



24 May 2010

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: eca.sen@aph.gov.au

Senate inquiry into the *Renewable Energy (Electricity) Amendment Bill 2010* and two related bills

The Energy Supply Association of Australia (esaa) welcomes the opportunity to provide comment to the Senate Environment, Communications and the Arts Legislation Committee (the Committee) on the provisions of the *Renewable Energy (Electricity) Amendment Bill 2010* (the bill) and two related bills.

esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of over 40 electricity and downstream natural gas businesses. These businesses own and operate more than \$120 billion in assets, employ 52,000 people and contribute \$16 billion directly to the nation's Gross Domestic Product. esaa is a fuel and technology neutral organisation and represents the views of businesses that control investments across a wide range of fossil fuel and renewable energy technologies.

In legislating amendments to the *Renewable Energy (Electricity) Act 2000* (the Act) esaa urges senators to consider foremost the principles of safe-guarding investor confidence in the stationary energy sector and minimising the regulatory burden and regulatory uncertainty faced by liable entities under the Renewable Energy Target (RET).

esaa supports provisions in the bill that establish the Large-scale Renewable Energy Target (LRET). The Government's announcement to separate the RET into two parts appears *prima facie* to have addressed the concerns of investors in large-scale renewable energy generation projects regarding the collapse in the spot price of Renewable Energy Certificates (RECs) that occurred during the second half of 2009.

On the other hand, the resultant Small-scale Renewable Energy Scheme (SRES) has the same effect as an upfront capital subsidy for households, community groups and businesses to install small-scale renewable generators and solar water heaters, but with considerable complexity in the administration and delivery due to the Government's reluctance to take fiscal responsibility for its own policy initiatives. The outcome is another complex and burdensome set of regulations imposed on a sector already subject to an abundance of different feed-in tariff schemes, energy efficiency

schemes as well as the existing requirements of the RET. As a gauge to the added complexity associated with the SRES, it is instructive to note that the bill before the Senate today is six times longer than the bill that was considered by the Senate last year to establish the expanded RET. The complexity of the SRES in addition to the actual cost of subsidising small-scale technologies will lead to higher prices for electricity customers and has the potential to stifle competitive pressures in competitive retail markets because additional complexity, in an already over-burdened regulatory environment, is likely to act as a formidable barrier to new entrant participation.

However, given that the Government is minded to proceed with a scheme of this type, esaa remains very concerned about the prospect of uncapped liabilities and urges senators to consider proposing legislative amendments capping the SRES or, at the very least, to cap liable entities' potential exposure to the costs of subsidising small-scale technologies, by requiring the Government to underwrite the costs of any Small-scale Renewable Energy Certificates (SRECs) created over and above the cap.

esaa has previously commented on issues relating to provisions of the *Renewable Energy (Electricity) Amendment Bill 2010* in response to the discussion paper – *Enhancing the Renewable Energy Target* – released by the Department of Climate Change and Energy Efficiency on 26 March 2010. Notwithstanding the Association's broad concerns regarding the inefficiency of the SRES, the table below sets out recommendations on the design of a small-scale renewable energy certificate scheme in response to proposals outlined in the discussion paper and compares these against the content of the bill currently before Parliament.

| esaa's recommendations | Government response |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If the Government intends to continue subsidising small-scale energy technologies through the energy market, then liabilities should be capped. At the very least, the Government should cap the exposure of liable entities by underwriting the costs of subsidies over and above the cap. | Not met. While the Government has notionally allocated 4,000 megawatt hours of the original target for small-scale technologies, there will be no limits on the creation of Small-scale Technology Certificates (STCs). Liable entities will be required to purchase and acquit all STCs created. |
| The regulator should estimate the number of small-scale certificates expected to be created ahead of each compliance year. | Met. The regulator will be required to publish the Small-scale Technology Percentage (STP) before 31 March of each compliance year. In addition, the regulator will be required to publish an estimate of the STP for the two years following the compliance year. |
| If the creation of STCs in a compliance year exceeds the requirements of the STP, liable entities should not be required to purchase surplus STCs to clear the market. | Met. Higher than expected creation of STCs in a compliance year will be reflected in the determination of the STP to apply for the following year. |

| esaa's recommendations | Government response |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Trading STCs through the regulated clearing house should be optional not mandatory. | Met. Trading STCs in the clearing house will be optional. |
| Moving from an annual acquittal of certificates to quarterly acquittal should only be considered where the Government can demonstrate a clear net benefit. | Not met. Liable entities will be required to surrender STCs on a quarterly basis. However, the Government has not provided any information to suggest a cost-benefit analysis has been undertaken. |
| Recognition of pre-existing contractual obligations should cover all contracts regardless of whether the activity relates to small-scale technologies or large-scale generation. | Met. Regulations to be developed in consultation with affected parties will recognise pre-existing contractual obligations for the transfer of Renewable Energy Certificates created from small-scale technologies. |

The remainder of this submission details each of esaa's recommendations in turn.

*If the Government intends to continue subsidising small-scale energy technologies through the energy market, then liabilities should be capped. At the very least, the Government should cap the exposure of liable entities by underwriting the costs of subsidies over and above the cap. **Not met.** While the Government has notionally allocated 4,000 megawatt hours of the original target for small-scale technologies, there will be no limits on the creation of STCs. Liable entities will be required to purchase and acquit all STCs created.*

The first best policy response if the Australian government wants to provide capital subsidies for the installation of small scale renewable generation remains a direct capital payment funded on-budget as it avoids market distortions and is efficient in its operation. Given the reluctance by the Government to move small-scale technology subsidies on-budget, esaa urges senators to ameliorate the most negative aspect of the SRES by capping liable entities' potential exposure to the costs of subsidising small-scale technologies. This could be done either by capping subsidies paid under the scheme or by the Government assuming the risk of over-subscription by underwriting the cost of subsidies over and above the cap.

As the Government has experienced under previous programs, such as the *Solar Homes and Communities Program* and the *Remote Renewable Power Generation Program* that have been amended or prematurely closed due to over-subscription, accurately estimating the uptake of small-scale technologies is notoriously difficult. The Government has stated that on conservative assumptions it considers about 4,000,000 megawatt hours of the 2020 target will be taken up by small-scale technologies, although it anticipates uptake is likely to be greater than its conservative estimations. It is not clear what the anticipated upside risk is because the Government's modelling has not been disclosed.

*The regulator should estimate the number of small-scale certificates expected to be created ahead of each compliance year. **Met.** The regulator will be required to publish the STP before 31 March of each compliance year. In addition, the regulator will be required to publish an estimate of the STP for the two years following the compliance year.*

esaa supports the inclusion of provisions included at section 40B of the bill that require the regulator to publish an estimate of the STP two years following the compliance year. While acknowledging that these estimates will not constrain the ability of the Minister to consider updated estimates to establish the STP for future years, the Association considers that the publication of these estimates will assist liable entities to better manage liabilities.

*If the creation of STCs in a compliance year exceeds the requirements of the STP, liable entities should not be required to purchase surplus STCs to clear the market. **Met.** Higher than expected creation of STCs in a compliance year will be reflected in the determination of the STP to apply the following year.*

esaa notes at section 38AE of the bill that the STP will be used as the basis for calculating the small-scale technology shortfall for the purposes of determining whether a small-scale technology shortfall charge is payable. Therefore, liable entities will not be required to purchase surplus STCs in the event that certificate creation in a compliance year exceeds the requirements of the STP. The Association further notes at section 40A of the bill that higher than expected creation of STCs in a compliance year will be reflected in the determination of the STP to apply the following year.

*Trading STCs through the regulated clearing house should be optional, not mandatory. **Met.** Trading STCs in the clearing house will be optional.*

esaa supports the Government's decision not to require mandatory trading of STCs through the clearing house. This will allow greater flexibility for liable entities to contract or otherwise procure certificates outside a mandatory market, with the clearing house providing a platform for balancing trades.

*Moving from an annual acquittal of certificates to quarterly acquittal should only be considered where the Government can demonstrate a clear net benefit. **Not met.** Liable entities will be required to surrender STCs on a quarterly basis. However, the Government has not provided any information to suggest a cost-benefit analysis has been undertaken.*

It is disappointing that the Government does not consider it necessary to carry out an analysis of the costs and benefits of introducing new arrangements that increase the regulatory burden on businesses, which will typically result in higher prices for consumers. It is particularly concerning from a compliance point of view that the Government has decided to front-load certificate acquittal, such that 35 per cent of STCs are required to be acquitted in the first quarter but where the Minister is required to publish the STP on 28 March – only one month before liable entities are required to surrender their first-quarter certificates. esaa considers that requiring earlier publication of the STP would improve business compliance processes.

*Recognition of pre-existing contractual obligations should cover all contracts regardless of whether the activity relates to small-scale technologies or large-scale generation. **Met.** Regulations to be developed in consultation with affected parties will recognise pre-existing contractual obligations for the transfer of Renewable Energy Certificates created from small-scale technologies.*

esaa notes at item 7 of schedule 2 that regulations may provide for certificates that are created by solar water heaters or small generation units and transferred under contracts entered into on or before 25 February 2010 to be taken to have been Large-scale Generation Certificates (LGCs). The Association further notes at item 288 of the explanatory memorandum that “regulations will be developed in consultation with affected parties to ensure they provide an appropriate transitional mechanism such that the rights of each party to the contract are not adversely impacted”.

Yours sincerely

Brad Page
Chief Executive Officer