

Chapter 1

Background

Referral and conduct of the inquiry

1.1 On 30 March 2006, the Senate referred the provisions of the *Renewable Energy (Electricity) Amendment Bill 2006* to the Environment, Communications, Information Technology and the Arts (ECITA) Legislation Committee for inquiry and report by 9 May 2006.

1.2 In accordance with its usual practice, the committee advertised the inquiry in *The Australian*, calling for submissions by Wednesday 19 April. The committee also directly contacted a number of relevant organisations and individuals to invite submissions.

1.3 Submissions were received from eight organisations and individuals, as listed in Appendix 1.

Acknowledgments

1.4 The committee thanks all those who contributed to its inquiry by preparing submissions. The committee is grateful to the Parliamentary Library for its work in the Bills Digest, which assisted greatly in the committee's work.

Notes on references in this report

1.5 References in this report are to individual submissions as received by the committee rather than a bound volume of submissions.

Background to the bill

The Mandatory Renewable Energy Target (MRET)

1.6 In Australia fossil fuels are the basis for the majority of the country's electricity supply. The following 2004 figures provide a breakdown of electricity generation (excluding non-grid private generation) by fuel type:

- Black coal – 59.8 per cent
- Brown coal – 25.7 per cent
- Hydro – 7.2 per cent
- Gas – 7.0 per cent

- Oil and other – 0.3 per cent.¹

1.7 Emissions from fossil fuels used in electricity generation make up approximately one third of Australia's total greenhouse emissions. In response to this, the Mandatory Renewable Energy Target (MRET) was introduced as a greenhouse gas abatement measure. The MRET has been designed to accelerate the uptake of renewable energy in grid-based power applications, in turn reducing fossil fuel emissions. The MRET originally established a target of 2% of renewable energy, which was later fixed at 9500 GWh, to be sourced by electricity retailers and other large electricity buyers by 2010.²

1.8 The MRET is part of a suite of national greenhouse response measures, *Safeguarding the Future: Australia's Response to Climate Change*, announced by the Prime Minister, the Hon. John Howard MP, in November 1997.

The Renewable Energy (Electricity) Act 2000 (REEA)

1.9 The *Renewable Energy (Electricity) Act 2000* (the REEA) provides the legislative framework for the MRET. The REEA is supported by the *Renewable Energy (Electricity) (Charge) Act 2000*³ and the *Renewable Energy (Electricity) Regulations 2001*. The Acts and regulations are administered by the Office of the Renewable Energy Regulator (ORER).

1.10 Australian electricity retailers and other large buyers of electricity (known as liable parties or entities) are required by the REEA to collectively source an additional 9500 GWh of electricity from renewable sources per annum by 2010. The amount contributed to the target by each liable entity is determined on a proportional basis. The target of 9500 GWh is being phased in up to 2010 with 9500 GWh per annum sustained from 2010 to 2020.⁴ Interim annual targets have been set to ensure there is consistent, incremental progress towards achieving the 2010 9500 GWh target.

1 Department of the Parliamentary Library, Bills Digest No. 109 2005-06, *Renewable Energy (Electricity) Amendment Bill 2006*, 27 March 2006, p. 2.

2 MRET Review Panel, *Renewable Opportunities: A Review of the Renewable Energy (Electricity) Act 2000*, the Australian Greenhouse Office, 2003, p. 2.

3 The *Renewable Energy (Electricity) Bill 2000* and the *Renewable Energy (Electricity) (Charge) Bill 2000* were referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry on 29 June 2000. The Committee tabled its report in August 2000.

4 MRET Review Panel, *Renewable Opportunities: A Review of the Renewable Energy (Electricity) Act 2000*, the Australian Greenhouse Office, 2003, p. 2.

1.11 Eligible renewable energy sources include: 'solar, wind, ocean, wave and tidal, hydro, geothermal, biomass, specified wastes, solar water heating, renewable stand alone power systems and renewable fuels when co-fired with fossil fuels'.⁵

Renewable Energy Certificate

1.12 Renewable Energy Certificates (RECs) are created by accredited power stations that generate energy from renewable sources. Each certificate corresponds to one megawatt hour (MWh) of renewable energy generated on top of a baseline amount. RECs are tradeable; they can be bought and sold.

1.13 Under the REEA, liable parties must annually surrender RECs to cover their required renewable energy purchases or pay a shortfall charge of \$40 per MWh.⁶

Office of the Renewable Energy Regulator

1.14 The Office of the Renewable Energy Regulator (ORER) was established on 12 February 2001 to oversee the implementation of the MRET. ORER is a statutory authority under the environment and heritage portfolio.

1.15 The principal responsibilities of the ORER are to:

- accredit renewable energy power stations to allow them to participate in the scheme;
- oversee the creation and registration of valid renewable energy certificates;
- assess Annual Energy Acquisition Statements, Renewable Energy Shortfall Statements and Annual Electricity Generation Returns;
- impose any penalties for non-compliance within the provisions of the legislation;
- allow liable parties to redeem any renewable energy shortfall charges if shortfalls are made up within three years; and
- ensure the integrity of the measure by undertaking audits of participants including renewable energy power stations, agents and liable parties.⁷

5 Department of the Parliamentary Library, Bills Digest No. 109 2005-06, *Renewable Energy (Electricity) Amendment Bill 2006*, 27 March 2006, p. 4.

6 Department of the Parliamentary Library, Bills Digest No. 109 2005-06, *Renewable Energy (Electricity) Amendment Bill 2006*, 27 March 2006, p. 3.

7 ORER website, www.orer.gov.au/about/index.html (accessed 12 April 2006).

The Energy Market Review⁸

1.16 In June 2001, COAG endorsed the need for a national energy policy and agreed to commission an independent review of the strategic directions for energy market reform in Australia (the Energy Market Review). The Hon. Warwick R Parer, the chair of the review panel, presented the report *Towards a Truly National and Efficient Energy Market* to the Minister for Industry, Tourism and Resources on 20 December 2002.

1.17 The key finding of the report was that serious energy market deficiencies remain. It argued that these deficiencies must be promptly addressed if Australia is to achieve a 'genuinely national and efficient' energy market, particularly in relation to the following areas of the industry:⁹

- governance and regulation;
- transmission and financial market development (electricity); and
- 'upstream competition and barriers to the construction of new pipelines' (gas).

1.18 The detailed findings of the report did not support the expansion of, or an increase to, the MRET target. It commented that the MRET scheme focuses too heavily on developing the renewable energy industry, rather than on reducing both greenhouse emissions and energy consumption, and that in its current form, it diverts investment away from 'more efficient carbon reducing options'.¹⁰

The Renewable Energy (Electricity) Amendment Bill 2002

1.19 In 2002, the government introduced into Parliament the *Renewable Energy (Electricity) Amendment Bill 2002*. This bill was designed to implement changes to the list of eligible renewable energy sources and establish significant new penalties. In September 2002 the ECITA Legislation committee commenced an inquiry into the provisions of the *Renewable Energy (Electricity) Amendment Bill 2002*, and reported on them in December of that year.

1.20 At the same time as the ECITA committee was concluding its deliberations, a review of the *Renewable Energy (Electricity) Act* was getting underway. This review was required by the original legislation. The ECITA Legislation committee recommended that a number of matters be referred for more detailed consideration by the legislation review, whilst also suggesting:

8 Commonwealth of Australia, *Towards a Truly National and Efficient Energy Market*, Council of Australian Governments' Independent Review of Energy Market Directions, 2002

9 Commonwealth of Australia, *Towards a Truly National and Efficient Energy Market*, Council of Australian Governments' Independent Review of Energy Market Directions, 2002, p. 9.

10 Commonwealth of Australia, *Towards a Truly National and Efficient Energy Market*, Council of Australian Governments' Independent Review of Energy Market Directions, 2002, p. 230.

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- changes to the definition of renewable energy sources in section 17 of the REEA;¹¹
 - inclusion of anti-gaming provisions; and¹²
 - consideration to be given at an appropriate time to the possibility of raising the MRET.¹³

1.21 The bill lapsed in 2004.¹⁴

The Renewable Energy Act review¹⁵

1.22 Section 162 of the REEA requires the Minister for the Environment and Heritage to commission an independent review of the operation of the Act. It also outlines a range of issues that must be considered as part of the review:

- 'extent to which the Act has contributed to reducing greenhouse gas emissions;
- extent to which the Act has encouraged additional generation of electricity generated from renewable energy sources; and
- mix of technologies that had resulted from the implementation of the Act; and level of the overall target and interim target'.¹⁶

1.23 On 29 November 2002, the then Minister for the Environment and Heritage, Dr David Kemp, announced the commencement of preparations for the independent review. The MRET review panel, chaired by the Hon Grant E J Tambling, was announced in March 2003 and the report, *Renewable Opportunities, A Review of the Operation of the Renewable Energy (Electricity) Act 2000* (the Tambling Report), was presented in September 2003. The review had the Bill and the submissions to the ECITA committee before it, as well as seeking submissions of its own.

1.24 The review concluded that, at August 2003, MRET had contributed substantially to additional renewable energy generation, with a total of 190 power

11 Senate ECITA Legislation Committee, *Provisions of the Renewable Energy (Electricity) Amendment Bill 2002*, December 2002, p. 16.

12 Senate ECITA Legislation Committee, *Provisions of the Renewable Energy (Electricity) Amendment Bill 2002*, December 2002, pp 17–18.

13 Senate ECITA Legislation Committee, *Provisions of the Renewable Energy (Electricity) Amendment Bill 2002*, December 2002, p. 28.

14 Department of the Parliamentary Library, Bills Digest No. 109 2005-06, *Renewable Energy (Electricity) Amendment Bill 2006*, 27 March 2006, p. 20.

15 MRET Review Panel, *Renewable Opportunities: A Review of the Renewable Energy (Electricity) Act 2000*, The Australian Greenhouse Office, 2003

16 Mandatory Renewable Energy Target Review website, www.mretreview.gov.au/about.html (accessed 11 April 2006).

stations accredited.¹⁷ However, the review made a number of recommendations to improve the efficiency and transparency of the MRET scheme. It was further recommended that the MRET scheme be extended from 2010 to 2020 with an increased target of 20 000 GWh to be achieved by 2020. The review recommendations and the Government's response to these recommendations are listed in Appendix 2.

1.25 The review supported several amendments to the REEA, including many that were in the *Renewable Energy (Electricity) Amendment Bill 2002*.

The Government's energy white paper

1.26 The Government released its Energy White Paper (EWP), *Securing Australia's Energy Future*, on 15 June 2004. The EWP outlined the Government's strategy for Australia's future energy development.

1.27 The EWP was developed by a whole-of-government Energy Task Force that included members from the Department of Prime Minister and Cabinet, the Department of the Treasury, the Department of the Environment and Heritage, the Department of Transport and Regional Services, and the Department of Industry, Tourism and Resources.¹⁸

1.28 The EWP explained that the Government's objectives are to ensure that:

- Australians have reliable access to competitively priced energy;
- the value of energy resources is optimised; and
- environmental issues are well-managed.¹⁹

1.29 The EWP maintained that 'renewable energy will play an important part in Australia's long-term greenhouse response'.²⁰ However, the EWP argued that to achieve this, it would be more effective to invest in promoting the development of a broader range of low-emission technologies than to increase the MRET.²¹ Accordingly, the Government's approach to renewable energy would involve:

- the continuation of the MRET to 2020, without any target increase; and
- a commitment of \$134 million to address barriers impeding the uptake of renewable energy.²²

17 MRET Review Panel, *Renewable Opportunities: A Review of the Renewable Energy (Electricity) Act 2000*, the Australian Greenhouse Office, 2003, p. xvi.

18 Senate ECITA References Committee, *Lurching forward, looking back: budgetary and environmental implications of the Government's Energy White Paper*, May 2005, p. 3.

19 Australian Government Energy Task Force, *Securing Australia's Energy Future*, 2004, p. 2.

20 Australian Government Energy Task Force, *Securing Australia's Energy Future*, 2004, p. 30.

21 Australian Government Energy Task Force, *Securing Australia's Energy Future*, 2004, p. 148.

22 Australian Government Energy Task Force, *Securing Australia's Energy Future*, 2004, p. 30.

Senate inquiry

1.30 On 24 June 2004 the Senate referred an inquiry into the budgetary and environmental implications of the EWP to the Senate Environment, Communications, Information Technology and the Arts References Committee. The committee tabled its report²³ in May 2005.

1.31 As noted above, the review of the Renewable Energy (Electricity) Act recommended that the timeframe of the MRET scheme be extended from 2010 to 2020 with the target for renewable sources set at 20 000 GWh by 2020. Counter to this recommendation, the EWP stated that while the Government would continue to support the MRET to 2020, the target would not be increased.

1.32 The Senate report noted that the Government rejected the review recommendation because it was believed that the expansion of the MRET would 'impose significant economic costs through higher electricity prices'.²⁴ The Government proposed alternative measures to accelerate the uptake of renewable energy: the Renewable Energy Development Initiative (REDI), Intermittent Energy Storage and Wind Forecasting.

Outline of the bill

1.33 The *Renewable Energy (Electricity) Amendment Bill 2006* was introduced into the House of Representatives on 2 March 2006. The purpose of the bill is to implement the Government's agreed response to the review of the *Renewable Energy (Electricity) Act 2000*, which was conducted in 2003.

1.34 In his second reading speech the Parliamentary Secretary to the Minister for the Environment and Heritage, the Hon. Mr Gregory Hunt MP noted that:

Following the 2003 review of the act, the government agreed to make improvements to the legislation that enhance market transparency and improve business certainty in the measure. The government also agreed to increase opportunities for bioenergy and solar technologies, encourage innovation through recognising emerging renewable electricity generation technologies and make a range of administrative amendments to improve the effectiveness and efficiency of operation of the scheme. This includes adopting provisions of the Renewable Energy (Electricity) Amendment Bill 2002 that sought to improve the administrative integrity, effectiveness and efficiency of the measure.²⁵

23 Senate ECITA References Committee, *Lurching forward, looking back: budgetary and environmental implications of the Government's Energy White Paper*, May 2005.

24 EWP cited in Senate ECITA References Committee, *Lurching forward, looking back: budgetary and environmental implications of the Government's Energy White Paper*, May 2005, p. 11.

25 The Hon. Mr Gregory Hunt, Second Reading Speech, *House of Representatives Hansard*, 2 March 2006, p. 4.

1.35 The Government agreed to the majority of recommendations in the review, which sought to improve the efficiency and transparency of the MRET scheme (see Appendix 2). However, as noted above, the Government did not agree to increase the MRET. Consequently, the bill does not include amendments to the MRET target.

1.36 The explanatory memorandum states that the bill:

- Sets time-limits for the creation of renewable energy certificates and provides the opportunity to voluntarily surrender certificates.
- Provides for provisional accreditation of proposed generation projects and establishes timeframes for determining the eligibility of proposed projects.
- Allows for the publication of additional data on baselines and renewable electricity generation.
- Clarifies the provisions and definitions in the Act for Eligible Renewable Energy Sources and provides increased opportunities for bioenergy.
- Clarifies the provisions with respect to the claiming of renewable energy certificates associated with solar water heaters and small generation units.
- Clarifies the provisions in relation to the eligibility of solar water heaters and expedites the process by which certificates can be claimed for new solar water heater models.
- Allows for recent reforms in the National Electricity Market and potential new market operators.
- Clarifies the provisions in relation to a relevant acquisition of electricity to ensure that only one entity is made liable in relation to the purchase of a particular quantum of electricity.
- Provides the Renewable Energy Regulator with the power to vary a number of assessments and determinations under the Act including the acquisition statement, the shortfall statement and baselines for accredited power stations.
- Provides the Renewable Energy Regulator with information gathering powers to enable effective monitoring and compliance.
- Allows for the suspension of an accredited power station in certain circumstances – for example, where gaming is suspected.²⁶

Committee for the Scrutiny of Bills

1.37 The Senate Standing Committee for the Scrutiny of Bills provided commentary on the *Renewable Energy (Electricity) Amendment Bill 2006* on 29 March 2006.²⁷

26 *Renewable Energy (Electricity) Amendment Bill 2006, Explanatory Memorandum*, p. 1.

27 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 3 of 2006, 29 March 2006, pp 8-11.

1.38 The committee has sought advice from the Minister on two provisions of the bill:

- Schedule 1, item 57 – the bill proposes to add a new subsection to empower the regulator to make written determinations regarding the number of renewable energy certificates able to be created for a particular solar water heater installation. The committee has requested clarification on whether the written determination would be legislative or administrative in character.²⁸
- Schedule 1, item 100 – proposed new subsections 44(5), 44(6), 44(7) and 44(8) provide for the payment of a fee for the surrender of renewable energy certificates within a period of 28 days from an entity receiving a notice from the Regulator following the lodgement of an energy acquisition statement. Proposed new subsection 44(9) declares that such a notice is not a legislative instrument. The committee has requested clarification on whether the proposed new subsection would be legislative in character or declaratory only.²⁹

1.39 The ECITA Legislation Committee notes the concerns raised by the Scrutiny of Bills Committee, and expects that these matters will be addressed through the minister's response.

28 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 3 of 2006, 29 March 2006, p. 9.

29 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 3 of 2006, 29 March 2006, p. 10.

