Australian Network of Environmental Defender's Offices Inc

Submission on Renewable Energy Target Review – Issues Paper

14 September 2012

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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Executive Summary

The Australian Network of Environmental Defender's Offices Inc (**ANEDO**) is a network of nine community legal centres in each State and Territory, specialising in public interest environmental law and policy. ANEDO welcomes the opportunity to comment on the Climate Change Authority's *Renewable Energy Target Review Issues Paper* (**Issues Paper**). We welcome the Issues Paper's context-setting with regard to federal and state policies, such as the Clean Energy Future package.

ANEDO has commented extensively on Australian Government renewable energy and climate change policies, including previous consultations on the Renewable Energy Target (**RET**) scheme, the Draft Energy White Paper, proposed National Energy Savings Initiative and the Clean Energy Future package.[1] This submission focuses on selected themes set out in the Issues Paper, from a public interest environmental law and policy perspective.

ANEDO strongly supports the continuation and enhancement of the RET. This scheme is an important measure in a suite of legislative tools and policies to reduce Australia's greenhouse gas (**GHG**) emissions. We submit that as the Government has committed to ensure 'the equivalent of *at least* 20 per cent of Australia's electricity supply comes from renewable resources by 2020',[2] the Climate Change Authority (**Authority**) should specifically consider recommendations to assist Australia to go *beyond* the 'minimum' 20%.

In conducting its review, we support the Authority's guiding principles including environmental effectiveness, economic efficiency, equity and public interest. In addition, ANEDO would support using the principles of ecologically sustainable development (**ESD**) as a reference point for the review and recommendations.[3] This would align the scheme with the objectives of the *Renewable Energy (Electricity) Act 2000* (Cth) (**REE Act**), which include: 'to ensure renewable energy sources are ecologically sustainable'.[4]

We provide a summary of our recommendations below.

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[1] For example, the following ANEDO submissions are available at http://www.edo.org.au/policy/policy.html: Submission on *Enhancing the Renewable Energy Target Discussion Paper (April 2010);* Submission on *Discussion Paper 4: Treatment of new waste coal mine gas power generation in the RET* and *Discussion Paper 5: Treatment of Solar Credits and Renewable Energy Certificates under the RET* (Jan. 2010); Submission on the RET scheme Exposure Draft legislation (February 2009); Submission to the Inquiry into the *Renewable Energy (Electricity) Amendment (Feed in Tariff) Bill 2008* (August 2008); Submission to the COAG Working Group on Climate Change and Water on *Design Options for the Expanded National Renewable Energy Target Scheme* (July 2008). See further: Submission on the Australian Government's *Draft Energy White Paper* (March 2012); Submission on the *Issues Paper for a National Energy Savings Incentive* (February 2012); Submissions on the *Clean Energy Future* Legislative Package (August and September 2011).

[2] Explanatory Memorandum, *Renewable Energy (Electricity) Bill 2010* (emphasis added); cited in Climate Change Authority, *Renewable Energy Target Review Issues Paper*, August 2012 (**Issues Paper**), p 12.

[3] For example, the precautionary principle; equity within and between generations; protection of biodiversity and ecological processes as a fundamental consideration in decision-making; improved environmental valuation and the polluter pays principle; and recognising the importance of broad community involvement in decision-making. See also *REE Act,* definition of 'ecologically sustainable', s 5.

[4] *REE Act*, s 3 and definition of 'ecologically sustainable' in s 5. See also *National Strategy for Ecologically Sustainable Development*, endorsed by COAG December 1992. For example, Objective 8.1: 'to limit harmful emissions arising from energy production and distribution wherever economically efficient, and to promote alternative energy sources', at http://www.environment.gov.au/about/esd/publications/strategy/energy.html.

Large-scale Renewable Energy Target (LRET)

- The 2020 target should be increased beyond 20% to accelerate a low-carbon transition.
- The 20% target should be increased in the period from 2020 to 2030, to ensure that renewable energy becomes an increasing proportion of Australia's energy mix.
- Prior to 2030, there must be a comprehensive review to establish the most effective way to facilitate increased renewable energy generation and use beyond 2030.
- ANEDO strongly supports 'topping up' the LRET target to take account of activities funded by the Clean Energy Finance Corporation (CEFC).
- Shortfall charges for non-compliance must remain significantly higher than the cost of compliance; and the Authority should also consider additional ways to encourage compliance (such as more prominent publication of non-compliance, and 'make good' provisions where requirements are not met).
- ANEDO supports the ability for individuals and organisations to purchase and voluntarily surrender certificates in the LRET.
- Both the EITE partial exemption and the 'self-generator exemption' should be reviewed, with a view to further limiting or phasing out these exemptions, and increasing their transparency.
- Maintain the exclusion of native forest waste and re-evaluate the ongoing eligibility of wood waste as a renewable energy source, and whether it should be further limited to minimise environmental impacts.
- No new waste coal mine gas (WCMG) capacity (or any fossil fuel waste products) should be included in the RET.
- The principles of ESD should be a mandatory consideration in determining technologies' eligibility (for the LRET and SRES).

Small-scale Renewable Energy Scheme (SRES)

- ANEDO reiterates its support for an uncapped scheme for Small-scale Technology Certificates (STCs).
- ANEDO welcomes the Authority's further consideration of additional technologies.
- 'Deeming' arrangements are an appropriate way for SRES participants to receive certificates. However, we support the Authority examining:
    - whether deeming calculations are adequate, and
    - whether the Clean Energy Regulator has sufficient powers and resources to ensure deemed generation reflects actual outcomes (for example, by monitoring, reporting and auditing).
- The Authority should consider including a mechanism to increase the annual renewable energy target by the number of certificates granted for solar energy not actually generated, to ensure the integrity of targets.

Other issues

- ANEDO recommends that a general review period (for example, 5 yearly) may be more appropriate, if coupled with a legislative mechanism allowing more regular targeted review of specific issues (for example, the level of shortfall charges and the scope of exemptions).
- The Authority's Discussion Paper should consider how state planning regulation (and renewable energy initiatives) can better integrate with national climate change policies, including the RET.

Large-scale Renewable Energy Target (LRET)

Large-scale target

Following the improvements made by splitting the RET scheme into large and small components, ANEDO reiterates that the RET scheme should be amended as follows:

- The 2020 target should be increased *beyond 20%* in order to ensure that renewable energy becomes the major source of energy generation in Australia more rapidly (this would accelerate our transition from a high-carbon emitting economy, assist Australia's contribution to avoiding dangerous climate change, and help reduce the higher costs of future abatement[5]).
- The 20% target should be increased in the period of 2020 to 2030 to ensure that renewable energy continues to become an increasingly significant proportion of Australia's energy mix, rather than being fixed at 20%; and
- Prior to 2030, there should be a comprehensive review to establish how renewable energy will continue to be encouraged beyond 2030.
- In addition, ANEDO strongly supports increasing the LRET target to take account of activities funded by the Clean Energy Finance Corporation (CEFC). We welcome the CEFC initiative, and believe a 'top up' of the LRET target is needed to ensure the initiative fully complements the RET objectives[6] and goes beyond the minimum '20% by 2020' target.

Liability framework and surrender

In relation to the LRET shortfall charge, ANEDO has consistently noted the importance of robust penalties for non-compliance in order to achieve the RET's stated policy outcomes.[7] Shortfall charges for non-compliance must remain significantly higher than the cost of compliance via the purchase of renewable energy certificates.[8]

The Authority should also consider additional ways that the Act and the Clean Energy Regulator could encourage compliance. For example:

- Leveraging companies' reputational considerations by more prominent publication of non-compliance, or comparison between entities' performance.[9]
- Introducing 'make good' provisions, requiring liable entities who repeatedly breach their RET responsibilities to purchase *additional* certificates in subsequent periods.

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[5] See for example, Maria van der Hoeven, Executive Director, International Energy Agency in the 'Energy security: looking towards uncertainty' (8 March 2012) in *OECD Observer* at http://iea.org/index_info.asp?id=2393:

> *The door is closing to achieving climate change goals which limit temperature increases to 2°C… The 2011 [World Energy Outlook] also shows that delaying action is a false economy: for every $1 of investment in cleaner technology that is avoided in the power sector before 2020, an additional $4.30 would need to be spent after 2020 to compensate for the increased emissions. The sooner we get going, the easier and cheaper our task will be; 2012 will therefore be a crucial year.*

See also Productivity Commission, *Barriers to Effective Climate Change Adaptation:* Draft Report, at www.pc.gov.au/__data/assets/pdf_file/0007/116539/climate-change-adaptation-draft-report.pdf.

[6] To encourage additional renewable generation and reduce GHG emissions in the electricity sector (Act s 3)

[7] See for example, ANEDO *Submission on the Renewable Energy Target scheme – exposure draft legislation* (February 2009), available at http://www.edo.org.au/policy/090219ret.pdf.

[8] As the Authority's Issues Paper notes (p 27): 'If the price of LGCs rose beyond $92, liable parties may be better off paying the shortfall charge and not purchasing LGCs.

[9] As the Authority's Issues Paper notes (p 27): 'It is possible that some liable parties may be willing to pay a premium above the shortfall charge to comply for reputational reasons.' The *REE Act* (s 134) permits the Regulator to publish details about (*inter alia*) liable entities that have large and small-scale shortfalls.

Finally, ANEDO supports the ability for individuals and organisations to purchase and voluntarily surrender certificates in the LRET to drive additional renewable energy generation, and increase the likelihood that the RET can exceed the '20% by 2020' goal.

Exemptions for emissions-intensive, trade-exposed entities (EITEs) and self-generators

ANEDO has consistently opposed exemptions from the RET that may undermine the scheme's objectives and optimum performance. ANEDO submits that both the EITE partial exemption and the 'self-generator exemption' should be reviewed, with a view to further limiting or phasing out these exemptions.

The EITE exemption[10] is counter-intuitive to increasing investment in renewable energy sources, and to encouraging energy-intensive industry to move towards lower emission technology.[11] There are also cost and equity issues, given that 'renewable generation not covered by exempted entities is made up by increased liability for other participants.'[12] For example, in 2011 The Climate Institute noted that 'While big polluting, trade exposed industries consume around 25 per cent of Australia's electricity they only pay for around eight per cent of the total cost of the RET.' Households and non-EITEs bear a disproportionate burden.[13]

The Issues Paper notes the Government's rationale for creating the EITE exemption,[14] however, with the subsequent redesign of carbon pricing under the Clean Energy Future package (which itself provides generous assistance to EITEs), the rationale for the RET exemption must be revisited.[15] Should the exemption continue, the Authority should review and consider limiting eligible EITE activities; and the Act should be amended to require transparent reporting (by the Regulator) of the 'cost' of exemptions and the level of subsidy to each exempt company.[16]

The self-generator exemption raises similar issues. As the Issues Paper notes, COAG recently considered whether the self-generator exemption should be *extended* in the interests of remote resource projects.[17] The other option considered in the COAG report was 'retaining existing provisions'.[18] We would welcome the Authority's consideration of whether the self-generator exemption remains appropriate to continue; or whether applying the RET in these circumstances would better align with the aims of increased renewable uptake and lower emissions. However, ANEDO agrees with the COAG report's finding that this exemption should *not* be extended.

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[10] This provides a significant (60-90%) partial exemption from LRET and SRES liability for electricity used in defined EITE activities (see Issues Paper, p 28 and Clean Energy Regulator website, http://ret.cleanenergyregulator.gov.au/For-Industry/Emissions-Intensive-Trade-Exposed/eites).

[11] See ANEDO Submission on the RET scheme exposure draft legislation (February 2009). Available at: http://www.edo.org.au/policy/090219ret.pdf.

[12] Climate Change Authority, Issues Paper, p 28. See also, The Climate Institute, *Policy brief – Shielding Big Polluters: Who Pays?* (June 2011), at http://www.climateinstitute.org.au/articles/publications/shielding-big-polluters-who-pays.html.

[13] See The Climate Institute, *Policy brief – Shielding Big Polluters: Who Pays?* (June 2011), pp 1 and 4. Households used around 29% of electricity but paid for 35% of RET costs; non-EITE businesses the ratio was 46% (use) to 57% (payment for RET).

[14] The rationale 'was to recognise the additional cost of compliance borne by entities carrying on EITE activities in the context of a carbon price.' (Issues Paper, p 28).

[15] See for example, http://www.cleanenergyfuture.gov.au, 'Assistance for industry'.

[16] See for example, The Climate Institute, *Policy brief – Shielding Big Polluters: Who Pays?* (June 2011), p 4.

[17] Issues Paper, pp 28-29; citing COAG Renewable Energy Sub Group, *Report to the Council of Australian Governments' Select Council on Climate Change*, COAG Review of Specific RET Issues (2012), p 6.

[18] COAG Review of Specific RET Issues (2012), p 2.

Large-scale Eligibility framework and LRET administration

Consistent with previous submissions on the RET scheme, and the objective of ensuring renewable energy sources are ecologically sustainable, ANEDO recommends:

- Maintaining the exclusion of native forest waste, and re-evaluating the ongoing eligibility of wood waste as a renewable energy source, and whether it should be further limited to ensure the RET does not contribute to the environmental impacts of logging – such as loss of biodiversity, loss of 'carbon sinks', and particulate pollution from burning sawmill waste.[19]
- That no new waste coal mine gas (WCMG) (or any fossil fuel waste) capacity be included in the RET. This is consistent with the recent COAG report's findings[20] that this would increase costs and undermine the RET's focus on enhancing the renewable energy sector's competitiveness. ANEDO's view is that the RET is not an appropriate vehicle to support generation from WCMG.[21]
- The principles of ESD should be a mandatory consideration in determining technologies' eligibility (both for the LRET and the SRES).

While this submission does not consider in detail the diversity of renewable energy access under the RET,[22] the issue of diversity should *not* be used as a reason to reduce the RET target (particularly given the RET's limited impact on retail electricity prices).[23]

Small-scale Renewable Energy Scheme (SRES)

Small-scale target – a separate, uncapped scheme

ANEDO continues to support splitting the RET into two parts (LRET and SRES), to ensure complementary operation and appropriate incentives for different scales of renewable energy.

We also reiterate our support for an uncapped scheme for Small-scale Technology Certificates (STCs). This means that the potential take-up of small-scale renewable energy by individuals and groups will have no set limit, which in turn should support renewable energy production going beyond the minimum '20% by 2020' target.

Small-scale Eligibility framework

ANEDO has consistently encouraged the inclusion of a diverse range of small-scale technologies in the RET, to further stimulate research into, and development of, new and

[19] See *Renewable Energy (Electricity) Regulations 2001* (Cth), cl 8. See further EDO NSW *Submission on Renewable Energy (New South Wales) Bill 2007* (July 2007), at http://www.edo.org.au/edonsw/site/policy/renewenergbill070727.php.
[20] Issues Paper, p 30; citing COAG *Review of Specific RET Issues* (2012), p 67.
[21] See ANEDO Submission on *Discussion Paper 4: Treatment of new waste coal mine gas power generation in the RET* and *Discussion Paper 5…* (Jan. 2010). Alternative policies, including existing support packages, can be used to assist WCMG instead (see ANEDO Submission on *Enhancing the RET – Discussion Paper* (April 2010); and *COAG Review of Specific RET Issues* (2012) p 4.)
[22] Discussed in the Issues Paper, pp 44-45.
[23] See for example, T. Edis, 'Devil in detail of Renewable Energy Target Review' *Climate Spectator*, 3 August 2012. See also Issues Paper, pp 42-43 regarding pricing impacts. The Australian Energy Market Commission estimated the RET's likely contribution to national retail electricity prices in 2013-14 at around 1.8% (LRET) and 0.5% (SRES).

alternative energy forms. ANEDO would therefore welcome the Authority's further consideration of additional technologies..[24]

The Authority's Discussion Paper should further consider the analysis of the technologies in the RESG report;[25] any subsequent developments; and how likely it is that available energy efficiency schemes will encourage displacement technologies.

Finally, as noted above, the principles of ESD should be a mandatory consideration in determining technologies' eligibility.

'Deeming' arrangements

ANEDO believes that 'deeming' arrangements are an appropriate way for SRES participants to receive certificates. However, we also support the Authority examining:

- whether deeming calculations are adequate, and
- whether the Clean Energy Regulator has sufficient powers and resources to ensure deemed energy generation reflects actual outcomes.[26]

Implementation of the SRES must continue to ensure there is adequate incentive for households, businesses and community groups to install small-scale renewable energy infrastructure. It is critical that participants can receive payment for their STCs in a timely and efficient manner (which is the aim of deeming arrangements). Long time-lags between the creation of the STCs and the guaranteed payment will inevitably act as a disincentive to investment, due to the necessary capital outlay.

Use of multipliers in the RET

The Issues Paper states that 'Multipliers tend to reduce the environmental effectiveness of a scheme as a certificate no longer equates to output…' (p 38). ANEDO and others have previously submitted that, in order to maintain the target's integrity, the RET scheme should include a mechanism to increase the annual renewable energy target by the number of certificates granted for solar energy *not actually generated*.[27] If the annual target is not adjusted, the 20% target by 2020 will in reality be lower, depending on the number of 'phantom' solar credits granted. Consequently we recommend that the Authority should consider including a mechanism to increase the annual renewable energy target by the number of certificates granted for solar energy not actually generated, to ensure the integrity of targets.

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[24] Notwithstanding that the COAG Renewable Energy Sub Group (RESG) has recommended against adopting new technologies. This follows the RESG's additional consideration and impact-modelling of solar assisted cooling and geothermal (ground source) heat pumps. The RESG cites the uncapped nature of the SRES, uncertainty in modelling future take-up and those technologies' status as 'displacement technologies' (efficiency-oriented) rather than generating technologies. See, for example, COAG *Review of Specific RET Issues* (2012), p 2.

[25] Including the range of projected increases to compliance costs ('up to' 9%) – see COAG *Review of Specific RET Issues* (2012), p 2.

[26] Such as by way of monitoring, reporting and auditing. For example, the Issues Paper (p 37) notes 'As yet, there is little data against with to test the accuracy of the deeming calculations.' See also, 'Compliance', pp 40-41.

[27] ANEDO Submission on RET *Discussion Paper 4* and *Discussion Paper 5…* (Jan. 2010), p 4.

Review frequency and focus

ANEDO supports legislated, independent and regular reviews of the RET scheme – including public consultation, publication and tabling of the Authority's review report.[28] We are also cognisant of concerns from the renewable energy industry that the current two-year review frequency could affect regulatory and investment uncertainty.[29] ANEDO has previously submitted that a regular five-yearly review of the legislation's effectiveness and operation would be appropriate.[30]

ANEDO therefore recommends that a general review period (for example, 5 yearly) may be more appropriate, if coupled with a legislative mechanism allowing more regular targeted review of specific issues (for example, the level of shortfall charges and the scope of exemptions).[31]

ANEDO also reiterates that, with sufficient time in advance of 2030, there should be a comprehensive review to establish the most effective way to facilitate increased renewable energy generation and use beyond 2030. It should not be a foregone conclusion that the scheme will cease in 2030, as the scheme may still be needed if incentives are still required for promoting renewable energy at that time.

Interaction with planning systems[32]

ANEDO members have highlighted the major importance of integrating climate change readiness into state planning systems.[33] Although the Authority does not intend to make recommendations about state planning systems, the Authority's Discussion Paper should consider how state planning regulation (and renewable energy initiatives[34]) can better integrate with national climate change policies, including the RET.

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[28] See *REE Act 2000* (Cth), s 162 including ss (2), (3) and (11). Regular reviews can respond to rapid industry change, and help to ensure policy and investments are well-targeted; and under the REE Act, review recommendations must not be inconsistent with the Act's objects (s 3) – to encourage additional renewable energy generation (and ensure this is ecologically sustainable); and reduce the electricity sector's GHG emissions.

[29] See Issues Paper, p 46; and Solar Policy Summit, Communique Canberra, 17 July 2012.

[30] ANEDO, *Submission on the Renewable Energy Target scheme - exposure draft legislation* (Feb. 2009).

[31] ANEDO *(ibid)* has previously suggested that shortfall charges should be adjusted periodically (for example, by annual review) relative to the permit price to ensure that the charges continue to be an effective deterrent.

[32] See Issues Paper, p 19.

[33] See for example, EDO Victoria, *Windfarms in Victoria* (April 2011), and *Reforming Mining Law in Victoria* (April 2012), pp 24-25, via http://www.edovic.org.au/law-reform/submissions-and-reports; see also EDO NSW, *Submission on Draft NSW Planning Guidelines for Wind Farms* (March 2012), and EDO, NCC NSW and TEC Joint Submission to NSW Planning Review Issues Paper (March 2012), pp 24-26, via http://www.edo.org.au/edonsw/site/policy_submissions.php#4.

[34] At the time of writing, the NSW Government had just released a *Draft Renewable Energy Action Plan* (September 2012), available at http://haveyoursay.nsw.gov.au/renewableenergy.

COAG reforms and complementarity[35]

Finally, ANEDO has expressed significant concerns about COAG's April 2012 announcement to streamline federal and state environmental approval laws, and to 'rationalise' state and federal energy efficiency and climate change programs.[36]

ANEDO strongly supports the development of efficient and effective environmental laws in Australia. However, it appears that the introduction of the carbon price has been one justification for reducing other climate change programs, particularly if they are considered 'non-complementary'. A significant problem with this is that the carbon price does not have bipartisan support. Accordingly, if the carbon price is repealed by a future Government, the COAG policy could result in a loss of a range of state and federal climate change policies, as well as the carbon price itself. This would leave a gaping hole in Australia's climate change policy and be inconsistent with international obligations.

[35] See Issues Paper, p 7 and Appendix, p 54.
[36] ANEDO, *COAG Environmental Reform Agenda: ANEDO Response - In Defence of Environmental Laws* (June 2012), available via www.edo.org.au or www.edovic.org.au.