



Australian Capital Territory

Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011

A2011-56

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J2010-623

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Australian Capital Territory

Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011

A2011-56

An Act about the large-scale generation of electricity from renewable energy sources, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*electricity distributor*—see the *Utilities Act 2000*, dictionary.’ means that the term ‘electricity distributor’ is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Objects and important concepts

5 Objects of Act

The objects of this Act are to—

- (a) promote the establishment of large-scale facilities for the generation of electricity from a range of renewable energy sources in the Australian capital region; and
- (b) promote the development of the renewable energy generation industry in the ACT and Australia consistent with the development of a national electricity market; and
- (c) reduce the ACT's contribution to greenhouse gas emissions and help achieve targets to reduce the ACT's greenhouse gas emissions; and
- (d) address the need for urgent action to be taken to reduce reliance on non-renewable energy sources while minimising the cost to electricity consumers.

6 **Meaning of *large renewable energy generator* and *renewable energy source***

- (1) In this Act:

large renewable energy generator means a generating system that—

- (a) generates electricity using a renewable energy source; and
- (b) has a capacity of more than 200kW.

renewable energy source means any of the following energy sources:

- (a) solar;
- (b) wind;

- (c) another energy source declared by the Minister under subsection (2).
- (2) The Minister may declare an energy source to be a renewable energy source.
- (3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

7 Meaning of *capacity*

- (1) For this Act, the *capacity*, of a generating system, is the nameplate rating of the generating unit that makes up, or the total of the nameplate ratings of the units that make up—
 - (a) for a system that generates electricity using a renewable energy source only—the system; or
 - (b) for a system that generates electricity using a renewable energy source and a non-renewable energy source—the part of the system that generates electricity using the renewable energy source only.
- (2) However, if the Minister makes a determination under subsection (3), the *capacity* of the system is the capacity worked out in accordance with the determined method.
- (3) The Minister may determine a method for measuring the capacity of a system that generates electricity using a renewable energy source.
- (4) Also, for a system that generates electricity using a renewable energy source and a non-renewable energy source, the Minister may determine a method for working out the part of the system that generates electricity using a renewable energy source.
- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(6) In this section:

nameplate rating, of a generating unit, means the maximum continuous output, expressed in megawatts, of the unit as specified by the manufacturer, or as subsequently modified.

Part 3 FiT entitlements

Division 3.1 Preliminary

8 **Meaning of *FiT entitlement***

In this Act:

FiT entitlement means a right for the holder of a FiT entitlement to receive FiT support payments under part 4 for the holder's eligible electricity.

9 **FiT capacity**

The total capacity of the generating systems of large renewable energy generators in relation to which FiT entitlements may be held under this Act (the ***FiT capacity***) is 210MW.

Division 3.2 Releasing FiT capacity

10 **FiT capacity release**

- (1) The Minister may determine that a stated part of the FiT capacity (a ***FiT capacity release***) is to be made available for the grant of FiT entitlements.
- (2) The determination must state—
 - (a) whether the FiT capacity release will be made available by a competitive process or by direct grant to any person the Minister considers appropriate; and
 - (b) the following in relation to any FiT entitlement that may be granted under the release:
 - (i) the term (not longer than 20 years) of the entitlement;
 - (ii) the kind of renewable energy source that must be used;

- (iii) whether a large renewable energy generator must be located in the ACT or may be located elsewhere in the Australian capital region; and
 - (c) for a release to be made available by direct grant—any criteria a person, or a person’s proposal, must meet to be eligible for a direct grant.
- (3) The determination may state the minimum capacity of a large renewable energy generator’s generating system in relation to which a FiT entitlement may be granted under the FiT capacity release.
- (4) In deciding whether to make a FiT entitlement available by direct grant, the Minister must have regard to—
 - (a) the advantages and disadvantages to the Territory of not undertaking a competitive process; and
 - (b) the objects of the Act.
- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

11 FiT entitlement—grant

- (1) The Minister may grant a person a FiT entitlement under a FiT capacity release in relation to a large renewable energy generator located in the Australian capital region.
- (2) However, the Minister must not grant a person a FiT entitlement if the grant would cause the FiT capacity release to be exceeded.
- (3) The Minister must not grant a FiT entitlement under a FiT capacity release before—
 - (a) if there is a motion to disallow the determination under section 10 for the release and the motion is negatived by the Legislative Assembly—the day after the motion is negatived; or

- (b) the day after the 6th sitting day after the determination for the release is presented to the Legislative Assembly under the Legislation Act, chapter 7; or
 - (c) if the determination for the release provides for a later date or time for the grant of the entitlement—that date or time.
- (4) Subsection (3) is subject to any disallowance or amendment of the determination under the Legislation Act, chapter 7.
- (5) In granting a FiT entitlement, the Minister must have regard to the following:
 - (a) probity and ethical behaviour;
 - (b) management of risk to the Territory;
 - (c) the objects of this Act;
 - (d) if the entitlement is granted under a FiT capacity release made available by a competitive process—open and effective competition.
- (6) The grant of a FiT entitlement must state the following:
 - (a) the name of the holder of the entitlement;
 - (b) the term (not longer than 20 years) of the entitlement;
 - (c) when the term of the entitlement starts;
 - (d) the amount of the feed-in tariff;
 - (e) the requirements for the large renewable generator, including—
 - (i) the kind of renewable energy source that must be used; and
 - (ii) the capacity of the generator’s generating system;

- (f) a description of the generator;

Example

the generator's plant specification

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (g) whether large-scale generation certificates for eligible electricity generated by the large renewable energy generator must be transferred to the Territory under the *Renewable Energy (Electricity) Act 2000* (Cwlth).

- (7) The grant of a FiT entitlement is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

12 FiT entitlement—conditions

- (1) A FiT entitlement is subject to the following conditions:
- (a) that the large renewable energy generator complies with—
- (i) the requirements for the generator stated in the grant under section 11 (6) (e); and
 - (ii) the description of the generator stated in the grant under section 11 (6) (f);
- (b) that the holder of the FiT entitlement complies with—
- (i) any requirement in relation to renewable energy certificates stated in the grant under section 11 (6) (g); and
 - (ii) all laws relating to the construction, connection or operation of the large renewable energy generator; and
 - (iii) any written agreement the Minister requires the holder to enter into under subsection (3);

- (c) any other condition imposed by the Minister that the Minister considers appropriate to protect the interests of the Territory or promote the objects of the Act.
- (2) The conditions imposed under subsection (1) (c) may include conditions about any of the following:
- (a) establishing a schedule for construction of the large renewable energy generator and meeting stated deadlines in relation to its construction;
 - (b) complying with a stated law in relation to the construction, connection or operation of the large renewable energy generator within a stated time;
 - (c) establishing and meeting stated deadlines in relation to financing arrangements necessary for the construction, connection or operation of the large renewable energy generator;
 - (d) entering into an agreement with an electricity distributor to connect the large renewable energy generator to the distributor's electricity network within a stated time;
 - (e) connecting the large renewable energy generator to an electricity network and supplying electricity to the network within a stated time;
 - (f) where a large renewable energy generator must be located and connected to an electricity network;
 - (g) the kind of generating system that must be used;
 - (h) the minimum quantity of eligible electricity that must be generated by the large renewable energy generator in a stated time;
 - (i) the maximum quantity of eligible electricity, in a financial year, in relation to which the holder is entitled to be paid a FiT support payment;

- (j) allowing reasonable access to the premises of the holder of a FiT entitlement and where the large renewable energy generator is located to check the holder's compliance with the conditions of the FiT entitlement;
 - (k) amending a FiT entitlement, including imposing a new condition or amending an existing condition.
- (3) The Minister may require the holder of a FiT entitlement to enter into a written agreement (however described) with the Territory, on terms approved by the Minister, in relation to the entitlement.

Division 3.3 Dealing with FiT entitlements

13 FiT entitlement—cancellation

- (1) The Minister may, by written notice (a *cancellation notice*) given to the holder of a FiT entitlement, cancel the entitlement if the Minister believes on reasonable grounds that a condition of the entitlement has been breached, whether by the holder or otherwise.
- (2) However, the Minister must not cancel a FiT entitlement unless the Minister—
- (a) gives the holder of the entitlement written notice (an *intended cancellation notice*) of the Minister's intention to cancel the entitlement; and
 - (b) takes into consideration any response received from the holder in accordance with the notice.
- (3) An intended cancellation notice must—
- (a) state that the Minister intends to cancel the FiT entitlement; and
 - (b) explain why the Minister intends to cancel the FiT entitlement; and

- (c) state that the holder of the entitlement may, within 28 days after the day the holder is given the notice, give a written response to the Minister about the matters in the notice.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (4) Cancellation of a FiT entitlement under this section takes effect on the day and at the time stated in the cancellation notice.

14 FiT entitlement—surrender

- (1) The holder of a FiT entitlement may surrender the entitlement by giving written notice of the surrender to the Minister.
- (2) On receipt of a notice under subsection (1), the Minister must confirm the surrender, by written notice (a *surrender notice*) given to the holder of the FiT entitlement.
- (3) Surrender of a FiT entitlement under this section takes effect on the day and at the time stated in the surrender notice.

15 FiT entitlement—transfer

- (1) The holder of a FiT entitlement (the *transferor*) may apply, in writing, to the Minister to transfer the entitlement to another person (the *transferee*).
- (2) The Minister may, by written notice to the transferor and transferee (a *transfer notice*), transfer the FiT entitlement to the transferee.
- (3) In considering whether to transfer the FiT entitlement to the transferee, the Minister must have regard to—
 - (a) the matters mentioned in section 11 (5) (a) to (c) (FiT entitlement—grant); and
 - (b) whether the transferee can comply with the conditions of the FiT entitlement.

- (4) The Minister may impose additional conditions on a FiT entitlement transferred under this section.

Note The conditions of a FiT entitlement are set out under s 12.

- (5) The transfer of a FiT entitlement takes effect on the day and at the time stated in the transfer notice.

16 Public notice of FiT entitlement matters

- (1) The Minister must prepare a notice of each of the following after it happens:

- (a) cancellation of a FiT entitlement under section 13;
- (b) surrender of a FiT entitlement under section 14;
- (c) transfer of a FiT entitlement under section 15.

- (2) The notice must state—

- (a) for a cancellation or surrender of a FiT entitlement—the name of the holder of the FiT entitlement; and
- (b) for a transfer of a FiT entitlement—the names of the person transferring the entitlement and the person to whom the entitlement is transferred; and
- (c) a description and the location of the large renewable energy generator under the FiT entitlement; and
- (d) when the cancellation, surrender or transfer took effect.

- (3) A notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Part 4 Support payments for FiT entitlements

17 Meaning of *eligible electricity*

In this Act:

eligible electricity means electricity—

- (a) generated by a large renewable energy generator connected to an electricity network; and

Note The National Electricity (ACT) Law and national electricity rules govern the process by which a person may apply for connection to an electricity network.

- (b) for which large-scale generation certificates have been registered under the *Renewable Energy (Electricity) Act 2000* (Cwlth); and
- (c) generated using a renewable energy source; and
- (d) supplied to the electricity network; and
- (e) sold through the national electricity market or directly to a market participant.

18 FiT support payment—distributor to pay

- (1) This section applies to an electricity distributor if a large renewable energy generator in relation to which a FiT entitlement is granted is connected to its electricity network.
- (2) The distributor must pay the holder of the FiT entitlement an amount (the *FiT support payment*) worked out under section 19, for the holder's eligible electricity.

- (3) However, if it is a condition of a holder's FiT entitlement that there is a maximum quantity of a holder's eligible electricity, in a financial year, in relation to which the holder is entitled to be paid a FiT support payment, the distributor need not pay the holder an amount in relation to electricity generated in excess of the maximum quantity in a financial year.
- (4) The FiT support payment is payable—
- (a) in arrears; and
 - (b) within 30 days after the later of—
 - (i) the day the holder gives the distributor written notice that the large-scale generation certificates for the holder's eligible electricity, worked out under the *Renewable Energy (Electricity) Act 2000* (Cwlth), section 18 (3), have been registered under that Act, section 26; and
 - (ii) the day the holder gives the distributor any other information reasonably required by the distributor to work out the FiT support payment; and
 - (c) in relation to eligible electricity generated during the period the holder of the FiT entitlement holds the entitlement; and
 - (d) otherwise in accordance with any guidelines for paying a FiT support payment made by the Minister under section 20.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see *Legislation Act*, s 177).

19 FiT support payment—working out

- (1) A FiT support payment for the holder of a FiT entitlement for a period is the multiple of—
 - (a) the amount that is the holder's feed-in tariff, stated in the grant, less the spot price value of the eligible electricity during the period; and
 - (b) the quantity of the holder's eligible electricity during the period.
- (2) If the amount of a FiT support payment worked out under this section is a negative amount, the electricity distributor may—
 - (a) offset the amount against any subsequent FiT support payment payable to the holder of the FiT entitlement; or
 - (b) require the holder of the FiT entitlement, by written notice, to pay the distributor the amount within 30 days after the distributor gives the notice.

- (3) In this section:

AEMO—see the national electricity rules, chapter 10 (Glossary).

spot market—see the national electricity rules, chapter 10 (Glossary).

spot price value, of the eligible electricity of the holder of a FiT entitlement, means the amount that would have been paid to the holder for the electricity by the AEMO if the electricity had been sold on the spot market.

20 FiT support payment—guidelines

- (1) The Minister may issue guidelines about—
- (a) working out a FiT support payment under section 19 (1); or
 - (b) paying a FiT support payment.

Example

how often the FiT support payment is payable to the holder of a FiT entitlement

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Part 5 Reporting

21 Quarterly reports by distributors

- (1) For each quarter that 1 or more large renewable energy generators are connected to an electricity network, the electricity distributor for the network must report to the Minister about the following in relation to each connected generator:
 - (a) if the generator was first connected to the electricity network during the quarter—the cost of connecting the generator to the network, including any network augmentation that was required to facilitate the connection;
 - (b) the cost of maintaining the connection of the generator to the network and maintaining any network augmentation required to facilitate the connection;
 - (c) the quantity of eligible electricity supplied by the generator to the electricity network in a trading interval, and the spot price value for electricity in each interval;
 - (d) the FiT support payment paid by the distributor, during the quarter, to the holder of the FiT entitlement in relation to the generator.
- (2) The electricity distributor must give the Minister the report for a quarter before the end of the next quarter.
- (3) In this section:

spot price value, of the eligible electricity of the holder of a FiT entitlement—see section 19 (3).

trading interval—see the national electricity rules, chapter 10 (Glossary).

Part 6 Miscellaneous

22 Review of Act

- (1) The Minister must review a FiT capacity release within 6 months after the last FiT entitlement under the release is granted.
- (2) A review under subsection (1) must include—
 - (a) an evaluation of the outcomes in relation to achieving value for money; and
 - (b) in relation to a competitive process for a FiT capacity release— an evaluation of the process, including the administration of the process and its effectiveness in generating competition.
- (3) The Minister must review the operation of this Act after the end of its 5th year of operation, and at least once every subsequent 5 years of its operation.
- (4) A review under subsection (3) must include—
 - (a) an evaluation of the progress of construction of large renewable energy generators; and
 - (b) a consideration of the effectiveness of the operation of this Act in achieving the objects of this Act; and
 - (c) a consideration of the impact of costs under this Act on electricity consumers.
- (5) The Minister must present a copy of a review to the Legislative Assembly not later than 6 months after the end of the period for undertaking the review.

23 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

24 Approved forms

- (1) The Minister may approve forms for this Act.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

25 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- ACT
- Commonwealth
- disallowable instrument (see s 9)
- Executive
- in relation to
- may (see s 146)
- Minister (see s 162)
- month
- must (see s 146)
- notifiable instrument (see s 10)
- person (see s 160)
- quarter
- regulation
- territory law
- the Territory
- under
- writing.

Australian capital region means the region made up of—

- (a) the following areas:
 - (i) ACT;
 - (ii) Bega Valley Shire;
 - (iii) Bombala Valley Shire;
 - (iv) Boorowa Shire;

- (v) Cooma-Monaro Shire;
 - (vi) Cootamundra Shire;
 - (vii) Eurobodalla Shire;
 - (viii) Goulburn Mulwaree Council Area;
 - (ix) Gundagai Shire;
 - (x) Harden Shire;
 - (xi) Queanbeyan City Council Area;
 - (xii) Palerang Council Area;
 - (xiii) Snowy River Shire;
 - (xiv) Tumbarumba Shire;
 - (xv) Tumut Shire;
 - (xvi) Upper Lachlan Council Area;
 - (xvii) Yass Valley Local Government Area;
 - (xviii) Young Shire; or
- (b) if a regulation prescribes areas that make up the region—the prescribed areas.

capacity, of a generating system—see section 7.

electricity distributor—see the *Utilities Act 2000*, dictionary.

electricity network—see the *Utilities Act 2000*, section 7.

eligible electricity—see section 17.

FiT capacity—see section 9.

FiT capacity release—see section 10 (1).

FiT entitlement—see section 8.

FiT support payment—see section 18 (2).

generating system—see the national electricity rules, chapter 10 (Glossary).

generating unit—see the national electricity rules, chapter 10 (Glossary).

large renewable energy generator—see section 6.

large-scale generation certificate—see the *Renewable Energy (Electricity) Act 2000* (Cwlth), section 5.

market participant—see the national electricity rules, chapter 10 (Glossary).

National Electricity (ACT) Law means the provisions applying in the ACT because of the *Electricity (National Scheme) Act 1997*, section 5.

national electricity market—see the national electricity rules, chapter 10 (Glossary).

national electricity rules means the national electricity rules under the National Electricity (ACT) Law.

renewable energy source—see section 6.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 November 2011.

2 Notification

Notified under the Legislation Act on 14 December 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Electricity Feed-in (Large-scale Renewable Energy Generation) Bill 2011, which was passed by the Legislative Assembly on 8 December 2011.

Clerk of the Legislative Assembly

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