Clean Energy Investor Group

24 April 2026

Hon. James Chalmers MP
Treasurer
Commonwealth Government
Lodged online at https://consult.treasury.gov.au/c2026-755475

Dear Treasurer,

Response to Commonwealth Government's draft exposure legislation on Strengthening the foreign resident capital gains tax regime

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide input on the Commonwealth Government's draft legislation released on 10 April 2026, *Strengthening the foreign resident capital gains tax regime*.

CEIG represents domestic and global renewable energy developers and investors, with approximately 18GW of renewable energy capacity in the NEM across 139 power stations and a combined portfolio value of more than $41 billion. CEIG members' project pipeline is estimated to be more than 150GW across Australia. CEIG advocates for an efficient transition to a clean energy future on behalf of the investors who are essential to providing the significant amount of low-cost capital required to achieve the Government's stated energy transition targets.

Key Points

- The CEIG is deeply concerned that the draft legislation will slow investment in Australia's clean energy transition. The CEIG maintains the current reforms are at risk of:
    - increasing the cost of living,
    - exacerbating Australia's energy insecurity,
    - negatively impacting Australia's global reputation, and
    - driving away international investment.
- The transitional arrangements are inadequate, having:
    - no grandfathering arrangements that consider investments already made in good faith,
    - no alignment with the time frames required for investments nor the Government's own net zero plans, and
    - no accounting for inflation.
- CEIG urges the Government in the strongest terms to defer the introduction of the reforms and ensure the impacts are properly modelled and assessed, and in consultation with investors.

- **Consumer Prices –** Consumers will ultimately bear the higher prices resulting from the Government's proposed changes. The increased tax rate will mean fewer projects get developed leading to less competition in wholesale and power purchase agreement markets. Projects that do go forward will need to recoup the higher cost by increasing the price of delivered power. Both effects will result in higher electricity prices for households and businesses. According to independent analysis commissioned by CEIG members, the reforms risk increasing retail electricity prices by an average of 4% or around $100 per year for Australian households. This will only add to the cost-of-living pressures forecast from higher inflation over the medium term.

- **Energy Security –** The NEM already exhibits significant and growing risk of generation shortfalls. Chilling investment will result in fewer projects in the pipeline, and even further exacerbate system security risk as demand continues to rise. AEMO's most recent Integrated System Plan is predicated on many renewable energy projects coming online through 2035. The likely hiatus in further project delivery will have a significant negative impact on future ISP forecasts. This could also impact the ability to further electrify the transport sector, to protect against petroleum supply shocks.

- **Fairness –** CEIG supports a fair and equitable tax regime for all investors in Australia's clean energy transition. Such a regime would tax all investors - domestic and global - at the same rates and provide equal access to concessionary rates. Legislating a two-tiered system presents complications and risks for international investors that are likely to reduce or cease their exposure to the Australian market. This is concerning given the structure of capital markets, not Australian domestic law, will continue to dictate that Australia remains highly dependent on international capital for its clean energy and other public infrastructure.

- **All changes should be prospective –** A key part of fairness will be to ensure all changes are truly prospective. This will respect the decisions investors made in good faith from 2006 till today. To risk capital – often largely retirement savings held in trust – to build and expand Australia's power system for the benefit of all Australians. Those long term focussed decisions were made under the current tax regime. Proposing to change the regime well after investors committed significant amounts of capital to Australia will be perceived as a 'bait and switch' move. It will have detrimental effect on future investment in not just renewable energy but public infrastructure at large.

- **Sovereign Risk –** Notwithstanding the Tax Commissioner's statement on 14 April 2026 confirming a narrow retrospective application to already assessed disposals, *any aspect* of retrospectivity will lead to investors avoiding exposure to Australia and increasing their risk premia to account for the increased perception of sovereign risk. **CEIG urges the Government to ensure the final legislation contains no retrospective elements.**

- **Transition Arrangements –** In order for the Government to be able to achieve its stipulated energy transition targets, the Government should provide all investors a full capital gains tax exemption until such time as its legislated clean energy targets are met.
    - This will provide targeted support for the construction of new power plants as capital gains are key to the business models of greenfield developers.
    - Four years, as proposed, risks a fire sale of assets. Those investors in a position to do so, are likely to exit Australia.
    - Australia's headline and effective tax rates remain among the highest globally and within the OECD. Given Australia's other comparative weaknesses, an additional tax cost can be expected to lead to declining investment.

- **Lost investment** – CEIG is aware of international investors that have considered but not entered the Australian clean energy market due to the lower risk-adjusted returns factoring in the CGT reforms. The 'gap' is unlikely to be filled through domestic institutional investors despite policy changes meant to encourage greater domestic investment.

GENERAL COMMENTS

The Clean Energy Investor Group (CEIG) supports the Government's aim to provide more certainty regarding Australia's capital gains tax (CGT) regime. However, CEIG maintains the draft exposure legislation, if enacted, would undermine the stated aim of fairness while also leading to declines in clean energy investment and ultimately higher prices for consumers.

CONSUMERS WILL PAY HIGHER PRICES

Even as the Government seeks to abate ongoing inflation, the legislation will put upward pressure on consumer power prices through at least two channels. First, for projects that continue to go forward, developers will pass through the cost of the tax to consumers via higher power prices. That will occur through higher power-purchase agreement (PPA) prices and through higher bids into the National Electricity Market (NEM).

Second, the increased cost means other projects will fail to meet the criteria for investment and will be cancelled. In aggregate, this will mean a slowdown in new plants being built and connected. Fewer plants means less supply-side competition across PPA markets as well as in the NEM, thereby also pushing up prices for consumers. Less directly, this also will likely mean that states will need to provide further operating licence extensions and subsidies from their own treasuries to keep aging and financially unviable thermal plants operating beyond current closure dates. Such ad-hoc, emergency extensions increase costs to taxpayers, risk system security, and introduce more uncertainty for private investors.

In 2024 CEIG member commissioned independent modelling to elucidate the economy-wide impacts of the original 2024 Treasury proposal. This analysis found residential power bills could increase four percent. The average household electricity bill would thus go up by around $100 a year. The modelling also showed a significant impact to renewable investment in Australia. Given the extremely short consultation period, new modelling could not be commissioned in time to provide it as part of this submission.

The need for additional, independent economic analysis

These results point to the need for updated, thorough, and independent economic analysis of the full impacts of this proposed legislation prior to its final enactment. **The CEIG strongly recommends that both the Commonwealth Government and key stakeholders undertake such additional, in-depth analysis and making it publicly available to inform this significant reform agenda prior to going forward.**

At a minimum, such analysis should investigate the impacts on economic activity, tax revenue, overall investment, sector specific investment from domestic and international sources, and Commonwealth and state-level policies created to attract highly mobile global capital. These impacts should be carefully considered and used to improve the legislation so it can best support the Government's revenue requirements along with the need for economic growth and a transition to net zero.

ENERGY SECURITY

Energy security represents an important cost to consider with the proposed reform. As aging thermal plants retire or are impacted by more frequent and longer unplanned maintenance cycles, NEM jurisdictions are in urgent need of developing new generating capacity to replace the withdrawals and to meet increasing demand. In the face of this, the NEM already exhibits a significant and growing risk of generation shortfalls.

Introducing a tax reform that simultaneously increases the costs of building new plants and *does not* grandfather existing plants that have not yet gone to sale will risk a significant chilling of much needed greenfield investment to build additional new generation and storage capacity. This risk to upstream investment will jeopardise the pipeline of new projects causing it to shrink even further, which, in turn, will exacerbate the system security risk in the NEM. Increasing system security increases electricity prices one the one hand and the potential for costly power disruption on the other.

Insufficient supply also jeopardises being able to successfully implement other nation building and economic growth policies such as Future Made in Australia and electrification of the transport sector. Both are heavily dependent on significant increases in new clean energy generation and storage projects.

A FAIR TAX REGIME

CEIG agrees with the aims for a fair capital tax regime but has two major concerns with

the draft legislation's impact on fairness. First, a fair regime would include equitable rates for all investors, regardless of residency. We note that tax laws would appear to provide domestic investors several pathways to concessional rates well below the headline 30% CGT rate, primarily the 10% rate allowed to superannuation funds.

While the proposed transitional arrangement of a 50% discount from the headline rate for four years is welcome, the draft language presented would appear to retain, in a different form, a multi-tier system that would still frustrate the aims of supporting Australia's net-zero targets. CEIG recommends that the legislation provide more aligned and uniform rates for domestic and international investors, specifically a rate of 0% until net-zero targets are achieved and then a 15% rate going forward for international and most domestic investors, plus the 10% concessional rate for domestic superfunds. This would support continuing to attract the international capital that constitutes up a large majority of investment across sectors, including nearly 75% of clean energy investment, while also encouraging more investment from domestic sources. (See the 'Transitional Arrangements' section below for more detailed recommendations.)

Second, all changes should be prospective for assets acquired after the announcement of the reforms to the CGT regime, not just assets sold after the announcement. The projects currently under development, or that have recently commenced commercial operations, that reached final investment decision (FID) well before Treasury released its first consultation paper are vial to Australia's net-zero transition. The investors involved, domestic and international, made their investment decisions based on then-current law and ATO rulings, along with Australia's reputation as a stable and fair jurisdiction. Changing the law and ATO guidance ex-post, and requiring investors to pay a much higher tax rate than promised when they agreed to put the capital at risk, creates significant fairness concerns and will unquestionably lead many investors to reduce their exposure to Australia or exit altogether.

As with other elements, this will result thinning and slowing the pipeline of new projects resulting in higher consumer prices and decreased energy security.

SOVEREIGN RISK

This second point of fairness should be of particular concern for the Government because it brings about sovereign risk for the global investment community. Australia has long been at a comparative disadvantage when it comes to tax rates and other development costs. For many decades, though, investors have valued Australia's high degree of stability, predictability, and commitment to the rule of law. The strength of Australia's reputation on those points has been a significant comparative advantage that has outweighed those other costs.

Even from 2024, the anticipation that the rules could change substantially after making an investment decision, and that the Government might not provide grandfathering arrangements, led investors to begin to consider Australia as now presenting sovereign risk. The introduction of further retrospectivity dating back to 2006, especially since

announced only at the draft legislation stage of consultation, has only heightened the worry, despite the Tax Commissioner's public statements regarding his plan to use it only in narrow circumstances.

CEIG understands that as a result investors have now begun to include sovereign risk as part of their risk pricing for projects in Australia. This presents one more avenue by which project costs will increase and the overall number of projects will decrease, resulting in higher prices for consumers and increasing energy security risks.

TRANSITIONAL ARRANGEMENTS

The CEIG acknowledges that the Government has listened in part to the concerns of industry through earlier consultation in putting forth a reduction in the headline CGT rate to 15% for four years. We appreciate that this rate is closer to headline and effective rates found in other jurisdictions and available to domestic investors, and the timeline for sunsetting appears to be connected to the Government's near-term renewable electricity generation target of 43% by 2030.

Nonetheless, we submit that this transition arrangement is inadequate for several reasons. The Government's recent energy sector plan and national net zero plan are both set to 2050. The electricity sector remains the most high-polluting sector and its transition is essential to decarbonising transport and industry. Achieving Australia's net zero targets is dependent on rapidly increasing the investment required to develop *new* generation and storage projects. The investors and developers involved in this early stage are quite heavily dependent on capital gains driven business models and are most likely to be adversely impacted by capital flight.

The proposed four-year transition period is also significantly shorter than the development and investment time frames of 10 to 15 years to develop a project to the point of becoming operational and ultimate disposal. Linking sunsetting of the reduced rate to energy and climate targets – a performance-based milestone – therefore makes more sense in terms of tailoring the policy to support instead of counteracting other Government policies, and to ensure that it does not continue beyond its utility.

As noted above, we encourage the Government to ensure that the final legislation provides equal rates to all domestic investors to include those that do not qualify for already available concessional rates.

Accounting for pure inflationary effects

Additionally, the proposed retrospective applications makes no account for the impact of inflation. Computing gains for the purpose of CGT at current value versus the original cost basis without accounting for inflation treats inflationary effects as equal to genuine value appreciation instead of its actual status as simply eroding monetary purchasing power over time.

Under current law domestic investors have access to the CGT discount as a proxy to

ameliorate this and be more fairly taxed on actual gains. Non-resident investors do not. Consequently, retrospectively applying the legislative changes will result in levying a tax on the inflation as well as the real economic gains. This issue could be quite significant given the periods of high inflation over the preceding two decades. Given that investments made in clean energy projects prior to the Government's announcement could not anticipate much less price in the cost of the new CGT regime should be grandfathered in full.

THE CHALLENGE OF TRACKING 'AVOIDED' INVESTMENT

The CEIG recognises the challenge of observing and measuring the amount of investment under consideration that never eventuates. While this 'avoided' investment is difficult to measure directly and precisely, we continue to be made aware of a significant number of offshore investors stating that Australian projects their firms had considered are no longer under consideration. We are seeking to collect and quantify to some degree the number of projects and the scale in terms of both generating and storage capacity as well as investment amounts at stake. Doing so will require more time than made available for the very short consultation period of two weeks.

While Foreign Investor Review Board (FIRB) flows may continue to show investment coming in for clean energy, those alone remain insufficient for observing the amount of lost investment when investors decide to direct their capital elsewhere. Initial FIRB approval rates do not adequately account for investment that has subsequently stalled due to the extensive existing complexities confronting investment into the Australian renewable energy sector (slow permitting, delayed connection approvals, strained supply chains, delayed grid augmentation leading to high levels of curtailment). Implementing the proposed CGT legislation changes will only add to the concerns international investors have when considering Australia as an investment jurisdiction.

Closing this 'avoided' investment gap will support Australia meeting its clean energy and net-zero targets. Despite the global rate and levels of investing in clean energy continuing to rise, the number of Australian projects reaching FID has fallen since 2024.

International investors continue to provide nearly 75% of capital for the utility scale clean energy. While CEIG would welcome policy changes to encourage increased levels of activity from domestic investors, updates to superannuation rules, such as the Your Future Your Super benchmark, are unlikely to close the gap that will result from this proposed legislation. This will mean that the Commonwealth Treasury, and thus ultimately tax payers, will need to pay a higher price through policy mechanisms to bring the required capital, along with needed innovation and expertise, to meet Australia's targets.

ENSURING THE TRANSITIONAL ARRANGEMENTS COVER ALL CLEAN ENERGY TECHNOLOGIES

CEIG welcomes the 50 per cent CGT discount. However, CEIG is concerned that the

proposed definition of "Australian renewable energy asset" is too narrow and risks excluding critical clean energy technologies from the discount.

The definition requires that the "primary purpose" of the asset be "to generate, or to facilitate directly the generation of, electricity in Australia using an eligible renewable energy source" (within the meaning of the *Renewable Energy (Electricity) Act 2000)*. This language gives rise to a material risk that batteries and battery energy storage systems (BESS) and other storage technologies will fall outside the definition. BESS do not generate electricity; they charge, store and discharge it. The Commissioner could reasonably interpret storage and discharge as functionally distinct from generation or the direct facilitation of generation, thereby excluding such technologies from the discount.

Such an interpretation would be directly contrary to the Explanatory Memorandum, which expressly states that "batteries that are essential for the generation of renewable electricity are within the intended scope (e.g. grid firming battery energy storage systems)". Where the legislative text does not clearly give effect to the stated policy intent, there is a significant risk that investors in storage infrastructure critical to the integration of variable renewable generation will be denied access to the transitional discount.

The definition is also insufficiently technology-neutral. The clean energy sector is characterised by rapid technological evolution, and a definition anchored to "generation" and "direct facilitation of generation" may fail to accommodate emerging technologies (such as transmission infrastructure and grid stabilisation technologies) that do not fit neatly within those categories but are nonetheless integral to the delivery of electricity from renewable energy sources.

CEIG recommends that the definition of "Australian renewable energy asset" be amended to expressly include assets whose primary purpose is the storage or dispatch of electricity generated from an eligible renewable energy source, and to adopt language that is sufficiently broad and technology-neutral to accommodate clean energy technologies both current and emerging.

RECOMMENDED IMPLEMENTATION OF THE NEW REGIME

Considering all issues raised in this submission, the CEIG therefore recommends the Government implement a staged, performance-linked transition that fairly treats already invested capital while seeking to balance revenue needs with net-zero priorities. The following table outlines how to stage this *where 'commencement' refers to effect date following Royal Assent* per the draft legislation and the classes refer to when the capital was committed.

	Pre-commencement	*Commencement → Net-Zero*	*Post-transition*
Class	**Full Grandfathering** **Existing investments held pre-commencement + any future disposal of those assets**	**Transitional** **New investments made after Royal Assent and disposed of prior to meeting net-zero targets**	**Final Regime** **New investments made after Royal Asset and disposed of after meeting net-zero targets**
CGT Treatment	0% No CGT on gains from assets held prior to Royal Assent	0% Sunsets at meeting original net-zero targets	15% Full rate, with access to concessions on equal terms as for domestic investors
Rationale	Existing investments involve capital committed under current regime. Retrospective changes on sunk capital is fundamentally unfair and would deter future investment more broadly.	New capital needs time to price in the new regime into investment models. The discounted rate maintains global competitiveness and supports the pipeline of new projects necessary to achieve net-zero targets.	Aligns all investors – domestic and global. Performance-based sunset supports capital recycling and avoids permanent concessions that distort investment decisions and erode the base.

CEIG thanks the Commonwealth Government for the opportunity to provide feedback on its draft exposure legislation and looks forward to continued engagement on the critical issues it raises. CEIG's Chief Executive Officer can be contacted at richie.merzian@ceig.org.au if you would like to further discuss any elements of this submission.