EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 320

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

Renewable Energy (Electricity) Act 2000

Renewable Energy (Electricity) Amendment Regulations 2010 (No. 8)

Section 161 of the Renewable Energy (Electricity) Act 2000 (the Act) provides, in part, that the Governor-General may make Regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act, as amended by the Renewable Energy (Electricity) Amendment Act 2010 (the Amendment Act) establishes the Renewable Energy Target (RET) scheme to encourage electricity generation from eligible energy sources. The RET is designed to ensure that the equivalent of 20 per cent of Australia’s electricity supply is generated from renewable sources by 2020. From 1 January 2011 the RET will include two components - the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme (SRES).

Under the Act, wholesale electricity purchasers (‘liable entities’) are required to contribute to the RET in proportion to their share of the national wholesale electricity market. The Act provides for the creation of renewable energy certificates (RECs) by renewable energy generators, small generation units (SGUs) and solar water heaters. One REC generally represents one megawatt-hour (MWh) of electricity from eligible energy sources.

The Renewable Energy (Electricity) Regulations 2001 (the Principal Regulations) provide an administrative framework to implement the Act in relation to power station accreditation, eligibility requirements for renewable energy sources, eligibility requirements for solar water heaters and SGUs, and calculation methods for determining the number of RECs.

The Regulations amend the Principal Regulations to further implement the changes to the RET that were made under the Amendment Act.

Specifically, the Regulations:

• ensure that the regulatory system with regard to solar water heaters is kept up to date with industry development, as well as provide transparency on how decisions are made by the Renewable Energy Regulator when determining how many RECs may be created for a particular solar water heater installation;

• amend the Solar Credit multiplier, that is the number by which the number of RECs that may be created for eligible installations of SGUs may be multiplied under certain circumstances;

• provide for data to be collected on the out-of-pocket costs for installing SGUs;

• specify the details of an inspection regime for new installations of SGUs such as rooftop...
solar photovoltaic (PV) panels;

• revise aspects of the provision of partial exemption from liability in respect of an emissions-intensive trade-exposed (EITE) activity in light of the separate LRET and SRES; and

• establish administrative arrangements for the new LRET and SRES.

Details on the Regulations are included in the Attachment.

Consultation

In developing these Regulations, the Department of Climate Change and Energy Efficiency conducted a formal stakeholder engagement process. On 7 October 2010 a public exposure draft of the Regulations was released for consultation together with a commentary paper to explain the technical detail of the draft regulations. Stakeholders were invited to make submissions on the draft regulations by 29 October 2010. Feedback received through submissions was considered in finalising the Regulations.

Authority: Section 161 of the Renewable Energy (Electricity) Act 2000
Details of the Renewable Energy (Electricity) Amendment Regulations 2010 (No. 8)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the Renewable Energy (Electricity) Amendment Regulations 2010 (No. 8).

Regulation 2 – Commencement

This regulation provides for regulations 1-3, subregulations 5(1) and (4) and Schedule 1 to commence on the day after they are registered, while regulation 4, subregulations 5(2) and (3) and Schedule 2 commence on 1 January 2011.

Regulation 3 – Amendment of Renewable Energy (Electricity) Regulations 2001

This regulation provides for Schedule 1 to the Regulations to amend the Renewable Energy (Electricity) Regulations 2001 (the Principal Regulations).

Regulation 4 – Amendment of Renewable Energy (Electricity) Regulations 2001

This regulation provides for Schedule 2 to the Regulations to amend the Principal Regulations.

Regulation 5 – Transitional

Subregulation 5 (1) specifies that transitional water heaters (as defined by subregulation 5 (4) – devices listed on the Register of solar water heaters on the date of commencement of the Regulations) have until 31 December 2011 to obtain new certification to the updated standards listed in paragraph 3A.

This would ensure that solar water heaters that are currently on the Register of solar water heaters but are not accredited to an updated standard are not immediately removed from the Register as a result of these amendments.

Subregulations 5 (2) and 5 (3) relate to the commencement of new regulations on energy acquisition statements, as well as large–scale generation and small–scale technology shortfall statements and fees for the surrender of certificates. The Regulations specify that those provisions do not apply in relation to liabilities incurred for the 2010 compliance year and earlier. This is intended to clarify that the new regulations would only have effect from the commencement of the enhanced Renewable Energy Target (RET) arrangements from 1 January 2011 and would not apply retrospectively, and that the previous regulations would continue to apply for liabilities earlier than 2011 (such as for 2010 energy acquisition statements which are due by 14 February 2011).
SCHEDULE 1 – AMENDMENTS COMMENCING THE DAY AFTER REGISTRATION

Definitions

Item 1 – Subregulation 3 (1), after the definition of biomass
Item 1 inserts a definition for business day for the purpose of the Regulations. The reference to the Australian Capital Territory is relevant as it is where the Office of the Renewable Energy Regulator (the Regulator) is based.

It also inserts a definition of Clean Energy Council, the peak industry body representing Australia’s clean energy sector.

Item 2 – Subregulation 3 (1), after the definition of product certification
Item 2 inserts a definition for quarter to mean a three month period commencing on 1 January, 1 April, 1 July or 1 October of a year. This term is used in the Regulations relating to the collection and publication of out-of-pocket expenses incurred for small generation units for which certificates were created (see item 10).

Item 3 – Subregulation 3 (1), after the definition of regional forest agreement
Item 3 inserts a definition for registered for GST for the purpose of regulations to mean registered under the A New Tax System (Goods and Services Tax) Act 1999. Accordingly, for an entity, this is registration under Part 2–5 of the A New Tax System (Goods and Services Tax) Act 1999. In relation to a branch of an entity, it is registration under Division 54. This term is used in regulations relating to the operation of the clearing house (see Schedule 2).

Item 4 – Subregulation 3 (1), after the definition of Register of solar water heaters
Item 4 inserts a definition for required to be registered for GST for the purpose of regulations to mean required to be registered under the A New Tax System (Goods and Services Tax) Act 1999. Accordingly, required to be registered has the meaning given by sections 23–5, 57–20, 58–20 and 144–5 of the A New Tax System (Goods and Services Tax) Act 1999. This term is used in regulations relating to the operation of the clearing house (see Schedule 2).

Treatment of solar water heaters

Item 5 – Subregulation 3A (1)
Item 5 substitutes subregulation 3A (1), clarifying the definition of a solar water heater. In particular, a solar water heater is only a solar water heater for the period specified in relation to that solar water heater in the Register of solar water heaters.
Item 5 also inserts a note at the foot clarifying that heat pumps with a volumetric storage capacity of 425 litres or more are no longer eligible to receive renewable energy certificates (RECs) as solar water heaters for the purposes of this legislation.

This reflects the recent amendment to the Renewable Energy (Electricity) Act 2000 (the Act) during the passage through Parliament (see Section 21(4) of the Act), but does not override recent transitional regulations made in early July 2010 that relate to the supply and installation of heat pumps under existing contracts.

**Item 6 – Paragraph 3A (2) (b)**

A solar water heater may only be considered for listing in the Register of solar water heaters by the Regulator if an accredited body certifies that it meets the specific requirements outlined in subregulation 3A. Notably different requirements apply to models depending on their storage capacity – those with a capacity of not more than 700 litres and those with a capacity of more than 700 litres.

Item 6 amends paragraph 3A (2) (b) to require that a device with a capacity of not more than 700 litres must have product certification to AS/NZS 2712:2007, Solar and heat pump water heaters – Design and construction as in force at the time certification was given by the accrediting body. This change allows the Regulations to refer to current Australian Standards without the need for ongoing regulation changes each time it is updated.

**Item 7 – Paragraphs 3A (3) (b) and (c)**

Item 7 amends paragraphs 3A (3) (b) and (c), which deal with Australian Standards for device component certification and storage tanks for devices that have a capacity of more than 700 litres. In line with the intent of item 6, the amendments remove the existing references to when particular Australian Standards are in force from a point in time to when the certification by an accrediting body is given. Importantly, certifications are only required where they apply to the device in question.

**Item 8 – Regulations 19A and 19B**

New subsection 22(2) of the Act provides new powers to make regulations regarding the number of certificates solar water heaters are eligible to create.

Item 8 inserts new regulations concerning the process for determining how many certificates a particular solar water heater is eligible to create.

*Regulation 19A – Number of certificates*

Regulation 19A is remade in its current form and is intended to be interpreted consistently with the current provision. This is necessary because of item 12 of Schedule 2 to the Renewable Energy (Electricity) Amendment Act 2010 (the Amendment Act). Accordingly, the statutory declaration requirements for solar water heaters with a volumetric capacity over 700 litres would remain.
Regulation 19A also inserts a note clarifying that heat pumps with a volumetric storage capacity of 425 litres or more are no longer eligible to receive RECs as solar water heaters for the purposes of this legislation.

*Regulation 19B – Determination of method for determining number of certificates*

Regulation 19B now specifies that the methodology for determining the number of certificates that a particular type of solar hot water system would create will in future be set out in a legislative instrument, developed by the Regulator.

Importantly, subregulation 19B (2) clarifies the fundamental basis for the REC calculation, which is the energy saved over ten years from the use of the solar water heater compared to an equivalent conventional electric water heater. This is the difference between non-solar non-heat pump energy (such as electricity, natural gas or LPG) used by the solar water heater and the electrical energy used by an electric water heater to supply over ten years a particular hot water load. These amounts are ordinarily measured in joules. This is consistent with the existing methodology.

This regulation improves the transparency and accessibility of the Regulator’s current methodology and practice relating to these matters. However, it is not intended that this changes in substance the current approach of the Regulator in this area.

In making the determination, the Regulator must still have regard to the method set out in the relevant Australian Standard set out in Schedule 4 to the Principal Regulations as in force at the time the determination is made. Where a determination is to be made for the first time the Regulator must also have regard to the existing ‘guidelines’ concerning certificate calculation methodology.

Where a document is incorporated by reference in the conditions of the determination, section 160A of the Act requires that the document be made available on the Regulator’s website (www.orer.gov.au) unless this is not possible due to copyright restrictions.

*Regulation 19BA – Determination of number of certificates*

Regulation 19BA specifies that where the Regulator makes a determination on the number of certificates that may be created for a particular model of solar water heater they must make it in accordance with the separate legislative instrument determination set out in subregulation 19B (1).

Where a determination for a certificate calculation methodology has not yet been made by the Regulator under subregulation 19B (1), they must follow the method outlined in subregulation 19BA (3).

Subregulation 19BA (3) outlines the existing Australian Standards that are utilised by the Regulator to make determinations on the number of certificates a particular model of solar water heater may create as currently set out in Schedule 4 to the Principal Regulations. Maintaining this transitional arrangement is important as it is tied to the Regulator’s existing certificate
calculation methodology. It prevents uncertainty in the period before a legislative instrument
determination under regulation 19B (1) of the method for determining the number of certificates
for a particular model of solar or heat pump water heater is made, which takes into account the
new Australian Standards.

Regulation 19BB – Variation of determination

Regulation 19BB formalises existing processes the Regulator undertakes to make a
determination which would vary the number of certificates a particular solar water heater listed
on the Register of solar water heaters may create.

This regulation specifies that the Regulator must consult with the manufacturer of the device
before any decision is made. As part of this process the Regulator would notify the manufacturer
of what information is to be proposed to be varied, how it is to be varied and why it is to be
varied. This may involve the Regulator asking for specific information in relation to the solar
water heater to re–determine the number of certificates for each solar zone.

As part of this notification the Regulator would also invite the manufacturer to make a
submission on the proposal and take into account the response in deciding whether to make any
changes.

Regulation 19BC – Requests for determination

Regulation 19BC formalises existing processes the Regulator undertakes to make or vary
determinations, under regulation 19BA, of the number of certificates that may be created for a
particular model of solar water heater. In response to the Regulator’s invitation for requests for a
determination, people is required to submit their request to have a solar water heater included in
the Register or to vary an existing determination within 30 days of the invitation being made.

In line with the current process, the regulation specifies that a request would need to set out
relevant information or documents required by the Regulator to make a determination. Where
more information is required, the Regulator may seek additional information or documents
within a specified period in connection to the request. If the additional information is not
provided as per the request, the Regulator may refuse to consider or take any further action. This
would ensure the Regulator has timely and necessary information to make the determination.

If the Regulator decides to alter an existing determination or, following an assessment of the
request, proposes not to include the solar water heater or make a determination different from
that proposed, he would have to consult with the manufacturer.

In making a final decision on a request, the Regulator must notify the person about the decision
no later than 180 days after closure of the 30 day invitation period.

Regulation 19BD – Invitation for requests for determination

Regulation 19BD requires the Regulator to invite people to make requests for a determination on
the number of certificates that may be created for a particular model of solar water heater at a
minimum of every six months. The regulation also specifies that the invitation is published on the Regulator’s website and open for a period of 30 days.

**Item 9 – After subregulation 19C (3)**

Item 9 inserts a new subregulation (3A) that would oblige the Regulator to remove any device from the *Register of solar water heaters* that is no longer a solar water heater as defined by the legislation.

**Treatment of small generation units and the ‘Solar Credits’ Multiplier**

**Item 10 – After regulation 19D**

Item 10 inserts new regulations 19E, 19F and 19G.

**Regulation 19E – Conditions for creation of certificates**

Regulation 19E sets out new conditions that must be satisfied before a certificate can be created for an SGU. The regulation outlines that from 1 February 2011 a registered person would need to provide the Regulator with information on a reasonable estimate of the total out–of–pocket expenses, (including GST) the owner of the SGU incurred in purchasing the system before being able to create certificates.

This information is intended to provide ongoing transparency around the level of out-of-pocket costs for rooftop photovoltaic systems and other SGUs that receive additional support through the Solar Credits mechanism.

The regulation also includes the formula for calculating the total out–of–pocket expenses to be provided to the Regulator, including an estimate of any goods or services that may be offered to the purchaser as part of the installation package.

The calculation is designed to take into account situations where out-of-pocket expenses incurred in purchasing the system may not be clear where the system is included as part of a package. In circumstances where the actual cost cannot be derived, a reasonable estimate should be provided.

Total out–of–pocket expense is calculated using the formula:

\[
OE = (Amount A + Amount B) - (Amount C + Amount D + Amount E)
\]

Where:

‘OE’ is the total out–of–pocket expense;

‘Amount A’ is the total amount or reasonable estimate where there is not a separate arms-length retail transaction, paid by the purchaser for the small generation unit and installation of the unit;

: For example, this could be the total contract price for the company to install and connect an SGU to the grid; or
A reasonable estimate of the cost to install and connect an SGU to the grid which is derived from construction cost to build a new home or the bundled cost of a suite of energy efficiency and renewable energy products sold as a single ‘package’.

‘Amount B’ is a reasonable estimate of any money that the owner of the SGU will pay to the seller of the SGU after it is installed but not included in the first amount;

: For example, a customer may assign their feed–in tariff revenue for 4 years to the installation company or may pay in monthly instalments.

‘Amount C’ is a reasonable estimate of the market value of any services or goods provided in relation to the acquisition or installation to the owner of the SGU for no charge above the first amount (other than the goods which make up the SGU and the service of installation);

: For example, a free energy audit or a free electrical appliance could be provided.

‘Amount D’ is a reasonable estimate of the difference between the market value of any services or goods provided, or to be provided, in relation to the acquisition or installation to the owner of the SGU at a non–market price not included in the first amount (other than the goods which make up the SGU and the service of installation); and the non–market price paid;

: For example, an energy audit could be provided at $50 instead of $200, with the difference being $150.

‘Amount E’ is reasonable estimate of any amount paid, or to be paid, to the purchaser after the unit has been purchased including the value of the certificates where they are to be created by the purchaser;

: For example, a cash back offer or the value of a government rebate or assistance received; or

: Where the purchaser has retained their right to create certificates themselves for the purpose of a future sale or voluntary surrender. The value of these certificates is significant. Without capturing this value in the calculation, the out-of-pocket expense amount is misrepresented.

This regulation recognises the different commercial relationships in the SGU industry, including the common scenario where a householder (purchaser) that chooses to install an SGU transfers the right to create RECs to the installer (seller) in return for an upfront discount on the price of the installation.

Regulation 19F – Certain costs to be included in purchase and installation

Regulation 19F provides additional information relating to the calculation of out–of–pocket expenses under regulation 19E. This regulation further explains the types of costs that a
purchaser of an SGU may incur, which is to be taken into consideration in calculating the amount the purchaser pays for the installation. These costs include the cost of equipment, mounting structures, grid connection, metering, wiring and battery storage. Accordingly, many of the additional costs that may not be included in the advertised price of an SGU is taken into account, including metering and connection costs where persons other than the supplier of the small generation unit may be involved.

*Regulation 19G – Publication of out-of-pocket expenses*

Regulation 19G specifies that for each quarter the Regulator must publish on the Regulator’s website, within 28 days of the end of the quarter, details of the out-of-pocket expenses for SGUs for when certificates were created during that quarter. The Regulator will determine the most useful way of presenting aggregated information in a manner which does not identify any of the persons involved.

**Item 11 – Subregulation 20AA (2)**

Item 11 substitutes the schedule of Solar Credits multipliers in subregulation 20AA (2), which is used to calculate the additional support under the RET for SGU installations, with a new schedule that specifies a new, lower, multiplier number in each of the financial years from 2011-12 to 2013-14. The standard rate of REC creation (that is, a multiplier of one) will apply for SGUs installed from 1 July 2014, rather than from 1 July 2015 as outlined in the previous schedule of Solar Credits multipliers for certificates for SGUs.

The *Renewable Energy (Electricity) Amendment Act 2010* amended the Act to provide that the Solar Credits multiplier must not exceed the numbers prescribed in the Act and allowed for regulations to be made to apply a lower Solar Credits multiplier in certain circumstances.

Solar Credits provide additional support for households, small businesses and community groups that install SGUs by multiplying the number of RECs a system is eligible to create. The multiplier number that determines the additional support for SGUs under the RET reduces over time, reflecting reductions in technology costs and the role that a carbon price is expected to play in incentivising investment in renewable energy over the longer term.

Support through Solar Credits is intended to assist with the upfront cost of installing SGUs. The proposed adjustments to the Solar Credits schedule respond to the sustained high levels of growth in the industry, suggesting that less support through the RET is necessary. Strong demand in the industry has been driven by the strength of the Australian economy more generally, continued technological improvements which are reducing installation costs, and significant support from other Government programs, in particular feed-in tariff arrangements at a state and territory level.

**Item 12 – Subparagraphs 20AC (5) (d) (i), (ii) and (iii)**

This item amends subparagraphs 20AC (5) (d) (i), (ii) and (iii) of the Principal Regulations to delete dates from the titles of Australian Standards referred to in the Principal Regulations.
Persons entitled to create RECs must obtain certain documentation and written statements, including that Australian Standards as in force from time to time have been complied with. The amendment does not alter this requirement, and is consistent with the original intent behind the regulation.

The amendment is required to ensure that regulation 20AC of the Principal Regulations are consistent with the style and content of new regulation 39, to be inserted by item 33.

**Item 13 – Subsubparagraphs 20AC (5) (e) (i) (A) (B) and (C)**

As with the previous item, this item amends subsubparagraphs 20AC (5) (e) (i) (A) (B) and (C) of the Principal Regulations to delete dates from the titles of Australian Standards referred to in the Principal Regulations.

**Item 14 – Subparagraphs 20AC (5) (f) (i) and (ii)**

As with the previous item, this item amends subparagraphs 20AC (5) (f) (i) and (ii) of the Principal Regulations to delete dates from the titles of Australian Standards referred to in the Principal Regulations.

**Items 15 – Paragraph 20AC (2) (d)**

Item 15 makes a punctuation change to allow for the insertion of paragraph 20AC (2) (e) by item 16.

**Item 16 – After paragraph 20AC (2) (d)**

Item 16 inserts a new paragraph 20AC (2) (e) and deals with requirements for the creation of certificates by SGUs and relate to the inspection regime regulations and read in conjunction with regulation 47 introduced by item 33.

Regulation 20AC of the Principal Regulations provides requirements for the creation of certificates. Subregulation 20AC(2) requires that installers of SGUs must be accredited by the Clean Energy Council (CEC) and also references to the CEC’s previous name – the Australian Business Council for Sustainable Energy – for the SGU to be eligible to create certificates.

Paragraph 20AC (2) (e) imposes an additional condition for an SGU to be eligible to create certificates, namely that the installer of the SGU must not currently be under declaration under regulation 47 which deals with powers for the Regulator to declare that a person is ineligible to design or install SGUs for the purposes of the RET. If the installer is under such a declaration, no SGU installed by that person during the period the declaration is in force will be eligible to create certificates.
Amendments to the partial exemption regime

Item 17 – Subregulations 22A (1), after the definition of joint venture

Item 17 inserts a definition for LGC for the purpose of the Principal Regulations. LGCs or large-scale generation certificates will be certificates that relate to generation of electricity by accredited power stations after 1 January 2011 or renewable energy certificates that are subsequently converted into LGCs.

Item 18 – Paragraph 22J (d)

Item 18 addresses circumstances where prescribed persons who may apply for a partial exemption certificate (PECs), in particular regulations 22G and 22J, do not capture certain persons, who should, in accordance with the Government’s policy intent, be able to apply for a PEC. This could occur where a company assumes a contract for the purchase of electricity from another company that has not yet acquired a PEC (for example, as a result of internal restructuring between related companies, or as a result of a sale of assets). During certain periods of the year, neither the first purchaser of electricity under the contract nor the second purchaser of electricity under the contract is a prescribed person for the purpose of the Regulations.

These amendments are intended to operate in the circumstance described below, where no person would otherwise be eligible to apply for a PEC.

Paragraph 22J (d) is amended to capture not only a party to a contract with a liable entity for the first supply of electricity to be consumed at a site in the year, but also, a person who becomes a party to a contract for sale of electricity after electricity has already been consumed at the site in the year but before the relevant application date under regulation 22X (for example, if a person became party to a contract for the supply of electricity to the site in February 2011, but there had already been a supply of electricity to the site under an earlier contract).

Paragraph 22J (da) specifies that the person making the application for the PEC as a prescribed person under regulation 22J must not already be eligible to be a prescribed person under regulation 22G, 22H or 22I.

Item 19 – Paragraph 22O (1) (g)

Item 19 clarifies that the statement relating to the amount of partial exemption and how this amount should be calculated is to include any assumptions made about values or amounts used in the applicant’s estimate of the amount of partial exemption, which are not known at the time of application. For example, an application may be made before the regulation setting the small-scale technology percentage, or before the Regulator has published the volume-weighted average market price for a REC or LGC (as applicable).

Item 20 – Paragraph 22O (1) (h)

Item 20 omits paragraph 22O (1) (h) as it becomes redundant on insertion of the clarification in paragraph 22O (1) (g).
Item 21 – After regulation 22U

Item 21 inserts Subdivision BA (Reports to accompany certain applications), which comprises three regulations to prescribe who may prepare the audit reports (including their relationship to the applicant), the information and statements that must be included, and the standards which must be adhered to in undertaking the audit.

Regulation 22UA – Reports to accompany certain applications

Regulation 22UA stipulates that audit reports are to accompany an application for a PEC and that they must be:

• in respect of RET compliance years from 2012 onwards; and
• made by persons prescribed under regulations 22G to 22K (but not by persons prescribed under regulation 22L or 22M). The intent is to cover the first PEC application for a particular activity, site and year – not where a PEC has already been issued and the liable entity named on the PEC has changed or an additional entity becomes a liable entity in relation to the activity and site for the relevant year; and
• only for applications where the amount of partial exemption applied for in relation to an activity, site and year exceeds 15,000 megawatt–hours (MWh). This recognises that for small operations using relatively limited amounts of electricity, the auditing cost may outweigh the potential benefit of applying for a PEC.

Regulation 22UB – Application to be accompanied by audit report

Regulation 22UB prescribes the requirements for the preparation and content of the audit report to provide reasonable assurance of the compliance of the information, and the methods for deriving this information.

By having applications reviewed by an independent third party auditor and a level of assurance determined, the Regulator is able to have more confidence in the historical information and assumptions provided. This should facilitate the timely delivery of PECs.

Subregulation 22UB (2) provides that the report must be prepared by a company authorised, or a person registered, under specified sections of the Corporations Act 2001 to undertake an audit; or by a greenhouse and energy auditor registered as a Category 2 or 3 auditor under the National Greenhouse and Energy Reporting Regulations 2008 (the NGER regulations). The requirements of Category 2 and 3 auditors are set out in Division 6.4 of the NGER regulations and in the Auditor Registration Instrument.

Subregulation 22UB (3) provides that the report must contain a statement by the auditor concerning compliance of the application with all of the key information scope and quality requirements set out in the Subdivision B of Division 4, Part 3A of the Principal Regulations. The requirements specified in regulation 22UB include:
• compliance, in all material respects, of the activity being undertaken with the relevant emissions-intensive trade-exposed (EITE) activity definition as set out in Schedule 6 to the Principal Regulations;

• that the amounts (or volumes as relevant) of product represented in the application as being produced at the site from the EITE activity in the years relevant to the application are, in all material respects, in accordance with the requirements of Schedule 6 and subregulation 22A (7), and are consistent with the applicant’s adopted and disclosed measurement policies; and

• where the application is in relation to a new site or a significant expansion to an existing site, the reasonableness of the applicant’s best–estimate assumptions regarding future production, and consistency of the new or expected additional production figures (to be used in calculating the amount of the partial exemption) with these assumptions and with the applicant’s adopted and disclosed measurement policies.

It is acknowledged that it is not possible, practical or cost effective to test the physical qualities of every tonne or other relevant measure of product produced each year. A risk-based approach needs to be taken, which reflects the circumstances of each industry to ensure the broad boundaries set by the EITE activity definitions and relevant product qualities are achieved with an acceptable level of uncertainty.

To provide assistance to industry and auditors, it is envisaged that general guidelines associated with reasonable assurance audit reports to accompany an application for a PEC is provided by the Regulator where necessary and appropriate. The intent of this non-binding guidance is to provide greater certainty about what is expected by the Regulator and how industry and auditors may usefully implement procedures, avoid unnecessary costs associated with audit activities and to ensure the smooth processing of an entity’s application.

Subregulation 22UB (4) provides that the person or company preparing the audit must also be independent of all applicants so that a conflict of interest, within the meaning of regulation 6.49 (Meaning of conflict of interest situation) within Division 6.6 of Part 6 of the NGER regulations, does not arise in relation to the audit.

Subregulation 22UB (5) provides that the person preparing the audit report must ensure the audit is conducted in accordance with the relevant requirements for reasonable assurance engagements under either:

• the National Greenhouse and Energy Reporting (Audit) Determination 2009 (the NGER determination), subject to the requirement in regulation 22UC concerning the meaning of ‘misstatement’. The NGER determination (section 1.6) defines a reasonable assurance engagement as an assurance engagement in which the audit team leader gives an opinion, expressed as a reasonable assurance conclusion, if appropriate in the circumstances of the engagement. The NGER determination (subsection 1.5 (3)) also clarifies that in an assurance engagement, the audit team leader provides an independent opinion about the
matter being audited and uses professional judgment in preparing for and carrying out the audit and preparing the assurance engagement report; or

- if the auditor is not registered under the NGER regulations and does not wish to use the requirements of the NGER determination, the ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information or any other relevant auditing standard issued by the Australian Auditing and Standards Board.

Regulation 22UC – Application of National Greenhouse and Energy Reporting (Audit) Determination 2009

Regulation 22UC, to avoid doubt, stipulates that for the purposes of the Regulations, a reference to ‘the Act’ or ‘the Regulations’ in the definition of ‘misstatement’ in section 1.4 of the NGER determination, is to be read as a reference to the Renewable Energy (Electricity) Act 2000 or to the Renewable Energy (Electricity) Regulations 2001.

Item 22 – Subregulation 22Z (7)

Item 22 replaces a reference to ‘REC’ with a reference to ‘REC or LGC’ for consistency with the changes to Subdivision F of the Principal Regulations (see items 25 and 26 below) to recognise that LGC or large-scale generation certificates will be certificates that relate to generation of electricity by accredited power stations after 1 January 2011 or RECs that are subsequently converted into LGCs.

Item 23 – Subregulation 22ZA (1), definition of $k_a$

Item 23 substitutes the definition of $k_a$, which is the partial exemption assistance rate for a particular EITE activity and year.

Calculation of the partial exemption

The amount of the partial exemption (PE) in MWh of electricity, which appears on a partial PEC, is worked out by applying an assistance rate ‘k’ to the amount of liable electricity assessed to be consumed by the EITE activity at the particular site, for the year in question, according to the generic equation:

$$PE = k \times EP \times ASP \times G$$

Where:

- ‘PE’ is the partial exemption (MWh) of electricity;
- ‘k’ is the partial exemption assistance rate;
- ‘EP’ is the electricity baseline in MWh of electricity per unit of product from the activity;
- ‘ASP’ is the amount or allocation of product taken to be produced by the EITE activity at the relevant site; and
‘G’ represents the proportion of electricity used in the activity that is liable under the RET.

Assistance rate ‘k’

The assistance rate ‘k’, as a percentage of liable electricity exempted, accounts for the emissions–intensity classification (60 or 90 per cent) of the activity, and also the two components of additional cost, namely the proportion of the relevant annual target that is above 9,500 gigawatt–hours (GWh), and (from 2011) an adjustment for the extent to which the average REC price exceeds $40.

In former subregulation 22ZA (1), the ‘k’ factor comprised separate elements (‘base k’ and ‘additional k’) to reflect the position that assistance for the additional cost (due to higher REC prices) of the first 9,500 GWh of the annual targets, is contingent upon passage of the Carbon Pollution Reduction Scheme legislation. This pre–condition was removed as part of the legislative amendments passed by Parliament in June 2010 to enhance the RET.

To maintain a consistent level of support for EITE activities in context of removal of the need for the CPRS legislation to pass before receiving the above–$40 component, and to account for the cost components of both the LRET and the SRES in calculating the partial exemption, the method for determining ‘k’ has required amendment.

Accordingly, this item and item 21 below combine the elements of assistance into a single formula that accounts for the targets and certificate prices associated with both the LRET and SRES components of the RET. As the enhancements to the RET only apply for compliance years from 2011 onwards, the formula does not apply to 2010, and subregulation 22ZA (1) provides fixed percentage figures for ‘k’ for compliance year 2010 for highly emissions–intensive activities (21.6 per cent) and moderately emissions–intensive activities (14.4 per cent).

In relation to additional ‘k’ for 2010 in accordance with regulation 22ZH, the Regulator has published the weighted average REC price for the 12 months ending 30 September 2010. As this figure was below $40, no additional assistance applies in respect of the 2010 compliance year.

Item 24 – Subregulations 22ZAA (2) to (5)

Item 24 replaces the tables and calculation methods in subregulations 22ZA (2) to 22ZA (5) with the following formula for ‘k’ for a particular compliance year ‘t’:

\[
k_t = \frac{[(LRET_t \times LGCprice_t) + (STC_t \times CHP_t) - (9500 \times a)]}{[(LRET_t \times LGCprice_t) + (STC_t \times CHP_t)]} \times \text{[Activity %]}
\]

Where:

‘\text{LRET}_t’ is the annual LRET target in GWh for the application year ‘t’;

‘\text{LGCprice}_t’ is the Regulator’s reasonable estimate for the volume weighted average market price of a REC (in respect of the 2011 compliance year) or LGC ( for 2012 and
later years) for the 12–month period ending on 30 September of the year prior to the application year. As prescribed under regulation 22ZH, this price is to be published on the Regulator’s website by 31 October of the year prior to the application year ‘t’. Regulation 22ZH defines the year prior to the application year as the ‘estimate year’;

‘STC\_t’ is the value, in GWh, of small–scale technology certificates assumed to be created in the application year ‘t’ for the purposes of setting the small–scale technology percentage for the year. This can be conceptualised as the small–scale technology number for the year used for the purpose of setting the small–scale technology percentage (under paragraph 40A (3) (a) of the Act) for the year, with an adjustment or ‘true–up’ to account for any excess or shortfall in the number of certificates actually created for the previous compliance year compared to the number used in determining the previous year’s small–scale technology percentage;

‘CHP\_t’ is the clearing house price under the SRES as at 30 September of the year before the application year ‘t’. This price is $40 for 2011, and for later years unless otherwise specified by legislative instrument in accordance with section 30LA of the Act;

‘a’ is the factor to be applied to adjust $k_t$ assistance for the additional cost (due to higher REC prices) of the first 9,500 GWh of the annual targets. Application of the factor will ensure delivery of the government’s policy intent of the assistance in circumstances where the LGCprice\_t may be below $40. The factor to be applied is contingent on the ‘LGCprice\_t’ published on the Regulator’s website by 31 October of the year prior to the application year ‘t’.

\[
\text{‘a’ = ‘} 40 \text{’ where the ‘LGCprice\_t’ is equal to or more than $40; or ‘a’ = ‘} \text{LGCprice\_t} \text{’ where the ‘LGCprice\_t’ is less than $40.}
\]

Activity %’ is the assistance rate for the EITE activity. This rate is 90 per cent for a highly emissions–intensive activity and 60 per cent for a moderately emissions–intensive activity.

The diagram below shows how the formula for ‘k’ in the Regulations can be conceptualised. Areas A, B and C represent, for a particular year, the compliance costs of the old Mandatory Renewable Energy Target (MRET), the LRET and the SRES respectively. The compliance costs are calculated by multiplying certificate costs by the number of certificates to be surrendered. The assistance rate ‘k’ represents the liability of the expansion to the RET (Area A less Area C, plus with Area B) as a proportion of total liability of the RET (Area A plus Area B combined).
Example of the new calculation method applied

Assuming:

An application is made for a PEC in respect of the electricity to be consumed in carrying on the EITE activity defined in the Principal Regulations as ‘production of magnesia’ at a particular site, during calendar year 2014. Production of magnesia is defined in Part 12 of Schedule 6 of the Principal Regulations as a highly emissions-intensive activity.

Before the end of October 2013, the Regulator has published on the ORER website his reasonable estimate of $63 for the volume weighted average market price of a large-scale generation certificate (LGC) for the 12-month period ending on 30 September 2013.

In 2013, ten million small-scale technology certificates were created. This is assumed to be one million certificates more than an estimate prescribed by regulation before 31 March 2013, upon which the small-scale technology percentage for that year (set in accordance with subsection 40A (1) of the Act) was based. The Regulator, drawing on other expertise as appropriate, estimates that eight million small-scale technology certificates will be created in 2014 and accounts for the previous year’s over-estimate by subtracting one million certificates to leave seven million. Seven million certificates is equivalent to 7,000 GWh.
The clearing house price under the SRES as at 30 September of 2013 remains at $40.

\[
k_t = \frac{[(\text{LRET}_t \times \text{LGCprice}_t) + (\text{STC}_t \times \text{CHP}_t) - (9500 \times a)]}{[(\text{LRET}_t \times \text{LGCprice}_t) + (\text{STC}_t \times \text{CHP}_t)]} \times \text{[Activity %]}\]

The variables in the equation for ‘k’ are as follows:

- \(\text{LRET}_{2014} = 16,100 \text{ GWh}\) (from the table in sub-section 40 (1) of the Act);
- \(\text{LGCprice}_{2014} = $63\);
- \(\text{STC}_{2014} = 7,000 \text{ GWh}\)
- \(\text{CHP}_{2014} = $40\);
- \(a = 40\) (given \(\text{LGCprice}_{2014} = $63\)); and
- \(\text{Activity} \% = 90\ \%\).

Thus

\[
K_{2014} = \frac{[(16,100 \times 63) + (7,000 \times 40) - (9,500 \times 40)]}{[(16,100 \times 63) + (7,000 \times 40)]} \times 90\ \%
\]

\[
K_{2014} = \frac{(1,014,300 + 280,000 - 380,000)}{(1,014,300 + 280,000)} \times 90\ \%
\]

\[
K_{2014} = 63.58\ \%
\]

**Item 25 – Subregulation 22ZH (1)**

Item 25 clarifies that each year, in working out the volume–weighted average market price for certificates over the 12–month period to 30 September of that year (the ‘estimate year’), the Regulator is to use REC price data in respect of the 2010 estimate year, and LGC price data for later years, in recognition that from 1 January 2011 LGCs will supplant RECs as the applicable certificates able to be created for eligible generation by renewable energy power stations.

The weighted average price for a particular estimate year is used as factor ‘LGCprice’ in calculating the assistance rate ‘k’ in respect of the year following the estimate year (see items 23 and 24 above).
Item 26 – Subparagraph 22ZH (3) (a) (ii)

Item 26 replaces a reference to ‘RECs’ with ‘RECs or LGCs as appropriate’, for consistency with item 25 above.

Items 27 to 31 – Regulation 22ZL

Items 27 to 31, together, amend the prescribed period within which the Regulator is to issue a PEC after receiving a PEC application to enable the Regulator to take into account the prescribed small-scale technology percentage for the application year from 2011, which under section 40A of the Act is to be prescribed by regulation by 31 March in each year.

For 2011 and later compliance years, the Regulator must issue a PEC within 60 days after receiving a complete application, or seven days after the small-scale technology percentage for the year has been prescribed, whichever is later. Where further information has been requested, the Regulator has 45 days after receipt of this information, or seven days after the small-scale technology percentage has been prescribed, again whichever is later, to issue the PEC.

For the 2010 compliance year, the Regulator must issue a PEC within 60 days after receipt of a complete application or after receipt of any further information requested in respect of an incomplete application.

Item 32 – Regulation 22ZM

Item 32 omits regulation 22ZM. This regulation accounted for circumstances where applications under the EITE assistance program under the Carbon Pollution Reduction Scheme (CPRS) would be made. As the CPRS legislation to empower such an EITE program is not in place, this regulation is not required.

New SGU inspection regime

Section 23AAA of the Act requires the regulations to establish a scheme for the inspection of SGUs. Section 23AAA also requires that information found during those inspections be shared with state and territory authorities as appropriate.

Inspections under section 23AAA are intended to support the RET’s objective of encouraging electricity generation from eligible energy sources, notably renewable energy SGUs. They aim to ensure that requirements under the RET are met in connection with creation of renewable energy certificates from installations of SGUs, including by assessing whether there is material or pervasive evidence that an installation may not have been installed in accordance with standards required to qualify for support under the RET. State and territory governments, through their respective electrical safety regulations and through the Building Code, are responsible for regulating SGU safety. It is not intended that the new inspection scheme would impinge on state and territory government responsibilities for enforcement in relation to SGU installation and grid connection. However, where information is found during the course of an inspection performed
under these regulations that is relevant to state and territory electrical safety regulators the Act requires that this be shared with them to inform the operation of their electrical safety regimes.

In implementing the operational requirements of these regulations, it is expected that the Regulator would seek advice as appropriate from qualified experts with practical knowledge of SGU installation issues. To that end, an advisory committee of industry experts (possibly including representatives of state and territory regulators, training bodies, unions and industry) could provide advice on operational matters relating to the inspection program, drawing on high-level data from inspections outcomes, and provide a forum for exchange of information about SGU compliance issues.

**Item 33 – After Part 6**

Item 33 inserts into the Principal Regulations a new Part 7 establishing an inspection regime for SGUs and a new Part 8 establishing review provisions.

This inspection regime supplements existing compliance monitoring powers established by Part 11 of the Act.

**Part 7 Inspection of SGUs**

**Regulation 29 – Purpose of Part**

Regulation 29 outlines the purpose of Part 7 of the Regulations, which is to establish the inspection scheme for SGUs under section 23AAA of the Act.

**Regulation 30 – General requirements for inspections**

Regulation 30 mirrors the requirements of section 23AAA of the Act in the Principal Regulations to ensure that section 23AAA of the Act is given full effect.

Subregulation 30(1) requires the Regulator to ensure that each year a statistically significant selection of SGUs that were installed during that year are inspected for conformance with the relevant Australian Standards and other standard or requirements relevant to the creation of certificates for that SGU installation. Under regulation 19D of the Principal Regulations, an applicant for certificates has up to 12 months following the inspection to create their certificates. For the purposes of the Regulations, SGUs ‘that were installed during a year’ is taken to mean those for which certificates were created in that year, as until an application for RECs is made, the Regulator would not, in the normal course of administration, be aware that there has been an installation of an SGU.

The Regulations do not prescribe a particular meaning or number to the term ‘statistically significant’. This is to provide the Regulator flexibility in determining the number of inspections that occur each year, with levels likely to vary from year to year. For example, the Regulator could select a representative sample of inspections based on principles of statistical levels of confidence, as well as conducting additional inspections on the basis of other relevant sources of information available to the Regulator.
Subregulation 30(2) requires the Regulator to ensure the independence of the inspector carrying out the inspection, by ensuring they do not have a conflict of interest either in relation to the installation of the specific SGU being inspected, or in relation to the administration of matters being inspected. Conflict of interest is addressed further by regulation 36 below. The intent is that this would include any organisation deriving revenue from administration of accreditation programs referred to in regulation 20AC of the Principal Regulations and persons involved in that administration.

**Regulation 31 – Part 7 not to limit other inspections**

Regulation 31 clarifies that the inspections of SGUs under regulation 30 do not preclude additional inspections taking place either under this Part of the Regulations at any time the Regulator chooses, or from taking place under Part 11 of the Act.

**Regulation 32 – Publication of inspections**

Regulation 32 requires the Regulator to publish on its website each year the number of inspections that take place during the year. The regulation specifically allows the publication by the Regulator of other general information about inspections. Such publication is subject to constraints laid down by information protection provisions within the Act (Part 12, section 132) and be subject to the Privacy Act 1988.

**Division 2 Appointment of inspectors**

**Regulation 33 – Appointment of inspectors**

Regulation 33 provides the Regulator with the authority to appoint a person to be an inspector for this Part of the Regulations. Regulation 33 requires that the Regulator must be satisfied that a person appointed as an inspector is able to properly exercise the powers of an inspector, is a licensed electrician, has sufficient expertise in relation to SGUs (for example, knowledge of relevant standards and regulations applying to their installation) and is a person of good repute.

The Regulator may take all steps necessary in order to determine whether an inspector is a suitable person, including requesting police checks. In determining whether the applicant has sufficient knowledge of the matters to be inspected, the Regulator may also consider training completed by the applicant and other qualifications (for example, completion of relevant training courses or equivalent experience).

Regulation 33 also requires an inspector to comply with any directions of the Regulator when performing their duties as an inspector. These might include instructions on the conduct of the inspection. They may also specify check lists which must be used in conducting the inspection.

Consistent with subsection 33(4) of the Acts Interpretation Act 1901, where an instrument confers on a person a power to make appointments then, unless a contrary intention appears, the power also includes a power to remove or suspend that appointment.
It is expected that the Regulator might dismiss inspectors in cases where the Regulator is satisfied that an inspector has ceased to hold the required qualifications (e.g. their electrical licence) or where an inspector has failed to conduct inspections as required by the Regulations.

*Regulation 34 – Identity cards*

Regulation 34 requires the Regulator to issue an identity card to an inspector which includes the inspector’s name and signature, an expiry date and any other information that may be deemed necessary. Subregulation 34(2) requires the inspector to carry the identity card when performing inspections.

*Regulation 35 – Offence for not returning identity card*

Regulation 35 makes it an offence for an inspector to not return an identity card if they cease to be an inspector, with this offence having a penalty of one penalty unit ($110 as at November 2010).

*Regulation 36 – Inspector must not have conflict of interest*

Regulation 36 makes it an offence if an inspector conducts an inspection and fails to meet the requirements for independence as set out in subregulation 30(2), with this offence having a penalty of five penalty units ($550 as at November 2010). This is necessary as the inspector will be best placed to identify whether or not they have a conflict in relation to the particular SGU being inspected.

*Division 3 Powers of inspectors*

*Regulation 37 – Entry to premises*

Inspections will only be conducted with the consent of the occupier of the premises. Regulation 37 provides an inspector with the authority to enter a premises for the purpose of conducting an inspection, on the condition that the inspector has given the occupier of the premises at least 24 hours notice of the inspection, the occupier has consented to the inspection and a suitable time has been arranged for the inspection to occur.

Whilst other types of inspections (e.g. under state and territory laws regarding electrical safety) can be undertaken without the consent of the householder, such entry powers are not considered necessary to undertake an inspection for the purposes of this scheme. Where required, further powers for search and entry are available to authorised officers exercising warrants under Part 11 of the Act.

Paragraph 37 (2) (d) ensures that the purpose and scope of the inspection has been explained to the occupier.
Regulation 38 – Consent

Regulation 38 ensures that the inspector has informed the occupier of the premises that they can refuse consent and that the occupier of the premises has voluntarily consented to an inspection. Consent may be withdrawn at any point during an inspection.

Regulation 39 – Matters for inspection

Regulation 39 sets out the matters for which an inspector must check when performing an inspection. These are principally concerned with whether the SGU has been installed in accordance with requirements for SGUs as specified in the RET legislation.

Paragraph 23AAA (2) (a) of the Act requires that SGUs be inspected for conformance with Australian Standards and any other standards or requirements relevant to the creation of certificates for that SGU. Regulation 39 itemises these requirements consistent with the Principal Regulations. They should be interpreted consistently with the certificate creation requirements, such as those in regulation 20AC of the Principal Regulations.

In particular, the inspections are to determine whether there is material or pervasive evidence that the following requirements have not been met:

(a) Whether the unit has been installed at the address claimed;
(b) Whether the unit is an SGU as defined in the legislation (and is therefore eligible under the RET);
(c) Whether state and territory government requirements for siting, mounting and grid-connection of the unit have been met;
(d) Whether the following standards (as in force from time to time) have been complied with:
   i. AS/NZS 3000 Wiring Rules;
   ii. AS/NZS 1768 Lightning protection;
   iii. AS4777 Grid connections of energy systems via inverters [on-grid systems];
   iv. AS/NZS 5033, Installation of photovoltaic (PV) arrays and IAS/NZS 1170.2, Structural design actions, Part 2: Wind Actions [solar PV systems];
   v. AS/NZS 4509.1, Stand-alone power systems, Part 1: Safety and installation and AS4086.2, Secondary batteries for use with stand-alone power systems, Part 2: Installation and maintenance [off-grid solar PV or wind systems];
   vi. AS/NZS 1170.2 Structural design actions, Part 2: Wind actions [wind systems];
(e) If documents and statements required as conditions for REC eligibility in subregulation 20AC(5) have been created;
(f) If written statements have been obtained relating to the use of compliant panel models and inverters;
(g) If certain requirements for the Solar Credits multiplier have been met; and
(h) If the unit is an off-grid unit (if Solar Credits multipliers for off-grid units have been obtained).

Regarding state and territory government requirements for siting, mounting and grid connection of the unit, the inspector will not determine that a state or territory requirement has been definitively breached as they are not empowered under state or territory law to do this and do not have access to all relevant information a state or territory electrical safety inspector might have. Rather, the Regulations requires that where, in an inspector’s assessment, there is material or pervasive evidence that any state or territory requirements may not have been met, this information must be provided to the relevant state or territory regulator who is able to make a determination, consistent with their regulations, as to whether there has actually been a breach of any state or territory requirements.

In some jurisdictions, ‘state and territory requirements’ may include electrical network service operators’ rules where these have the force of state or territory law.

It should be noted that AS/NZS 5033 Compliant PV modules referred to in subparagraph 39 (f) (i) is a document published by the CEC which lists components meeting the Australian Standard. Although the title is similar, it should not be confused with an Australian Standard. The document may be found at http://www.cleanenergycouncil.org.au/cec/accreditation/Solar–PV–accreditation/approvedproducts.html.

**Regulation 40 – Conduct of inspection**

Regulation 40 sets out the actions an inspector must or may take when conducting an inspection. These actions include examining and testing the SGU and any associated wiring or equipment, taking photographs, making a video recording and requesting the occupier to answer questions related to the SGU.

Regulation 40 also specifies that the occupier of the premises can decline to answer questions asked by the inspector, ask the inspector to leave the premises and observe the inspection being performed.

Paragraph 40 (1) (f) requires an inspector to comply with any requirements which may be imposed under state or territory law. For example, as inspectors must be a licensed electrician; they may be obliged to meet certain requirements imposed as a condition of their electrical licence, such as rendering safe any unsafe electrical installations discovered during the conduct of the inspection.

The regulation has been drafted so as to avoid any possible conflict between the requirements which is established by these Regulations and any pre–existing obligations which may exist for inspectors under other legislation (e.g. state or territory legislation).
Regulation 41 – Dealing with imminent safety risks

Regulation 41 requires an inspector to immediately notify ‘interested parties’ if an SGU presents an imminent safety risk. Regulation 41 requires an inspector in this situation to consider guidelines issued by the Regulator and comply with any directions given by the Regulator or specific directions in relation to the situation which has been identified. It is expected that the guidelines will make clear the types of issues which would trigger the need to act under this regulation.

‘Interested parties’ are defined as the occupier of the premises, the Regulator, the relevant state and territory regulator and the relevant distribution network service provider. These have been identified as the principal parties likely to have an interest in the outcome of an inspection resulting in a finding of an imminent risk to safety.

State and territory governments have responsibility for regulating and enforcing electrical safety. For this reason, state and territory electrical safety regulators are specified as ‘interested parties’. The definition of ‘relevant state and territory regulators’ also acknowledges the role of other state and territory authorities, such as those administering and enforcing the Building Code of Australia in state and territory law (of relevance to issues relating to mounting of solar PV panels on roofs). Additionally, subregulation 41 (4) requires the inspector to immediately notify relevant state or territory regulators of imminent safety risk by telephone and to confirm this by email or other electronic communication.

The inspector also needs to notify the relevant distribution network service provider of any imminent safety risk, as the safety risk might have the potential to adversely affect the electricity distribution network it is connected to.

Division 4 Reports

Regulation 42 – Inspector to prepare a report

Regulation 42 requires an inspector to prepare a written report when an inspection has been performed. Regulation 42 requires that the report be in the form approved by the Regulator and that it contain the following:

- One of three conclusions:
  1. that the inspector found no material or pervasive evidence that one or more of the requirements of regulation 39 were not satisfied; or
  2. that the inspector found material or pervasive evidence that one or more of the requirements of regulation 39 were not satisfied and that the non–compliance presents an imminent risk to the safe operation of the unit; or
  3. that the inspector found material or pervasive evidence one or more of the requirements in regulation 39 were not satisfied but the non–compliance doesn’t present an imminent risk to the safe operation of the unit;

- A brief summary of how the inspection was conducted;
• Any recommendations for action arising from the inspection; and
• Any other information required by the Regulator.

It is expected that the report would note as part of the summary required under paragraph 42 (4) (a) any actions which the inspector may have taken in accordance with regulation 41.

The examination of ‘material or pervasive’ evidence mirrors considerations relevant to greenhouse and energy audits conducted under the National Greenhouse and Energy Reporting Act 2007.

**Regulation 43 – Procedural fairness**

Regulation 43 ensures that if a report is likely to contain adverse findings in relation to a person who designed and installed an SGU, then the inspector must provide them with a copy of the report before it is finalised and give the person the opportunity to comment on the proposed findings. The regulation further requires the inspector to give the installer a reasonable period of time to comment on the proposed findings and to take account of comments provided.

**Regulation 44 – Copy of final report to be provided to interested parties**

Regulation 44 requires the Regulator to provide a copy of the inspector’s final report to: the owner of the SGU, the occupier of the premises, the person who created certificates for the SGU, the designer of the SGU, and the installer of the SGU. If a person falls into more than one category they are not required to receive multiple copies.

The list of persons to receive a final report in this regulation is different from those defined as ‘interested parties’ in subregulation 41 (5). This reflects the fact that not all ‘interested parties’ necessarily have a need to know any information relating to a conclusion that the installation is compliant with requirements in the same timeframe as in cases where imminent safety issues have been identified.

**Regulation 45 – Copy of report to be provided to Clean Energy Council**

If the report contains adverse findings on specific criteria which are relevant to the CEC – accreditation requirements, the Regulator must also provide a copy of the report to the CEC.

The CEC administers a scheme for the accreditation of installers of SGUs. CEC accreditation for installers and designers has been a requirement for some SGUs and deeming periods to be eligible to create certificates since 2007, and has more recently been expanded to cover all unit types and deeming periods (regulation 20AC of the Principal Regulations).

The intent of regulation 45 is for the CEC to be provided with information of direct relevance to the installer’s or designer’s accreditation.
The conditions of CEC accreditation include that installers are obliged to carry out installations to relevant Australian Standards, and to use products which comply with the international standard for panels and the Australian Standard for inverters and system design (layout).

The Regulator is required to provide the CEC with a copy of the report if it contains adverse findings with the matters being inspected under proposed paragraphs 39 (c), (d), (e) and (f). These provisions are referenced because they are directly relevant to the CEC accreditation of the installer.

*Regulation 46 – Copy of report to be provided to relevant State or Territory Regulators*

Regulation 46 requires the Regulator to provide a copy of the report to the relevant state or territory regulator if the report contains a conclusion that the design or installation of the RET scheme does not comply with that state or territory’s requirements for the installation of SGUs.

This is a requirement imposed by paragraph 23AAA (2) (c) of the Act, and reflects the responsibility of state and territory governments for the making and enforcement of regulations relating to the safety of electrical appliances. The definition of ‘relevant state and territory regulators’ also acknowledges the role of other state and territory authorities, such as those administering and enforcing the Building Code of Australia in state and territory law (of relevance to issues relating to mounting of solar PV panels on roofs).

The Regulator must provide relevant state and territory regulators with a copy of the report if it contains adverse findings with the matters being inspected under paragraphs 39 (c) or 39 (d). These paragraphs directly relate to matters which are likely to be relevant to state and territory electrical safety or other regulators.

*Regulation 47 – Regulator may declare person ineligible to design and install small generation units*

In cases where non–compliance has been demonstrated on three separate occasions by a particular installer, regulation 47 gives the Regulator power to declare that an SGU designer or installer is no longer eligible to design and install SGUs for the purposes of the RET, and therefore will not receive RECs for up to 12 months. It should be noted that this provision applies only to individual designers or installers of SGUs (i.e. not to companies which employ them). It is a matter for either the relevant state or territory regulator or the CEC to take any appropriate actions based on relevant information provided to them under regulation 45 or 46.

This provision allows the Regulator to ensure that the RET does not provide support for installation of SGUs by installers who have been found to be repeatedly non–compliant with the requirements of the Principal Regulations.

Subregulation 47 (1) specifies that the power of the Regulator to issue a declaration applies only in relation to installers who have been subject to adverse findings on at least three separate occasions.
Subregulation 47 (2) allows the Regulator to issue a declaration that a person is not eligible to design and install SGUs for the purposes of subregulation 20AC (2). The effect is that any SGU installed by an installer subject to a declaration could not create certificates.

Subregulation 47 (3) clarifies that declarations made by the Regulator can be made for periods of up to 12 months.

Subregulation 47 (4) allows declarations to be published on the Regulator’s website. This is necessary to avoid third parties (such as householders) inadvertently engaging an installer who is under a declaration and thus voiding their eligibility to create certificates.

Declarations made under this regulation are subject to review provisions set out by regulation 49 below. This regulation should be read in conjunction with item 16 above.

*Regulation 48 – Matters to consider before making declaration*

Regulation 48 requires the Regulator to take certain matters into consideration before making a declaration under regulation 47.

Subregulation 48 (1) requires the Regulator to consider the nature and extent of the adverse finding, the circumstances related to the finding, action taken to rectify matters where material and pervasive evidence of a problem has been identified by an inspector and whether the person has cooperated with the Regulator and the inspector with respect to the adverse finding.

Subregulation 48 (2) further requires the Regulator to observe procedural fairness, by allowing the person to comment on the proposed declaration. The Regulator is required to take into account any comments provided by the person.

*Part 8 Review*

*Regulation 49 – Review of decisions*

Regulation 49 provides for a process of review of the particular decisions made by the Regulator in regard to solar water heaters and eligibility of a person or persons to design and install SGUs.

In regard to the treatment of solar water heaters under the RET this regulation provides recourse for the manufacturer to request the Regulator to reconsider a decision concerning the number of certificates that may be created or in relation to a request to make or vary a determination about a solar water heater. The amendments also allow the manufacturer to apply to the Administrative Appeals Tribunal for review of the Regulator’s decision.

Regulation 49 also applies to declarations made by the Regulator concerning the eligibility of a person or persons to design and install SGUs.

*Item 34 – Schedule 4, heading*

Item 34 makes a technical correction to the heading of Schedule 4 to the Principal Regulations as it relates to the determination of solar water heaters.
Item 35 – Schedule 4, table, item 2

Item 35 makes a technical correction to Schedule 4 to the Principal Regulations to update a reference to the Australian Standard relating to the calculation of energy consumption for heated water systems.

SCHEDULE 2 – AMENDMENTS COMMENCING ON 1 JANUARY 2011

Item 1 – After Part 2

Item 1 of Schedule 2 inserts a new Part 2A with new regulations as outlined below.

Part 2A of the Act establishes a clearing house for the transfer of small–scale technology certificates (STCs). It refers to a number of regulations and subsection 30U of the Act establishes a broad power to make regulations with respect to the policies, procedures and rules of the clearing house.

Part 2A Clearing house for small–scale technology certificates

Regulation 20G – Operation of clearing house

Regulation 20G allows the Regulator to operate the clearing house as part of the register of STCs. The clearing house transfer list which relates to the list of STCs ready to be transferred by the clearing house is to be maintained by electronic means and made available to the public for inspection on the internet. It is intended that the public will be able to see the position of each order in the queue, including the number of STCs in each order and the date on which it entered the transfer list.

Placing the clearing house within the register of small–scale certificates assists the Regulator in managing the efficient transfer of certificates and provides a central point for all participants that wish to use the clearing house to transfer STCs.

Regulation 20G requires the Regulator to keep the clearing house transfer list up to date to help manage the timely transfer of STCs. It is envisaged that an application to transfer STCs would normally be processed immediately after submitting an electronic request and is reflected in the user’s REC holding summary with the Public Register being refreshed hourly.

Regulation 20G also specifies that a person intending to use the clearing house must agree to comply with certain terms and conditions.

It is intended that the terms and conditions will appear in the electronic interface for the clearing house and that their acknowledgment and acceptance is a prerequisite for transactions in the clearing house.

Regulation 20H – Application to enter small–scale technology certificate into clearing house

Regulation 20H specifies the information that the registered owner of the STC must provide to the Regulator along with the application to enter its STC into the clearing house. This general
information is required to allow the Regulator to track and manage STC ownership transfers through the clearing house. It also allows the Regulator to determine whether or not the supply of an STC is a taxable supply which impacts the amount to be paid to the seller.

It is intended that personal information publicly available on the transfer list is limited to the name of the seller which has been entered into the REC registry account. This is consistent with the existing operation of the REC registry.

To reduce the administrative burden for clearing house users, subregulation 20H (3) prescribes that users are only required to provide identifying information and documents the first time the clearing house is used (i.e. that is when the person becomes registered) on the basis that the information and those documents remain current. It is intended that the system will store and recall identifying information each subsequent time the clearing house is utilised.

Regulation 20I – Entering small–scale technology certificates into the clearing house

Regulation 20I allows the Regulator to determine the order in which STCs (if there is more than one) from an application are placed on the clearing house transfer list.

Regulation 20J – Removal of small–scale technology certificate from clearing house transfer list

Regulation 20J allows the Regulator to remove the STC from the clearing house list if:

• it ceased to be valid (such as when surrendered or declared invalid by a court); or
• removal was required to comply with a court order (including orders on death or insolvency); or
• the Regulator decided to withdraw the certificate for reasons outlined in regulation 20K (see below).

Regulation 20K – Withdrawal of small–scale technology certificates from clearing house

Regulation 20K clarifies where the Regulator may withdraw STCs from the clearing house transfer list where the registered owner of the STCs transfers ownership to another person (the transferee). Where the transferee has not submitted the information and documents listed in subregulation 20K (2) within seven days of the transfer of the STC, or the day in which the STC reaches the top of the clearing house transfer list (whichever is earlier), the Regulator may withdraw the STC. Subregulation 20K (5) avoids unnecessary duplication of paperwork by requiring the information and documents need to be provided with the first transaction as a transferee on the basis that the information and those documents remain current.

Where the STC is withdrawn the Regulator will be obliged to notify the transferee within seven days. STCs placed below the withdrawn certificates will move up the transfer list. The transferee may subsequently apply to enter the STCs into the clearing house under regulation 20H. This rule will ensure that owner information with respect to each certificate is up–to–date and the GST status of each transfer can be determined.
Regulation 20L – Owner may request Regulator to withdraw small–scale technology certificates

Regulation 20L specifies how the registered owner of STCs may request the Regulator to withdraw their certificates from the clearing house. The regulation specifies that the request must be made to the Regulator in writing and submitted electronically. It is intended that this is a function in the register of STCs and withdrawal of STCs from the clearing house is immediate.

Regulation 20M – Persons not entitled to purchase small–scale technology certificates through clearing house

Regulation 20M limits the application to purchase STCs through the clearing house to GST registered entities that have provided the required information and documents to make the transfer work (such as bank account details for potential refunds). This information and documents only need to be provided once on the basis that the remain current, as it is intended that the system will store and recall identifying information each subsequent time the clearing house is utilised.

The need to be GST registered only applies to the purchase of STCs from the clearing house transfer list and not the transfer of ownership of STCs in the clearing house which is open to any person or ordinary purchase of STCs on the open market.

Regulation 20N – Small–scale technology certificates to be transferred or created within 3 days

Regulation 20N specifies once an application to purchase STCs from the clearing house transfer list is made in accordance with section 30M of the Act along with the accompanying payment (inclusive of GST) for the STCs, the Regulator must either transfer the STC to the purchaser or create an STC recording the purchaser as the owner (if there are no STCs on clearing house transfer list) within three business days.

While it is intended that the Regulator will process the transfer of STCs as quickly as possible, the Regulator cannot commence the process for transferring or creating STCs until payment is received into the Regulator’s bank account. This payment process may take up to several business days after a buy order is made for funds to clear from a liable party’s financial institution in to the Regulator’s bank account. It is expected that liable parties would have regard to these timing issues to ensure timely acquisition of STCs, particularly towards the end of a quarter.

Business days are to be defined for the purposes of the Principal Regulations (see Schedule 1 item 1).

Regulation 20O – Refunds

Regulation 20O specifies where the purchaser has been transferred one or more STCs on behalf of the seller (registered owner of the STCs immediately before the transfer), the Regulator must refund to the purchaser 10 per cent of the clearing house price for each STC when the transfer of the STCs is not a taxable supply. For example, this would occur in instances where the seller is
not registered for GST such as a householder that has decided to sell their STCs through the clearing house.

There are no refunds relating to when a person receives certificates created by the Regulator and a non–GST registered person later submits a certificate which is cancelled. These are considered to be two separate transactions. Accordingly, buyers will be informed of the GST implications of their purchase as soon as relevant sellers are identified or certificates are created by the Regulator.

*Regulation 20P – GST registration*

Regulation 20P specifies if a registered owner of a STC that is on the clearing house transfer list becomes GST registered or ceases to be GST registered, before the STC is transferred to the purchaser, they must notify the Regulator within seven days.

**Other Amendments to implement SRES/LRET**

Items 2 to 4 of Schedule 2 to the Regulations primarily set out the details for establishing a liable entity’s energy acquisition statement and the details of a liable entity’s application to have a different SRES baseline recognised instead of the previous year’s reduced acquisitions.

**Item 2 – Before regulation 23**

*Regulation 23A – Prescribed percentage*

Regulation 23A prescribes the percentage in subsection 38AF (7) of the Act which provides a margin of error for the calculation of an assessment year’s reduced acquisitions which stands in place of the default amounts. The regulation prescribes this as 10 per cent. That is, if the Regulator makes a determination for a liable entity to have a baseline other than the previous year’s reduced acquisitions for the purpose of determining their SRES liability, and the liable entity’s actual reduced acquisitions for the assessment year is more than 10 per cent greater than that new baseline, then the actual reduced acquisitions will be the baseline used in determining the entity’s liability.

This is intended to recognise the potential for some unintentional underestimation by a liable entity of their expected relevant acquisitions for the year while avoiding an incentive to significantly underestimate their acquisitions to reduce their liability.

*Regulation 23 B – Energy acquisition statement lodged – requirements for Regulator exercising powers or functions*

Regulation 23B relates to liable entities with energy acquisition statements already lodged and requires the Regulator to accept a liable entity’s estimate of its assessment year acquisitions, to be used instead of the previous year’s reduced acquisitions, if the Regulator is satisfied with the estimate based on the liable entity’s application.
Conversely, if the Regulator does not consider that the liable entity’s estimate is its best estimate of the assessment year is reduced acquisitions, the Regulator must determine an amount based on their best estimate. Accordingly, the proposed amount should be the best estimate of the liable entity's relevant acquisitions less partial exemptions for the relevant year. It is recognised that demand assumptions cannot be predicted absolutely and thus it is sufficient for the overall amounts to be the best estimate that can reasonably be made with the available information.

Regulation 23C – No energy acquisition statement lodged – requirements for Regulator exercising powers or functions

Similar to regulation 23B, this regulation requires the Regulator to accept a liable entity’s estimate as a replacement for a previous year’s reduced acquisitions if it is satisfied that number is the liable entity’s best estimate of its quarterly acquisitions on an annualised basis.

Where a liable entity does not lodge an energy acquisition statement and the liable entity applies to the Regulator to have a baseline amount apply as if it were the previous year’s reduced acquisitions, the Regulator must determine that the amount applied for will be the amount that the liable entity’s quarterly baseline is based on if the Regulator is satisfied that the amount the liable entity applies for is its best estimate of its annualised quarterly acquisitions. As the Act uses 'previous year's reduced acquisitions' as an annual amount, it is necessary to multiply the reduced acquisitions estimate for the quarter by four to get to the correct amount for liability.

Conversely, if the Regulator is not satisfied that the liable entity’s estimate as a replacement for a previous year’s reduced acquisitions is the liable entity’s best estimate of its quarterly acquisitions on an annualised basis, the Regulator must determine an amount based on their best estimate.

In making a determination, the Regulator is also required to deduct any relevant partial exemptions from the amount determined to represent the previous year’s reduced acquisitions on a pro-rata basis relative to acquisitions (as opposed to simply dividing the partial exemption amount by four). Accordingly, if relevant acquisitions were only being made for the last two quarters, half of the total partial exemption amount is attributed to those quarters rather than just one quarter.

Regulation 23D – Applications under section 38AF of Act

Regulation 23D outlines the detail required to be included in a liable entity’s application to the Regulator to have a different amount other than its previous year’s reduced acquisitions apply for the purpose of determining annual SRES liability.

In particular, the application must include the previous year’s reduced acquisitions that would otherwise apply, a liable entity’s best estimate of its relevant reduced acquisitions for the compliance year and the liable entity’s reasons as to why the amount proposed should apply instead of the previous year’s reduced acquisitions. The liable entity must also include in its application any factors which may contribute to its actual reduced acquisitions being more or less than the amount that the liable entity considers should be in place of the previous year’s reduced acquisitions.
acquisitions. For instance, if the liable entity is in the process of signing up new large customers, this must be disclosed. Similarly, a directly liable large electricity user should identify possible production changes which would impact its electricity use.

*Regulation 23E – Applications under section 38AG of Act*

Regulation 23E outlines the detail required to be included in a liable entity’s application to the Regulator to have an amount apply as if it were its previous year’s reduced acquisitions for the purpose of determining annual SRES liability, where the liable entity has not lodged an annual energy acquisition statement for the previous year.

In particular, the application must include an estimate of the previous year’s relevant acquisitions, a liable entity’s best estimate of its relevant reduced acquisitions for a quarter at the time of the application and the liable entity’s reasons for choosing the amount it considers should apply as if it were the previous year’s reduced acquisitions. The liable entity must also include in its application any factors which may contribute to its actual reduced acquisitions being more or less than the amount that the liable entity considers should be in place of the previous year’s reduced acquisitions.

*Item 3 – Regulations 24 and 25*

*Regulation 24 – Annual energy acquisition statements*

Regulation 24 replaces the current contents required for an annual energy acquisition statement with the same contents but reflecting the new SRES/LRET arrangements. This regulation changes the reference to a ‘renewable energy shortfall’ with references to a 'small-scale technology shortfall' and a 'large-scale generation shortfall'.

*Regulation 24A – Surrender of small–scale technology certificates*

Regulation 24A is a new regulation relating to a liable entity lodging STCs to surrender against their first three quarters of SRES liability. The regulation requires the STCs to be lodged electronically through the register of STCs.

*Regulation 24B – Surrender of additional certificates*

Where a liable entity’s energy acquisition statement has been amended by the Regulator which increased the entity’s liability, section 45C of the Act provides for the entity an opportunity to surrender additional LTCs or STCs to avoid the relevant shortfall charge.

Regulation 24B specifies that the liable entity’s surrender notice must be lodged electronically on the relevant register.

*Regulation 25 – Annual large–scale generation shortfall statements*

Regulation 25 outlines further details required to be included in a liable entity’s annual large–scale generation shortfall statement, including details on how the liable entity calculated its
large-scale generation shortfall charge and any changes to acquisitions stated for previous years. It replicates previous regulation 25 with the new terminology.

This regulation also specifies that the statement must be sent to the Office of the Renewable Energy Regulator by post (including if sent by fax in the first place).

Regulation 25A – Annual small-scale technology shortfall statements

Regulation 25A outlines further details required to be included in a liable entity’s annual small-scale technology shortfall statement, including details on how the liable entity calculated its small-scale technology shortfall charge and any changes to acquisitions stated for previous years. It replicates the requirements of previous regulation 25.

This regulation also specifies that the statement must be sent to the Office of the Renewable Energy Regulator by post (including if sent by fax in the first place).

Item 4 – Subregulation 28 (4)

This subregulation replaces the current subregulation relating to fees that may be payable for the surrender of certificates to amend references to the current sections of the Act. The rate of eight cents per certificate is retained.