australian network of environmental defender's offices

Submission on the Renewable Energy Target scheme - exposure draft legislation

13 February 2009

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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Submitted to:

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EXECUTIVE SUMMARY

The Australian Network of Environmental Defender's Offices Inc (ANEDO) is a network of 9 community legal centres in each state and territory, specialising in public interest environmental law and policy. ANEDO welcomes the opportunity to provide comment on the exposure draft of the *Renewable Energy (Electricity) Amendment Bill 2008*, the *Renewable Energy (Electricity) Amendment Regulations 2009* and the Discussion Paper - *Treatment of electricity-intensive, trade-exposed industries under the expanded national Renewable Energy Target Scheme.*

Renewable energy has a crucial role to play as part of Australia's long-term mitigation response to climate change. Indeed, it is arguable that renewable energy represents the primary viable long-term solution to climate change. In this vein, a strong mandatory renewable energy target must be a focal point of government action. Although ANEDO is of the opinion that the current target does not go far enough, we support the introduction of the exposure legislation that will increase the target from 2% to 20% by 2020 as an important step.

This submission makes comment on the following areas:

1. Objects clause
2. Small generation units
3. Shortfall charge
4. Scheme Review
5. Trade-exposed, electricity-intensive industries
6. Key recommendations from ANEDO submission to COAG

Our recommendations are:

<u>Objects clause</u>

- The objects clause in Section 3 of the Act should include an explicit objective of promoting the growth of the renewable energy industry in Australia;

<u>Small generation units</u>

- ANEDO supports the multiplier applied to small generation units for the first 18 months of the expanded Renewable Energy Target Scheme (RET);
- ANEDO submits that the most effective way to encourage the production of renewable energy is through a national feed-in tariff to encourage the uptake of renewable energy;

<u>Shortfall charge</u>

- ANEDO supports a penalty for breach that is significantly higher than the REC price to encourage compliance. We also call for the introduction of a 'make good' provision;

Scheme Review

- A review of the RET scheme should be required *every* 5 years until the end of the scheme;
- There should be a mechanism allowing the RET scheme to be extended beyond 2030 if renewable energy is still working to establish a good market share by that time; and

Trade-exposed, electricity-intensive industries

- ANEDO does not support the provision of assistance for emissions-intensive, trade-exposed industries (EITEs) or their exemption from the RET scheme. However, if the government remains committed to assistance, we would support only partial assistance through the grant of free RECs for a transitional period, with assistance decreasing annual based on best practice energy efficiency advances.

Key recommendations from ANEDO submission to COAG[1]

- Interim MRET targets should be set annually to adjust for increases in electricity demand to ensure that the 2020 target is met;
- Renewable energy producers must demonstrate that their operations are ecologically sustainable;
- Wood waste should not be included as an eligible source of renewable energy because of the significant environmental impacts of logging activities on our forests and biodiversity;
- ANEDO recommends some limitations be considered in relating to banking to ensure the 2020 target is not compromised;
- Project eligibility periods should be reassessed at 2020 and should be informed by ongoing reviews of renewable energy development; and
- Caution should be exercised when considered pre-1997 generators to ensure that RECs are generated only for production above business as usual.

[1] ANEDO, Submission to the COAG Working Group on Climate Change and Water – *Design Options for the Expanded National Renewable Energy Target Scheme* – 30 July 2008.

1. Objects clause

ANEDO does not oppose the amendment to the objects clause in section 3 of the *Renewable Energy (Electricity) Act 2000* to clarify that one of the objects of the Act is to reduce emissions of greenhouse gases in the electricity sector. However, ANEDO submits that the objects clause should also include as an explicit object the 'promotion o of the renewable energy industry in Australia as a key part of Australia's mitigation response and to facilitate a move towards cleaner energy sources' (or similar wording). It is important that this goal is expressly stated to frame the operation of the Act.

2. Small generation units

ANEDO supports the proposal to adopt a multiplier for small generation units (predominantly solar PV panels) whereby small generators will be granted more renewable energy certificates (RECs) than they would otherwise get to encourage generation in the first 18 months of the expanded scheme. Indeed, we submit that it is imperative that the domestic sector be encouraged to participate in the RET scheme through the use of incentive mechanisms. Also, given the current focus on 'clean' coal, energy efficiency and carbon capture and storage technology as the key mitigation focuses, it is important that the renewable energy industry is given a 'kick start'. Therefore, a transitional scheme designed to increase the uptake of renewable energy at an accelerated rate is supported.

However, although ANEDO supports all genuine incentives that encourage the uptake of renewable energy, we submit that the most effective way to encourage the production of renewable energy is through a national feed-in tariff. Such a tariff has been introduced in several Australian states and overseas, although it has been shelved federally. As we noted in our previous submission to the Inquiry into the *Renewable Energy (Electricity) Amendment (Feed in Tariff) Bill 2008*, international experience has demonstrated that feed-in-tariff laws have proven the most cost-effective mechanism for increasing the use of renewable energy sources in the electricity sector.[2] Therefore, we strongly believe that when used in conjunction with the proposed RET scheme, a feed-in tariff scheme (which extends beyond 18 months) would provide a significant boost to the industry.

3. Shortfall charge

ANEDO notes that the level of the shortfall charge will not be decided under the next COAG meeting. In anticipation of this upcoming meeting, we re-emphasise that the penalty for breaching the Renewable Energy Target (RET) scheme needs to be significantly higher than the REC price in order to have any impact on encouraging compliance and deterring non-compliance. Low penalties are relatively ineffective for large businesses where it may be more cost-effective to write-off any fines as simply a cost of doing business. We submit that the shortfall charge should be adjusted periodically corresponding to the permit price to ensure that the deterrence factor is maintained. As a suggestion, annual reviews should be

[2] Found at http://www.edo.org.au/policy/policy.html (13 February 2009).

undertaken and the shortfall charge should be set as at least double the REC price at the time of the review.

We note also the absence of a 'make good' provision in the exposure legislation. ANEDO calls for a 'make good' provision to be introduced requiring those who breach their responsibilities under the Act to compensate for breaches in successive compliance periods by having to purchase additional RECs to the level of their shortfall. The addition of such a provision adds additional weight to the financial incentive of compliance provided by a high penalty.

4. Scheme Review

ANEDO welcomes the adoption of one of the key recommendations in our submission to the COAG Working Group on Climate Change and Water, which is that an independent, five year review of the expanded RET scheme should be undertaken. However, ANEDO submits that a review should be required *every* 5 years until the end of the scheme. Furthermore, as ANEDO has previously indicated, there should be a mechanism allowing the RET scheme to be extended beyond 2030 if renewable energy is still working to establish a good market share. The end of the scheme should not be a foregone conclusion.

5. Treatment of Emissions-intensive, trade-exposed industries

ANEDO is opposed to the proposed exemption of emissions-intensive, trade-exposed industries (EITEs) from the RET scheme, or alternatively that financial assistance should be provided to assist them in meeting their RET obligations. We submit that exemption or assistance to EITEs would significantly undermine the efficacy of the expanded RET.

It is crucial that EITEs begin the transition away from fossil fuels as soon as possible. Indeed, EITEs are significant consumers of electricity, accounting for a large percentage of total electricity consumption. Consumption by the aluminium smelting, metals and manufacturing industries comprised 37.3% of Australia's total energy consumption in 2004-05.[3] Furthermore, as indicated by the Discussion Paper, the aluminium industry (comprised of 6 smelters) alone would bear 10 to 15 per cent of the total RET burden, as they consume 10 to 15 per cent of Australia's electricity. Hence, exempting such industries create a danger that the RET will be largely ineffectual if it does not provide a stimulus for EITEs to transition to renewable energy. A legal obligation on EITEs to surrender RECs under the MRET is therefore essential.

The rationale given for exempting EITEs is that the MRET would disadvantage the competitiveness of these industries as long as their overseas competitors are not subject to the same legal obligations. A better view, we believe is that the RET scheme should be focused on increasing the competitiveness of renewable energy rather than on maintaining the competitiveness of high-emitting industries. Furthermore, it is important to note that EITEs will be granted a significant

[3] CSIRO, *The Heat is on- the future of energy in Australia*, 2006 at 26. Found at: http://www.csiro.au/resources/pfnd.html (13 July 2007).

amount of compensation under the Carbon Pollution Reduction Scheme.[4] As indicated by the White Paper, EITEs will be allocated around 25 per cent of total carbon permits free of charge at the scheme's commencement, increasing to 45 per cent by 2020. Indeed, there is actually an incentive to *increase* production, because if an individual EITE entity's production doubles, then the number of permits that it will receive will also double.[5] Providing additional compensation to EITEs in relation to the RET will increase the windfall profits to industry, remove all impetus to invest in renewable sources of energy and is contrary to the polluter-pays principle and good public policy. ANEDO therefore supports Option 1 outlined in the Discussion Paper, which is to provide no assistance to EITEs. Indeed, early action in renewables will lead to lesser costs for EITEs compared to the costs of later action taken once a truly international climate change plan is drawn up that encompasses global competitors.

However, if the Commonwealth decides to proceed with assistance for EITEs, ANEDO submits that the compensation or assistance mechanism must be transparent and consistent in its application. ANEDO does not support a direct exemption for EITEs from the scheme (Option 2). This is inequitable, as it would impose an increased cost burden on households and businesses. Moreover, it would make it difficult to include EITEs in the scheme at a future date. We also do not support free cash payments (Option 4) as this would simply be a windfall profit and there would be no direct link between the payment and the RET obligation. If assistance is to be provided we would support Option 3, which is the free issue of RECs. This would be a more transparent and accountable process, especially if backed up by a public register that enables the public to determine how much free certificates have been granted. Furthermore, there would be a clear link between the assistance and the RET obligation.

Additionally, if the Commonwealth remains committed to assistance, ANEDO supports only partial assistance (as opposed to 100 per cent assistance) for EITEs. This would ensure there is still some incentive for individual EITEs to invest in renewable energy. This is also more equitable, as EITEs will still have to bear some obligations.

Finally, as we have previously submitted, we believe that any assistance provided to EITEs must be transitional only, and should incrementally decrease based on best practice efficiency technologies available to EITEs on an annual basis.

6. Key recommendations from ANEDO submission to COAG[6]

We reiterate our key recommendations from our submission to the COAG Working Group which are not addressed by the bill below:

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[4] Australian Government, *Carbon Pollution Reduction Scheme – Green Paper* (July 2008) http://www.climatechange.gov.au/greenpaper/report/index.html (24 July 2008)

[5] Department of Climate Change, *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future – White Paper*, December 2008, Executive Summary, p14.

[6] ANEDO, Submission to the COAG Working Group on Climate Change and Water – *Design Options for the Expanded National Renewable Energy Target Scheme* – 30 July 2008.

- Interim MRET targets should be set annually to adjust for increases in electricity demand to ensure that the 2020 target is met;
- Renewable energy producers must demonstrate that their operations are ecologically sustainable;
- Wood waste should not be included as an eligible source of renewable energy because of the significant environmental impacts of logging activities on our forests and biodiversity;
- ANEDO recommends some limitations be considered in relating to banking to ensure the 2020 target is not compromised;
- Project eligibility periods should be reassessed at 2020 and should be informed by ongoing reviews of renewable energy development; and
- Caution should be exercised when considered pre-1997 generators to ensure that RECs are generated only for production above business as usual.

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