC must have regard to—
- (a) any relevant information available that demonstrates whether or not the group of interconnected power stations generated less electricity than it would have but for a gaming arrangement; and
 - (b) any matter specified in the ESC rules for the purposes of this sub-section.
- (5) The ESC may have regard to such other matters as it thinks appropriate.
- (6) In this section—

"gaming arrangement" means an arrangement to coordinate the amount of electricity generated by each power station in the group of interconnected power stations utilising the relevant supply for the primary purpose of allowing more certificates to be created than would have been able to be created but for the arrangement.

**51. Suspending the accreditation of a power station—
other grounds**

- (1) The ESC may, by written notice, suspend the accreditation of an accredited power station if—
 - (a) an electricity generation return for a year, in respect of the power station, has not been given to the ESC in accordance with section 29; or
 - (b) the ESC believes on reasonable grounds that the nominated person in relation to the accredited power station, has breached an undertaking given to the ESC under Division 3 or 9; or
 - (c) the ESC believes on reasonable grounds that the power station is being operated in contravention of a law of Victoria, the Commonwealth, another State or a Territory.
- (2) An accreditation that is suspended under subsection (1)(a) is suspended until the return is given to the ESC in accordance with section 29. The notice must include a statement to that effect.
- (3) An accreditation that is suspended under subsection (1)(b) is suspended for such period (including permanently) as the ESC considers appropriate in all of the circumstances. That period must be specified in the notice.
- (4) An accreditation that is suspended under subsection (1)(c) is suspended until the ESC believes on reasonable grounds that the power station is not being operated in contravention of that law. The notice must include a statement to that effect.

Note: Any electricity generated by the power station while its accreditation is suspended under this section is to be excluded from all calculations under section 26: see section 26(5).

**52. Suspending the accreditation of a power station—
circumstances specified by Governor in Council**

- (1) The Governor in Council, by Order published in the Government Gazette, may, specify other circumstances on which the ESC may suspend the accreditation of an accredited power station.
- (2) If a circumstance specified in an Order under sub-section (1) arises, the ESC may, by written notice, suspend the accreditation of an accredited power station.
- (3) An accreditation that is suspended under sub-section (2) is suspended for such period (including permanently) as the ESC considers appropriate in all of the circumstances. That period must be specified in the notice.

Note: Any electricity generated by the power station while its accreditation is suspended under this section is to be excluded from all calculations under section 26: see section 26(5).

**Division 12—Varying Pre-Scheme Capacity and Scheme
Capacity**

53. Varying pre-scheme capacity and scheme capacity

- (1) The ESC may, by written notice, vary the pre-scheme capacity or scheme capacity for an accredited power station.
 - (2) The ESC may do so only on an application by the nominated person for the accredited power station.
 - (3) If a notice under sub-section (1) increases or decreases the pre-scheme capacity or the scheme capacity (as the case requires) for an accredited power station, the notice has effect on and from the time the notice is given.
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PART 3—ACQUISITIONS OF ELECTRICITY

54. What is a "standard scheme acquisition"?

- (1) An acquisition of electricity is a standard scheme acquisition if, under the acquisition, electricity is acquired by a person or body from NEMMCO, or a person or body specified by the ESC rules, for use in Victoria.
- (2) If there is a standard scheme acquisition of electricity under this section, then no other acquisition in relation to that electricity is a scheme acquisition (regardless of when the other acquisition occurs).

55. What is a "notional scheme acquisition"?

A person or body that generates electricity for use by them in Victoria is to be taken to have made a notional scheme acquisition of electricity at the time they use the electricity.

56. What is an "excluded acquisition"?

An excluded acquisition is—

- (a) an acquisition of electricity under which the electricity that is acquired is later acquired by NEMMCO or a person or body specified by the ESC rules; or
- (b) a standard scheme acquisition or a notional scheme acquisition specified by Order under section 57.

57. Specification of standard scheme acquisitions and notional scheme acquisitions as excluded acquisitions

- (1) The Governor in Council, by Order published in the Government Gazette, may specify a standard scheme acquisition or a notional scheme acquisition to be an excluded acquisition.

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- (2) In specifying a standard scheme acquisition under an Order under sub-section (1), the Governor in Council may specify it by reference to any one or more of the following—
- (a) a minimum amount of electricity to which the acquisition relates; or
 - (b) the end user acquiring the electricity; or
 - (c) the supply points at which the electricity is used.
- (3) In specifying a notional scheme acquisition under an Order under sub-section (1), the Governor in Council may specify it by reference to—
- (a) a person or body that generates electricity for use by them in Victoria; or
 - (b) a class of persons or bodies the members of which each generate electricity for use by themselves in Victoria.

58. Special provision for transactions involving NEMMCO

Despite section 56, no acquisition of electricity by NEMMCO is a scheme acquisition.

59. ESC rules to determine amount of electricity acquired

- (1) The amount of electricity acquired under a scheme acquisition is to be determined in accordance with the ESC rules.
 - (2) For the purposes of sub-section (1), electricity used for the primary purpose of generating, transmitting or distributing electricity is not to be taken into account.
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**PART 4—RENEWABLE ENERGY CERTIFICATE
SHORTFALL**

**Division 1—Prohibition of Renewable Energy Certificate
Shortfall**

60. Who is a relevant entity?

A person who makes a scheme acquisition of electricity is called a relevant entity.

61. Prohibition of renewable energy certificate shortfall

- (1) A relevant entity must not have a renewable energy certificate shortfall for a year in which the relevant entity makes a scheme acquisition.
- (2) Sub-section (1) does not apply in the year 2031 or any year after that year.

62. Civil penalty for shortfall

- (1) A relevant entity that has a renewable energy certificate shortfall for a year is liable to pay to the Consolidated Fund a pecuniary penalty ("**renewable energy shortfall penalty**") determined in accordance with this section.
- (2) The renewable energy shortfall penalty payable by a relevant entity for a year is determined by multiplying the relevant entity's renewable energy certificate shortfall (in MWh) for that year by the shortfall penalty rate for that year.

63. Shortfall penalty rate

- (1) The shortfall penalty rate is \$43 per MWh as varied in accordance with this section.
- (2) The amount referred to in sub-section (1) that is to apply in respect of 2007 and each subsequent year is to be varied in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

"A" is the amount referred to in sub-section (1).

"B" is the all groups consumer price index for Melbourne published by the Australian Statistician in respect of the September quarter of the preceding year.

"C" is the all groups consumer price index for Melbourne published by the Australian Statistician in respect of the 2006 September quarter.

- (3) If an amount is varied in accordance with this section, sub-section (1) has effect as if a reference to the amount were a reference to the amount as so varied.
- (4) The ESC must cause a notice to be published in the Government Gazette specifying the amount as varied for the purposes of sub-section (1) in respect of the relevant year.

64. Determination of renewable energy certificate shortfall

The following steps and result show how to determine whether a relevant entity has a renewable energy certificate shortfall for a year—

- Step 1. Calculate the total amount, in MWh, of electricity acquired by the relevant entity during the year under a scheme acquisition.

Note: Section 59 provides that the amount of electricity acquired under a scheme acquisition is to be determined in accordance with the ESC rules.

Step 2. Multiply the total electricity acquired by the renewable power percentage for the year and round down to the nearest MWh (assuming there is more than 1 MWh). Subtract any carried forward surplus for the previous year. The result is the relevant entity's "**required renewable energy**" for the year.

Step 3. Subtract the total value, in MWh, of certificates surrendered to the ESC under section 67 for that year by the relevant entity from the required renewable energy for the year.

Result: If the result is greater than zero, the relevant entity has a "**renewable energy certificate shortfall**" for the year equal to the result.

If the result is zero or less than zero, the relevant entity does not have a renewable energy certificate shortfall for the year.

If the result is less than zero, the relevant entity has a "**carried forward surplus**" for the year.

Division 2—Renewable Power Percentage

65. Renewable power percentage

- (1) The Governor in Council, by Order published in the Government Gazette, may fix the renewable power percentage in respect of a year.
 - (2) In determining the renewable power percentage in respect of a year, the Governor in Council must have regard to the scheme acquisitions by each relevant entity in the previous year and the
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required GWh of electricity from eligible renewable energy sources for that year.

- (3) An Order under sub-section (1) fixing the renewable power percentage for a year must be made on or before 31 May of that year.
- (4) If a renewable power percentage is not fixed by Order for a year, the percentage for that year is—
 - (a) for the year commencing on 1 January 2007—0%; and
 - (b) for any later year—the rate worked out using the following formula—

$$\text{Renewable power percentage for the previous year} \times \frac{\text{Required GWh of electricity from eligible renewable energy sources for the year}}{\text{Required GWh of electricity from eligible renewable energy sources for the previous year.}}$$

66. Required GWh of electricity from eligible renewable energy sources

- (1) Subject to sub-section (2), the required GWh of electricity from eligible renewable energy sources for a year is set out in the following Table—

Required GWh of electricity from eligible renewable energy sources

<i>Year</i>	<i>Required GWh</i>
2007	0
2008	193
2009	578
2010	963
2011	1348
2012	1733
2013	2118
2014	2504
2015	2889

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Required GWh of electricity from eligible renewable energy sources

<i>Year</i>	<i>Required GWh</i>
2016	3274
2017	3274
2018	3274
2019	3274
2020	3274
2021	3274
2022	3274
2023	3081
2024	2696
2025	2311
2026	1926
2027	1541
2028	1156
2029	770
2030	385

- (2) The Governor in Council, by Order published in the Government Gazette, may fix an increased amount of electricity from eligible renewable energy sources in respect of a year.
- (3) If a change is made to the required GWh of renewable source electricity under the Commonwealth scheme, the Governor in Council, by Order published in the Government Gazette, may fix an increased or decreased amount of electricity from eligible renewable energy sources in respect of a year.

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- (4) An Order under sub-section (2) or (3) fixing an amount of electricity from eligible renewable energy sources in respect of a year must be made on or before 30 September in the year before that year.
- (5) If an Order under sub-section (2) or (3) fixes an amount of electricity from eligible renewable energy sources in respect of a year, that amount applies in place of the amount specified in the Table in respect of that year.
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**PART 5—STATEMENTS AND SURRENDER OF
CERTIFICATES**

67. Annual energy acquisition statements

- (1) A relevant entity that makes an acquisition of electricity under a scheme acquisition during a year must lodge an energy acquisition statement for the year on or before—
- (a) 30 April in the following year; or
 - (b) any later day allowed by the ESC.

- (2) The statement must set out—

- (a) the name and postal address of the relevant entity; and
- (b) the amount of electricity acquired under scheme acquisitions during the year; and

Note: Section 59 provides that the amount of electricity acquired under a scheme acquisition is to be determined in accordance with the ESC rules.

- (c) the value, in MWh, of certificates being surrendered for that year under this section; and
- (d) any carried forward surplus for the previous year; and
- (e) any carried forward surplus for the current year; and
- (f) any other information specified by the ESC rules.

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- (3) The statement must—
 - (a) be made in a form and manner required by the ESC; and
 - (b) be accompanied by the relevant fee (if any) fixed under section 112; and
 - (c) be signed by or on behalf of the relevant entity making the statement.
 - (4) The statement must be accompanied by details of all certificates being surrendered for that year under this section.
 - (5) A certificate cannot be specified in the statement unless the relevant entity is recorded in the register of renewable energy certificates as the owner of the certificate at the time that the statement is lodged.
 - (6) A statement must also be audited in accordance with the ESC rules before it is lodged under this section.

68. Fees for surrender of certificates

- (1) The ESC must, by notice in writing given to the relevant entity, advise the relevant entity—
 - (a) of the number of certificates specified under section 67(4) that are able to be surrendered for that year; and
 - (b) of the relevant fee (if any) fixed under section 112 that is payable by the relevant entity in respect of the surrender of those certificates.

Note: Section 69 contains restrictions on the certificates that can be surrendered.

- (2) The relevant entity must pay the fee within the period of 20 business days beginning on the day the relevant entity receives the notice under subsection (1).

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- (3) If the fee is unpaid at the end of that period, it is a debt due to the Crown and is recoverable by the ESC in any court of competent jurisdiction.

69. Restrictions on certificates that can be surrendered

A certificate cannot be surrendered under section 67 unless—

- (a) the certificate is valid; and
 - (b) the certificate was created before 31 January in the year following the year to which the energy acquisition statement relates; and
 - (c) the relevant entity is recorded in the register of renewable energy certificates as the owner of the certificate at the time that the statement is lodged.
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PART 6—CIVIL ENFORCEMENT

Division 1—Renewable Energy Shortfall Penalty

70. Shortfall statement

- (1) If the ESC believes on reasonable grounds that a relevant entity is in breach of an obligation under section 61 in respect of a year, the ESC may issue a shortfall statement to the relevant entity.
- (2) The shortfall statement must set out—
 - (a) the name and postal address of the relevant entity; and
 - (b) the relevant entity's renewable energy certificate shortfall for the year; and
 - (c) the renewable energy shortfall penalty that the relevant entity is liable to pay under section 62; and
 - (d) the manner in which that penalty is to be paid; and
 - (e) the time within which that penalty is to be paid; and
 - (f) any other information required by the ESC rules.
- (3) The shortfall statement must include a statement advising the relevant entity that if the renewable energy shortfall penalty is not paid in accordance with the shortfall notice, the ESC may apply to a court for an order requiring the penalty to be paid.

71. Application for declaration and order for payment of shortfall penalty

- (1) If a renewable energy shortfall penalty is not paid in accordance with a shortfall notice, the ESC may apply to a court for—
 - (a) a declaration that the relevant entity has contravened section 61; and
 - (b) an order requiring the relevant entity to pay the renewable energy shortfall penalty.
- (2) If the court is satisfied that the relevant entity has contravened section 61, the court may—
 - (a) make the declaration sought; and
 - (b) order the relevant entity to pay to the ESC for payment into the Consolidated Fund the amount of the renewable energy shortfall penalty determined in accordance with Part 4.
- (3) An order made under this section is taken, for the purposes of enforcement, to be an order made by the court in a civil proceeding.

Division 2—Surrender of Additional Certificates where Undertaking Breached

72. Certificate surrender notice

- (1) If the ESC believes on reasonable grounds that a nominated person or a registered person is in breach of an undertaking given under Division 1, 3 or 9 of Part 2 relating to the creation of certificates, the ESC may issue a certificate surrender notice to that person.
- (2) The ESC must not issue a certificate surrender notice under this section unless the ESC has, as the case requires, suspended—

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- (a) under section 47(1)(b), the registration of the registered person;
- (b) under section 51(1)(b), the accreditation of the power station in relation to which certificates have been created in breach of the undertaking.
- (3) The notice must—
- (a) set out the name and postal address of the registered person or nominated person; and
- (b) specify the number of certificates that must be surrendered to the ESC; and
- (c) specify the time within which the certificates specified must be surrendered.
- (4) The number of certificates that must be surrendered must be equivalent to the number of certificates created and registered under this Act—
- (a) in the case of a breach of an undertaking under Division 1 of Part 2—in relation to the small generation unit in relation to which Commonwealth certificates were also created;
- (b) in the case of a breach of an undertaking under Division 3 or 9 of Part 2—utilising the scheme capacity of the accredited power station of the nominated person that was also utilised to create Commonwealth certificates.
- (5) The certificate surrender notice must include a statement advising the registered person or nominated person that if the number of certificates specified in the notice to be surrendered is not surrendered in accordance with the notice, the ESC may apply to a court for an order under section 73.
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- (6) A certificate surrendered in accordance with a certificate surrender notice is not to be counted toward a person's compliance with section 61.
 - (7) To avoid doubt, it is not an excuse for a failure to comply with a certificate surrender notice that the person to whom the notice is issued is not, at the time the notice is issued, the registered owner of a sufficient number of certificates to comply with the notice.

73. Application for declaration and order requiring surrender of certificates

- (1) If certificates are not surrendered in accordance with a certificate surrender notice, the ESC may apply to a court for—
 - (a) a declaration that a registered person or nominated person has breached an undertaking given by that person under Division 1, 3 or 9 of Part 2; and
 - (b) an order requiring the registered person or nominated person to surrender to the ESC the number of certificates specified in the order.
 - (2) If the court is satisfied that the registered person or nominated person has breached the undertaking given by the person under Division 1, 3 or 9 of Part 2, the court may—
 - (a) make the declaration sought; and
 - (b) order the registered person or nominated person to surrender to the ESC the number of certificates specified in the order within the time specified in the order.
 - (3) A certificate surrendered in accordance with an order made under this section is not to be counted toward a person's compliance with section 61.
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- (4) To avoid doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order is not, at the time the order is made, the registered owner of a sufficient number of certificates to comply with the order.

Division 3—Surrender of Additional Certificates following Improper Creation of Certificates

74. ESC may require surrender of certificates following improper creation of certificates

- (1) The ESC, by order in writing to a person, may require the person to surrender to the ESC, within a period specified in the order, a number of certificates specified in the order.
- (2) An order may be made against a person under this section only if the person is found guilty of an offence against section 38.
- (3) If an order is made against a person found guilty of an offence under section 38, the ESC is to require the surrender of a number of certificates that is equivalent to the number of certificates that were created by the person in contravention of section 38 and registered under this Act.
- (4) A certificate surrendered under this section is not to be counted toward a person's compliance with section 61.
- (5) A person must not fail to comply with an order under this section.

Penalty: 600 penalty units and an additional 1 penalty unit for each certificate that the person fails to surrender in accordance with the order.

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- (6) To avoid doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order is not, at the time the order is made, the registered owner of a sufficient number of certificates to comply with the order.
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PART 7—REVIEW OF ESC DECISIONS

75. Review of decisions

- (1) An affected person in relation to a reviewable decision may request that the ESC reconsider the decision.
- (2) The following Table sets out the reviewable decisions and, for each decision, sets out the provision under which it is made and the affected person in relation to it.

Table of reviewable decisions

<i>Item</i>	<i>For a decision...</i>	<i>made under...</i>	<i>the affected person is...</i>
1	to refuse to register a person	section 10	the person
2	in relation to an application about provisional accreditation of a relevant power station	section 13	the applicant for provisional accreditation
3	in relation to an application about accreditation of a relevant power station	section 17	the applicant for accreditation
4	to refuse to accredit a relevant power station	section 18	the applicant for accreditation
5	not to register a certificate	section 41	the person who created the certificate
6	to suspend a person's registration	section 46 or 47	the registered person

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Table of reviewable decisions

<i>Item</i>	<i>For a decision...</i>	<i>made under...</i>	<i>the affected person is...</i>
7	to refuse to approve a person as the nominated person for an accredited power station	section 48	the person
8	to vary, or refuse to vary, a decision about power station components	section 49	the nominated person for the accredited power station concerned
9	to suspend the accreditation of an accredited power station	section 50 or 51	the nominated person for the power station concerned
10	to vary, or refuse to vary, pre-scheme or scheme capacity	section 53	the nominated person for the power station concerned

- (3) The request must be—
- (a) in writing setting out the reasons for the request; and
 - (b) accompanied by the relevant fee (if any) fixed under section 112; and
 - (c) given to the ESC within 30 business days after the making of the decision.
- (4) The ESC must reconsider the decision and confirm, vary or set aside the decision.
- (5) The ESC is deemed to have confirmed the decision under sub-section (4) if the ESC does not give notice in writing of the ESC's decision under that sub-section within 40 business days after the request.
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- (6) Not more than one request can be made in respect of each reviewable decision.
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PART 8—ROLE OF ESC

76. Role of ESC

- (1) The ESC is responsible for the general administration of this Act.
- (2) Without limiting sub-section (1), the ESC's functions under this Act include—
 - (a) to register persons who may create certificates;
 - (b) to accredit relevant power stations;
 - (c) to approve nominated persons;
 - (d) to monitor and administer the creation, registration, transfer and surrender of certificates;
 - (e) to enforce renewable energy shortfall penalties;
 - (f) to monitor compliance with this Act.

77. ESC must publish certain information

- (1) The ESC must publish—
 - (a) a list of each relevant entity that has a renewable energy certificate shortfall for a particular year; and
 - (b) the amount of each relevant entity's renewable energy certificate shortfall for that year; and
 - (c) the total of the renewable energy certificate shortfalls for that year; and
 - (d) the number of certificates created in a particular year; and
 - (e) the number of certificates surrendered in a particular year; and

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- (f) the number of certificates that could have been created in respect of renewable energy generated in a particular year and the number that were actually created; and
 - (g) any other information in accordance with the ESC rules.
- (2) Nothing in Part 12 prevents the publication of the information referred to in sub-section (1).

78. Annual report

The ESC must include a report on the operation of this Act in its annual report of operations under Part 7 of the **Financial Management Act 1994**.

PART 9—REGISTERS

Division 1—General

79. Registers to be maintained

The ESC must maintain the following registers—

- (a) the register of registered persons;
- (b) the register of accredited power stations;
- (c) the register of renewable energy certificates;
- (d) the register of applications for accredited power stations.

Division 2—The Register of Registered Persons

80. Register of registered persons

- (1) The register of registered persons is to contain—
 - (a) the name of each registered person; and
 - (b) the registration number for each registered person; and
 - (c) any other information that the ESC considers appropriate.
- (2) The register must also contain the following information about any person whose registration is suspended—
 - (a) the name of the person; and
 - (b) the person's registration number; and
 - (c) the period for which registration is suspended; and
 - (d) any other information that the ESC considers appropriate.

Division 3—The Register of Accredited Power Stations

81. Register of accredited power stations

The register of accredited power stations is to contain—

- (a) the name of each accredited power station; and
- (b) the name of the nominated person for each accredited power station; and
- (c) the identification code for each accredited power station; and
- (d) the pre-scheme capacity for each accredited power station; and
- (e) the scheme capacity for each accredited power station; and
- (f) the total capacity for each accredited power station; and
- (g) any relevant method used to determine the amount of electricity generated by each accredited power station utilising scheme capacity; and
- (h) any other information that the ESC considers appropriate.

Division 4—The Register of Renewable Energy Certificates

82. Register of renewable energy certificates

The register of renewable energy certificates is to contain—

- (a) the unique identification code of each valid certificate; and
- (b) the year in which the certificate was created; and

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- (c) the name of the registered person who created the certificate; and
 - (d) the name of the current registered owner, and each previous registered owner, of each certificate; and
 - (e) the eligible renewable energy source or sources of the electricity in respect of which the certificate was created; and
 - (f) any other information that the ESC considers appropriate.

Division 5—The Register of Applications for Accredited Power Stations

83. Contents of register of applications for accredited power stations

The register of applications for accredited power stations is to contain—

- (a) the name of each applicant for each relevant power station to be accredited; and
- (b) the name and location of each relevant power station to be accredited; and
- (c) the eligible renewable energy source or sources proposed to be used by each relevant power station to be accredited; and
- (d) any other information that the ESC considers appropriate.

Division 6—Form of Registers

84. Form of registers

- (1) A register under this Part must be maintained by electronic means.
- (2) A register is to be made available for inspection on the ESC's Internet site.

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- (3) Any addition to a register must be made available on the ESC's Internet site within 20 business days after the ESC registers the person, power station or certificate or receives the application (as the case requires).
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PART 10—INFORMATION-GATHERING POWERS

85. ESC may obtain information and documents

- (1) This section applies to a person if the ESC has reason to believe that the person has information or a document that is relevant to the operation of this Act.
- (2) The ESC may, by written notice given to the person, require the person—
 - (a) to give to the ESC, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ESC, within the period and in the manner specified in the notice, any such document; or
 - (c) if the person is an individual, to appear before the ESC at a time and place specified in the notice to give any information, either orally or in writing, and produce any such document; or
 - (d) if the person is a body corporate, to cause a competent officer of the body corporate to appear before the ESC at a time and place specified in the notice to give any such information, either orally or in writing, and produce any such document.
- (3) A notice under sub-section (2) must set out the effect of sections 86 and 87.

86. Failure to comply with notice

A person must not, without reasonable excuse, fail to comply with a notice given to the person under section 85.

Penalty: 60 penalty units, in the case of an individual;
240 penalty units, in the case of a body corporate.

87. Protection against self-incrimination

It is a reasonable excuse for an individual to refuse or fail to give information or evidence or produce a document under section 85 if the giving of the information or evidence or the production of the document would tend to incriminate the person.

88. Copies of documents

The ESC may inspect a document produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.

89. ESC may retain documents

- (1) The ESC may take, and retain for as long as necessary, possession of a document produced under this Part.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ESC to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

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Part 10—Information-Gathering Powers

- (4) Until a certified copy is supplied, the ESC must, at all such times and places as the ESC thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
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PART 11—POWERS OF AUTHORISED OFFICERS

**Division 1—Appointment of Authorised Officers and
Identity Cards**

90. Appointment of authorised officers

- (1) The ESC may, in writing, appoint any of the following persons as an authorised officer for the purposes of this Part—
 - (a) an employee of the ESC;
 - (b) a person employed under Part 3 of the **Public Administration Act 2004**;
 - (c) any other person employed by the State;
 - (d) any other person who the ESC considers has appropriate skills, qualifications and experience.
- (2) The ESC must not appoint a person as an authorised officer unless the ESC is satisfied that the person has appropriate skills, qualifications and experience.
- (3) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the ESC.

91. Identity cards

- (1) The ESC must issue an identity card to an authorised officer.
- (2) The identity card must contain a recent photograph and the signature of the authorised officer.
- (3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

- (4) An authorised officer must produce his or her identity card for inspection—
- (a) before exercising a power under this Part other than a requirement made by post, fax, email or other electronic communication; and
 - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

Division 2—Powers of Authorised Officer

Subdivision 1—When may Powers be Exercised

92. When may powers be exercised?

- (1) An authorised officer may exercise powers under this Part only to the extent that it is reasonably necessary to do so for substantiating information provided under this Act or for determining whether this Act has been complied with.
- (2) In exercising powers under this Part, an authorised officer must—
 - (a) cause as little inconvenience as possible; and
 - (b) not remain on premises any longer than is reasonably necessary.

Subdivision 2—Monitoring Powers

93. Entry to premises

- (1) An authorised officer may at any reasonable time of the day—
 - (a) enter any premises; and
 - (b) exercise the monitoring powers set out in section 97.
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- (2) An authorised officer is not authorised to enter premises under sub-section (1) unless—
- (a) the premises are business premises, the occupier of the premises has consented to the entry and the authorised officer has complied with section 95; or
 - (b) the entry is made under a monitoring warrant.
- (3) If the authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

94. Information to be provided to occupier on entry

- (1) If the occupier of the premises is present when an authorised officer exercises a power of entry under this Part, the officer must inform the occupier of the purpose of the entry.

Note: The authorised officer must also produce his or her identity card for inspection: see section 91(4).

- (2) If an authorised officer exercises a power of entry under this Part without the occupier being present, the officer must—
- (a) on leaving the premises, leave a notice setting out—
 - (i) the time of entry; and
 - (ii) the purpose of entry; and
 - (iii) a description of all things done while on the premises; and
 - (iv) the time of departure; and
 - (v) the procedure for contacting the officer for further details of the entry; and

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- (b) post a copy of that notice to the occupier of the premises, if the identity and address of the occupier are known to the officer.

95. Entry with consent

- (1) If an occupier consents to an entry under section 93, the authorised officer must before entering the premises ask the occupier to sign an acknowledgement stating—
- (a) that the occupier has been informed of the purpose of the entry; and
 - (b) that the occupier has been informed that he or she may refuse to consent to the entry; and
 - (c) that the occupier has consented to the entry; and
 - (d) the date and time that the occupier consented.
- (2) An occupier who signs an acknowledgement must be given a copy of the signed acknowledgement before the authorised officer leaves the premises.
- (3) If, in any proceeding, an acknowledgement is not produced to the court or tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry.
- (4) An entry of an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

96. Entry with monitoring warrant

- (1) An authorised officer executing a monitoring warrant must, before entering premises under the warrant—
- (a) announce that he or she is authorised to enter the premises; and

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- (b) give any person at the premises an opportunity to allow entry to the premises.
 - (2) If a monitoring warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the authorised officer must make available to that person a copy of the warrant.
 - (3) The authorised officer must identify himself or herself to the person referred to in sub-section (2).

97. Monitoring powers of authorised officers

- (1) For the purposes of this Part, the following are the monitoring powers that an authorised officer may exercise in relation to premises under section 93—
 - (a) the power to search the premises for any thing on the premises that may relate to—
 - (i) the creation or transfer of certificates; or
 - (ii) scheme acquisitions;
 - (b) the power to examine any activity conducted on the premises that may relate to information provided for the purposes of this Act;
 - (c) the power to examine any thing on the premises that may relate to information provided for the purposes of this Act;
 - (d) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;
 - (e) the power to inspect any document on the premises that may relate to information provided for the purposes of this Act;

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- (f) the power to take extracts from, or make copies of, any such document;
 - (g) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
 - (h) the power to secure a thing that—
 - (i) is found during the exercise of monitoring powers on the premises; and
 - (ii) an authorised officer believes on reasonable grounds affords evidence of the commission of an offence against this Act; and
 - (iii) the authorised officer believes on reasonable grounds would be lost, destroyed or tampered with before a warrant can be obtained—until a warrant is obtained to seize the thing;
- (i) the powers in sub-sections (2) and (3).
- (2) For the purposes of this Part, "**monitoring powers**" include the power to operate equipment at premises to see whether—
- (a) the equipment; or
 - (b) a disk, tape or other storage device that—
 - (i) is at the premises; and
 - (ii) can be used with the equipment or is associated with it—
- contains information that is relevant to substantiating information provided under this Act.
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- (3) For the purposes of this Part, "**monitoring powers**" include the following powers in relation to information described in sub-section (2) found in the exercise of the power under that sub-section—
- (a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;
 - (b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that—
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
 - (c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in the exercise of the power under paragraph (b).

Subdivision 3—Powers to Ask Questions and Seek Production of Documents

98. Authorised officer may ask for information

If the authorised officer was only authorised to enter premises because the occupier of the premises consented to the entry, the authorised officer may ask the occupier to—

- (a) answer any questions related to the creation or transfer of certificates, scheme acquisitions or the provision of information under this Act that are put by the authorised officer; and
 - (b) produce any document requested by the authorised officer that is so related.
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99. Authorised officer may require information

If the authorised officer was authorised to enter the premises by a monitoring warrant, the authorised officer may require any person in or on the premises to—

- (a) answer any questions related to the creation or transfer of certificates, scheme acquisitions or the provision of information under this Act that are put by the authorised officer; and
- (b) produce any document requested by the authorised officer that is so related.

100. Failure to produce documents or answer questions

A person must not, without reasonable excuse, fail to answer a question or produce a document required under section 99.

Penalty: 60 penalty units.

101. Protection against self-incrimination

- (1) It is a reasonable excuse for an individual to refuse or fail to answer a question or produce a document under section 99 if the answering of the question or the production of the document would tend to incriminate the person.
- (2) Despite sub-section (1), it is not a reasonable excuse for an individual to refuse or fail to produce a document that the person is required to keep by this Act, if the production of the document would tend to incriminate the person.

Division 3—Occupiers' Rights and Responsibilities

102. Occupier may be present during execution of warrant

- (1) If a monitoring warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

103. Occupier to provide authorised officer with assistance

The occupier of warrant premises, or another person who apparently represents the occupier, must provide the authorised officer executing the warrant and any person assisting that officer with all reasonable facilities and assistance for the effective exercise of their powers.

Penalty: 60 penalty units, in the case of an individual;
240 penalty units, in the case of a body corporate.

Division 4—Monitoring Warrants

104. Monitoring warrants

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

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- (2) Subject to sub-section (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of substantiating information provided under this Act or determining whether this Act has been complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is sought.
- (4) The warrant must—
- (a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 97 in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.
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- (5) A warrant issued under this section must be issued in accordance with the **Magistrates' Court Act 1989** as if it were a search warrant issued under that Act and must be in a form set out in the regulations under that Act.
- (6) Section 78(1)(b)(iii) of the **Magistrates' Court Act 1989** does not apply to a warrant issued under this section.
- (7) Subject to any provisions to the contrary in this Part, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
-

PART 12—CONFIDENTIALITY

105. Disclosure of information and offence

- (1) A person must not disclose any confidential or commercially-sensitive information obtained during the exercise of a power or the performance of a function under, or in connection with, this Act.

Penalty: 60 penalty units.

- (2) A person must not use any such information to obtain directly or indirectly any pecuniary or other advantage for himself or herself or any other person.

Penalty: 120 penalty units.

- (3) However, the person may disclose or use such information if—
- (a) the disclosure or use is made in the exercise of a power or the performance of a function under, or in connection with, this Act; or
 - (b) the person has the consent of the person who supplied the information; or
 - (c) the disclosure or use is made in legal proceedings at the direction of a court; or
 - (d) the information is in the public domain at the time it is disclosed or used.
- (4) To avoid doubt, sub-section (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.
-

106. Information may be disclosed to specified persons or bodies

This Part does not prevent the ESC, or a person authorised by the ESC, from divulging or communicating information to—

- (a) the Minister; or
 - (b) VENCORP established under the **Gas Industry Act 2001**; or
 - (c) NEMMCO; or
 - (d) Sustainability Victoria established under the **Sustainability Victoria Act 2005**; or
 - (e) the Office of the Renewable Energy Regulator established under the Commonwealth scheme; or
 - (f) the Head of the Australian Greenhouse Office (within the meaning of the Commonwealth scheme) or an officer of the Australian Greenhouse Office authorised by the Head of the Australian Greenhouse Office for the purposes of this Part; or
 - (g) an officer of that part of the Agriculture Department of the Commonwealth Government known as the Australian Bureau of Agriculture and Resource Economics ("**ABARE**") for the purposes of the performance of any of ABARE's functions or the exercise of any of ABARE's powers.
-

PART 13—GENERAL

Division 1—General Offences

107. False or misleading information

A person must not—

- (a) give information to the ESC or any person exercising powers under or in connection with this Act that the first-mentioned person knows to be false or misleading in a material particular; or
- (b) produce a document to the ESC or any person exercising powers under or in connection with this Act that the first-mentioned person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units, in the case of an individual;
240 penalty units, in the case of a body corporate.

108. Failure to provide documents

If a person is required under this Act to provide a document (including a statement or return) to the ESC within a specified time or by a specified date, the person, must not, without reasonable excuse, fail to provide the document by the specified time or the specified date, as the case requires.

Penalty: 60 penalty units, in the case of an individual;
240 penalty units, in the case of a body corporate.

109. Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, any officer of the body corporate who knowingly authorised or permitted the commission of the offence is also guilty of that offence and liable to the penalty for it.
- (2) A person may be proceeded against and convicted under a provision in accordance with sub-section (1) whether or not the body corporate has been proceeded against or convicted under that provision.
- (3) If in a proceeding for an offence against this section it is necessary to establish the intention of a body corporate, it is sufficient to show that a servant or agent of the body corporate had that intention.
- (4) In sub-section (1), "**officer**", in relation to a body corporate, means—
 - (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.

Division 2—Evidence and Records

110. Evidence

- (1) A document sealed by the ESC purporting to be a copy of a document issued or given by the ESC under this Act is evidence that the second-mentioned document was so issued or given.

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- (2) A document sealed by the ESC purporting to be a copy of, or an extract from, a renewable energy shortfall statement is evidence of the matter set out in the document to the same extent as the original statement would be if it were produced.

111. Records to be kept by registered persons and relevant entities

- (1) A person who is a registered person or a relevant entity must keep records that record and explain all transactions and other acts engaged in, or required to be engaged in, by the registered person or relevant entity under this Act.
- (2) The records kept by a registered person must include any documents relevant to ascertaining—
- (a) the amount of electricity generated by an accredited power station in relation to which the registered person is the nominated person; and
 - (b) the amount of that electricity that was generated from eligible renewable energy sources and from scheme capacity; and
 - (c) details of all certificates created by the nominated person during the year; and
 - (d) any other matter required by the ESC rules.
- (3) The records kept by a relevant entity must include any documents relevant to ascertaining—
- (a) the amount of electricity acquired by the relevant entity under scheme acquisitions during a year; and
 - (b) any other matter required by the ESC rules.

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- (4) The records must be kept—
- (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
 - (b) so that the relevant entity's liability under this Act can be readily ascertained.
- (5) A registered person or relevant entity who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 5 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later.
- (6) Nothing in this section requires a registered person or relevant entity to retain records if—
- (a) the ESC has notified the registered person or relevant entity that the retention of the records is not required; or
 - (b) the registered person or relevant entity is a company that has gone into liquidation and been finally dissolved.
- (7) A registered person or relevant entity who contravenes this section is guilty of an offence and liable to a penalty not exceeding 60 penalty units, in the case of an individual, or 240 penalty units, in the case of a body corporate.

Division 3—Fees

112. Fees

- (1) The Minister, after consultation with the Minister administering the **Essential Services Commission Act 2001**, may fix fees or scales of fees for the purposes of this Act.

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- (2) The fees may include—
 - (a) fees for the registration of certificates; and
 - (b) fees for requests for review of reviewable decisions; and
 - (c) fees for the lodging of statements; and
 - (d) fees for the surrender of certificates.
 - (3) In fixing fees, the Minister may have regard to the total amount of the costs and expenses of the ESC that are incurred or are likely to be incurred in the exercise of its powers, or in connection with the performance of its functions, under this Act.
 - (4) The fees must be published by notice in the Government Gazette and on the Internet site of the ESC.
 - (5) Fees take effect on the day that the notice is published in the Government Gazette or on such later date as is specified in the notice.

Division 4—ESC Rules

113. ESC rules

- (1) The ESC may make rules for or with respect to any matter required or permitted by this Act to be provided for by the ESC rules or which is necessary or convenient for carrying out or giving effect to this Act.
- (2) Without limiting sub-section (1), rules made may be for or with respect to the following matters—
 - (a) eligibility of relevant power stations for accreditation;
 - (b) eligible renewable energy sources;

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Part 13—General

s. 113

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- (c) the amount of energy generated by an accredited power station including in respect of pre-scheme capacity and scheme capacity;
 - (d) electricity generation returns and the audit of those returns;
 - (e) scheme acquisitions;
 - (f) annual energy acquisition statements and the audit of those statements;
 - (g) records to be kept by registered persons and relevant entities.
- (3) The rules may apply, adopt or incorporate (with or without modifications)—
- (a) the provisions of any document issued or published by any person or body, whether as issued or published at the time the rules are made or any time before then or as in force from time to time; and
 - (b) the provisions of any Act of the Commonwealth or another State or Territory or a subordinate instrument made under any of those Acts, whether wholly or partially or as amended by the rules or as in force or published at a particular time or from time to time.
- (4) A rule may—
- (a) apply generally or be of limited application;
 - (b) apply differently according to differences in time, place or circumstance;
 - (c) authorise any matter or thing to be from time to time approved, determined or regulated by a specified person or body.
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- (5) In preparing and consulting on any draft rules, the ESC must comply with the consultation requirements of the Charter of Consultation and Regulatory Practice published under the **Essential Services Commission Act 2001**, as far as possible, as if the draft rules were a draft determination of the ESC.
 - (6) The rules must be published in the Government Gazette and on the Internet site of the ESC.
 - (7) Rules take effect on the day that they are published in the Government Gazette or on such later date as is specified in the rules.
 - (8) The ESC must make an up to date copy of the rules available at its office for any person to inspect, during ordinary office hours, free of charge.
 - (9) A copy of a rule must be laid before each House of Parliament on or before the sixth sitting day after it is made.
 - (10) A rule is subject to disallowance by the Parliament and sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply as if the rule were a statutory rule.

Division 5—Review of Act

114. Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act, including consideration of—
 - (a) the extent to which the objects of this Act have been achieved; and
 - (b) the required GWh of electricity from eligible renewable energy sources applying under this Act; and

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Part 13—General

s. 114

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- (c) the eligible renewable energy sources; and
 - (d) the mix of electricity generation technologies that has resulted from the implementation of this Act; and
 - (e) the level of penalties provided for under this Act.
- (2) The review must be undertaken by 31 December 2011.
 - (3) A person who undertakes the review must give the Minister a written report of the review.
 - (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament.
 - (5) In this section "**independent review**" means a review by persons who—
 - (a) in the opinion of the Minister possess appropriate qualifications to undertake the review; and
 - (b) include one or more persons who are not employed by the State or a State authority and have not, since the commencement of this Act, provided services to the State or a State authority under or in connection with a contract.
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s. 115

Part 14—Amendment of Essential Services Commission Act 2001

See:
Act No.
62/2001.
Reprint No. 1
as at
1 January
2004
and
amending
Act Nos
75/2004,
86/2004,
91/2004 and
108/2004.
LawToday:
www.dms.
dpc.vic.
gov.au

**PART 14—AMENDMENT OF ESSENTIAL SERVICES
COMMISSION ACT 2001**

115. Functions

In section 10 of the **Essential Services
Commission Act 2001**—

(a) in paragraph (i) for "**1983.**" substitute
"**1983.**";

(b) after paragraph (i) **insert**—

"(j) to perform the functions conferred on
the Commission by the **Victorian
Renewable Energy Act 2006.**".

116. New section 10C inserted

After section 10B of the **Essential Services
Commission Act 2001** insert—

**"10C. Commission's functions in relation to
renewable energy**

Sections 8, 14, 15, 16, 29 and 30 and Parts 3,
4, 5, 6 and 7 (other than sections 60 and 64)
do not apply to the functions of the
Commission referred to in section 10(j)."

117. Delegation

In section 26 of the **Essential Services
Commission Act 2001**, after "relevant legislation"
insert "or any other Act".

SCHEDULE

Sections 9, 16, 48

UNDERTAKINGS TO BE GIVEN TO THE ESC

**PART 1—UNDERTAKINGS TO BE GIVEN BY REGISTERED
PERSON APPLICANTS**

**1. Undertakings for registered person applicants who are
Commonwealth scheme participants**

The applicant—

- (a) will not create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to a small generation unit if a certificate is created under section 32 in relation to that small generation unit;
- (b) as an owner of a small generation unit, will not cause another person who is also—
 - (i) an owner of the small generation unit; and
 - (ii) a Commonwealth scheme participant—

to create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to the small generation unit if a certificate is created under section 32 in relation to that small generation unit.

**2. Undertakings for registered person applicants who are not
Commonwealth scheme participants**

The applicant—

- (a) will, as soon as reasonably practicable, after becoming a Commonwealth scheme participant notify the ESC of that fact; and
- (b) will, as soon as reasonably practicable after becoming a Commonwealth scheme participant, provide to the ESC evidence, in writing, that the applicant has agreed with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate, to the ESC, protected information concerning the applicant or any other information held by the Commonwealth Regulator; and

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Act No. 72/2006

Sch.

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- (c) will not create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to a small generation unit, if a certificate is created under section 32 in relation to that small generation unit; and
 - (d) as an owner of a small generation unit, will not cause another person who is also—
 - (i) an owner of the small generation unit; and
 - (ii) a Commonwealth scheme participant—to create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to the small generation unit if a certificate is created under section 32 in relation to that small generation unit.

**PART 2—UNDERTAKINGS TO BE GIVEN BY ACCREDITED
POWER STATION APPLICANTS**

3. Undertakings for applicants who are Commonwealth scheme participants

The applicant—

- (a) will not create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to electricity generated utilising scheme capacity if a certificate is created under section 26 utilising that scheme capacity;
- (b) will not cause a stakeholder who is a Commonwealth scheme participant to create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to electricity generated utilising scheme capacity if a certificate is created under section 26 utilising that scheme capacity.

4. Undertakings for applicants who are not Commonwealth scheme participants

The applicant—

- (a) will, as soon as reasonably practicable, after becoming a Commonwealth scheme participant notify the ESC of that fact; and
 - (b) will, as soon as reasonably practicable after becoming a Commonwealth scheme participant, provide to the ESC evidence, in writing, that the applicant has agreed with the Commonwealth Regulator for the
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- Commonwealth Regulator to divulge or communicate to the ESC—
- (i) protected information concerning the applicant; or
 - (ii) any other information held by the Commonwealth Regulator; and
- (c) will, as soon as reasonably practicable after becoming a Commonwealth scheme participant who is a Commonwealth nominated person, provide to the ESC evidence, in writing, that the persons specified in the application in accordance with section 15(2)(c) have agreed with the applicant that they will each agree with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC—
- (i) protected information concerning them; or
 - (ii) any other information held by the Commonwealth Regulator; and
- (d) will, as soon as reasonably practicable after becoming a Commonwealth scheme participant who is a Commonwealth nominated person, provide to the ESC evidence, in writing, that the applicant has agreed with the Commonwealth Regulator for the Commonwealth Regulator to divulge or communicate to the ESC information about any of the components of the electricity generation system that became a Commonwealth scheme power station; and
- (e) will not create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to electricity generated utilising scheme capacity if a certificate is created under section 26 utilising that scheme capacity; and
- (f) will not cause a stakeholder who is a Commonwealth scheme participant to create, while a Commonwealth scheme participant, a Commonwealth certificate in relation to electricity generated utilising scheme capacity if a certificate is created under section 26 utilising that scheme capacity.
-
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Victorian Renewable Energy Act 2006
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Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 20 July 2006

Legislative Council: 22 August 2006

The long title for the Bill for this Act was "to promote the development of renewable energy generation through the establishment of a scheme that provides for the creation and acquisition of renewable energy certificates and requires the surrender of renewable energy certificates and for other purposes."

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