



Renewable Energy (Electricity) Amendment (Transitional Provision) Amendment Regulations 2010 (No. 1)¹

Select Legislative Instrument 2010 No. 322

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Renewable Energy (Electricity) Amendment Act 2010*.

Dated 8 December 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

GREG COMBET
Minister for Climate Change and Energy Efficiency

1 Name of Regulations

These Regulations are the *Renewable Energy (Electricity) Amendment (Transitional Provision) Amendment Regulations 2010 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Renewable Energy (Electricity) Amendment (Transitional Provision) Regulations 2010*

Schedule 1 amends the *Renewable Energy (Electricity) Amendment (Transitional Provision) Regulations 2010*.

Schedule 1 Amendments

(regulation 3)

[1] Before regulation 1

insert

Part 1 Preliminary

[2] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Renewable Energy (Electricity) Amendment (Transitional Provisions) Regulations 2010*.

2	<i>Renewable Energy (Electricity) Amendment (Transitional Provision) Amendment Regulations 2010 (No. 1)</i>	2010, 322
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[3] After regulation 2*insert***2A Definitions**

In these Regulations:

amending Act means the *Renewable Energy (Electricity) Amendment Act 2010*.*annual transfer number* has the meaning given by subregulation 8 (2).*principal Act* means the *Renewable Energy (Electricity) Act 2000*.**[4] Before regulation 3***insert***Part 2 Transitional — general****[5] Regulation 3, heading***substitute***3 Solar water heaters****[6] Subregulation 3 (1)***omit*Act by item 116A of Schedule 1 to the *Renewable Energy (Electricity) Amendment Act 2010**insert*

principal Act by item 116A of Schedule 1 to the amending Act

[7] Subregulation 3 (2), definition of *acquirer*

omit each mention of

the Act

insert

the principal Act

[8] Subregulation 3 (2), definition of *Act*

omit

[9] After regulation 3

insert

4 Publication of renewable energy certificate shortfall information

The amendment made by item 90 of Schedule 1 to the amending Act does not apply to a renewable energy certificate shortfall for a year before 2011.

5 References in contracts to renewable energy certificates

- (1) For paragraph 6 (3) (c) of Schedule 2 to the amending Act, subitem 6 (2) of that Schedule applies to a contract only if:
 - (a) it is a contract for the transfer or supply of renewable energy certificates (however described); and
 - (b) certificates are to be transferred or supplied under the contract after 1 January 2011 (whether or not certificates are also transferred or supplied under the contract before 1 January 2011).
- (2) For paragraph 6 (3) (c) of Schedule 2 to the amending Act, subitem 6 (2) of that Schedule does not apply to a contract:
 - (a) entered into after 25 February 2010 that describes the certificates as small-scale renewable energy certificates; or

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- (b) that would, but for the application to the contract of item 6 of that Schedule, terminate because of the amendments made by the amending Act; or
 - (c) to which subregulation (3) or (4) applies.
- (3) This subregulation applies to a contract if:
- (a) the contract would, but for the application to the contract of item 6 of Schedule 2 to the amending Act, allow a party to the contract (a *terminating party*) to terminate the contract because of the amendments made by the amending Act; and
 - (b) a terminating party tells the Regulator and each other party to the contract, in writing, that the terminating party wants to terminate the contract.
- (4) This subregulation applies to a contract entered into after 25 February 2010 and before 28 June 2010 if:
- (a) either:
 - (i) the contract refers to the certificates as being created for solar water heaters or small generation units; or
 - (ii) it is clear from the context of the contract that the parties expect the certificates to be created for solar water heaters or small generation units; and
 - (b) certificates are to be supplied or transferred under the contract after 1 March 2011 (whether or not certificates are also supplied or transferred under the contract before 1 March 2011).

Part 3 Transitional — transfer of certificates taken to be large-scale generation certificates

6 Application

This Part is made for subitems 7 (2) and (3) of Schedule 2 to the amending Act.

7 Annual transfer number — applications

- (1) A party to a contract mentioned in subitem 7 (1) of Schedule 2 to the amending Act for the supply or transfer of renewable energy certificates (however described) may apply to the Regulator for an annual transfer number for each year in which certificates will be transferred under the contract.
- (2) The application must be made:
 - (a) before 1 January 2011; and
 - (b) in writing, in a form approved by the Regulator.
- (3) The application must:
 - (a) state that:
 - (i) the contract is a contract to which subitem 7 (1) of Schedule 2 to the amending Act applies; and
 - (ii) certificates created in relation to solar water heaters or small generation units will be transferred under the contract; and
 - (iii) the party expects that the certificates will become large-scale generation certificates under regulation 15; and
 - (b) explain how subitem 7 (1) of that Schedule applies to the contract; and
 - (c) include a copy of:
 - (i) the contract; and
 - (ii) any document incorporated into, or referred to by, the contract; and
 - (iii) any other document relied on to show that subitem 7 (1) of that Schedule applies to the contract; and
 - (d) for each of the years 2008, 2009 and 2010, state:
 - (i) the number of certificates transferred between any of the parties to the contract under the contract or under any other contract or arrangement; and
 - (ii) the date of each transfer; and
 - (iii) whether the transferred certificates were created in relation to solar water heaters, small generation units or accredited power stations; and

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- (e) state the number of certificates to be transferred under the contract after 1 January 2011 and the date on which each transfer is to occur; and
 - (f) state whether the parties to the contract expect that the certificates to be transferred under the contract would be created:
 - (i) in relation to solar water heaters or small generation units installed before 1 January 2011; or
 - (ii) for electricity generated by an accredited power station.
- (4) The application must be accompanied by a statutory declaration by the party verifying the information and documents included in the application.

8 Annual transfer number — Regulator's estimate

- (1) If the Regulator receives an application mentioned in regulation 7, the Regulator must estimate an annual transfer number for each year for the contract.
- (2) The *annual transfer number* for a year is:
 - (a) if a provision of the contract in force before 26 February 2010 fixes the number of certificates, created in relation to solar water heaters or small generation units, to be transferred in that year — that number; or
 - (b) in any other case — the number of certificates, created in relation to solar water heaters or small generation units, that the Regulator considers would, but for the enactment of the amending Act, have been transferred under the contract for that year.
- (3) However, in estimating the annual transfer number, the Regulator is to disregard any certificates expected to be created:
 - (a) in relation to solar water heaters or small generation units installed before 1 January 2011; or
 - (b) for electricity generated by an accredited power station.

- (4) For subregulation (3), unless any party to the contract proves the contrary, any certificates to be transferred before 15 February 2011 are taken to have been created:
 - (a) in relation to solar water heaters or small generation units installed before 1 January 2011; or
 - (b) for electricity generated by an accredited power station.

9 Estimated annual transfer amount — consultation

- (1) Not later than 30 days after receiving an application mentioned in regulation 7, the Regulator must:
 - (a) give a copy of the application to each party to the contract, other than the party who made the application (the *applicant*); and
 - (b) invite each party to the contract, other than the applicant, to comment on the accuracy of the information in the application; and
 - (c) tell each party to the contract the annual transfer number estimated by the Regulator for each year for the contract; and
 - (d) invite the parties to comment on the estimated annual transfer number for each year.
- (2) If a party to a contract provides a response to an invitation mentioned in paragraph (1) (b) or (d), the response must be:
 - (a) in writing; and
 - (b) given to the Regulator not more than 30 days after the party receives the invitation.

10 Annual transfer number — Regulator's determination

- (1) After the period mentioned in paragraph 9 (2) (b) has ended, the Regulator must determine:
 - (a) whether the contract is a contract to which subitem 7 (1) of Schedule 2 to the amending Act applies; and
 - (b) if the Regulator determines that the contract is a contract to which subitem 7 (1) of that Schedule applies — the annual transfer number for each year for the contract.

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- (2) In determining the annual transfer number, the Regulator is to disregard any certificates expected to be created:
 - (a) in relation to solar water heaters or small generation units installed before 1 January 2011; or
 - (b) for electricity generated by an accredited power station.
 - (3) For subregulation (2), unless any party to the contract proves the contrary, any certificates to be transferred before 15 February 2011 are taken to have been created:
 - (a) in relation to solar water heaters or small generation units installed before 1 January 2011; or
 - (b) for electricity generated by an accredited power station.
 - (4) In making the determination, the Regulator must take into account any comments received under subregulation 9 (2).
 - (5) The Regulator must tell the parties to the contract, in writing, about the determination.
 - (6) If the Regulator determines an annual transfer number for the contract, the Regulator must give the contract an identification number and tell the parties, in writing, that number.

11 Review of Regulator's determination

- (1) A party to a contract may ask the Regulator to reconsider a determination made for the contract under subregulation 10 (1).
- (2) The request must be:
 - (a) in writing; and
 - (b) given to the Regulator not later than 60 days after the determination is made.
- (3) The Regulator must reconsider the determination and confirm, vary or set aside the determination.

Note Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the party to be notified of the party's review rights.
- (4) The Regulator is taken to have made a decision confirming the determination under subregulation (3) if the Regulator does not give written notice of the Regulator's decision under subregulation (3) within 60 days of the request.

- (5) A party to the contract may apply to the Administrative Appeals Tribunal for review of a decision of the Regulator under subregulation (3) to confirm, vary or set aside the decision.

12 Publication of aggregate annual transfer number

- (1) The Regulator must publish, on its website, the aggregate of annual transfer numbers, for each year, determined under paragraph 10 (1) (b).
- (2) The information must be published on the website before 1 April 2011.

13 Request for certificates to become large-scale generation certificates

- (1) If the Regulator has determined an annual transfer number for a contract, a party to the contract may apply to the Regulator for certificates to be transferred under the contract to become, and be taken to have been, large-scale generation certificates.
- (2) The application must state:
- (a) the identification number of the contract; and
 - (b) the number of certificates to be transferred; and
 - (c) when the certificates will be transferred; and
 - (d) that the party to whom the certificates will be transferred expects that some or all of the certificates will become large-scale generation certificates because of the transfer; and
 - (e) that the transfer will not exceed the annual transfer number for the contract for the year in which the transfer occurs; and
 - (f) that the contract will be in force at the time of the transfer; and
 - (g) that the certificates will be transferred under a requirement in the contract that existed on or before 25 February 2010; and

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- (h) that the certificates are additional to any large-scale generation certificates that have been or will be transferred to meet the requirement in the contract; and
 - (i) that none of the certificates was acquired under Division 4 of Part 2A of the principal Act.
- (3) The application must be accompanied by a statutory declaration by the party making the application verifying the statements mentioned in paragraphs (2) (e) to (h).
 - (4) In this regulation:
identification number means the number given to the contract by the Regulator under subregulation 10 (6).

14 Inclusion of certificates in the register of large-scale generation certificates

- (1) This regulation applies if the Regulator receives an application mentioned in subregulation 13 (1).
- (2) The Regulator must include a certificate transferred under the contract in the register of large-scale generation certificates as a large-scale generation certificate if the Regulator is satisfied that:
 - (a) the number of certificates to be included will not exceed the annual transfer number for the contract for the year in which the transfer occurs; and
 - (b) the contract will be in force at the time of the transfer; and
 - (c) the certificate is being transferred under a requirement in the contract which existed on or before 25 February 2010; and
 - (d) the certificate is additional to any large-scale generation certificates that have been or will be transferred to meet the requirement in the contract; and
 - (e) the certificate was not acquired under Division 4 of Part 2A of the principal Act.
- (3) When including the certificate in the register, the Regulator must include the information mentioned in:
 - (a) paragraphs 140 (a), (b), (c), (d) and (e) of the principal Act; and

(b) subparagraph 141AA (c) (ii) of the principal Act.

- (4) The Regulator must tell the parties to the contract, in writing, the number of certificates included as large-scale generation certificates in the register.

15 Conversion of certificates to large-scale generation certificates

For subitem 7 (2) of Schedule 2 to the amending Act, a certificate becomes, and is taken to have been, a large-scale generation certificate when the Regulator includes the certificate in the register of large-scale generation certificates under subregulation 14 (2).

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.