



Renewable Energy (Electricity) Amendment Bill 2009

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Renewable Energy (Electricity) Amendment Bill 2009

Date introduced: 17 June 2009

House: House of Representatives

Portfolio: Climate Change and Water

Commencement: Sections 1 and 3 commence on the day of Royal Assent, as does Schedule 1. Other individual Parts or Items commence on various dates – notably Schedule 2 commences on the same day as section 3 of the *Carbon Pollution Reduction Scheme Act 2009*.¹

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Renewable Energy (Electricity) Amendment Bill 2009 (the Bill) amends the *Renewable Energy (Electricity) Act 2000* to give effect to the Governments' commitment to replace the existing Mandatory Renewable Energy Target (MRET) scheme with a national Renewable Energy Target (RET) scheme.

The RET scheme aims to see an annual 45 000 GWh of electricity produced in Australia from renewable energy sources by 2020, in comparison to the existing MRET scheme which has a 2010 target of 9500 GWh. The 45 000 GWh renewable power generation target is expected to ensure that 'the equivalent of at least 20 per cent of Australia's electricity supply' is generated from renewable sources by 2020, when combined with an estimated baseline renewable generation of 15 000 GWh.²

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1. This is currently a Bill before Parliament. Details of the Bill can be accessed from the Bill Homepage, viewed 23 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4127%22>
 2. Australian Labor Party, *Labor's 2020 target for a renewable energy future*, Election 2007 policy document, October 2007, p. 1, viewed 24 June 2009, http://www.alp.org.au/download/now/renewable_energy_target_policy.pdf

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Background

The Mandatory Renewable Energy Target (MRET) scheme

The policy origins of the MRET can be traced back to then Prime Minister John Howard's statement *Safeguarding the Future: Australia's Response to Climate Change*, in which he said:

Targets will be set for the inclusion of renewable energy in electricity generation by the year 2010. Electricity retailers and other large electricity buyers will be legally required to source an additional 2 per cent of their electricity from renewable or specified waste-product energy sources by 2010 (including through direct investment in alternative renewable energy sources such as solar water heaters). This will accelerate the uptake of renewable energy in grid-based power applications and provide an ongoing base for commercially competitive renewable energy. The program will also contribute to the development of internationally competitive industries which could participate effectively in the burgeoning Asian energy market.³

The MRET scheme was subsequently implemented through the *Renewable Energy (Electricity) Act 2000* (the REEA), and the associated Renewable Energy (Electricity) Regulations 2001.

The REEA requires Australian electricity retailers and other large buyers of electricity ('liable entities') to collectively source an additional 9 500 GWh per annum of electricity from renewable sources by 2010. The 9 500 GWh figure was intended to push the amount of renewable energy used in electricity generation from 10.7 per cent in 2000 to 12.7 per cent by 2010. This two per cent target increase was later changed to 9 500 GWh to provide more certainty to the market.

The key feature of the MRET scheme is what are termed 'renewable energy certificates', or RECs. The bulk of RECs are created by accredited power stations that generate power from renewable energy sources in excess of a 1997 'baseline' amount, with one REC created for every 1 MWh of renewable energy power generated in excess of the baseline. However, eligible solar water heater installations⁴ and eligible small generation unit installations⁵ may also give rise to RECs, in which case the amount of RECs depends on various factors, including the location of the installation. These RECs have a fluctuating

3. J Howard, 1997, 'Safeguarding The Future: Australia's Response to Climate Change', viewed 20 June 2009, <http://www.ecobusiness.com.au/grn/green.html>

4. More information is at <http://www.orer.gov.au/swh/index.html>

5. More information is at <http://www.orer.gov.au/sgu/index.html>

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economic value (which appears to be currently around \$49 or so per REC) and can be bought and sold.⁶

The REEA requires liable entities to surrender to the Renewable Energy Regulator (the regulatory body administering the REEA) sufficient RECs to cover their required purchases of electricity generated from renewable sources or otherwise pay a ‘shortfall charge’. The number of RECs required to avoid the shortfall charge is calculated as a percentage of electricity purchased, and this has been progressively increased over time. Currently, this percentage is 3.64 per cent. Thus a liable party purchasing 100 000 MWh of electricity in 2009 must surrender 3640 RECs to fully discharge their liability for this year.⁷ Liable entities will generally acquire the RECs by purchasing them. If liable entities do not surrender sufficient RECs, the shortfall charge is \$40 per MWh.⁸ The shortfall charge is not deductible for tax purposes.

Section 162 of the REEA required an independent review of the operation of the Act. The report of that review (commonly known as the Tambling report) was given to the Government in September 2003.⁹ The Tambling report made a number of recommendations about the operation of the MRET scheme that were subsequently implemented through, amongst other ways, the *Renewable Energy (Electricity) Amendment Act 2006*. Notably however, the Tambling report also recommended that the timeframe for the MRET scheme to be extended out from 2010 to 2020 and a target for electricity generation for renewable sources be set for 2020 at 20 000 GWh. In releasing its June 2004 Energy White Paper, the Government did not accept this recommendation. Further historical information is available in the relevant Bills Digest.¹⁰

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6. See <http://www.greenmarkets.com.au/> and <http://www.orer.gov.au/recs/#prices> for more details.
 7. See <http://www.orer.gov.au/rpp/index.html>
 8. This is due to be increased to \$65 per MWh under the Renewable Energy (Electricity) (Charge) Amendment Bill 2009. According to the Second reading speech, ‘increasing the shortfall charge to this level will allow the price of renewable energy certificates to be sufficient to drive investment in renewable energy in order to meet the government’s significantly increased renewable energy targets. The level of the shortfall penalty will be monitored to ensure it remains effective as an incentive for investment in renewable energy.’
 9. *Renewable Opportunities, A Review of the Operation of the Renewable Energy (Electricity) Act 2000*, Canberra September 2003. See <http://www.mretreview.gov.au/report/pubs/mret-review.pdf>, viewed 20 June 2009.
 10. A Martyn and M Roarty, *Renewable Energy (Electricity) Bill 2000* Bills Digest, No. 198 1999–2000, Parliamentary Library, Canberra, 2000, viewed 20 June 2009, <http://www.aph.gov.au/Library/pubs/bd/1999-2000/2000bd198.htm>

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The Renewable Energy Target (RET) Scheme

In the lead up to the 2007 election, the various political parties issued revised policies for 'clean' and / or renewable energy production. The Australian Labor Party's (ALP) policy set a 20 per cent renewable energy target by 2020, and committed to a national scheme, effectively absorbing and replacing any existing state-based renewable energy schemes. Following the ALP's election, and subsequent discussion between the Commonwealth and the States and Territory governments, the Council of Australian Governments (COAG) issued a discussion paper on the proposed RET scheme.¹¹

Following this, draft exposure legislation was released in December 2008. Based on the design of the RET scheme reflected in the exposure draft legislation, the Government commissioned a technical report on its costs and benefits.¹² During the development of the RET scheme, the Government was also developing its legislative-based scheme to address climate change, subsequently called the Carbon Pollution Reduction Scheme (CPRS). A prominent issue in the CPRS debate, and one also relevant to the RET scheme, was the impacts on what were called the 'emissions-intensive, trade-exposed (EITE) industries' such as the aluminium, cement, iron and steel industries. In relation to the RET, the affected industries are *electricity*-intensive, or 'RET-affected, trade-exposed' (RATE industries). A further COAG discussion paper on this subject was issued in late 2008.¹³

At its meeting of 30 April 2009, COAG agreed on the design of the RET scheme.¹⁴ Following introduction into Parliament of the CPRS legislation in May 2009, a further exposure draft of the RET legislation was released on 9 June 2009. That draft legislation differed from the previous draft in introducing assistance for RATE industries and amendments relating to transition of State RET schemes. The Bill the subject of this Digest is the same as the exposure draft dated 9 June 2009.

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11. COAG Working Group on Climate change and Water, *Design Options for the Expanded National Renewable Energy Target Scheme*, Canberra 2008, viewed 20 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/pubs/ret_design_options_per.pdf. Submissions on the paper made publicly available can be viewed at <http://www.climatechange.gov.au/renewabletarget/consultation/coag.html>
 12. W Gerardi, *Benefits and Costs of the Expanded Renewable Energy Target*, January 2009, viewed 20 June 2009, http://www.climatechange.gov.au/renewabletarget/publications/pubs/mma_ret_report.pdf.
 13. COAG Working Group on Climate change and Water, *Treatment of electricity-intensive, trade-exposed industries under the expanded national Renewable Energy Target scheme*, Canberra 2008, viewed 20 June 2009, <http://www.climatechange.gov.au/renewabletarget/consultation/pubs/RATEconsultationpaper.pdf>.
 14. Renewable Energy target Scheme design, viewed 20 June 2009, http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/Renewable_Energy_Target_Scheme.pdf.

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Committee consideration

The Bill has been referred to the Senate Economics Committee for inquiry and report by 12 August. Details of the inquiry are at:

http://www.aph.gov.au/Senate/committee/economics_ctte/renewable_energy_09/index.htm

Interestingly, the Senate Selection of Bills Committee was unable to agree on whether to refer the Bill for inquiry and report. It appears both the ALP and the Greens wanted to Bill to be debated in the Senate before the Winter recess – even if this meant a committee inquiry of only a few days. However, when the issue was debated on the floor of the Senate, the Coalition and Senator Xenophon supported a motion by Senator Fielding for inquiry and report by 12 August, effectively ruling out a vote before the Winter Parliamentary recess which commences on 26 June 2009.¹⁵

Position of significant interest groups

Environmental groups

Environmental groups support the expanded RET, but the great majority disagree with the assistance given to RATE industries. Many criticise the scheme target of 20 per cent of electricity to be sourced from renewable energy sources by 2020 as too low.¹⁶

Environmental groups as a rule believe that no assistance should be given to RATE industries under the expanded RET.¹⁷ The Australian Conservation Foundation (ACF) points out that the notional rationale for such assistance is to reduce the possibility of carbon leakage, or offshore relocation of such industries. However, in developing the policy, the ACF states that no assessment has been made about whether Australia's trade competitors in such industries have comparable renewable energy policies or electricity prices. It notes that in fact the EU, China, the US and many other nations do have substantial policies to support renewable energy growth, and that Australia's electricity

15. See Senate Debates 18 June 2009, pp 2-5, viewed 20 June 2009.

<http://www.aph.gov.au/hansard/senate/dailys/ds180609.pdf>

16. See for example Australian Conservation Foundation, *Submission on Exposure Draft Legislation for the Expanded National Renewable Energy Target*, viewed June 23 2009,

http://www.climatechange.gov.au/renewabletarget/consultation/sub_ret/australianconservationfoundation.pdf.

17. See submissions under the Department of Climate Change, 'Consultation – the treatment of electricity-intensive trade-exposed industries under the Renewable Energy Target', viewed 23 June 2009,

http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/submissions.html.

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prices are among the lowest in the world. Furthermore, it states that many such industries have long-term price contracts that will shield them from potential price increases.¹⁸

Some environmental groups oppose the inclusion of native forest biomass energy in the RET scheme, as they believe native forests are not managed or harvested sustainably, and they would be better exploited as a carbon sink.¹⁹

Industry groups

Industry groups express concern that the RET scheme will unnecessarily burden electricity-intensive industries and other electricity users. They generally do not support the RET scheme, saying that the proposed emissions trading scheme (the CPRS) will provide emissions mitigation at lower cost. However, if the RET scheme is to be introduced, industry groups stress the necessity of provision of assistance to RATE industries.

The Business Council of Australia, Minerals Council of Australia, Australian Industry Greenhouse Network (AIGN) and Australian Industry Group (AiG) question the need for the RET in addition to an emissions trading scheme (ETS), and state that the Treasury modelling shows that emissions savings under the RET scheme come at three times the

18. Australian Conservation Foundation, *Submission on the exposure draft legislation for the expanded national Renewable Energy Target*, 13 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/34australianconservationfoundation.pdf.

19. Climate Action Network Australia, *Submission*, 20 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/168ClimateActionNetworkAustralia.pdf; Australian Network of Environmental Defender's Offices, *Submission on the Renewable Energy Target scheme – exposure draft legislation*, 13 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/80AustralianNetworkofEnvironmentalDefender'sOffices.pdf.

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cost of the ETS.²⁰ AIGN states that this view is supported by assessments of the Productivity Commission, the Garnaut Review, the Treasury and the Wilkins Review.²¹

The Australian Industry Group (AiG) supports full exemption from the scheme for RATE industries. AiG notes that AIGN analysis of modelling of the impact of the scheme by McLennan Maganasik Associates estimates that trade-exposed mining and manufacturing industries, which consume 37 per cent of Australia's electricity, could see losses in competitiveness of \$340 million in 2010 and \$700 million in 2020, and that the costs imposed by the RET 'do not exist for many of Australia's international competitors'.²² AiG also states that the estimated cost of the scheme to the economy of \$2–3 billion over the life of the scheme have been shown by the Productivity Commission to come with no additional abatement, which questions the validity of the scheme.²³

AGL supports assistance to RATE industries, but has expressed concern that the proposed mechanism of assistance, which results in a large proportion of electricity purchases being exempt from the RET scheme, will result in undue burden on retailers servicing the remaining customers. It suggests that costs may not be adequately passed through, which could compromise the viability of electricity retailers. AGL suggested an alternative means of compensation be provided through additional allocation of permits under the CPRS, leaving the REC market to operate without distortion.²⁴

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20. Australian Industry Greenhouse Network, *Submission to COAG Working Group on Climate Change and Water*, 20 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/23AustralianIndustryGreenhouseNetwork.pdf; Business Council of Australia, *Submission on Renewable Energy Target and treatment of electricity-intensive trade-exposed industries*, February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/229businesscouncilofaustralia.pdf. See also the Productivity Commission's submission to the 2008 Garnaut Climate change review at <http://www.pc.gov.au/research/submission/garnaut>.
 21. Australian Industry Greenhouse Network, *Submission to COAG Working Group on Climate Change and Water*.
 22. Australian Industry Group, *Submission on the treatment of electricity-intensive trade-exposed industries under the expanded national Renewable Energy Target scheme*, February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/33australianindustrygroup.pdf.
 23. Australian Industry Group, *Submission on the treatment of electricity-intensive trade-exposed industries under the expanded national Renewable Energy Target scheme*.
 24. AGL, *AGL submission on the proposed expanded Renewable Energy Target*, 20 February 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/32agl.pdf

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CSR points out that state RET schemes propose provision for assistance to RATE industries, and as the national RET scheme is to subsume these schemes, these provisions should carry over.²⁵

Another criticism from both industry and environmental groups is that the design of the RET scheme will not encourage sustainable development of a diverse range renewable energy technologies, but will favour easily deployed and currently viable technologies (particularly wind).²⁶ This may result in continued need for subsidisation to support the renewable energy industry beyond the end of the scheme.²⁷ Hydro Tasmania advocates continuation of the RET scheme beyond 2030 until such time as the CPRS can be relied upon to ensure the 20 per cent share of renewable energy will be maintained.²⁸

Coalition/Greens/Family First/Independent policy position/commitments

There has been much criticism from the Coalition over the linkage of the RATE assistance in the RET scheme to the passage of the CPRS.²⁹ The Coalition had indicated their support for the expanded RET scheme until it became clear that this provision was reliant on the CPRS being passed. The Greens were also critical of the RET and CPRS bills being linked, reportedly saying that ‘the Government is playing political games in the face of climate crisis’.³⁰ However, the Greens supported a snap inquiry into the RET legislation that would allow it to be passed before the winter break, as they consider any further delay

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25. CSR Limited, Submission – treatment of electricity intensive, trade exposed industries under the expanded national Renewable Energy Target scheme, 13 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/21csr.pdf.
 26. WWF–Australia, *Submissions in relation to the draft Bill for the Renewable Energy Target scheme*, 24 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/228wwfaustralia.pdf.
 27. Australian Plantation Products and Paper Industry Council, Submission to ‘treatment of electricity–intensive trade–exposed industries under the expanded national Renewable Energy Target scheme’ discussion paper, 20 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/20australianplantationproductsandpaperindustrycouncil.pdf.
 28. Hydro Tasmania, *Submission on draft legislation for the expanded national Renewable Energy Target scheme*, 18 February 2009, viewed 23 June 2009, http://www.climatechange.gov.au/renewabletarget/consultation/sub_rate/112hydrotasmania.pdf.
 29. L Taylor and M Owen, ‘ETS ploy holds Coalition hostage’, *The Australian*, 11 June 2009, viewed 23 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F3BTT6%22>.
 30. L Taylor and M Owen.

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an unacceptable setback to dealing with climate change.³¹ On 18 June 2008, the Coalition and independent Senator Nick Xenophon gave their support to pass independent Senator Steve Fielding's motion to refer the Bill to the Senate Economics Committee for inquiry and report by 12 August 2009.

Financial implications

The Explanatory Memorandum to the Bill states:

As part of the 2008-09 Budget, the Government provided \$15.5 million over five years for the Office of the Renewable Energy Regulator to administer the expanded Renewable Energy Target. The measure included \$2.2 million over two years in capital funding to modify and expand the capacity of the renewable energy certificate online register and \$14.0 million over five years in administered revenue from the increased trade in Renewable Energy Certificates.³²

Key issues

Linking the RET Scheme with the passage of the CPRS legislation

The Bill is legally linked with the CPRS legislation in the sense that commencement of Schedule 2 of the Bill is dependent on the passage of the Carbon Reduction Pollution Scheme Bill 2009.³³ Schedule 2 is a key part of this Bill, as it provides a partial exemption from liability from paying any shortfall charge (which arises if an entity has not bought sufficient electricity from renewable sources) for 'emissions-intensive trade-exposed' activities.

Solar Credits

The Government's rebate for solar photovoltaic systems under the [Solar Homes and Communities Plan](#)³⁴ has now been phased out, with it being replaced by 'Solar Credits' under the proposed RET scheme. This is intended to operate by introducing a 'multiplier'

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31. C Milne (Australian Greens), *Renewable Energy Target legislation should be debated, not delayed*, 18 June 2009, viewed 23 June 2009, <http://christine-milne.greensmps.org.au/content/media-release/renewable-energy-target-legislation-should-be-debated-not-delayed>
 32. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2009, p. 2.
 33. On June 23 2009, the Senate adjourned the second reading debate of the CPRS legislation. At the time of writing, debate had not been resumed.
 34. See: <http://www.environment.gov.au/settlements/renewable/pv/index.html>, viewed 22 June 2009.

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on the number of RECs that will be created when a small generation unit (SGU) is installed.³⁵ The multiplier is set at 5 from 9 June 2009 to 30 June 2012, progressively phasing out to 30 June 2015. The intention is that persons installing a SGU will receive the relevant number of RECs (in practice the economic value of these), boosted by the appropriate multiplier, that reflects the generating life of the SGU. They will have the option of receiving them at installation, thus effectively receiving an upfront-payment to defray the cost of the SGU. The ‘fact sheet’ issued by the Government illustrates how this might work:

The level of subsidy will depend on a number of factors, including the price of Renewable Energy Certificates (RECs), the deeming period chosen by the applicant, the location of the solar PV system and the size of the system.

For example, a solar PV system in Sydney, Perth, Adelaide, Brisbane or Canberra will receive \$5,150 for a 1 kW system and \$7,750 for a 1.5 kW system installed in 2009, based on a \$50 REC price.

A system installed in Melbourne or Hobart will receive fewer RECs as these areas have less sunshine so less renewable energy is produced. For example, a 1 kW system installed in 2009 will receive \$4,400 and a 1.5 kW system will receive \$6,650 based on a \$50 REC price.³⁶

Main provisions

Schedule 1

One of the objects of the REEA in existing section 3 is to ‘reduce emissions of greenhouse gases’. **Item 1** amends this to ‘reduce emissions of greenhouse gases in the electricity sector’.

Currently, section 4 provides that the effective life of the MRET scheme is 2021. **Item 4** extends this to 2031.

Item 6 will amend section 23B to give effect to the Solar Credit part of the RET scheme, by enabling a higher number of RECs to be generated by these units via the application of a multiplier, but only up the first 1.5kW rated power output. From 9 June to 30 June 2012, the multiplier is 5. The multiplier progressively decreases in future years out to 2014–

35. SGUs are defined in the Renewable Energy (Electricity) Regulations 2001, but broadly speaking include small devices generating electricity where the electricity is generated by hydro, wind and photovoltaic (solar) energy.

36. *Supporting Small generation Units under the RET scheme*, viewed 20 June 2009, http://www.climatechange.gov.au/renewabletarget/publications/pubs/solar_credits-fs.pdf

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2015. Details of the circumstances in which the multiplier effect would apply are to be contained in regulations: **proposed subsection 23B(2)**.

Existing section 40 sets out the targets for the production electricity generated from renewable sources from 2001. Currently, the target for 2010 and subsequent years is 9 500 GWh. **Item 8** amends the table to raise the 2010 target to 12 500 GWh, with progressive increases reaching 45 000 GWh in 2020, whereafter the target remains at this level to 2030.

Section 162 required an independent review to be done of the REEA as soon as practical after two years of the REEA coming into operation. That review was done 2003 (the Tambling review). However, there is currently no requirement for subsequent review. **Item 9** substitutes a **new section 162** that will require a new independent review to be done as soon as practical after 31 December 2013. Unlike the current version, new section 162 does not specify the particular issues that must be covered by the review. A report of the Review must be tabled by the minister within 15 sitting days of receiving it. The policy intention is that timing of the review will be coincident with a review of the CPRS under the proposed CPRS legislation.

Schedule 2 –Partial exemptions from liability to charge

In introducing the Bill, Greg Combet, Minister Assisting the Minister for Climate Change, stated:

The government recognises the impact of the renewable energy target on emissions-intensive trade-exposed industries in the context of the proposed Carbon Pollution Reduction Scheme and the additional pressures these firms are experiencing as a result of the global recession. As part of the consultation process, stakeholders suggested that assistance under the renewable energy target should take account of the cumulative impact of the Renewable Energy Target and the Carbon Pollution Reduction Scheme.

The government listened to industry, particularly industries such as the aluminium smelting sector, and has therefore decided to provide assistance under the renewable energy target, reflecting the cumulative impact of the renewable energy target and the Carbon Pollution Reduction Scheme.

The Bill provides for regulations to be made to provide partial exemptions from liability under the expanded Renewable Energy Target. As agreed by COAG on 30 April 2009, partial exemptions will apply to those activities that are emissions-intensive trade-exposed activities under the Carbon Pollution Reduction Scheme. Exemptions will apply to 90 per cent or 60 per cent of an entity's liability under the renewable energy target, according to the respective category of assistance provided under the Carbon Pollution Reduction Scheme framework. All businesses will

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contribute to supporting renewable energy as the exemptions will only apply for liability above the existing 9,500 gigawatt hour target.³⁷

Schedule 2 implements the above policy position.

A key concept is ‘partial exemption certificates’

Item 14 contains **new sections 46A-46C**. As noted above, the second reading speech indicates the exemption will apply to 90 per cent or 60 per cent of an entity’s liability under the renewable energy target, and corresponds to criteria set out under the CPRS.³⁸ **New paragraph 46B(1)(a)** indicates that the ‘amount’ of the partial exemption for the purposes of the certificate will be ‘calculated according to a method prescribed by regulations’. Partial exemption certificates are not legislative instruments.³⁹

New section 38C, inserted by **item 8**, requires the Australian Climate Change Authority (the Authority) to publish information on a partial exemption provided to a liable entity each year. This information must include the name of the liable entity, the value in dollars of the amount of the entity’s partial exemption for the year, and any other information relating to a partial exemption, as prescribed in the regulations. If a liable entity’s partial exemption is later reduced or increased, the Authority must correct the information on its website.

New section 46C enables the amendment of partial exemption certificates in certain circumstances, by the Authority either on its own behest or at the request of the person who has been issued the certificate. Neither the Explanatory Memorandum nor the Minister’s second reading speech indicate the situations in which this might be required, but **new subsection 46C(3)** states that the circumstances under which the Authority amends a certificate on its own behest will be contained in regulations. Action by the Authority to amend, or refuse to amend, will be reviewable by the Administrative Appeals Tribunal: **item 15**.

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37. G Combet (Minister Assisting the Minister for Climate Change), ‘Second reading speech: Renewable Energy (Electricity) Amendment Bill 2009, *House Hansard*, 17 June 2009, p. 7, viewed on 23 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2009-06-17%2F0013%22>.
38. Although the categories of assistance in the CPRS seem to have been (temporarily) increased from 90 to 94.5 per cent, and 60 to 66 per cent, respectively. See discussion on page 21 of the Digest for the Carbon Reduction Pollution Scheme Bill 2009 at <http://www.aph.gov.au/Library/pubs/bd/2008-09/09bd165.pdf>.
39. This means that they will not be tabled in either House of the Parliament and are not subject to disallowance.

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Schedule 3 – amendments relating to the transition of State renewable energy target schemes

Item 2 inserts **new sections 7B** and **7C**. **New section 7C** is a key element of the Bill as it exempts constitutional corporations⁴⁰ from complying with ‘any law of State that substantially corresponds to this Act’. The Explanatory Memorandum comments that:

This item operates to ensure that the national Renewable Energy Target will operate as a single, national scheme by granting constitutional corporations immunity from compliance with obligations arising under a law of a State that substantially corresponds to this Act. This provision is not intended to apply to feed-in tariffs or other support mechanisms for renewable energy that do not substantially correspond to this Act.⁴¹

It is understood the only current State law that comes within this definition is the *Victorian Renewable Energy Act 2006*.⁴²

Where a (electricity-producing) power station is currently accredited under a State Act that substantially corresponds to this Act, **item 4** effectively deems that the power station is accredited under the REEA. However, the nominated person for the power station may give notice that the automatic accreditation should not apply to the station: **item 5**.

Item 6 deals with the conversion of State RECs to REEA RECs. The holder of State RECs may elect to voluntarily surrender such certificates, even if they do not have a liability to do so. Where the holder does so expressly for the purposes of item 6, and subject to various procedural requirements, the State renewable energy regulator may give notice of this to the Commonwealth, and the Commonwealth Regulator⁴³ must then create a REC under the REEA.

Item 7 states that nothing in item 6 makes the Commonwealth Regulator liable to be prosecuted for an offence. Presumably this ensures that, where a certificate improperly is created because some administrative or other error in the conversion process, the Commonwealth Regulator would not be liable for prosecution of an offence under existing section 24 of the REEA.⁴⁴

40. That is, foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth – section 51(xx) of the Commonwealth Constitution.

41. Explanatory Memorandum, paragraph 41, p. 11.

42. Personal communication, Department of Climate Change, June 23 2009.

43. Assuming the CPRS legislation is passed, this is the Australian Climate Change Authority.

44. Section 24 includes a strict liability (no fault) and a fault-based offence for the improper creation of RECs, although section 6 also provides that nothing in the REEA makes the Crown liable to be prosecuted for an offence. Whilst under the Australian Climate Change

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Item 9 enables the Governor-General to make regulations required or permitted by Part 2 of Schedule 3, or necessary or convenient for giving effect to it. **Subitem 9(2)** provides a non-exhaustive list of what such regulations might cover, namely:

- matters arising from the amendment or repeal of a State Act
- exemptions from fees payable under regulations
- and the number of RECs that may be created in relation to a small generation unit.

Regulatory Authority Bill 2009, the Authority enjoys the immunities of the Crown, under the REEA the Renewable Energy Regulator does not appear to enjoy this same status.

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