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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELECTRICITY FEED-IN TARIFF SCHEMES LEGISLATION AMENDMENT BILL 2015
EXPLANATORY STATEMENT

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Electricity Feed-in Tariff Schemes Legislation Amendment Bill 2015

EXPLANATORY STATEMENT

Preamble

This explanatory statement has been prepared in order to assist the reader of the Bill and to help inform debate on it. It is not a comprehensive description of the Bill and is not intended to be taken as an authoritative guide to the meaning of a provision.

This Bill amends the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* and the *Electricity Feed-in (Renewable Energy Premium) Act 2008* to update and improve the effectiveness of these Acts, and address concerns that have been identified since the passage of these Acts.

Amendments to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* will achieve:

- Greater certainty to the Territory and to generators supported under the Act should there be a change in the Commonwealth Legislation; and

- An ability for the Territory to determine alternative methods of calculating feed-in tariff support payments, where appropriate, for the benefit of the Territory and generators supported under the Act.

Amendments to the *Electricity Feed-in (Renewable Energy Premium) Act 2008* will achieve:

- Greater transparency and scrutiny of the costs and impact on electricity users;

- A lower regulatory burden for ACT electricity retailers and distributor through streamlined reporting requirements;

- An effective compliance regime by use of targeted penalties and audits, if required; and

- Administrative efficiencies and legislative clarity by providing for renewable energy generators to be installed and connected by 31 December 2016.

Clause 1
This clause notes the Bill name.

Clause 2
This clause provides for the commencement as the day after its notification day.

Clause 3
This clause provides that the Act amends the *Electricity Feed-in (Renewable Energy Premium) Act 2008* and the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*.

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

Clause 4 – Section 7A

This clause inserts a new section 7A. Section 7A specifies that a reference to the *Renewable Energy (Electricity) Act 2000* (Commonwealth) includes a reference to a regulation made under that Act. This is specifically intended to assist the function of Clause 5.

Clause 5 – Section 17(b)

This clause amends the definition of eligible electricity under existing section 17 in relation to sub section (b). The definition of eligible electricity under section 17 includes a requirement for large scale generation certificates to be registered for electricity generated under the Act. These certificates are registered under the *Renewable Energy (Electricity) Act 2000* (Commonwealth). This registration requirement is to ensure that the electricity generated is from a renewable source of energy. A generator can only register large scale generation certificates if it is an accredited renewable energy generator under the Commonwealth Act.

This clause amends this definition to ensure the Act will continue to work effectively should a future amendment, repeal or expiry of the Commonwealth Act no longer allow for large generation certificates to be registered. This is achieved by allowing generators to continue to receive FiT support payments without a requirement to create large-scale generation certificates, until such time as an alternative accreditation requirement is established by regulation, if so issued, under the Act.

Such a regulation can only come into effect if the Commonwealth Act expires, or is amended or repealed in a way that no longer allows for large generation certificates to be registered. If a regulation is not issued in the event of an expiry, repeal or amendment, eligible electricity will not be required to have large generation certificates to be registered. This electricity will be deemed to be exempt electricity (defined under clause 6).

Clause 6 – Section 17 (2) to (4)

This clause inserts new sections 17(2), (3) and (4). This clause allows for a regulation to prescribe accreditation requirements should the *Renewable Energy (Electricity) Act 2000* (Commonwealth) be amended or repealed in a way that no longer allows for large generation certificates to be registered.

This clause also requires that any such accreditation requirement contained in a regulation, if issued, does not go beyond the requirements of the Commonwealth Act such a way that would disadvantage a generator that is subject to a pre-existing grant of entitlement. This is to ensure that a regulation does not financially disadvantage an existing holder of a FiT entitlement under the Act, previous to the repeal or amendment of the Commonwealth Act. Such disadvantages may include significantly more onerous administration requirements or new requirements that limit the quantity of eligible electricity a generator may produce to amount less than what would have been the case under the Commonwealth Act.

This clause also provides definitions for commencement day and exempt electricity.

Clause 7 – Section 17A

This clause substitutes existing section 17A of the Act. Amended section 17A of the Act defines how the FiT support payment is to be calculated through a formula given under subsection (1)(a) or through an alternative assessment method approved by the Minister under subsection (1)(b).

Subsections (2) and (3) provide for a determination for an alternative assessment method to be made through a disallowable instrument, subject to two conditions: the alternative assessment method made under this determination should minimise costs for electricity users *and* not disadvantage an existing holder of a FiT entitlement under the Act. The second condition is to ensure that the determination is not used to issue an assessment method which results in lower costs for electricity users through lower FiT support payments but leaves the holder of the FiT entitlement worse off than they would have been under the payment formula or under an existing determination.

Given the complexity of issues associated with ways in which disadvantage for a generator may arise through the use of an alternative assessment method, it is expected that the Minister would have reasonable grounds for being satisfied that no disadvantage to a generator would arise where a generator has provided consent to a specific alternative assessment method being introduced under subsection 17A(1)(b). The generator would provide its consent on the basis that, in its own estimation, it was not disadvantaged.

An example where a section 17A(1)(b) may be properly applied is where the application of technology (such as energy storage) could result in an enhanced income stream for the generator. The new method could seek to establish a means of sharing these benefits between the generator and ACT electricity consumers. In this example the alternative assessment method could be approved for a generator either prior to the generator being granted a FiT entitlement, or after the grant of FiT entitlement and where the generator has agreed to that specific method.

Subsection (4) provides for the definition of terms included in this formula.

Clause 8 – Section 18 (2) (b)

This clause substitutes existing section 18 (2) (b) of the Act. The existing section requires the electricity distributor to pay the FiT support payment for eligible electricity to the holder of the FiT entitlement within 30 days of the holder giving written notice of the registration of the large scale generation certificates under the *Renewable Energy (Electricity) Act 2000* (Commonwealth) and other information required by the distributor to work out the FiT support payment.

This clause removes this requirement in relation to the registration of the large scale generation certificates under the *Renewable Energy (Electricity) Act 2000* (Commonwealth). This is intended to ensure the continuity of FiT support payments, the timeliness of those payments, should the expiry, repeal or amendment of that Act no longer allows the registration of large scale generation certificates.

As the FiT support payments can only be made for eligible electricity, the amended section will continue to require the holder of the FiT entitlement to give written notice of the registration of the large generation certificates to the electricity distributor as long as the *Renewable Energy (Electricity) Act 2000* (Commonwealth) continues to allow for registration of large generation of certificates.

Clause 9 – Section 25 (2) (c)

Section 25 enables the Executive to make regulations for the Act. These regulations may be in relation to working out or paying a FiT support payment under subsection (2). This clause inserts a new subsection (2) (c) that provides for regulations to be made for verification of information provided by a FiT entitlement holder. Without limiting the use of this clause, this clause is intended to assist the function of clause 5.

Electricity Feed-in (Renewable Energy Premium) Act 2008

Clause 10 – Section 5AA
This clause inserts a new section 5AA to apply the criminal code to all offences against this Act.

Clause 11 – Section 5B (1)
This clause amends the definition of a renewable energy generator under section 5B (1). The amended definition prohibits storage devices that are connected to any another source of electricity, other than a compliant renewable energy generator under the Act. This is to prevent FiT payments for electricity generated by a source of electricity that is not a compliant renewable energy generator connected under the Act.

Clause 12 – Section 5E (1)
Section 5E (1) contains the requirements to be a compliant renewable energy generator under the Act. This clause inserts additional requirements through new subsections (e), (f) and (g) to section 5E (1) in addition to existing requirements.

New subsection (e) requires a micro renewable energy generator's application for connection to have been received by the distributor before 29 May 2011. This subsection updates the Act to reflect previous Government announcements on the closing date for applications to connect micro renewable energy generators under the Act. This closing date announced by the Government was 29 May 2011.

New subsection (f) requires a medium renewable energy generator's application for connection to have been received by the distributor before 13 July 2011. This subsection updates the Act to reflect previous Government announcements on the closing date for applications to connect medium renewable energy generators under the Act. This closing date announced by the Government was 13 July 2011.

New subsection (g) requires the generator to be installed and connected to the electricity distribution network by 31 December 2016. This is to address an unintended consequence of the current Act which enables a renewable energy generator to delay connection indefinitely into the future once it has made an application to connect to the distributor. The date contained in this subsection is intended to provide sufficient time for potentially eligible generators to install and connect renewable energy generators.

Clause 13 – Section 10(1)
Section 10(1) requires the Minister to determine a premium rate in each financial year. This premium rate is payable by a NERL retailer to a compliant renewable energy generator under section 6. The requirement to determine a rate in each financial year is unnecessary and redundant as no renewable energy generators will be connected after 31 December 2016 under clause 10.

Clause 13 amends section 10(1) to remove the requirement to determine a premium rate in each financial year. The amended section 10(1) still requires the Minister to determine a premium rate payable by a NERL retailer for a compliant renewable

energy generator. This determination will continue to apply in future financial years until it is revoked by a new determination under this section.

Clause 14 - Section 11A

Clause 14 substitutes existing sections 11A and 11B. Section 11A currently requires the Minister to publish a monthly report. This report is required to provide the number of applications received by the distributor for connecting renewable energy generators during the month, and the number of renewable energy generators connected during the month. The report is also required to provide the total capacity and number of renewable energy generators connected to the electricity distribution network.

The rate of eligible renewable energy generators connecting to the electricity distribution network has fallen as capacity available under the Act has been taken up. The requirement to produce a monthly report is now considered to be redundant and inefficient. The number of additional renewable energy generators still waiting to be connected under the Act is limited. Separately, clause 12 requires generators to be installed by 31 December 2016. This will mean that no new generators will be connected after this date.

Clause 14 replaces this monthly reporting requirement with an annual reporting requirement. Amended section 11A requires the Minister to publish a report annually on a government website, within six months of the end of each financial year. The amendments require the report to contain information on the total capacity and number of renewable energy generators connected under the Act and the FiT payments made to renewable energy generators under the Act. It is intended that this report will provide a transparent and easily accessible source of information to the community on the operation of the Act.

Clause 14 – Section 11B

Section 11B currently requires the distributor to give Minister the information to prepare the report required under section 11A.

Clause 14 amends section 11B extend this to electricity retailers in the ACT. It also requires the Minister to issue a determination, through a disallowable instrument, on the information required to be reported by the electricity distributor and retailers. The amended section 11B also provides the ability to impose a penalty of up to 30 points if a retailer or the distributor fails to comply with a reporting requirement contained in a determination under this section to provide information. The inclusion of penalties is intended to incentivise reporting compliance in response to concerns over the information received under the current requirements. The ability to issue determinations is also intended to provide the Minister with greater ability to scrutinise the scheme including cost impact on electricity users. This is lacking in the current Act.

These amendments are also intended to streamline current reporting requirements and reduce regulatory burden on the electricity industry. The amended reporting requirements will replace the current monthly requirement on the distributor, and is also intended to replace the current quarterly reporting requirements in the *Utilities (Electricity Feed-in Code)* issued under the *Utilities Act 2000*.

Clause 14 – Section 11C

Clause 14 inserts a new section 11C. This section provides for the Minister to issue a determination, through a disallowable instrument, requiring a retailer or distributor to undertake an audit of the information provided under amended section 11B, if the Minister has reasonable grounds to consider that the information provided is untrue, misleading or incomplete.

The determination will contain the requirements for the audit and may provide for an auditor appointed by the Minister. If an auditor is not appointed by the Minister, the determination will require the entity being audited to appoint an independent auditor. The cost of an audit required under this determination will be payable by the entity being audited. New Section 11C also includes a penalty of up to 400 points if the audit is not carried by the entity required to undertake the audit in the determination.

This section is only intended to be used by the Minister as a last resort if significant Ministerial concerns emerged about the administration of the Act by a retailer and/or the distributor which has not been resolved by the provision of information by other, less onerous, means.

Clause 15

Section 12(3) allows for a regulation to create offences and fix penalties. This clause amends the maximum penalty points from 10 to 30 in section 12(3).

Clause 16

This clause inserts the terms ‘reporting entity’ in the Dictionary. The term covers electricity retailers and distributor under amended section 11B in relation to amended section 11A.

This clause also inserts the terms ‘required information’ in the Dictionary. The term covers information that may be required by the Minister from electricity retailers and distributor under amended section 11B in relation to amended section 11A.