

Version No. 004
Victorian Energy Efficiency Target Act 2007
No. 70 of 2007

Version incorporating amendments as at 14 October 2010

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The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to promote the reduction of greenhouse gas emissions by establishing the VEET scheme which—

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

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 January 2009, it comes into operation on that day.

3 Definitions

- (1) In this Act—

accredited person means a person accredited under Division 1 of Part 3;

AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);

S. 3(1) def. of
AEMO
inserted by
No. 23/2009
s. 35(1).

approved interstate energy efficiency regime

means a law of another State or a Territory approved under section 8;

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

carried forward surplus has the meaning given by section 29(2)(c);

certificate means an energy efficiency certificate created under Division 3 of Part 3;

energy acquisition statement means an energy acquisition statement under section 33;

energy efficiency certificate shortfall has the meaning given by section 29(2)(a);

energy efficiency shortfall penalty has the meaning given by section 28;

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

ESC guidelines means the guidelines made by the ESC under section 74;

gas has the same meaning as it has under section 3 of the **Gas Industry Act 2001**;

GJ means a gigajoule of energy from the combustion of gas;

greenhouse gas means—

- (a) carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons and perfluorocarbons; and
- (b) any other gas prescribed to be a greenhouse gas;

greenhouse gas reduction rate means a rate fixed by Order under section 32(2) or in accordance with section 32(3);

monitoring warrant means a warrant issued under section 55;

MWh means megawatt hour;

* * * * *

S. 3(1) def. of NEMMCO repealed by No. 23/2009 s. 35(2).

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

premises includes the following—

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

prescribed means prescribed by the regulations;

prescribed activity means an activity which is prescribed to be a prescribed activity in accordance with section 15;

prescribed greenhouse gas scheme means—

- (a) a voluntary offset scheme; or
- (b) a mandatory greenhouse gas scheme; or
- (c) any other arrangement—

which promotes the reduction of greenhouse gas emissions and which is prescribed for the purposes of this Act;

produce includes permit access to;

register of accredited persons has the meaning given by section 58;

register of energy efficiency certificates has the meaning given by section 59;

registration number has the meaning given by section 13;

relevant entity means a person who—

- (a) sells either electricity or gas, or both electricity and gas, to customers; and
- (b) has 5000 or more customers to whom either electricity or gas is, or both electricity and gas are, sold to in Victoria; and
- (c) makes a scheme acquisition in connection with the sale of either electricity or gas, or the sale of both electricity and gas, to those customers;

scheme acquisition means the purchase for on-sale to a prescribed customer or prescribed class of customers in Victoria of—

- (a) electricity from AEMO or a person or body prescribed for the purposes of this paragraph but does not include any acquisition of electricity by AEMO;
- (b) gas from a producer, storage provider or interconnected pipeline operator (within the meaning of the National Gas Rules) or from AEMO or a person or body prescribed for the purposes of this paragraph but does not include any acquisition of gas by AEMO;

VEET scheme means the scheme established by this Act;

S. 3(1) def. of *scheme acquisition* amended by No. 23/2009 s. 35(3).

VEET scheme target means the VEET scheme target under section 30;

* * * * *

S. 3(1) def. of *VENCorp* repealed by No. 23/2009 s. 35(2).

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

year means calendar year.

- (2) For the purposes of this Act, electricity or gas is taken to be a good that can be acquired.
- (3) For the purposes of this Act, the ***carbon dioxide equivalent of a greenhouse gas*** means the tonnes of carbon dioxide that have the same global warming potential as a tonne of the greenhouse gas.

4 Objects

The objects of this Act are to—

- (a) reduce greenhouse gas emissions;
- (b) encourage the efficient use of electricity and gas;
- (c) encourage investment, employment and technology development in industries that supply goods and services which reduce the use of electricity and gas by consumers.

5 Crown to be bound

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

6 Extra-territorial operation

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

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

PART 2—ADMINISTRATION

7 Role of ESC

- (1) The ESC is responsible for the general administration of this Act.
- (2) Without limiting subsection (1), the functions of the ESC under this Act include to—
 - (a) accredit persons who may create certificates;
 - (b) monitor and administer the creation, registration, transfer and surrender of certificates;
 - (c) enforce the imposition of energy efficiency shortfall penalties;
 - (d) undertake audits of the creation of certificates by accredited persons;
 - (e) monitor compliance with this Act.
- (3) The ESC must provide a report on the performance of the VEET scheme to the Minister—
 - (a) after the end of each year after the commencement of this section; and
 - (b) at the end of any other period as requested by the Minister in writing.
- (4) The ESC must include a report on the operation of this Act in its annual report of operations under Part 7 of the **Financial Management Act 1994**.

8 Approved interstate energy efficiency regime

- (1) The Minister, by notice published in the Government Gazette, may approve a law of another State or a Territory to be an approved interstate energy efficiency regime.

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- (2) The Minister must not approve a law of another State or a Territory to be an approved interstate energy efficiency regime unless he or she is satisfied that—
- (a) the approval of that law would complement, and not detract from, the achievement of the purpose and objects of this Act; and
 - (b) the approval of that law would not impose unreasonable costs on purchasers of electricity or gas in Victoria; and
 - (c) the law promotes the reduction of greenhouse gas emissions; and
 - (d) the arrangements for the monitoring, and enforcement, of compliance with that law are no less stringent than those under this Act.
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PART 3—ENERGY EFFICIENCY CERTIFICATES

Division 1—Accredited persons

9 Who may apply to be accredited?

- (1) A person may apply to the ESC to be an accredited person.
- (2) An application must—
 - (a) be made in a form and manner required by the ESC; and
 - (b) contain any information required by the ESC which the ESC considers necessary for the purposes of the VEET scheme; and
 - (c) be accompanied by any documents required by the ESC which the ESC considers necessary for the purposes of deciding whether to approve the application; and
 - (d) be accompanied by any relevant fee fixed under section 73.
- (3) If required by the ESC under section 10, the applicant must provide to the ESC—
 - (a) evidence of the kind referred to in section 10(1); and
 - (b) an undertaking referred to in section 10(2).

10 ESC may require consent or undertaking from applicant for accreditation

- (1) The ESC may require an applicant under section 9 to consent in writing to the disclosure of information of a kind specified by the ESC and held under a prescribed greenhouse gas scheme.

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- (2) The ESC may require an applicant under section 9 to give an undertaking not to claim any benefit under a prescribed greenhouse gas scheme if that would result in a benefit being obtained under both that scheme and the VEET scheme in respect of the same activity.
 - (3) For the purposes of subsection (2), *benefit* means—
 - (a) the creation of a certificate under the VEET scheme; or
 - (b) a benefit under the prescribed greenhouse gas scheme.

11 ESC to approve or refuse application

- (1) If the ESC receives an application that complies with section 9, the ESC must approve the application.
- (2) If the ESC is not satisfied that an application complies with section 9, the ESC must refuse the application.

12 Time limit for deciding applications

- (1) The ESC must decide an application made under section 9 within—
 - (a) the period of 20 business days beginning on the day the ESC received the application; or
 - (b) if before the end of that period the ESC and the applicant agree to a longer period, that longer period.
 - (2) If during the period applicable under subsection (1), the ESC requests information from an applicant for the purpose of deciding the application, the period between the request and the giving of the information must be disregarded for the purpose of calculating the period applicable under subsection (1).
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- (3) If the ESC has not decided the application within the period applicable under this section, the ESC is to be taken to have made a decision at the end of that period under section 11 refusing the application.

13 ESC to allocate registration numbers

If the ESC approves an application under section 11, the ESC must—

- (a) allocate the applicant a unique registration number; and
- (b) advise the applicant of the number.

14 Suspension of accreditation

- (1) If an accredited person has been convicted of an offence under section 20, the ESC may, by written notice, suspend the person's accreditation for the period (not exceeding 2 years) as the ESC considers appropriate in all of the circumstances and specifies in the notice.
 - (2) If a person whose accreditation has previously been suspended under subsection (1) is convicted of another offence under section 20, the ESC may, by written notice, suspend the person's accreditation for the period (including permanently) that the ESC considers appropriate in all of the circumstances and specifies in the notice.
 - (3) The ESC may, by written notice, suspend the accreditation of an accredited person if the ESC believes on reasonable grounds that the person—
 - (a) has committed an offence against this Act; or
 - (b) has breached an undertaking given to the ESC under section 10(2).
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- (4) An accreditation that is suspended under subsection (3) is suspended for the period (not exceeding 12 months) that the ESC considers appropriate in all of the circumstances and specifies in the notice.
 - (5) The ESC may, by written notice, suspend the accreditation of an accredited person if the accreditation was obtained improperly.
 - (6) An accreditation that is suspended under subsection (5) is suspended for the period (including permanently) that the ESC considers appropriate in all of the circumstances and specifies in the notice.

Division 2—Prescribed activities

15 Prescribed activities

- (1) Regulations made under section 75 may prescribe an activity in Victoria or in another State or Territory in which an approved interstate energy efficiency regime is in force to be a prescribed activity.
- (2) An activity may be prescribed to be a prescribed activity if the activity will result in a reduction in greenhouse gas emissions that would not otherwise have occurred if the activity was not undertaken.
- (3) Without limiting the generality of subsection (2), an activity of the following kind is an activity that will result in a reduction in greenhouse gas emissions that would not otherwise have occurred if the activity was not undertaken—
 - (a) modifying or replacing an appliance, a structure or any equipment so as to reduce consumption of electricity or gas where there is no negative effect on output;

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- (b) replacing any equipment or system that uses electricity or gas and emits relatively high levels of greenhouse gases with an energy source that emits relatively low levels of greenhouse gases;
 - (c) purchasing an appliance or any equipment for the purpose of being installed which has an efficiency rating prescribed as a high efficiency rating for an appliance or equipment of that kind or class;
 - (d) installing an appliance or any equipment which has an efficiency rating prescribed as a high efficiency rating for an appliance or equipment of that kind or class.

Division 3—Creation of certificates

16 Who may create a certificate?

- (1) Subject to sections 17 and 18—
 - (a) the consumer of electricity or gas in respect of whom the prescribed activity is undertaken; or
 - (b) a person who is the holder of an assignment of the right to create a certificate made by the consumer referred to in paragraph (a)—may, if that consumer or that person is an accredited person, create a certificate or certificates in relation to the prescribed activity.
- (2) If the owner of a premises is not the consumer of electricity or gas in respect of whom the prescribed activity is undertaken because—
 - (a) the owner of the premises is the landlord of premises in which the tenant is the consumer of the electricity or gas; or

(b) the owner of the premises is undertaking the construction of the premises or the renovation of the premises which are not currently connected for electricity or gas—

the owner of the premises is to be taken to be the consumer of electricity or gas in respect of whom the prescribed activity is undertaken for the purposes of subsection (1)(a).

(3) An assignment for the purposes of subsection (1)(b) must be made—

(a) by—

(i) written notice; or

(ii) by notice in a manner that is prescribed, in the case of a prescribed activity that is prescribed for the purposes of this subparagraph; and

(b) in the manner and form specified in the ESC guidelines.

(4) If a consumer makes an assignment in accordance with subsection (3), the consumer ceases to be entitled to create the certificate or certificates in respect of the prescribed activity to which the assignment relates.

(5) In this section, *owner* has the same meaning as in the **Subdivision Act 1988**.

17 When can a certificate be created?

(1) A certificate can only be created if the prescribed activity has been undertaken on or after the commencement of the VEET scheme and before 1 January 2030.

(2) For the purposes of subsection (1), the regulations may specify when a prescribed activity is to be taken to have been undertaken.

S. 16(3)(a)
substituted by
No. 59/2010
s. 52.

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- (3) A certificate must be created not later than 6 months after the end of the year in which the prescribed activity has been undertaken.
 - (4) Regulations made under section 75 may prescribe conditions or circumstances under which a certificate cannot be created.

18 How many certificates may be created in respect of a prescribed activity

- (1) An accredited person may create a certificate for each whole tonne of carbon dioxide equivalent of greenhouse gases to be reduced by the prescribed activity.
- (1A) If an amount of carbon dioxide equivalent of greenhouse gases to be reduced by the prescribed activity is less than 1 whole tonne but greater than or equal to 0.5 tonne, the accredited person may create 1 certificate in respect of the carbon dioxide equivalent of greenhouse gases to be reduced by the prescribed activity.
- (2) Regulations made under section 75 may provide for the method and variables to be used to calculate the carbon dioxide equivalent of greenhouse gases to be reduced by the prescribed activity for the purposes of this section.

S. 18(1A)
inserted by
No. 55/2010
s. 84.

19 Declaration of discount factors

- (1) This section applies if the Minister proposes to make a declaration specifying the discount factors which are to be used to calculate the carbon dioxide equivalent of greenhouse gas emissions to be reduced by a prescribed activity or a class of prescribed activities for the purposes of section 18(1).

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- (2) Without limiting the generality of subsection (1), the discount factors are to take into account any uncertainty associated with the reduction of greenhouse gas emissions that would eventuate from a specified prescribed activity or specified class of prescribed activities but for the existence of the VEET scheme.
 - (3) The Minister must publish in the Government Gazette a notice of intention to declare a discount factor specifying—
 - (a) the proposed discount factor;
 - (b) the prescribed activity or class of prescribed activities in respect of which the discount factor is proposed;
 - (c) the reasons for the proposed discount factor;
 - (d) the procedures for the making and consideration of submissions.
 - (4) If after complying with subsection (3), the Minister determines to make the declaration, the Minister may make the declaration by notice published in the Government Gazette.
 - (5) A notice under subsection (4) must—
 - (a) contain a copy of the declaration; and
 - (b) specify the date from which the declaration is to take effect.

20 Offences relating to creation of certificates

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

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

240 penalty units in the case of a body corporate.

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- (2) In determining whether a person was or was not entitled to create a certificate under this Act, the fact that the certificate has been registered by the ESC under section 22 is to be disregarded.

Note

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

- (3) An accredited person must not create a certificate in respect of a prescribed activity which occurred before the person applied for accreditation under section 9.

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

- (4) An accredited person must not create a certificate during any period in which accreditation under section 9 is suspended in accordance with section 14.

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

- (5) An accredited person must not create a certificate in respect of a prescribed activity, if the accredited person—

- (a) has previously created a valid certificate under this Act in respect of that prescribed activity; or

- (b) has knowledge that another person has previously created a valid certificate under this Act in respect of that prescribed activity.

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

240 penalty units in the case of a body corporate.

- (6) An accredited person must not create a certificate in respect of a prescribed activity if the accredited person or another person has previously obtained any benefit in respect of that prescribed activity under a prescribed greenhouse gas scheme.

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

240 penalty units in the case of a body corporate.

Division 4—Form, registration, expiry and transfer of certificates

21 Form and content of certificates

- (1) A certificate must be created in an electronic form specified in the ESC guidelines.
- (2) A certificate must contain—
- (a) a unique identification code;
 - (b) the name of the consumer of electricity or gas;
 - (c) the date on which the prescribed activity occurred;
 - (d) details of the prescribed activity;
 - (e) the date on which the certificate was created.

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

22 Certificates must be registered

- (1) A certificate is not valid until it has been registered by the ESC.
- (2) If the ESC is notified that a certificate has been created, the ESC must decide whether the certificate is eligible for registration.
- (3) A certificate is not eligible for registration unless the ESC has been paid any relevant fee fixed under section 73 for the registration of the certificate.
- (4) If the ESC decides that a certificate is eligible for registration, the ESC must create an entry for the certificate in the register of energy efficiency certificates and record the person who created the certificate as the owner of the certificate.
- (5) If the ESC decides that a certificate is not eligible for registration, or has been improperly created, the ESC must—
 - (a) not register the certificate; and
 - (b) notify the person who created the certificate.

23 Expiry of certificate

- (1) A certificate expires—
 - (a) on the day which is the sixth anniversary of the day on which the prescribed activity was undertaken; or

- (b) if it is surrendered to the ESC before the certificate expires under paragraph (a), on the day on which it is surrendered.
- (2) If a certificate expires, the ESC must alter the entry relating to the certificate in the register of certificates to show that the certificate has expired and is no longer valid.

24 Certificates may be transferred

- (1) A certificate registered under section 22 may be transferred to any person.
- (2) The ESC must be notified of the transfer of a certificate.
- (3) The notification must be by electronic transmission in the manner specified in the ESC guidelines.
- (4) The notification must be accompanied by any relevant fee fixed under section 73.
- (5) If the ESC is notified in accordance with this section, the ESC must alter the register of certificates to show the transferee as the owner of the certificate.

Division 5—Retirement of certificates

25 Owner may surrender certificate voluntarily

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

Note

Certificates may also be surrendered under section 33, 38, 39 or 40.

- (2) The owner of a certificate, must at the same time, give the ESC, reasons in writing, why the certificate is being surrendered.

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- (3) A certificate surrendered under this section must not be included in an energy acquisition statement.

26 Retirement of certificates

- (1) If a certificate is surrendered under section 25 or 33 or in accordance with section 38, 39 or 40, the certificate ceases to be valid.
- (2) If a certificate ceases to be valid, the ESC must alter the entry relating to the certificate in the register of energy efficiency certificates to show that the certificate is no longer valid.
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**PART 4—ENERGY EFFICIENCY CERTIFICATE
SHORTFALL AND VEET SCHEME TARGET**

27 Energy efficiency certificate shortfall

- (1) A relevant entity must not have an energy efficiency certificate shortfall for a year in which the relevant entity makes a scheme acquisition.
- (2) Subsection (1) does not apply in the year commencing 1 January 2030 or any year after that year.

28 Civil penalty for shortfall

- (1) A relevant entity which has an energy efficiency certificate shortfall for a year is liable to pay to the Consolidated Fund, as a pecuniary penalty, an energy efficiency shortfall penalty determined in accordance with this section.
- (2) The energy efficiency shortfall penalty payable by a relevant entity for a year is determined by multiplying the relevant entity's energy efficiency certificate shortfall (in tonnes of carbon dioxide equivalent of greenhouse gas emissions) for that year by the prescribed shortfall penalty rate.

29 Calculation of energy efficiency certificate shortfall

- (1) The energy efficiency certificate shortfall of a relevant entity for a year is to be calculated in accordance with the formula—

$$A - (B + C)$$

where—

"A" is the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions that the relevant entity is liable for under section 31 in that year;

"B" is the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions attributable to certificates surrendered under section 33 by the relevant entity in that year;

"C" is the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions which are a carried forward surplus for the previous year.

- (2) If the result of the calculation under subsection (1)—
- (a) is greater than zero, the relevant entity has an energy efficiency certificate shortfall for the year equal to the result;
 - (b) is zero or less than zero, the relevant entity does not have a energy efficiency certificate shortfall for the year;
 - (c) is less than zero, the relevant entity has a carried forward surplus for the year.

30 VEET scheme target

The VEET scheme target is—

- (a) in each of the first 3 years commencing 1 January 2009, 2.7 million tonnes of carbon dioxide equivalent; and
- (b) in each year of each 3 year period in the period commencing 1 January 2012 and ending 31 December 2029, the target prescribed for each year of each 3 year period by regulations made not later than 31 May in the year preceding each 3 year period.

31 Greenhouse gas emissions liability for relevant entity

- (1) For the purposes of section 29, the total amount in tonnes of carbon dioxide equivalent of greenhouse gas emissions that a relevant entity is liable for in respect of electricity in a year is to be calculated in accordance with the formula—

$$E \times RE$$

where—

"E" is the amount of electricity (in MWh) acquired by the relevant entity under scheme acquisitions in that year;

"RE" is the greenhouse gas reduction rate for electricity fixed under section 32 for that year.

- (2) For the purposes of section 29, the total amount in tonnes of carbon dioxide equivalent of greenhouse gas emissions that a relevant entity is liable for in respect of gas in a year is to be calculated in accordance with the formula—

$$G \times RG$$

where—

"G" is the amount of gas (in GJ) acquired by the relevant entity under scheme acquisitions in that year;

"RG" is the greenhouse gas reduction rate for gas fixed under section 32 for that year.

- (3) The amount calculated under subsection (1) or (2) is to be rounded up to the nearest tonne of carbon dioxide equivalent of greenhouse gas emissions.

32 Greenhouse gas reduction rates

- (1) The Governor in Council, by Order published in the Government Gazette, may fix greenhouse gas reduction rates for electricity and for gas in respect of a year.
- (2) An Order under subsection (1) fixing the greenhouse gas reduction rate for electricity and for gas for 2009 must be made on or before 31 May 2009 and for each subsequent year must be made on or before 31 May in that subsequent year.
- (3) If a greenhouse gas reduction rate for electricity or for gas for any year is not fixed by Order, the greenhouse gas reduction rate for electricity or for gas for that year is the greenhouse gas reduction rate for electricity or for gas for the previous year.

32A Effect of specified Order made under section 32

- (1) The specified Order has, and is taken always to have had, the same force and effect as it would have had if—
 - (a) for "0.13501" in the Order there were substituted "0.15508"; and
 - (b) for "0.00803" in the Order there were substituted "0.00923".
- (2) In this section—

specified Order means the Order made under section 32 on 25 May 2010 and published in the Government Gazette on 27 May 2010.

S. 32A
inserted by
No. 55/2010
s. 85.

**PART 5—STATEMENTS AND SURRENDER OF
CERTIFICATES**

33 Annual energy acquisition statements

- (1) A relevant entity which makes a scheme acquisition during a year must lodge an energy acquisition statement for the year on or before—
 - (a) 30 April in the following year; or
 - (b) any later day allowed by the ESC.
 - (2) An energy acquisition statement must set out—
 - (a) the name and postal address of the relevant entity;
 - (b) the amount of electricity and gas acquired under scheme acquisitions during the year;
 - (c) the value, in tonnes of carbon dioxide equivalent of greenhouse gas emissions, of certificates being surrendered for that year under this section;
 - (d) any carried forward surplus for the previous year;
 - (e) any carried forward surplus for the current year;
 - (f) any other information specified in the ESC guidelines.
 - (3) An energy acquisition statement must—
 - (a) be made in a form and manner specified in the ESC guidelines;
 - (b) be accompanied by any relevant fee fixed under section 73 in respect of the lodging of an energy acquisition statement;
 - (c) be signed by or on behalf of the relevant entity making the statement.
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- (4) An energy acquisition statement must be accompanied by details of all certificates being surrendered for that year under this section.
 - (5) A certificate cannot be specified in the energy acquisition statement unless the relevant entity is recorded in the register of energy efficiency certificates as the owner of the certificate at the time that the statement is lodged.
 - (6) An energy acquisition statement must also be audited by an independent third party engaged by the relevant entity before it is lodged under this section.

34 Restrictions on certificates that can be surrendered

A certificate cannot be surrendered under section 33 unless—

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

35 Fees for surrender of certificates

- (1) The ESC must, by notice in writing given to the relevant entity, advise the relevant entity—
 - (a) of the number of certificates specified under section 33(4) that can be surrendered for that year; and
 - (b) of any relevant fee fixed under section 73 that is payable by the relevant entity in respect of the surrender of those certificates.

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- (2) The relevant entity must pay the fee within the period of 20 business days beginning on the day the relevant entity receives the notice under subsection (1).
 - (3) If the fee is unpaid at the end of that period, the fee is a debt due to the Crown and is recoverable by the ESC in any court of competent jurisdiction.
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PART 6—ENFORCEMENT

36 Shortfall statement

- (1) If the ESC considers that a relevant entity is in breach of an obligation under section 27 in respect of a year, the ESC may issue a shortfall statement to the relevant entity.
- (2) The shortfall statement must set out—
 - (a) the name and postal address of the relevant entity;
 - (b) the relevant entity's energy efficiency certificate shortfall for the year;
 - (c) the energy efficiency shortfall penalty that the relevant entity is liable to pay under section 28;
 - (d) the manner in which that penalty is to be paid;
 - (e) the time within which that penalty is to be paid;
 - (f) any other information which may be required by the ESC.
- (3) The shortfall statement must include a statement advising the relevant entity that if the energy efficiency shortfall penalty is not paid in accordance with the shortfall notice, the ESC may apply to a court for an order requiring the penalty to be paid.

37 Application for declaration and order for payment of shortfall penalty

- (1) If an energy efficiency shortfall penalty is not paid in accordance with a shortfall notice, the ESC may apply to a court for—
 - (a) a declaration that the relevant entity has contravened section 27; and
 - (b) an order requiring the relevant entity to pay the energy efficiency shortfall penalty.
- (2) If the court is satisfied that the relevant entity has contravened section 27, the court may—
 - (a) make the declaration sought; and
 - (b) order the relevant entity to pay to the ESC for payment into the Consolidated Fund the amount of the energy efficiency shortfall penalty that the relevant entity is liable to pay under section 28.
- (3) An order made under this section is taken, for the purposes of enforcement, to be an order made by the court in a civil proceeding.

38 Certificate surrender notice

- (1) If the ESC considers that an accredited person is in breach of an undertaking given under section 10(2), the ESC may issue a certificate surrender notice to that person.
- (2) A person must comply with a certificate surrender notice issued to the person under this section.

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

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- (3) The ESC must not issue a certificate surrender notice under this section unless the ESC has suspended the accreditation of the accredited person under section 14(3)(b).
 - (4) A surrender certificate notice must specify—
 - (a) the name and postal address of the accredited person;
 - (b) the number of certificates that must be surrendered to the ESC;
 - (c) the time within which the certificates specified must be surrendered.
 - (5) The number of certificates that must be surrendered must be equivalent to the number of certificates created and registered under this Act in breach of the undertaking.
 - (6) The certificate surrender notice must include a statement advising the accredited person that if the number of certificates specified in the certificate surrender notice to be surrendered is not surrendered in accordance with the certificate surrender notice, the ESC may apply to a court for an order under section 39.
 - (7) A certificate surrendered in accordance with a certificate surrender notice is not to be counted toward a person's compliance with section 27.
 - (8) To avoid doubt, it is not an excuse for a failure to comply with a certificate surrender notice that the person to whom the certificate surrender notice is issued is not, at the time the certificate surrender notice is issued, the registered owner of a sufficient number of certificates to comply with the certificate surrender notice.
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**39 Application for declaration and order requiring
surrender of certificates**

- (1) If certificates are not surrendered in accordance with a certificate surrender notice, the ESC may apply to a court for—
 - (a) a declaration that an accredited person has breached an undertaking given by that person under section 10(2); and
 - (b) an order requiring the accredited person to surrender to the ESC the number of certificates specified in the order.
 - (2) If the court is satisfied that the accredited person has breached the undertaking given by the person under section 10(2), the court may—
 - (a) make the declaration sought; and
 - (b) order the accredited person to surrender to the ESC the number of certificates specified in the order within the time specified in the order.
 - (3) If the court is not satisfied that the accredited person has breached the undertaking given by the person under section 10(2), the court may order the ESC to revoke the suspension of the accreditation of the accredited person under section 14(3)(b).
 - (4) A certificate surrendered in accordance with an order made under this section is not to be counted toward a person's compliance with section 27.
 - (5) To avoid doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order is not, at the time the order is made, the registered owner of a sufficient number of certificates to comply with the order.
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40 ESC may require surrender of certificates if certificates improperly created

- (1) The ESC may by order in writing require a person to surrender to the ESC, within a period specified in the order, the number of certificates specified in the order.
- (2) A person must comply with an order under this section.
Penalty: 600 penalty units and an additional 1 penalty unit for each certificate that the person fails to surrender in accordance with the order.
- (3) An order can only be made against a person under this section if the person is found guilty of an offence against section 20(1), 20(3), 20(4), 20(5) or 20(6).
- (4) If an order is made against a person found guilty of an offence under section 20(1), 20(3), 20(4), 20(5) or 20(6), the ESC must require the person to surrender the number of certificates that is equivalent to the number of certificates that were created by the person in contravention of section 20(1), 20(3), 20(4), 20(5) or 20(6) and registered under this Act.
- (5) A certificate surrendered under this section is not to be counted toward a person's compliance with section 27.
- (6) To avoid doubt, it is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order is not, at the time the order is made, the registered owner of a sufficient number of certificates to comply with the order.

PART 7—POWERS OF AUTHORISED OFFICERS

Division 1—Appointment of authorised officers

41 Appointment of authorised officers

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

42 Identity cards

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

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

Penalty: 10 penalty units.

Division 2—Powers of authorised officer

43 When may powers be exercised?

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

44 Entry to premises

- (1) An authorised officer may at any reasonable time of the day—
 - (a) without force, enter any premises; and
 - (b) exercise the monitoring powers set out in section 48.

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- (2) An authorised officer is not authorised to enter premises under subsection (1) unless—
- (a) the occupier of the premises, whether business or residential, has consented to the entry and the authorised officer has complied with section 46; or
 - (b) the entry is made under a monitoring warrant.
- (3) If the authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

45 Information to be provided to occupier on entry

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

Note

The authorised officer must also produce his or her identity card for inspection: see section 42(4).

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

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

46 Entry with consent

- (1) If an occupier consents to an entry under section 44, the authorised officer must before entering the premises ask the occupier to sign an acknowledgement stating—
 - (a) that the occupier has been informed of the purpose of the entry; and
 - (b) that the occupier has been informed that he or she may refuse to consent to the entry; and
 - (c) that the occupier has consented to the entry; and
 - (d) the date and time that the occupier consented.
- (2) An occupier who signs an acknowledgement must be given a copy of the signed acknowledgement before the authorised officer leaves the premises.
- (3) If, in any proceeding, an acknowledgement is not produced to the court or tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry.
- (4) An entry of an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

47 Entry with monitoring warrant

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

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

48 Monitoring powers of authorised officers

- (1) For the purposes of this Part, the following are the monitoring powers that an authorised officer may exercise in relation to premises under section 44—
 - (a) the power to search the premises for any thing on the premises that may relate to—
 - (i) the creation or transfer of certificates; or
 - (ii) scheme acquisitions;
 - (b) the power to examine any activity conducted on the premises that may relate to information provided for the purposes of this Act;
 - (c) the power to examine any thing on the premises that may relate to information provided for the purposes of this Act;
 - (d) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;
 - (e) the power to inspect any document on the premises that may relate to information provided for the purposes of this Act;
 - (f) the power to take extracts from, or make copies of, that document;

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- (g) the power to take onto the premises any equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
 - (h) the power to secure a thing that—
 - (i) is found during the exercise of monitoring powers on the premises; and
 - (ii) an authorised officer believes on reasonable grounds affords evidence of the commission of an offence against this Act; and
 - (iii) the authorised officer believes on reasonable grounds would be lost, destroyed or tampered with before a warrant can be obtained—

until a warrant is obtained to seize the thing;

- (i) the powers in subsections (2) and (3).
- (2) For the purposes of this Part, **monitoring powers** include the power to operate equipment at premises to see whether—
- (a) the equipment; or
 - (b) a disk, tape or other storage device that—
 - (i) is at the premises; and
 - (ii) can be used with the equipment or is associated with it—

contains information that is relevant to substantiating information provided under this Act.

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- (3) For the purposes of this Part, *monitoring powers* include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection—
- (a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;
 - (b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that—
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
 - (c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in the exercise of the power under paragraph (b).

49 Authorised officer may ask for information

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

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

50 Authorised officer may require information

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

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

51 Failure to produce documents or answer questions

A person must not, without reasonable excuse, fail to answer a question or produce a document required under section 50.

Penalty: 60 penalty units.

52 Protection against self-incrimination

- (1) It is a reasonable excuse for an individual to refuse or fail to answer a question or produce a document under section 50 if the answering of the question or the production of the document would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for an individual to refuse or fail to produce a document that the person is required to keep by this Act, if the production of the document would tend to incriminate the person.

Division 3—Occupiers' rights and responsibilities

53 Occupier may be present during execution of warrant

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

54 Occupier to provide authorised officer with assistance

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

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

Division 4—Monitoring warrants

55 Monitoring warrants

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

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- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of substantiating information provided under this Act or determining whether this Act has been complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given the magistrate, either orally or by affidavit, any further information as the magistrate requires concerning the grounds on which the issue of the warrant is sought.
- (4) The warrant must—
- (a) authorise one or more authorised officers (whether or not named in the warrant), with any assistance and any force as is necessary and reasonable—
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 48 in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.
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- (5) A warrant issued under this section must be issued in accordance with the **Magistrates' Court Act 1989** as if it were a search warrant issued under that Act and must be in a form set out in the regulations under that Act.
- (6) Section 78(1)(b)(iii) of the **Magistrates' Court Act 1989** does not apply to a warrant issued under this section.
- (7) Subject to any provisions to the contrary in this Part, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
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PART 8—GENERAL

Division 1—Review of decisions

56 Review of decisions

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

Table of reviewable decisions

<i>Item</i>	<i>For a decision...</i>	<i>made under...</i>	<i>the affected person is...</i>
1	to refuse an application for accreditation	section 11	the applicant
2	to suspend a person's accreditation	section 14	the accredited person
3	not to register a certificate	section 22	the person who created the certificate

- (3) The request must be—
 - (a) in writing setting out the reasons for the request;
 - (b) accompanied by any relevant fee fixed under section 73;
 - (c) given to the ESC within 30 business days after the making of the decision.
- (4) The ESC must reconsider the decision and confirm, vary or set aside the decision.

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- (5) The ESC is deemed to have confirmed the decision under subsection (4) if the ESC does not give notice in writing of the ESC's decision under that subsection within 40 business days after the request is given to the ESC.
 - (6) Only one request can be made in respect of each reviewable decision.

Division 2—Registers

57 Registers to be maintained

- (1) The ESC must maintain—
 - (a) the register of accredited persons;
 - (b) the register of energy efficiency certificates.
- (2) A register must be maintained by electronic means.
- (3) A register must be made available for inspection on the ESC's Internet site.
- (4) Any addition to a register must be made available on the ESC's Internet site within 20 business days after the ESC registers the accreditation of the person or the creation of the certificate.

58 Register of accredited persons

- (1) The register of accredited persons must contain—
 - (a) the name of each accredited person;
 - (b) the registration number for each accredited person;
 - (c) any other information specified in the ESC guidelines for the purposes of facilitating the transfer of certificates in the VEET scheme.

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- (2) The register must also contain the following information about any person whose accreditation is suspended—
- (a) the name of the person;
 - (b) the person's registration number;
 - (c) the period for which registration is suspended;
 - (d) any other information specified in the ESC guidelines for the purposes of this subsection.

59 Register of energy efficiency certificates

The register of energy efficiency certificates must contain—

- (a) the unique identification code of each valid certificate;
- (b) the year in which the certificate was created;
- (c) the name of the accredited person who created the certificate;
- (d) the name of the current registered owner, and each previous registered owner, of each certificate;
- (e) any other information specified in the ESC guidelines for the purposes of this section.

Division 3—Information provisions

60 ESC may obtain information and documents

- (1) This section applies to a person if the ESC has reason to believe that the person has information or a document that is relevant to the operation of this Act.

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- (2) The ESC may, by written notice given to the person, require the person—
- (a) to give to the ESC, within the period (not being less than 10 business days) and in the manner and form specified in the notice, that information; or
 - (b) to produce to the ESC, within the period and in the manner specified in the notice, that document; or
 - (c) if the person is an individual, to appear before the ESC at a time and place specified in the notice to give any information, either orally or in writing, and produce that document; or
 - (d) if the person is a body corporate, to cause a competent officer of the body corporate to appear before the ESC at a time and place specified in the notice to give that information, either orally or in writing, and produce that document.
- (3) A notice under subsection (2) must set out the effect of sections 61 and 62.

61 Failure to comply with notice

A person must not, without reasonable excuse, fail to comply with a notice given to the person under section 60.

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

62 Protection against self-incrimination

It is a reasonable excuse for an individual to refuse or fail to give information or evidence or produce a document under section 60 if the giving of the information or evidence or the production of the document would tend to incriminate the person.

63 Copies of documents

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

64 ESC may retain documents

- (1) The ESC may take, and retain for as long as necessary, possession of a document produced under this Division.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ESC to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the ESC must, at the times and places that the ESC considers appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

65 Disclosure of information an offence

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

Penalty: 60 penalty units.

- (2) A person must not use any information referred to in subsection (1) to obtain directly or indirectly any pecuniary or other advantage for himself or herself or any other person.

Penalty: 120 penalty units.

- (3) However, the person may disclose or use information referred to in subsection (1) if—
- (a) the disclosure or use is made in the exercise of a power or the performance of a function under, or in connection with, this Act; or
 - (b) the person has the consent of the person who supplied the information; or
 - (c) the disclosure or use is made in legal proceedings at the direction of a court; or
 - (d) the information is in the public domain at the time it is disclosed or used.
- (4) To avoid doubt, subsection (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.

66 Information may be disclosed to specified persons or bodies

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

- (a) the Minister; or
- (b) AEMO; or

S. 66(b)
amended by
No. 23/2009
s. 35(4)(a).

S. 66(c)
repealed by
No. 23/2009
s. 35(4)(b).

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- (d) Sustainability Victoria established under the **Sustainability Victoria Act 2005**; or
 - (e) the person responsible for administering an approved interstate energy efficiency regime; or
 - (f) the Head of the Australian Greenhouse Office (within the meaning of the Renewable Energy (Electricity) Act 2000 of the Commonwealth) or an officer of the Australian Greenhouse Office authorised by the Head of the Australian Greenhouse Office for the purposes of this Part; or
 - (g) an officer of that part of the Agriculture Department of the Commonwealth Government known as the Australian Bureau of Agriculture and Resource Economics (**ABARE**) for the purposes of the performance of any of ABARE's functions or the exercise of any of ABARE's powers.

67 ESC must publish certain information

- (1) The ESC must publish—
 - (a) a list of each relevant entity that has an energy efficiency certificate shortfall for a particular year;
 - (b) the amount of each relevant entity's energy efficiency certificate shortfall for that year;
 - (c) the total of the energy efficiency certificate shortfalls for that year;
 - (d) the number of certificates created in a particular year;
 - (e) the number of certificates surrendered in a particular year.
- (2) Nothing in this Division prevents the publication of the information referred to in subsection (1).

Division 4—General offences

68 False or misleading information

A person must not—

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

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

69 Failure to provide documents

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

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

70 Offences by bodies corporate

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

Division 5—Evidence and records

71 Evidence

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

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

72 Records to be kept by accredited persons and relevant entities

- (1) A person who is an accredited person or a relevant entity must keep records that record and explain all transactions and other acts engaged in, or required to be engaged in, by the accredited person or relevant entity under this Act.
- (2) The records kept by an accredited person must include any documents relevant to ascertaining—
- (a) details of all certificates created by the accredited person during the year; and
 - (b) any other matter specified in the ESC guidelines.
- (3) The records kept by a relevant entity must include any documents relevant to ascertaining—
- (a) the amount of electricity and gas acquired by the relevant entity under scheme acquisitions during a year; and
 - (b) any other matter specified in the ESC guidelines.
- (4) The records must be kept—
- (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
 - (b) so that the relevant entity's liability under this Act can be readily ascertained.

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- (5) An accredited person or a relevant entity who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 6 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later.
- (6) Nothing in this section requires an accredited person or a relevant entity to retain records if—
- (a) the ESC has notified the accredited person or relevant entity that the retention of the records is not required; or
 - (b) the accredited person or relevant entity is a company that has gone into liquidation and been finally dissolved.
- (7) An accredited person or a relevant entity who contravenes this section is guilty of an offence and liable to a penalty not exceeding 60 penalty units, in the case of an individual, or 240 penalty units, in the case of a body corporate.

Division 6—Fees

73 Fees

- (1) The Minister, after consultation with the Minister administering the **Essential Services Commission Act 2001**, may fix fees for the purposes of this Act.
- (2) The fees may include—
- (a) fees for an application for accreditation;
 - (b) fees for the creation of a certificate;
 - (c) fees for the transfer of a certificate;
 - (d) fees for the lodging of an energy acquisition statement;

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- (e) fees for the surrender of a certificate;
 - (f) fees for a request for review of a reviewable decision.
- (3) In fixing fees, the Minister may have regard to the total amount of the costs and expenses of the ESC that are incurred or are likely to be incurred in the exercise of its powers, or in connection with the performance of its functions, under this Act.
- (4) The power conferred by this section providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees according to the value of goods or services provided for the fees;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (5) If under subsection (4)(f) provision is made for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions; or
 - (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or
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- (e) in respect of any combination of matters, transactions, documents, events or persons—
and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
- (6) A fee that may be fixed under this section is not limited to an amount that is related to the cost of providing a service.
- (7) The fees must be published—
- (a) by notice in the Government Gazette; and
 - (b) on the Internet site of the ESC.
- (8) Fees take effect on the day that the notice is published in the Government Gazette or on a later date as is specified in the notice.

Division 7—ESC guidelines

74 ESC guidelines

- (1) The ESC may prepare and issue guidelines for or with respect to any matter required or permitted by this Act to be provided for by the ESC guidelines.
- (2) Without limiting subsection (1), ESC guidelines may include matters in relation to—
- (a) the accreditation of a person;
 - (b) the creation, form and transfer of a certificate;
 - (c) the manner in which a prescribed activity is to be undertaken;
 - (d) the form of, and the information to be included in, an energy acquisition statement;
 - (e) the auditing by the ESC of the creation of certificates by an accredited person;

- (f) the auditing of an energy acquisition statement by a third party engaged by a relevant entity;
 - (g) the records to be kept by an accredited person or a relevant entity;
 - (h) the information to be contained in the register of accredited persons and the register of energy efficiency certificates;
 - (i) any other matter that the ESC considers is relevant to the performance of its functions under this Act.
- (3) The ESC guidelines must be published in the Government Gazette and on the Internet site of the ESC.
- (4) ESC guidelines take effect on the day that they are published in the Government Gazette or on a later date as is specified in the ESC guidelines.

Division 8—Regulations

75 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing any other gas to be a greenhouse gas;
 - (b) prescribing a scheme or other arrangement to be a prescribed greenhouse scheme;
 - (c) specifying a person or body other than AEMO from which a scheme acquisition may be made;
 - (d) prescribing an activity as a prescribed activity in respect of which a certificate may be created;

S. 75(1)(c)
amended by
No. 23/2009
s. 35(5).

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- (e) prescribing conditions or circumstances under which a certificate cannot be created;
 - (f) prescribing an efficiency rating which is a high efficiency rating in respect of a kind or class of appliance or equipment;
 - (g) specifying when a prescribed activity is to be taken to have been undertaken;
 - (h) prescribing the manner and form in which an assignment of the right to create a certificate may be made;
 - (i) the method and variables to calculate the carbon dioxide equivalent of greenhouse gases to be reduced by the prescribed activity;
 - (j) exemptions from any of the requirements applying in respect of the creation of certificates;
 - (k) prescribing the shortfall penalty rate and providing for the indexation of the rate in accordance with the all groups consumer price index for Melbourne published by the Australian Statistician;
 - (l) specifying targets for the purposes of section 30(b);
 - (m) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- (2) Regulations made under this Act—
- (a) may be of general or of specially limited application;
 - (b) may differ according to differences in time, place or circumstance;
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- (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, municipal council or public authority or any officer thereof;
- (d) may confer powers or impose duties in connection with the regulations on any government department, municipal council or public authority;
- (e) may apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time;
- (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made;
- (g) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.

S. 75(2A)
inserted by
No. 59/2010
s. 53.

- (2A) Regulations made under this Act may, for the purposes of section 16(3)(a)(ii), prescribe, as a manner, a manner that is done before the commencement of section 52 of the **Mineral Resources Amendment (Sustainable Development) Act 2010**.
- (3) The regulations are subject to disallowance by a House of the Parliament.

Division 9—Review of Act

76 Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act, including consideration of—
 - (a) the extent to which the objects of this Act have been achieved;
 - (b) the VEET scheme target applying under this Act;
 - (c) technological developments in industries which supply goods or services which reduce the use of electricity and gas by consumers;
 - (d) the level of penalties provided for under this Act.
- (2) The review must be undertaken by 31 December 2011.
- (3) A person who undertakes the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament.
- (5) In this section *independent review* means a review by persons who—
 - (a) in the opinion of the Minister possess appropriate qualifications to undertake the review; and
 - (b) include one or more persons who are not employed by the State or a State authority and have not, since the commencement of this Act, provided services to the State or a State authority under or in connection with a contract.

**PART 9—AMENDMENT OF ESSENTIAL SERVICES
COMMISSION ACT 2001**

77 Functions

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

- (a) in paragraph (j) for "2006." substitute
"2006;"
- (b) after paragraph (j) insert—
 - "(k) to perform the functions conferred on
the Commission by the **Victorian
Energy Efficiency Target Act 2007**."

78 New section 10D inserted

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

**"10D Commission's functions in relation to
energy efficiency**

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

79 Repeal of this Part

This Part is **repealed** on 1 January 2010.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 November 2007

Legislative Council: 21 November 2007

The long title for the Bill for this Act was "A Bill for an Act to promote the reduction of greenhouse gas emissions by establishing the Victorian Energy Efficiency Target scheme and to amend the **Essential Services Commission Act 2001** to confer functions on the Essential Services Commission and for other purposes."

The **Victorian Energy Efficiency Target Act 2007** was assented to on 11 December 2007 and came into operation on 1 January 2009: section 2(2).

2. Table of Amendments

This Version incorporates amendments made to the **Victorian Energy Efficiency Target Act 2007** by Acts and subordinate instruments.

Energy Legislation Amendment (Australian Energy Market Operator) Act 2009, No. 23/2009

Assent Date: 17.6.09
Commencement Date: S. 35 on 1.7.09; Special Gazette (No. 222) 30.6.09 p. 1
Current State: This information relates only to the provision/s amending the **Victorian Energy Efficiency Target Act 2007**

Energy and Resources Legislation Amendment Act 2010, No. 55/2010

Assent Date: 14.9.10
Commencement Date: S. 85 on 15.9.10; s. 2(2); s. 84 on 14.10.10; Government Gazette 14.10.10 p. 2404
Current State: This information relates only to the provision/s amending the **Victorian Energy Efficiency Target Act 2007**

Mineral Resources Amendment (Sustainable Development) Act 2010, No. 59/2010

Assent Date: 14.9.10
Commencement Date: Ss 52, 53 on 14.10.10; Government Gazette 14.10.10 p. 2405
Current State: This information relates only to the provision/s amending the **Victorian Energy Efficiency Target Act 2007**

3. Explanatory Details

No entries at date of publication.