



## Renewable Energy (Electricity) Amendment Bill 2010

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COAG	<i>Council of Australian Governments</i>
CPRS	<i>Carbon Pollution Reduction Scheme</i>
EITE	<i>Emissions-intensive trade-exposed</i>
eRET	<i>enhanced Renewable Energy Target</i>
kW	<i>Kilowatt</i>
LREC	<i>Large-scale Renewable Energy Certificate</i>
LRET	<i>Large-scale Renewable Energy Target</i>
MRET	<i>Mandatory Renewable Energy Target</i>
MWh / GWh	<i>Megawatt hour / gigawatt hour</i>
ORER	<i>Office of the Renewable Energy Regulator</i>
RATE	<i>RET-affected trade-exposed</i>
REC	<i>Renewable Energy Certificate</i>
RET	<i>Renewable Energy Target</i>
RIS	<i>Regulatory Impact Statement</i>
SGU	<i>Small generation unit</i>
SREC	<i>Small-scale Renewable Energy Certificate</i>
SRES	<i>Small-scale Renewable Energy Scheme</i>
WCMG	<i>Waste Coal Mine Gas</i>

## Renewable Energy (Electricity) Amendment Bill 2010

**Date introduced:** 12 May 2010

**House:** House of Representatives

**Portfolio:** Climate Change, Energy Efficiency and Water

**Commencement:** The main operative provisions commence on 1 January 2011, with a range of transition and other supporting provisions commencing the day after Royal Assent.

**Links:** The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, 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 2010 ('the Bill') amends the *Renewable Energy (Electricity) Act 2000* to divide the existing Renewable Energy Target (RET) scheme into two schemes: the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme (SRES).

### Background

#### MRET to RET

The enhanced RET (eRET) scheme outlined by this Bill is a result of successive Commonwealth policies, legislation and amendments. It originated as the Mandatory Renewable Energy Target (MRET), which began in 2001 with the *Renewable Energy (Electricity) Act 2000* (the Act). The MRET required electricity retailers and other large electricity buyers to source an additional two per cent of their electricity purchases from renewable or specified waste-product energy sources by 2010.

The MRET was implemented through the creation of renewable energy certificates (RECs). Eligible generation entities earned RECs on the basis of their renewable generation, where one REC represents '1 megawatt hour (MWh) of electricity generated by an accredited station from eligible renewable sources that is in excess of the station's 1997 baseline'.<sup>1</sup> Liable parties were required to surrender RECs equivalent to their total liability in that year to the Regulator. The RECs could also be traded among liable third parties. Penalties were due if there was a shortfall.

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1. A Martyn & M Roarty, *Renewable Energy (Electricity) Bill 2000*, Bills digest, no. 198, 1999-2000, Parliamentary Library, Canberra, 2000, viewed 25 May 2010, <http://www.aph.gov.au/library/pubs/bd/1999-2000/2000bd198.htm>

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In 2009, the Government created the Renewable Energy Target (RET) as an expansion of the MRET, by upping the target to 20 per cent by 2020, and introducing partial exemptions for ‘RET-affected, trade-exposed’ (RATE) industries. Under the RET scheme, the Government also introduced the ‘Solar Credits’ system. The Solar Credits scheme allows households, businesses or community groups to generate multiple RECs for the first 1.5kW of installed renewable energy capacity of an eligible small generation unit (SGU).<sup>2</sup> Solar Credits became available for eligible systems installed on or after 9 June 2009, and are applied to the first 1.5 kilowatts (kW) of capacity installed. The Solar Credits REC multiplier is set at 5 until 2012, at which time it is reduced by one annually until 2015. Generation from capacity above 1.5 kW is only eligible for the standard 1:1 rate of RECs creation.

For further details and background on the RET, see the Library’s Bills Digest on the Renewable Energy (Electricity) Amendment Bill 2009.<sup>3</sup>

### Decoupling the RET from the CPRS

The RET scheme was designed with the Government’s emissions trading scheme in mind, the Carbon Pollution Reduction Scheme (CPRS). Partial exemptions to the RET were explicitly linked to ‘emissions-intensive trade-exposed’ (EITE) activities as recognised under the CPRS. A significant amendment to the scheme, as negotiated by the Coalition Senators and Independent Senator Nick Xenophon, resulted in decoupling the RET from the CPRS legislation.

In the lead up to the 2010-11 Federal Budget release, the Government announced a deferral of the CPRS until 2013 at least.<sup>4</sup> The RET thus became a central feature in the Government’s response to climate change.<sup>5</sup>

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2. The Solar Credits replaces the solar photovoltaic rebate that existed under the Solar Homes and Community Plan.
  3. A Martyn, J Styles, *Renewable Energy (Electricity) Amendment Bill 2009*, Bills digest, no. 182, 2008-09, Parliamentary Library, Canberra, 2009, viewed 31 May 2010, <http://www.aph.gov.au/Library/pubs/bd/2008-09/09bd182.pdf>
  4. Department of Climate Change and Energy Efficiency, *Fact Sheet: Carbon Pollution Reduction Scheme - deferral*, May 2010, viewed 31 May 2010, <http://www.climatechange.gov.au/en/media/whats-new/~media/publications/budget/1011/cprs-deferral-factsheet.ashx>
  5. M Ferguson (Minister for Resources and Energy), *Fact sheet 4: Geothermal explorers now eligible for resource exploration rebate*, media release, 11 May 2010, viewed 31 May 2010, <http://www.ret.gov.au/Department/Documents/FactSheets%20-%20Budget%20night%2010-11/FACT%20SHEET%204%20-%20GOVERNMENT%20SUPPORT%20FOR%20GEOTHERMAL.pdf>

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## Issues with the RET

Shortly after passage of the RET legislation through Parliament on 20 August 2009, REC prices crashed, leading to uncertainty in the market and deterring potential investment in large-scale renewable energy projects. The price slump was brought about by a steep increase in demand for small generation units (SGU), mainly in households, and hence generation of a large numbers of RECs within a short period of time.

Consumer demand for SGUs was driven by a series of generous Federal Government subsidies such as the former Solar Hot Water Rebate and Solar Homes and Communities Plan, and State-based subsidies such as solar feed-in tariff schemes. Oversupply in RECs has been further exacerbated by the Solar Credits scheme which has created a multitude of 'phantom credits' not backed by real generation of electricity from renewable energy:

...solar hot water and phantom RECs from solar photovoltaics are together set to generate more than 9 million RECs this year, meaning they alone could account for almost all the entire 9.5 million REC target for 2009. Flooded by credits from household units, the REC price has plummeted from more than \$50 per MWh in May to under \$30 per MWh today, discouraging investment in largescale renewable energy projects.<sup>6</sup>

In response to these issues, on 5 November 2009 Senator Wong announced that the Council of Australian Governments (COAG) would review 'both short-term developments in the REC market and the factors that will determine longer-term pricing' and report by end-2009.<sup>7</sup> Five discussion papers have been released in the process of this review and 102 stakeholder submissions received.<sup>8</sup> According to the Regulation Impact Statement (RIS) accompanying the Bill, the COAG review process identified several factors affecting REC prices, including:

- the increase in the supply of RECs created by the higher uptake of solar water heaters and heat pumps, driven by Commonwealth and state subsidies, and the expectation that this trend may continue;

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6. J Breusch, A Hepworth & P Garvey, 'Green energy handouts backfire', *Australian Financial Review*, 27 October 2009, p. 1, viewed 31 May 2010, [http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/PF1V6/upload\\_binary/pf1v60.pdf](http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/PF1V6/upload_binary/pf1v60.pdf)
  7. P Wong (Minister for Climate Change and Water), 'COAG to consider renewable energy certificate market', media release, 5 November 2009, viewed 31 May 2010, <http://www.climatechange.gov.au/~media/Files/minister/wong/2009/media-releases/November/mr20091105.ashx>
  8. Department of Climate Change and Energy Efficiency (DCCEE), 'Consultation on Additional Renewable Energy Target Issues', *DCCEE website*, viewed 31 May 2010, <http://www.climatechange.gov.au/government/submissions/renewable-energy-target/coag-ret-target.aspx>

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- domination of the spot market by small industry players, such as solar water heater providers, who regularly sell RECs for liquidity reasons; and
- the perception that there is a large quantity of banked RECs, and that most liable entities will not need to purchase additional RECs to satisfy their obligations for the 2009 calendar year.<sup>9</sup>

## The eRET

The Government announced the eRET on 26 February 2010 as a solution to the collapse of the REC market. A discussion paper, *Enhancing the Renewable Energy Target Discussion Paper*, was released for consultation in March 2010. The 2010-11 Budget included provisions for \$6 million to the Office of the Renewable Energy Regulator (ORER) towards implementing the RET enhancement and \$4 million over four years to the Productivity Commission for an industry impact assessment of the eRET.<sup>10</sup>

The Bill implements ‘Option 3’, the last of three options identified in the RIS for managing the issues explored in the COAG review process. These options were:

- Option 1 — maintain the status quo and allow the REC market to settle with time
- Option 2 — adjust the profile of the targets over time so that they are higher in early years
- Option 3 — divide the RET into two schemes: a Large-scale Renewable Energy Target (LRET) with a target of 41 000 GWh by 2020, and a Small-scale Renewable Energy Scheme (SRES) targeting 4000 GWh annually at a price fixed at \$40 initially to be reviewed in 2014.<sup>11</sup>

Option 3 was considered optimal as it ‘would provide legislative certainty to large-scale renewable energy developers while still supporting the deployment of small-scale renewable energy technologies’.<sup>12</sup> The Government has even suggested that ‘these changes are expected to deliver more renewable energy than the original 20 per cent target’.<sup>13</sup> A start date of 1 January 2011 is given with an independent review planned for 2012 and a full statutory review of the scheme for 2014.<sup>14</sup>

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9. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 6.

10. Australian Government, *Budget measures: budget paper no. 2: 2010–11*, Commonwealth of Australia, Canberra, 2010, pp. 123 & 294, viewed 31 May 2010, <http://www.aph.gov.au/budget/2010-11/content/bp2/html/index.htm>.

11. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 6

12. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 8.

13. P Wong (Minister for Climate Change and Water), ‘*Enhanced renewable energy target scheme*’, media release, 26 February 2010, viewed 31 May 2010,

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In its latest communiqué of 19-20 April 2010, COAG acknowledged the eRET design and advised that ‘remaining matters within the scope of the review will be finalised for consideration by COAG at its next meeting’.<sup>15</sup> At the time of writing no date has yet been announced for the next COAG meeting.

## Committee consideration

The Bill has been referred to the Senate Environment, Communications and the Arts Legislation Committee for inquiry and report by 15 June 2010. Details of the inquiry are at [http://www.aph.gov.au/Senate/committee/eca\\_ctte/renewable\\_energy\\_2010/index.htm](http://www.aph.gov.au/Senate/committee/eca_ctte/renewable_energy_2010/index.htm).

## Position of significant interest groups

### Direct stakeholders

#### Liable entities

Under the current and proposed legislation ‘liable entities’ are electricity retailers and other wholesale electricity buyers that are required (should the Bill be passed) to purchase and periodically surrender both ‘large-scale generation certificates’ (LRECs) and ‘small-scale generation certificates’ (SRECs) equivalent to their total liability. Liable entities generally appear to support the purpose of the Bill but are concerned that the uncapped nature of the SRES delivers open-ended and uncertain cost obligations.<sup>16</sup> Some are also concerned that new amendments may emerge from the COAG review adding uncertainty to the scheme.<sup>17</sup> In addition, large electricity consumers have called for a 90 per cent exemption for RATE industries.<sup>18</sup>

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<http://www.climatechange.gov.au/~media/Files/minister/wong/2010/media-releases/february/mr20100226.ashx>

14. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 8.
15. Council of Australian Governments, *Communiqué*, 29th Meeting, 19–20 April 2010, p. 18, viewed 31 May 2010, [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2010-04-19/docs/communique\\_20\\_April\\_2010.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2010-04-19/docs/communique_20_April_2010.pdf)
16. Australian Industry Greenhouse Network, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 25 May 2010.
17. Australian Industry Greenhouse Network, op. cit.
18. Australian Aluminium Council, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.

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## Renewable energy generators

Renewable energy generators include large organisations involved in the renewable energy industry, as well as households looking to install rooftop systems. The renewable energy industry appears to generally support the intent of the Bill but has concerns regarding transitional measures.<sup>19</sup> Large renewable energy generators would prefer not to see existing RECs form part of the LRET as they believe that this will not drive investment in large-scale projects until 2013 or later.<sup>20</sup> Some are also opposed to the Solar Credits scheme, which they say counteracts the intent of the Bill.<sup>21</sup>

Smaller renewable energy installers and technology providers have concerns over the details of the proposed clearing house which they say may affect small business cash flows.<sup>22</sup> Point-of-sale discounts and immediate redemptions of SRECs is the preferred solution.<sup>23</sup>

## REC traders

Implementation of the scheme involves the establishment of an optional clearing house to register the creation, transfer and surrender of SRECs at a fixed price of \$40 (\$44 with GST). The clearing house is to be operated by the ORER. Independent registered REC traders will be seriously affected by the proposed clearing house. It will be 'in direct competition with the registered agents' and may eliminate the viability of such service providers.<sup>24</sup>

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19. Vestas Australian Wind Technology, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.
  20. Pacific Hydro, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 20 May 2010; Vestas Australian Wind Technology, op. cit.
  21. Moreland Energy Foundation Ltd & Alternative Technology Association, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, May 2010.
  22. Peter Sachs Industries, Submission to the Environment, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.
  23. Rheem Australia, Submission to the Environment, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 21 May 2010
  24. Greenbank Environmental, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.

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## Environmental groups

In its submission to the Committee inquiry, the World Wildlife Foundation – Australia (WWF-Australia) highlighted three aspects of the scheme that were of concern:

1. The recognition of existing banked RECs in the LRET
2. The lack of any ‘banding’ or special treatment to promote new technologies<sup>25</sup>
3. The level of exemption granted to RATE industries.<sup>26</sup>

WWF-Australia’s concerns are echoed by other environmental groups in their submissions to the Government’s discussion paper.<sup>27</sup> Banding of new technologies was an issue raised also in the Economics Legislation Committee inquiry on the Renewable Energy (Electricity) Amendment Bill 2009. At the time, Coalition Senators reported that the ‘coalition does not believe the Government has provided a solution to the problem and believes the Government should consult with industry to discuss this issue’.<sup>28</sup>

## Coalition

The Coalition supports the separation of the RET into two schemes. Indeed, in its alternative policy on climate change, the Direct Action Plan, the Coalition promised that:

To support the development of larger scale renewable energy generation, a proportion of incentives provided through the Renewable Energy Target will be reserved for bigger projects.<sup>29</sup>

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25. Banding refers to reserving some portion or percentage of the target specifically for new or emerging technologies.
  26. WWF-Australia, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.
  27. Australian Network of Environmental Defender’s Offices, *Submission on Enhancing the Renewable Energy Target Discussion Paper*, 14 April 2010, viewed 31 May 2010, [http://www.edo.org.au/policy/100414enhancing\\_ret\\_discussion\\_paper.pdf](http://www.edo.org.au/policy/100414enhancing_ret_discussion_paper.pdf)
  28. Senate Economics Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2009 and a related bill [Provisions]*, Commonwealth of Australia, Canberra, August 2009, p. 77, viewed 31 May 2010, [http://www.aph.gov.au/senate/Committee/economics\\_ctte/renewable\\_energy\\_09/report/report.pdf](http://www.aph.gov.au/senate/Committee/economics_ctte/renewable_energy_09/report/report.pdf)
  29. Liberal Party of Australia and the Nationals, *The Coalition’s Direct Action Plan – Policy, Coalition policy document*, 2 February 2010, viewed 1 June 2010, <http://www.tonyabbott.com.au/Pages/Article.aspx?ID=3930>

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During the Bill's second reading debate, Shadow Minister for Energy and Resources, Ian Macfarlane confirmed that the LRET had general bipartisan support but that details of the SRES were still to be negotiated:

We agreed to the splitting off of the 41 000 gigawatt hours of LRET and the creation within that of the new segment that comes on top of the 9500 gigawatts of MRET. We believe that is the only way you can give certainty to the industry that has come to rely on the predecessor to this legislation and to the legislation that was passed subsequent to the discussions last August.

We also support in principle the establishment of the Small-scale Renewable Energy Scheme, but we do have concerns that, on initial modelling, that scheme is going to blow out significantly. It could perhaps blow out twofold to threefold on the 4,000-megawatt allocation which is uncapped but which it is intimated the small-scale renewable energy target is set at. We are going to have some further discussions on that. One of the things we want to see, if this part of the scheme is able to be crystallised, is some of the abuses that are taking place in that solar heat and solar energy sector, which will be supported by the SRES, stop.<sup>30</sup>

Shadow Minister for Climate Action, Environment and Heritage, Greg Hunt, raised other Coalition concerns, particularly relating to waste coal mine gas (WCMG) and special consideration of EITE activities. He also highlighted the idea of promoting innovation by reserving 25 per cent of the LRET for new technologies such as high voltage direct current transmissions systems.<sup>31</sup>

Specific concerns have been raised by Nationals Senator Boswell regarding the cost of the scheme in light of the Government's statement that the eRET is expected to exceed the 20 per cent target.<sup>32</sup> On the whole, the Coalition has stated that it will reserve its judgement on the Bill until after the Senate inquiry.<sup>33</sup>

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30. I Macfarlane, 'Second reading speech: Renewable Energy (Electricity) Amendment Bill 2010, Renewable Energy (Electricity) (Charge) Amendment Bill 2010, Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Bill 2010', House of Representatives, *Debates*, 26 May 2010, pp. 32–3, viewed 31 May 2010, [http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2010-05-26/0095/hansard\\_frag.pdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2010-05-26/0095/hansard_frag.pdf)
  31. G Hunt, 'Second reading speech: Renewable Energy (Electricity) Amendment Bill 2010, Renewable Energy (Electricity) (Charge) Amendment Bill 2010, Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Bill 2010', House of Representatives, *Debates*, 26 May 2010, p. 28, viewed 31 May 2010, [http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2010-05-26/0093/hansard\\_frag.pdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2010-05-26/0093/hansard_frag.pdf)
  32. R Boswell, *Rudd's RET: How big – and how much?*, media release, 12 May 2010, viewed 1 June 2010,

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## Greens

On 24 February 2010, the Greens introduced a Private Member's Bill.<sup>34</sup> That Bill proposes to amend the existing Act to add the number of RECs generated from solar and heat pump hot water systems, plus 'phantom RECs' from the Solar Credits scheme, to the total target of the following year. From this, although the Greens have not formally announced their position on the details of this legislation, it would appear that they are broadly supportive of the general intent of the scheme, which buffers industrial-scale developments from the effects of small-scale installations.

The Greens are not in favour of the Coalition's call for an examination of 'banding' in favour of new and emerging technologies.

I do not support a banding approach because it is essentially a restrictive approach. It will restrict the technologies, the large-scale new technologies, especially if they do not come on stream in time. It will restrict the whole process.<sup>35</sup>

## Financial implications

The Government has stated that:

The Office of the Renewable Energy Regulator (ORER) will receive an additional \$6 million in 2010-11 to implement the changes outlined in this Bill. This includes \$4.5 million in capital funding to modify and expand the existing information technology system to enable the ORER to implement the clearing house functions.

The impact on Government revenue is dependent on any change in the number of renewable energy certificates that are traded. Administered revenue is received by the ORER from a number of statutory fees including fees for the creation and surrender of renewable energy certificates.<sup>36</sup>

As previously stated, the Productivity Commission has also been allocated \$4 million over four years to continually assess the impact of this new legislation on industry sectors.<sup>37</sup>

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<http://www.nationalparty.org/News/LatestNews/tabid/94/articleType/ArticleView/articleId/5190/Rudds-RET-How-big-and-how-much.aspx>

33. G Hunt, 'Second reading speech', op. cit., p. 28.
34. Renewable Energy—Electricity (Water Heaters and Phantom Certificates) Bill 2010.
35. C Milne, 'Second Reading speech: Australian Centre for Renewable Energy Bill 2009', Senate, *Debates*, 10 March 2010, p. 1464, viewed 1 June 2010, [http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/2010-03-10/0007/hansard\\_frag.pdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/2010-03-10/0007/hansard_frag.pdf)
36. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 3.
37. Australian Government, *Budget measures: budget paper no. 2: 2010–11*, op. cit., p. 294.

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## Key issues

The key issues that relate to the Bill are detailed below. It should be noted that there has also been some discontent amongst stakeholders in relation to the process that has led to the development of the amendments contained in the Bill.<sup>38</sup>

...it would have been prudent to provide industry experts with an opportunity to test legal and technical aspects of the proposed legislation for possible unforeseen consequences.<sup>39</sup>

## Managing the number of SRECs

### Uncapped SRES

The Bill is driven by the need to provide investor certainty in large-scale renewable energy generation. Although the Bill may effectively address this need, it has been suggested that it does so by shifting the risks to electricity producers and major consumers. Industry calls for the SRES to be capped 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.<sup>40</sup>

The Government concedes that a risk does exist for liable entities with regard to the uncapped SRES.<sup>41</sup> However, it suggests that this uncertainty is minimised through annual 'true-up' periods and the promise of an SREC price review in 2014.<sup>42</sup>

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38. Rio Tinto - Australia, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.
  39. Hydro Aluminium Kurri Kurri, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 20 May 2010.
  40. Energy Supply Association of Australia, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.
  41. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 8.
  42. The 'true-up' is a period of reconciliation of all RECs brought onto the market and the RECs purchased by liable entities. It occurs at the end of the year; *ibid.*

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### **‘Phantom’ credits**

Although the oversupply of RECs has been, at least to some extent, due to ‘phantom credits’, the Bill does not consider removing the Solar Credits scheme, nor reducing the multiplier. This was the subject of a discussion paper released by the Government in December 2009, *The treatment of ‘Solar Credits’ renewable energy certificates under the RET*. Players in the renewable energy industry believe that 4000 GWh of SRECs will be easily generated but that the Solar Credits undermines the eRET and dilutes the cost-effectiveness of the scheme.<sup>43</sup>

An alternative method of incentivising the installation of SGUs is to offer Government-funded rebates on the capital costs, as was the system under the Solar Homes and Communities Plan. This reduces the complexity of the scheme and ensures that the market for LRECs is not compromised.<sup>44</sup>

### **Balancing LRECs and SRECs**

In its discussion paper, the Government explained that to guarantee that the 20 per cent target is met by 2020, ‘the uptake of small-scale systems will be reviewed in 2014 and the target increased in the LRET if deployment of small-scale technologies is lower than expected’.<sup>45</sup> Targets of 41 000 GWh for the LRET and 4000 GWh for the SRES have been announced. However the Government has not produced any modelling or explanation of these targets. Given the uncapped nature of the SRES it is likely that the number of SRECs generated will exceed 4000 GWh. There is no provision to balance this by any reduction in the LRET.<sup>46</sup> This is in line with the Government’s expectation that the scheme may exceed the 20 per cent target, but it places a further financial burden on liable entities and may result in a scheme that is expensive per tonne of carbon abatement.

### **Transitioning existing RECs**

A significant concern is the treatment of banked RECs. The main operative provisions of the Bill have a start date of 1 January 2011 and propose that all RECs created before 31

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43. Moreland Energy Foundation Ltd & Alternative Technology Association, op. cit.

44. Visy, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, May 2010.

45. Department of Climate Change and Energy Efficiency, *Enhancing the renewable energy target – Discussion paper*, Commonwealth of Australia, Canberra, March 2010, p. 17, viewed 1 June 2010, <http://www.climatechange.gov.au/government/initiatives/~media/publications/renewable-energy/enhancing-ret-discussion-paper-pdf.ashx>

46. Gove Aluminium Finance Ltd, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 21 May 2010

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December 2010, whether from large-scale or small-scale installations will be eligible under the LRET. Any pre-existing forward contracts for the provision of RECs will also be valid in the LRET. It is expected that this will provide liquidity in the LRET market.<sup>47</sup>

However, according to calculations undertaken by some in the renewable energy industry, the ability to use banked RECs will deliver an oversupply of more than 20 million LRECs by the eRET's start date. This will delay the need to generate any supplementary LRECs until 2013 at the earliest.<sup>48</sup> This might be addressed by considering an earlier start date or cut-off date for banked RECs.

### The clearing house

SRECs entered into the clearing house are sold on a 'first in first out' basis and liable entities have quarterly SRES obligations.<sup>49</sup> Liable entities would therefore not be likely to purchase SRECs on a more frequent basis than every three months or so. SRECs registered by the clearing house thus do not offer the seller any immediate returns. For small businesses this can produce a cash flow problem.

Any oversupply of certificates would then sit in a clearing house for an extended period until any new target was set and we would not be able to redeem them.<sup>50</sup>

In relation to this issue, an immediate point-of-sale discount would be preferable. Alternatively, a more regular clearing schedule, such as monthly, may alleviate the problem.<sup>51</sup>

### REC agents

While the Bill contains features that minimise uncertainty and risk to most major stakeholders, there seems to have been no consideration given to registered REC agents. Through the creation of a clearing house, it is possible that this Bill could remove any

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47. Department of Climate Change and Energy Efficiency, *Enhancing the renewable energy target – Discussion paper*, op. cit., pp. 18–19.
  48. Pacific Hydro, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 20 May 2010
  49. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 2.
  50. Senate Environment, Communications and the Arts Legislation Committee, Reference: Renewable Energy Amendment (Electricity) Bill 2010 & related bills, 28 May 2010, Proof copy, M Sexton, ECA 15, viewed 8 June 2010, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22committee\\_s%2Fcommsen%2F13166%2F0003%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22committee_s%2Fcommsen%2F13166%2F0003%22)
  51. Peter Sachs Industries, op. cit., p. 3.

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market for such independent brokers, and yet there is no provision to help transition these small businesses.

## Certainty over time

### Reviews

The Government has promised an independent review in 2012 and a full statutory review in 2014, with SREC prices to potentially be adjusted in 2014.<sup>52</sup> Further, COAG is yet to finalise its Review of Specific RET Issues.<sup>53</sup>

All such reviews are intended to mitigate hesitation and wariness towards the scheme. However they may have the reverse effect of actually increasing business uncertainty.

The current COAG review and future independent review in 2012 will undoubtedly continue the steady tradition of incremental change and ‘tweaking’ that has occurred since the MRET was expanded, and will continue to add complexity and cost to the scheme, a cost likely to be passed on to electricity consumers.<sup>54</sup>

At a minimum, industry groups have called for the COAG review to be finalised without delay.<sup>55</sup>

### Long-term certainty

Both finance bodies and renewable energy providers agree that the eRET must provide certainty beyond 2020. Whether this is a planned phase-out program, or targets beyond 2020, such details are needed by businesses and investors soon.<sup>56</sup> Longer targets may also benefit the scheme by flattening out ‘booms and busts’.<sup>57</sup>

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52. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 8

53. COAG declared at its meeting of 19-20 April 2010 that it will finalise any remaining matters in the scope of its review at its next meeting.

54. Cement Industry Federation, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 5 May 2010.

55. The Australian Petroleum Production & Exploration Association, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.

56. Australian Bankers Association, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 28 May 2010.

57. Australian PV Association, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.

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## Waste coal mine gas

The Bill amends ‘the provisions relating to waste coal mine gas eligibility to allow for the commencement of eligibility of waste coal mine gas in the RET to be determined by regulations’.<sup>58</sup> There is ongoing debate on this issue. The discussion forms part of the COAG review. A decision is not to be included in the legislation but left to regulation.

The argument has two sides. WCMG is not a renewable energy, rather it is the waste methane released in the process of underground coal mining. As such it technically has no place in the eRET. Some argue that its inclusion sets a precedent for all or any low-emissions power generation technologies.<sup>59</sup>

On the other hand, methane is a greenhouse gas with a global warming potential many times more powerful than carbon dioxide. The ultimate purpose of increasing the penetration of renewable energy in Australia is to displace the emissions of greenhouse gases. It therefore seems fitting to include existing and new WCMG projects within the scheme.

## Main provisions

### Schedule 1—Amendments

#### Part 1—Main Amendments

#### *Renewable Energy (Electricity) Act 2000*

**Items 1 to 38** propose amendments to existing definitions, or the introduction of new definitions into **section 5(1)** the Act. These definitions are required as a consequence of the proposal to divide the RET Scheme into two parts (a standalone Large-scale RET (LRET) and a Small-scale Renewable Energy Scheme (SRES)). Basically, umbrella concepts have been retained, but these will include both large-scale and small-scale elements. Definitions of particular note follow below.

**Item 3** most obviously amends the definition of ‘**certificate**’ in **section 5(1)** such that it refers to all renewable energy certificates. And **item 21** provides that the term renewable energy certificate now refers to both ‘large-scale generation certificates’ and ‘small-scale technology certificates’.

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58. Explanatory Memorandum, Renewable Energy (Electricity) Amendment Bill 2010, p. 2.

59. The Australian Sugar Milling Council, Submission to the Environment, Communications and the Arts Legislation Committee, *Renewable Energy (Electricity) Amendment Bill 2010 [Provisions]*, 24 May 2010.

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**Item 4** provides for a new term ‘**clearing house**’ to have the same meaning as given by **proposed section 30J**. The proposed clearing house will exist within the Office and Renewable Energy Regulator (ORER). It will serve as a central point for the transfer of small-scale certificates at a fixed price of \$40 (or \$44 including GST) and use of the clearing house by owners of small-scale certificates will be optional. Its establishment responds to the demand by many liable entities and suppliers of small-scale systems for the flexibility to be able to trade small quantities of-certificates on the market, without the need to go through a privately run clearing house, at a price set by agreement between the relevant parties.<sup>60</sup>

While it is anticipated however, that in practice most liable entities and suppliers of small-scale systems will prefer to receive an up-front discount on the cost of installation of a small-scale system from their supplier - as is presently the case - concern remains about the impact of such a clearing house in terms of its competition with registered agents.

**Item 9** introduces a new term, ‘**large-scale generation certificate**’ which is created under Subdivision A of Division 4 of Part 2. A large-scale generation certificate is one created from the generation of electricity by accredited power stations. In response to this, Schedule 2 contains transitional provisions which provide that certificates from small generation units and solar water heaters installed before 1 January 2011 are to be treated as large-scale generation certificates, though some small-scale technology certificates may become large-scale generation certificates where they relate to pre-existing contracts.

**Item 13** provides that ‘**partial exemption**’ will refer to the two types of shortfalls - large-scale generation shortfall and small-scale technology shortfall. Thus, single partial exemption amount (in megawatt-hours) will apply to both the large-scale and small-scale liabilities.

**Item 22** repeals the definition of ‘**renewable energy certificate shortfall**’ to accommodate the proposal for two new types of shortfall – one for each of the large-scale and small-scale obligations.

**Item 29** inserts a new term ‘**small-scale technology certificate**’, defining it as ‘a certificate created under Subdivision B or BA of Division 4 of Part 2 or under section 30P’. Thus, it refers to certificates created from the installation of solar water heaters and small generation units either by owners or installers of systems or by the Regulator.

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60. G Gray, MP, ‘Second reading speech, Renewable Energy (Electricity) Amendment Bill 2010’, House of Representatives, *Debates*, 12 May 2010, p. 14, viewed 26 May 2010, [http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/2010-05-12/toc\\_pdf/7601-2.pdf;fileType%3Dapplication%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/2010-05-12/toc_pdf/7601-2.pdf;fileType%3Dapplication%2Fpdf)

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**Item 41** repeals the heading of Division 4, replacing it with the heading ‘Creation of renewable energy certificates’ which relates to the creation of *all* renewable energy certificates. A new **section 17B** is also inserted which gives an overview of Division 4 relating to the creation of renewable energy certificates, as follows:

- large-scale generation certificates, which are created in relation to the generation of electricity by accredited power stations (Subdivision A); and
- small-scale technology certificates, which are created in relation to the installation of solar water heaters and small generation units (Subdivisions B and BA).
- Small-scale technology certificates can also be created by the Regulator under Part 2A (clearing house for small-scale technology certificates).
- Subdivision B requires people who create certificates under Subdivision B or BA to submit returns relating to the creation of the certificates.
- Subdivision C contains offence and civil penalty provisions relating to the improper creation of certificates.

**Item 42** replaces the heading of **Subdivision A of Part 4** with the heading ‘Large-scale generation certificates for accredited power stations’. Thus, this Subdivision exclusively relates to the creation of large-scale generation certificates. **Item 43** makes a parallel amendment, repealing the current heading **Subdivision B of Division 4 of Part 2** and replacing it with the heading ‘Small-scale technology certificates for solar water heaters’ to make clear the operational ambit of this subdivision.

**Item 47** replaces **paragraph 25A(2)(f)** and inserts a requirement that small-scale technology certificates include ‘a statement that the certificate was created in relation to a solar water heater, or that it was created in relation to a small generation unit (as appropriate)’.

**Item 48** inserts **subsection 25A(3)** clarifying that the section 25A<sup>61</sup> ‘does not apply in relation to a small-scale technology certificate created by the Regulator under **section 30P**’. Certificates under **section 30P** are those provided to a liable party when there are no small-scale technology certificates available for purchase in the clearing house. And, **item 50** inserts a new **subsection 26(7)** providing that section 26 (dealing with the registration of certificates) does not apply to a small-scale technology certificate that the Regulator is required to create under section 30P.

**Item 53** inserts a new **subsection 28(4)** which provides that ‘section 28 (which relates to notifying the Regulator of certificate transfers) does not apply in relation to the transfer of

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61. Section 25A relates to the form and content of certificates—solar water heaters and small generation units.

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small-scale technology certificates at the top of the clearing house transfer list that the Regulator is required to transfer under **subsections 30N(2) or 30P(4)**.<sup>62</sup>

**Item 58** inserts a new **Part 2A** which deals with the establishment and operation of a **clearing house** to manage the transfer of **small-scale technology certificates**.

**Proposed Division 1** provides an overview of the operation of the clearing house. Of note is that:

The clearing house will effectively set the market price as it stands ready to facilitate the transfer of all small-scale technology certificates at the fixed price of \$44 (GST inclusive). The clearing house would manage the sale of all certificates offered to it, and deliver certificates at \$44 (GST inclusive) to purchasers.<sup>63</sup>

**Proposed Division 3** deals with entering small-scale technology certificates into the clearing house. **Proposed section 30K** details the process and requirements for a person to make an application for a small-scale technology certificate to be entered into the clearing house. These form and manner requirements are that the application must be in writing, and must include additional information and documents as specified in the regulations. Examples of such information or documents may include:

- proof of identity
- details of registry accounts
- ABN and GST status, and
- bank account details.<sup>64</sup>

Where this process and requirements are met, the Regulator must enter the certificate into the clearing house by including the certificate on the clearing house transfer list in accordance with the regulations (**proposed section 30L**).

**Proposed Division 4** deals with the purchase of certificates through the clearing house. **Proposed section 30M** sets out the procedure for applying to purchase small-scale technology certificates through the clearing house. That application must:

- be in writing
- be in a form approved, in writing, by the Regulator
- be accompanied by \$44; and

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62. Explanatory Memorandum, p. 20.

63. Ibid., p. 21.

64. Ibid., p. 22.

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- be accompanied by any fee required by the regulations.

The regulations may provide that certain persons are not entitled either generally or in particular circumstance, to make an application.

**Proposed section 30N** provides that if a purchaser makes an application to purchase a certificate and there is a certificate on the list, the Regulator must transfer the certificate at the top of the list (**proposed subsection 30N(2)**). The Regulator must as soon as possible inform the purchaser in writing, pay the seller and alter the register to show the purchaser as the owner (**proposed subsection 30N(3)**).

**Proposed subsection 30P(2)** provides that where a purchaser makes an application to the clearing house and there is no certificate on the transfer list, then the Regulator must create a certificate.

The Explanatory Memorandum states that the power given to the Regulator to create and cancel certificates is designed to:

ensure that there is always a supply of certificates available to purchasers by, in effect, temporarily increasing the supply of certificates, or ‘borrowing certificates from the future’. In order to reduce this temporary supply the Regulator must cancel the next certificate registered in the *clearing house*. This is achieved by immediately cancelling the certificate, paying the seller and updating the *register of small-scale technology certificates* to show that the transferred certificate is no longer valid (paragraph 30P(4)(b)). The creation and cancellation of certificates in this manner does not impact on the *small-scale technology percentage* for the year which is set with reference to the certificates created in relation to solar water heaters and small generation units.<sup>65</sup>

Furthermore:

Purchasers will not have control over which certificates are allocated to them from the *clearing house*. They may be allocated a certificate which the seller did not transfer as a taxable supply. In these circumstances the purchaser will not be entitled to claim an input tax credit because the transfer to the purchaser did not include GST.<sup>66</sup>

**Proposed Division 5 – Renewable Energy Special Account. Proposed section 30R** establishes the Renewable Energy Special Account, which is a Special Account for the purposes of complying with the *Financial Management and Accountability Act 1997*.

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65. Ibid., p. 23.

66. Ibid., p. 24.

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**Proposed section 30T** provides that the purposes of the Renewable Special Energy Account are:

- paying amounts under paragraph 30N(3)(b) in relation to the transfer of certificates
- paying amounts under subparagraph 30P(4)(b)(ii) in relation to the transfer of certificates
- refunding amounts under regulations made for the purpose of paragraph 30U(2)(i)
- paying amounts of GST for which the Regulator is liable because of the creation of certificates for purchasers under section 30P.

**Proposed section 30U** enables the details of policies, procedures and rules for the establishment and operation of the clearing house to be prescribed in regulations.

**Item 59** inserts a **new Division 1AA into Part 4** relating to the **renewable energy shortfall charge**. It specifies what is taken into account in determining the amount of large-scale generation shortfall charge or small-scale technology shortfall charge that would apply to a liable entity.

- A large-scale generation shortfall charge (**Subdivision B of Division 1**), is calculated by reference to a liable entity's relevant acquisitions of electricity, its partial exemptions, the number of large-scale generation certificates it surrenders and the renewable energy power percentage, and
- small-scale technology shortfall charge (**Subdivision C of Division 1**), is calculated by reference to a liable entity's relevant acquisitions of electricity, its partial exemptions, the number of small-scale technology certificates it surrenders and the small-scale technology percentage.

**Item 61** provides that a large-scale generation shortfall charge is payable by a liable entity if it has a large-scale generation shortfall for a year where it has not met the requirement to surrender their proportion of large-scale generation certificates to meet its annual liability (**proposed sections 36 - 38**).

Thus, the amount of large-scale generation shortfall charge payable by a liable entity is worked out using the formula:

$$\text{Large-scale generation shortfall} \times \text{Rate of charge}$$

where:

**rate of charge** is the rate of charge as specified in section 6 of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*.

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**Proposed section 38** provides a method statement for how to calculate a liable entity's large-scale generation shortfall for a year.

This item also inserts **new sections 38AA to 38AI** for the purposes of calculating a liable entity's small-scale technology shortfall. A liable entity will be liable to pay a small-scale technology shortfall charge if it does not surrender small-scale technology certificates on a quarterly basis. The structure basically resembles the large-scale generation shortfall charge. The **small-scale technology shortfall charge** for a liable entity is **calculated** by a liable entity's small-scale technology shortfall multiplied by the rate of charge as specified in section 6 of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010* (**proposed section 38 AC**).

There are four surrender periods throughout the year. These quarterly surrender periods are meant 'to encourage the timely purchase of small-scale technology certificates by liable entities'<sup>67</sup> (**proposed subsection 38AA(5)**).

**Item 63** inserts a new heading for **Division 2 Part 4**, '**Renewable power percentage for large-scale generation shortfall charge**' to clarify that this part only relates to the renewable power percentage for determining large-scale generation liability.

**Item 65** inserts proposed **paragraph 39(3)(d)** which clarifies that the Minister must take into consideration an estimate of the partial exemptions<sup>68</sup> likely to be claimed in determining the renewable power percentage.

**Item 66** provides for the regulations to specify a small-scale technology percentage<sup>69</sup> for use by liable entities in calculating their small-scale liability (proposed section 40A). According to the Explanatory Memorandum, while the regulator will provide the Minister with advice on what that percentage should be, it is also expected that other expertise will also be engaged in order to develop that estimate.<sup>70</sup>

**Item 67** provides that before 31 March in each year, the Regulator must publish on its website an estimate of the small-scale technology percentage for each of the next 2 years. However, this estimate does not in any way bind the Regulator, the Commonwealth or any other person, and does not in any way affect the determination of a liable entity's liability

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67. Ibid., p. 26.

68. This Bill retains the rate of assistance for emissions intensive trade exposed entities (EITEs) under the present RET. A liable entity is able to apply for a partial exemption certificate. A partial exemption certificate gives a liable entity a partial exemption amount (from RET for emissions-intensive, trade-exposed activities) for a year at rates which are set out in the regulations.

69. This term relates to the quarterly surrender obligations for small-scale technology certificates.

70. Explanatory Memorandum, op. cit.

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to small-scale technology shortfall charge for a year (**proposed section 40B**). It is ‘intended to provide liable entities with an indication of their potential liability over the forward two years to assist liable entities in managing their small-scale liabilities into the future’.<sup>71</sup>

**Item 69** inserts **proposed Divisions 1AA and 1** into existing Part 5. Part 5 deals with various matters relating to the determination of a liable entity’s liability for the renewable energy shortfall charge. **Proposed Subdivision A of Division 1** requires that a liable entity that acquired electricity under a relevant acquisition during a year (the *assessment year*) must lodge an energy acquisition statement for the year on or before: 14 February in the next year, or any later day allowed by the Regulator (**proposed subsection 44(1)**). **Proposed subsection 44(2)** lists the information that the acquisition statement must contain.

Further information is required for an entity wishing to claim a partial exemption (**proposed subsection 44(3)**)

The entity may surrender renewable energy certificates for the year (or for the quarters of the year) in the statement. The entity may surrender additional certificates in certain circumstances (**proposed subsection 45C**).

**Proposed section 45** sets out the requirements of a liable entity to provide notice to the Regulator when it surrenders small-scale technology certificates for the first three quarters of a year, and also as part of the annual energy acquisition statement for the fourth quarter surrender. The purpose of this notice is to better enable the Regulator and liable entities in managing compliance with the requirement to surrender small-scale technology certificates. Also, it is possible to pay quarterly surrender fees annually, and this option is designed to minimise compliance costs.<sup>72</sup>

**Proposed section 45A** makes provision so that a liable entity is able to apply for an amendment to an *energy acquisition statement* within 12 months of lodging that statement.

**Item 69** also inserts **proposed Subdivision B of Division 1**, which requires the lodgement of annual renewable energy shortfall statements by entities that have large-scale generation shortfalls or small-scale technology shortfalls. The requirements for lodging a large-scale generation shortfall statement for a year are mostly the same as the current provisions. A few additional requirements have been inserted relating to the lodgement of a small-scale technology shortfall statement.

Existing section 66 allows affected persons to request the Regulator to reconsider certain decisions. **Item 73** adds another class of decision to this category – namely the decision by

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71. Ibid.

72. Ibid., p. 31.

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a Regulator on a liable entity's application to use a proposed amount instead of the previous year's reduced acquisitions or the default rule in **section 38AH** when calculating the amounts for quarterly surrender of small-scale technology certificates (**proposed subsection 66(1)**).

**Item 90** repeals **section 134** and replaces its content with new requirements relating to information that the Regulator may publish. This reflects the separate *large-scale shortfall charge* information and inserts new provisions in regard to publishing *small-scale technology shortfall charge* information.

**Item 96** inserts a **new Division 4A** dealing with the **register of large scale generation certificates**. Several aspects of the current renewable energy certificate registry are re-used, with the new necessary feature that a separate registry must be kept for small-scale technology certificates as well as one for large-scale generation certificates. The register is also required to hold information on small-scale technology certificates created by the Regulator to lend to liable entities where there are not enough certificates in the clearing house.

## Part 2—Other Amendments

Most of the amendments in this part are basically aimed at enhancing the enforcement and compliance framework in the Act.

**Item 120** proposes the insertion of **section 24A (Improper creation of certificates – civil penalty)** and **section 24B (False etc. information resulting in improper creation of certificates under Subdivision B or BA—civil penalty)** in the Act.

**Proposed section 24A** provides for a civil penalty to be imposed on those found guilty by a court of creating certificates without an entitlement to do so. This will enable penalty actions to be undertaken by the Regulator and will only require a civil standard of proof. The criminal penalty in section 24 is retained for 'the more serious offenders'.<sup>73</sup> The combination of civil and criminal provisions enables a proportionate, fairer yet more efficient approach to dealing with non-compliance of the Act. **Proposed section 24B** creates a similar civil penalty provision in relation to false or misleading information (including through omissions) which results in the improper creation of certificates.

**Proposed section 154M** provides that the proposed civil penalty provisions of sections 24A and 24B will be strict liability offences. The Explanatory Memorandum states that the justification for doing so is 'the information asymmetries which exist in relation to the Regulator investigating and gathering evidence in relation to non-compliance with the Act

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73. Ibid., p. 40.

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and regulations. Nonetheless, **proposed section 154N** will make clear that the mistake of fact defence still applies in relation to the prosecution of the civil penalty'.<sup>74</sup>

This new framework is consistent with the civil penalty frameworks in the *National Greenhouse and Energy Reporting Act 2007* (Cth).

**Proposed** amendments to section 40 under **items 122-124** will affect existing, as well as future, WCMG projects. It is proposed that 1 July 2011 be repealed as the date from which existing WCMG power stations (once accredited) may commence creating renewable energy certificates. Both this date and dates for accreditation of existing WCMG power stations are deferred, and put aside as matters to be decided in the future by regulations.

## Concluding comments

This Bill is intended to improve market confidence to promote investment into large-scale renewable energy to assist in meeting the 2020 target of having 20 per cent of electricity generated from renewable sources. The Bill goes some way to achieving this, although questions still remain regarding 'phantom credits' created through the Solar Credits scheme, and the capacity of banked RECs to flood the LREC market. Robust government policy will be needed to address these issues.

By means of imposing a renewable energy target, the Government has created a market for RECs. By then offering incentives for the installation of SGUs it has distorted and subsequently stalled the REC market. This is the result of the Government attempting to retain influence over the REC market.

Through repairing the market failures of the RET, the eRET introduces new issues. While stability may be returned to the renewable energy industry, it may be done by increasing financial uncertainty to electricity providers and consumers. The eRET also threatens the source of revenue of independent registered REC agents, for whom a market was created only through opportunities presented under the previous scheme. The Bill's contingency plan regarding these issues is to conduct intermittent reviews. This might be viewed as 'fine-tuning' the scheme. However, determining the finer points (such as the right SREC price for desired outcomes) is likely to become more a matter of 'trial-and-error'.

At the core, this policy instrument is intended to be a low-cost solution to reduce greenhouse gas emissions. The cost aspect has yet to be determined as the Government has presented no comparative assessment of the eRET against alternatives. Also, according to modelling by ClimateWorks, even if it meets the eRET target, Australia will continue to

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74. Ibid., p. 40.

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increase its greenhouse gas emissions between now and 2020 (assuming no price on carbon).<sup>75</sup>

So, in essence, the eRET is not of itself sufficient. To enhance efforts in this area a number of complementary measures are needed. If the objective is ultimately to continue the policy intent post-2020, a complete energy system restructure will be required. According to the Australian Bureau of Agricultural and Resource Economics:

Utilising new energy resources, particularly renewable energy sources, will require a more flexible and decentralised electricity transmission grid... While Australia has an abundance of energy resources, this transformation will need to be underpinned by significant investment in energy supply chains to allow for better integration of renewable energy sources and emerging technologies into our energy systems.<sup>76</sup>

The eRET may further entrench the existing transmission systems rather than promote a more flexible and futureproofed solution. Policies that reward supply and demand side energy efficiency plus measures that lead to a more decentralised energy supply system could complement the eRET to go beyond existing targets.

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75. ClimateWorks Australia, *Low Carbon Growth Plan for Australia*, March 2010, p. 7, viewed 1 June 2010,

<http://www.climateworksaustralia.com/Low%20Carbon%20Growth%20Plan.pdf>

76. Australian Bureau of Agricultural and Resource Economics, *Australian Energy Resource Assessment*, Commonwealth of Australia, Canberra, 1 March 2010, p. 6, viewed 1 June 2010,

[http://www.abare.gov.au/publications\\_html/energy/energy\\_10/geoscience\\_complete.pdf](http://www.abare.gov.au/publications_html/energy/energy_10/geoscience_complete.pdf)

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