HERBERT SMITH FREEHILLS

ADDENDA: FURTHER DETAILS ON THE VICTORIAN RENEWABLE ENERGY AUCTION SCHEME RELEASED

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Legal Briefings – By **Gerard Pike**, **Alison Dodd** and **Kathryn Wright**

The Victorian Government has released further information regarding the Victorian Renewable Energy Auction Scheme (**VREAS**), confirming that the VREAS will be a key strategy contributing to the Victorian Renewable Energy Targets (**VRET**) legislated in the *Renewable Energy (Jobs and Investment) Bill 2017* (**Bill**). The full suite of information regarding the VREAS will be released in the formal Request For Proposal (**RFP**), which is expected to be launched in mid-October 2017. This information will include the terms under which bidders may participate in the auction, the evaluation criteria and the governance framework of the VREAS.

MANDATORY CRITERIA

The full set of mandatory criteria for participation in the VREAS will be outlined in the RFP. However, the Victorian Government has indicated that the following criteria will apply:

- the potential proponent must commence commercial operations before the last quarter of 2020;
- the project is a new project. This includes expansions of existing projects and portions of new projects, as well as projects which have not yet reached financial close;

- the project must be connected to the National Electricity Marked (**NEM**) at a single connection point;
- the project must be no smaller than 10MW; and
- the project must have a current planning permit issued by the relevant authority.

EVALUATION CRITERIA

The Victorian Government has advised that a key evaluation criterion for assessment of the bids will be 'value for money'. The full list of evaluation criteria will be released in the formal RFP.

SUPPORT AGREEMENT PAYMENT MECHANISM

The Victorian Government has announced that it will award successful bidders to the RFP a 15 year 'Support Agreement' with the State, under which the proponent will be paid through a 'hybrid payment mechanism'. This hybrid payment mechanism is described as comprising a mix of a variable contract-for-difference payment (**CfD**) and a fixed-price payment (**FP**).

The CfD is a two way payment to be paid on a monthly basis. A CfD 'strike price' will be set by the State in the RFP for $/MWh of eligible electricity generated. The payment owed for each MWh of electricity will be the difference between the CfD strike price and the price of the MWh in the relevant wholesale market pool.

This CfD payment mechanism is two-way as either the State or the proponent may owe payment to the other depending on the difference between the CfD strike price and the price of the MWh in the wholesale market pool. Where the price of the MWh in the wholesale market pool is below the CfD strike price, the State will owe the proponent the difference. On the other hand, where the price of the MWh in the wholesale market pool is above the CfD strike price, the proponent will be required to pay the difference to the State.

Bidders will bid the level of the FP payment. This FP payment will be paid quarterly on the basis of $/MW/year. The State proposes that the FP payment reflects the revenue that the proponent requires, in addition to the CfD payment, to support the project.

OTHER FEATURES OF THE SUPPORT AGREEMENT

In addition to providing the payment mechanism, the other features of the Support Agreement include:

- termination rights for both parties on the occurrence of specified events;

- change in law protections for both parties;
- interaction between the VREAS and the Federal Renewable Energy Target (**RET**) (described in further detail below);
- set project milestones for construction, commissioning and operations and maintenance; and
- an optional tripartite agreement.

The further detail of the content of the Support Agreement will be set out in the RFP.

LGCS AND THE FEDERAL RET

A pre-requisite to participation in the VREAS will be the ability of the proponent to commence commercial operations before the last quarter of 2020, allowing the creation of Large-scale Generation Certificates (**LGCs**) before this time. Successful proponents will be obliged to be accredited under the Federal RET and therefore the Victorian Government is stating that: "The VREAS will operate to complement the Federal RET before 2020 and will be additional after 2020."

The Victorian Government has outlined two LGC 'treatment pathways' to allow the VREAS to 'complement' the Federal RET. The State will be able to choose its preferred treatment pathway based on an assessment of the overall value for money. The Victorian Government will require that each bid to the RFP provide:

- one bid that includes the transfer of all LGCs generated from the project to the Victorian Government, with the LGCs to be subsequently re-sold by the Victorian Government; and
- one bid that does not involve transfer of LGCs to the Victorian Government, with the LGCs retained by the relevant proponent.

NEXT STEPS

The RFP will be released in mid-October 2017 and will allow potential participants three months to complete and submit their proposal. Following submission, an independent external panel will evaluate the proposals over a two to three month period.

For more information or to explore possible opportunities for your business arising from the VREAS, please contact Gerard Pike, Alison Dodd, Peter Davis or Toby Anderson.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

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