2011

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELECTRICITY FEED-IN (LARGE SCALE RENEWABLE ENERGY GENERATION) BILL 2011

EXPLANATORY STATEMENT

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Overview

The purpose of the *Electricity Feed-in (Large-scale Renewable Energy Generation) Bill 2011* is to establish a Scheme to support the development of up to 210 MW of large-scale renewable energy generation capacity for the Australian Capital Territory.

Moving to low carbon and renewable electricity generation sources is critical to addressing the challenges of climate change. The ACT Government recognises the connection between greenhouse gas (GHG) emissions in the ACT and adverse climate impacts and the importance of reducing the ACT's GHG emissions. The ACT Government is committed to encouraging the generation and use of renewable energy in the Territory. In support of this objective, the ACT Government introduced Feed-in Tariffs (FiTs) to encourage the installation of Micro scale generators (less than 30kW capacity) and Medium scale generators (greater than 30 kW and less than 200kW).

The existing FiT scheme has been well supported but its success will not of itself significantly reduce the ACT's GHG emissions to the extent required. If longer term emission targets are to be met, further growth from large scale generation is required. A large-scale feed-in tariff scheme will contribute to this objective.

At present, renewable energy electricity generation is a cleaner, albeit often more expensive, alternative to fossil fuel based sources. Historically, large-scale solar generation has not yet been deployed in Australia, though several s+chemes are in place. Feed-in tariffs are a common policy tool to accelerate the deployment of selected renewable energy technologies, and their associated abatement of GHG emissions, compared to business-as-usual conditions. A FiT arrangement (as opposed to a capital grant) also provides greater commercial certainty for investors, and therefore lower costs of capital and a lower implementation risk to the ACT community.

The required value of the FiT can vary according to technology and scale of operation and capability of project developers. Depending on the information available, at larger scales of generation, this value can be determined by testing the market, rather than through a pre-determined fixed price FiT. The Scheme allows for both approaches to be used where appropriate as capacity under the Scheme is released.

Under the Scheme:

a) Capacity will be released by the Minister. The Minister will determine how the release will be made available, the renewable energy source to which the release relates, where the generator (the subject of any FiT entitlement) must be located and the duration of a FiT (which will never exceed 20 years);
b) Depending on the approach adopted in making FiT entitlements in a release available, FiT entitlements can be awarded to generators;
c) FiT entitlements will be subject to compliance with conditions, the breach of which can lead to the cancellation of the FiT;

d) The form of the FiT is a variable subsidy paid by the Territory's Distribution Network Service Provider (DNSP) for eligible electricity based, on an agreed gross tariff less the value of wholesale electricity sales. The value of electricity sales are determined by the (national) wholesale spot market. Alternatively, the Scheme gives the holder of the FiT entitlement the flexibility to enter into off-market arrangements (and provides for calculation of the FiT in this regard);

The Scheme will be funded by the DNSP that will, in accordance with National Electricity Rules, pass-through costs, through regulated Network Charges to all ACT electricity retailers, who in turn will recover their costs from their customers.

In light of the size of energy generation the Scheme seeks to encourage, the Scheme has been designed to take as much advantage as possible of existing energy market regulatory frameworks, particularly the National Electricity (ACT) Law and the National Electricity Rules.

The realisation of the greenhouse gas savings is dependent upon the ACT acquiring ownership of the appropriate Commonwealth recognised certificates (LGCs). Under the rules applying to the ACT's greenhouse gas inventory calculations, the party that owns the certificates is entitled to claim the abatement they represent. The Scheme allows the Minister to compel transfer of LGCs to the ACT, as is appropriate, to allow the Territory to offset the abatement generated against its statutory greenhouse gas reduction targets.

A comprehensive regulatory impact assessment, incorporating consultation with industry and government stakeholders, was undertaken to inform the development of the Bill. The assessment includes detailed analysis of the likely impacts of the Scheme, including a comprehensive analysis of the likely economic costs and benefits for the Territory. This analysis concludes that the objectives of the policy, including substantial greenhouse gas savings, can be achieved at modest cost the Territory spread over the period of the Scheme.

The Bill has been reviewed as compatible with the *Human Rights Act 2004*.

Detailed Explanation

Part 1 Preliminary

Clause 1 provides for the name of the legislation as the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* reflecting that the Act relates to a new, expanded scheme intended to address large scale generation (two megawatt and above) only.

Clause 2 provides for the commencement of the Act on the day after its notification.

Clause 3 provides for the dictionary appearing at the end of the Act to be part of the legislation.

Clause 4 explains that notes included in the Act are explanatory and are not in themselves part of the Act.

Part 2 Objects and important concepts

Clause 5 sets out the objects of the Act which are to promote the establishment of large scale facilities for the generation of electricity from renewable energy sources and the development of the ACT's own renewable energy generation industry. In doing so the objects are aimed at addressing the urgent need for action to be taken to address the negative effects on the environment of using non-renewable energy sources and to help the ACT achieve its greenhouse gas emissions reduction targets. The objects also require that that the development of the renewable energy generation industry is undertaken in a manner consistent with the development of a national electricity market and in a way that minimises the cost of electricity to consumers.

Clause 6 defines a large renewable energy generator as a generating system with a capacity of more than two megawatts that generates electricity from a renewable energy source. A renewable energy source is defined to include solar, wind and any other energy source declared by the Minister to be a renewable energy source. This provides flexibility for the Act to apply to new renewable energy generation technologies as they emerge. A declaration is a disallowable instrument.

Clause 7 defines the term 'capacity' of a generating system. This clause addresses the circumstances where a generating system may rely not only on renewable energy sources as an input into the generating system, and ensures that the Scheme capacity is only allocated to the renewable energy portion of a multi-source generation system. This clause also provides that the Minister may determine a method for measuring the capacity of a generating system. This provides flexibility in the Act for dealing with the various technical issues that may arise with technology including new emerging technologies and the various possible ways by which the capacity of a particular technology generating system may be measured.

Part 3 Entitlement to Feed-in Tariff

Division 3.1 Preliminary

Clause 8 defines a FiT entitlement as a right for the holder of the FiT entitlement to receive FiT support payments under Part 4 of the Act for the eligible electricity generated by the FiT holder.

Clause 9 provides a limit on the total capacity of generating systems in respect of which FiT entitlements may be granted by the Minister, which is referred to as the FiT capacity. This clause sets the FiT capacity at 210 megawatts.

Division 3.2 – Releasing FiT Capacity

Clause 10 provides that the Minister may make a part of the FiT capacity available for the grant of a FiT entitlement. In determining that a part of the FiT capacity be made available, the Minister must determine whether the FiT entitlements will be granted for the FiT capacity release by way of a competitive process, or by a direct grant by the Minister to any person the Minister considers appropriate. The determination must also specify:

(1) the term of any such FiT entitlements (i.e. the period of time over which a FiT holder will be entitled to receive FiT support payments. FiT support payments are explained in clauses 18 and 19);

(2) the kind of renewable energy source that must be used; and

(3) whether the large renewable energy generator must be located in the ACT. This part of the determination provides for circumstances where relevant land and resources are not available within the borders of the ACT. FiT entitlements nonetheless can be granted for generation facilities located outside the ACT, which are able to supply electricity, either directly or indirectly, to the ACT electricity network.

In making a determination whether to make a direct grant or undertake a competitive process for the grant of FiT entitlements (for a part of the FiT capacity), the Minister must have regard to the advantages and disadvantages to the Territory of not undertaking a competitive process and the objects of the Act.

The determination by the Minister under this clause is a disallowable instrument.

Division 3.3 – Granting FiT Entitlements

Clause 11 provides that the Minister may grant a person a FiT entitlement in relation to a FiT capacity release and provides that in granting a FiT entitlement the Minister must have regard to probity and ethical behaviour, management of risk to the Territory, the objects of the Act, and in the instance of a competitive process – open and effective competition. Sub-clause

11(4) sets out what must be included in the grant of a FiT entitlement. This includes the name of the holder of the FiT entitlement, the term of the FiT (which cannot be longer than twenty years), when the entitlement starts, the amount of the FiT (which will be stated in Australian dollars per megawatt hour) and the requirements for the large renewable energy generator (its energy source and capacity).

Subclause 4(f) also requires that the grant of the FiT entitlement include a description of the generator. The description will be specific and individual to the large scale renewable energy generator that is the subject of a successful proposal (in a competitive process) or a direct grant. This reflects the intention that a FiT entitlement will attach not only to a particular person (holder of the FiT) but to a particular, physical generator.

This subclause also requires the Minister to state whether large scale generation certificates created in respect of electricity generated by the generator under the renewable energy (*Electricity Act 2000 (Cth)*), must be transferred to the Territory. This clause gives the Minister the option of incorporating the cost of the renewable energy certificates (generated by renewable energy generators in respect of which a FiT entitlement is held) into the FiT. This means that ACT consumers will be in a position to claim responsibility for the generation of additional electricity from renewable energy sources – rather than displacing the generation of electricity from other renewable energy generators which would otherwise have occurred because of the availability of renewable energy certificates.

Clause 12 provides that a FiT entitlement is subject to conditions. Sub-clause 12(1)(a) and (b) set out conditions that the large renewable energy generator comply with the requirements for the generator and the description of the generator (both as stated in the grant under section 11) and that the holder of the FiT entitlement comply with any requirements to transfer renewable energy certificates and all laws relating to the construction connection and operation of the generator. The effect of these subclauses is to make compliance with the terms of the grant a condition of it.

Sub-clause 12(1)(b)(iii) also makes it a condition of a FiT entitlement that the holder comply with any written agreement the Minister requires the holder to enter under subclause 12(3). Such an agreement may contain further conditions the Minister considers appropriate to impose to protect the interests of the Territory or promote the objects of the Act (sub-clause 12(c)). Subclause 12(2) provides that such conditions may include conditions about any of the following matters:

(1) complying with construction schedules of the generating system;

(2) complying with laws that relate to the construction, connection or operation of the generator;

(3) obtaining finance for the construction, connection or operation of the generator within a certain time;

(4) entering into a connection agreement with the electricity distributor to connect the generator to the electricity network within a certain time;

(5) connecting the generator to the network and supplying electricity to the network within a stated time;

(6) where a generator must be located and the kind of generating system that must be used;

(7) the minimum and maximum quantities of eligible electricity the generator may be required to produce within a certain stated time;

(8) allowing access to premises to enable the Territory to check the holder is complying with the conditions of the FiT entitlement;

(9) amending FiT entitlement and imposing new conditions.

Incorporating conditions of a FiT entitlement into a written agreement with the Territory is intended to provide the Territory flexibility in dealing with the various contingencies that might arise in the implementation of a proposal to construct and operate a generating facility under the Act.

Division 3.3 – Dealing with FiT Entitlements

Clause 13 provides the Minister with the power to cancel an entitlement if the Minister believes on reasonable grounds that a condition of the entitlement has been breached. It is the intention that compliance with the conditions of a FiT entitlement are strict conditions and that a breach will occur and give rise to the right for the Minister to terminate the FiT entitlement whether or not the breach of a condition was the fault of the FiT holder or another person. The Minister must not cancel a FiT entitlement unless the Minister has issued an intended cancellation notice to the FiT holder and has given the FiT holder 28 days in which to give a response. A cancellation of a FiT entitlement will take effect on the date and at the time specified in the cancellation notice.

Clause 14 provides for a proponent to voluntarily surrender a FiT entitlement by giving a written notice of the surrender to the Minister. The Minister must confirm the surrender in writing which will form the surrender notice. A surrender of the FiT entitlement takes effect on the day and at the time specified in the surrender notice.

Clause 15 provides for a holder of a FiT entitlement to transfer the entitlement to another person by making a written application to the Minister. While the identity of the holder of the FiT entitlement may change as a result of a transfer, the FiT entitlement will still relate to the same generator (the subject of the original grant). Transfer of the FiT entitlement is done by the Minister by way of written notice to the transferrer and the transferee. In considering whether to transfer a FiT entitlement, the Minister is required to have regard to the matters listed in subclauses 11(3) (a)-(c). These matters are probity and ethical behaviour,

management of risk to Territory, and the objects of the Act. The Minister must also have regard to whether the transferee can comply with the terms and conditions of the FiT entitlement. This clause provides the Minister with the power to impose additional conditions on a FiT entitlement transferred under this clause. Transfer of the FiT entitlement will take effect on the date stated in the transfer notice given by the Minister.

Clause 16 requires the Minister to prepare a notice of a cancellation, surrender or transfer of a FiT entitlement. This requirement will ensure that the relevant register of instruments will reflect the current state of persons holding FiT entitlements. This notice is a notifiable instrument.

Part 4 Support Payments for FiT Entitlement

Clause 17 defines eligible electricity to mean electricity generated by a large renewable energy generator connected to an electricity network for which large scale generation certificates have been registered under the *Renewable Energy (Electricity) Act 2000* (Cth); generated using a renewable energy source; supplied to the electricity network; and sold through the National Electricity Market (NEM) or directly to a participant within that market.

Clause 18 requires an electricity distributer (if a large renewable energy generator in relation to which a FiT entitlement is granted is connected, either directly or indirectly, to its electricity network) to pay FiT support payments to the holder of the FiT entitlement. This obligation is imposed on the electricity distributor in its capacity as the distribution network support provider. FiT support payments are calculated under clause 19. Subclause 18(3) provides that a FiT support payment will not be paid for electricity exceeding the maximum amount of eligible electricity for which the FiT holder is entitled to receive FiT support payments if there is a condition to this effect imposed on the FiT entitlement.

Subclause 18(4) provides that FiT support payments are payable by the distributor in arrears and within 30 days of the later of the day the FiT entitlement holder giving the distributor written notice that relevant LGCs had been registered under the Commonwealth Act and the day that the holder gives the distributor any other information reasonably required to work out the FiT support payment. This clause also provides that a FiT support payment is payable in relation to eligible electricity generated in the period the holder of the FiT entitlement holds the entitlement and otherwise in accordance with any guidelines for paying a FiT support payment made by the Minister under section 20.

Clause 19 provides for the manner of working out the amount of a FiT support payment. The amount of a FiT support payment for a period is the multiple of the difference between the amount of the holder's feed in tariff stated in the grant, less the spot price value of the eligible electricity during the period and the quantity of the holder's eligible electricity during the period.

Subclause 19(2) provides that if a FiT support payment is a negative amount then this becomes an amount owing by the FiT holder to the electricity distributor. The amount is payable either as an offset against future FiT support payments, or otherwise by making a direct payment to the distributor within 30 days after the distributor gives notice to pay the amount.

This clause provides for the definition of the Australian Energy Market Operator (AEMO) and spot markets as defined in the National Electricity Rules. It also provides that the definition of spot price value (of the holder's eligible electricity) is the amount that would have been paid to the holder for the electricity by AEMO if the electricity had been sold on the national electricity spot market. This will require the use of AEMO generated information and data.

The requirement that eligible electricity be electricity for which large scale generation certificates have been registered under the *Renewable Energy (Electricity) Act 2000* (Cth) ensures that at the time of calculation of the FiT support payment, issues such as auxiliary and transmission losses arising in the production of electricity have already been addressed (as part of the creation of the relevant Large Scale Generation Certificate - see for example regulation 14 of *Renewable Energy (Electricity) Regulations 2001* (Cth)) and therefore will not need to be separately provided for in the FiT support payment calculation.

Clause 20 provides that the Minister may make guidelines about working out at FiT support payment or paying a FiT support payment. The guidelines are a notifiable instrument.

Part 5 Reporting

Clause 21 provides that the electricity distributor (which has a renewable energy generator connected to its electricity network in relation to which a FiT entitlement is held) must provide reports to the Minister on the following matters:

(1) the cost of connecting a generator to the network, including any network augmentation that was required to facilitate the connection;

(2) the cost of maintaining the connection and any augmentation work;

(3) the quantity of eligible electricity supplied by a generator to the electricity network in a trading interval;

(4) spot price value for electricity supplied in its trading interval; and

(5) FiT support payment paid by the distributor during the quarter to the holder of the FiT entitlement in relation to the generator.

Subclause 21(2) provides that the reports required by this clause must be provided before the end of the quarter following the quarter to which the reports relate. This clause defines spot

price value by reference to section 19(3) and trading interval by using the corresponding definitions from the National Electricity Rules.

Part 6 Miscellaneous

Clause 22 provides that the Minister must review a FiT capacity release within 6 months after the last FiT entitlement was granted under the release. Such reviews are to include an evaluation of the outcomes in achieving value for money and, in relation to any competitive process for a FiT capacity release, an evaluation of the process including its effectiveness in generating competition. Subclause 3 requires that the Minister must review the operation of the Act at the end of its fifth year of operation and at least once every subsequent 5 years of its operation. Review of the Act is required to include at the least an evaluation of progress of construction of large renewable energy generators, consideration of the effectiveness of the Act in achieving its objects and consideration of the impact of costs under this Act on electricity consumers. The Minister is required to present a copy of the report of review to the legislative assembly no later than 6 months after the end of the period for undertaking the review.

Clause 23 provides for the Minister to determine fees for this Act. Such determination is a disallowable instrument.

Clause 24 provides for the Minister to approve forms for this Act. An approved form is an notifiable instrument.

Clause 25 provides for the Executive to make regulations for this Act and provides that regulations may create offences with maximum penalties of not more than 10 penalty units for the offences.

The **Dictionary** defines a number of important terms used in the Act, including those definitions found in the National Electricity (ACT) Law and the National Electricity Rules.