



Renewable Energy (Electricity) Amendment Bill 2006

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Renewable Energy (Electricity) Amendment Bill 2006

Date introduced: 2 March 2006

House: House of Representatives

Portfolio: Environment and Heritage

Commencement: Sections 1 to 3 Commence on Royal Assent. The operative provisions of the Bill (Schedule 1) commence on a day to be proclaimed, or failing that, six months after Royal Assent.

Purpose

To implement some of the recommendations of the Tambling report into the operation of the *Renewable Energy (Electricity) Act 2000* as well as adopting the majority of the provisions of the Renewable Energy (Electricity) Bill 2002.

Background

Electricity generation in Australia

The bulk of Australia's electricity is generated by coal-burning power stations. Australia has abundant reserves of both brown and black coal and natural gas and has amongst the cheapest electricity tariffs in the OECD, largely as a result of the low cost of the fuel sources used in generation. This is likely to remain the case for the foreseeable future. Coal and gas-fired electricity plants can supply continuous base-load power, which is essential for industrial and commercial use and also for household use as lifestyle has become inextricably linked with energy use.

In 2004, Electricity generation by fuel type in Australia—*excluding non-grid private generation*—is black coal 59.8 per cent, brown coal 25.7 per cent, hydro 7.2 per cent, gas 7.0 per cent and oil and other 0.3 per cent.¹ In terms of non-hydro renewables, as at the end of 2004 some 252 megawatts (MW) of wind power had been installed compared with 338 MW of bagasse,² 102 MW of landfill gas, 26 MW of sewage gas, 45 MW of biomass, 77 MW of black liquor³ and 4 MW of solar photovoltaic generation.

The Mandatory Renewable Energy Target (MRET)

In his 1997 statement, *Safeguarding the Future: Australia's Response to Climate Change*, the Prime Minister said:

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Targets will be set for the inclusion of renewable energy in electricity generation by the year 2010. Electricity retailers and other large electricity buyers will be legally required to source an additional 2 per cent of their electricity from renewable or specified waste-product energy sources by 2010 (including through direct investment in alternative renewable energy sources such as solar water heaters). This will accelerate the uptake of renewable energy in grid-based power applications and provide an ongoing base for commercially competitive renewable energy. The program will also contribute to the development of internationally competitive industries which could participate effectively in the burgeoning Asian energy market.⁴

This Mandatory Renewable Energy Target (MRET) scheme was implemented through the *Renewable Energy (Electricity) Act 2000* (the REEA), and the associated Renewable Energy (Electricity) Regulations 2001.

How the MRET scheme works

The REEA requires Australian electricity retailers and other large buyers of electricity ('liable entities') to collectively source an additional 9 500 GWh per annum of electricity from renewable sources by 2010. The 9 500 GWh figure is intended to push the amount of renewable energy used in electricity generation from 10.7 per cent in 2000 to 12.7 per cent by 2010. This 2 per cent target increase was later changed to 9 500 GWh to provide more certainty to the market.

The key feature of the MRET scheme is what are termed 'renewable energy certificates', or RECs. RECs are created by accredited power stations that generate power from renewable energy sources in excess of a 1997 'baseline' amount, with 1 REC created for every 1 MWh of renewable energy power generated in excess of the baseline. These RECs have an economic value and can be bought and sold.

The REEA requires liable entities to surrender to the Renewable Energy Regulator sufficient RECs to cover their required purchases of electricity generated from renewable sources or otherwise pay a 'shortfall charge'. The number of RECs required to avoid the shortfall charge is calculated as a percentage of electricity purchased, and this has been progressively increased over time. In 2006, the 'renewable power percentage' (RPP) is 2.17% - thus if an electricity retailer buys 100 000 MWh of electricity over 2006, it must surrender 2 170 RECs.⁵ Liable entities will generally acquire the RECs by purchasing them. If liable entities do not surrender sufficient RECs, the shortfall charge is \$40 per MWh. Thus if the retailer in the previous example surrenders only 1 170 RECs for their 2006 purchases, it would be liable for a charge of \$40 000.

As at January 2006, approximately 14.6 million valid RECs have been created since the start of the MRET scheme.⁶ The largest contributors have been hydro (5.3 million), solar

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hot water heaters (3.0 million) and wind (2.6 million). During 2005, the number of RECs created by windfarms increased by over 150% as compared to 2004.⁷

The MRET scheme is an example of demand stimulation through targets with the intention to accelerate the uptake of renewable energy in grid-based electricity supply. A wide range of renewable energy sources has been identified as being eligible including 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.

According to the *Explanatory Memorandum* to the Bill, from 2010 the MRET scheme will also result in greenhouse gas emission abatement of around 6.6 million tonnes per annum and contribute 10 per cent of the total greenhouse abatement measures designed to achieve Australia's 108 per cent emissions target.⁸

The Tambling report and the Government response

The REEA required an independent review of the operation of the Act. The review was required to cover:

- the extent to which the Act has contributed to reducing greenhouse gas emissions and encouraged additional generation of electricity from renewable energy sources
- the extent to which the policy objectives of this Act have been achieved and the need for any alternative approach
- the mix of technologies that has resulted from the implementation of the provisions of this Act
- the level of penalties provided under this Act
- the need for indexation of the renewable energy shortfall charge to the Consumer Price Index to maintain the real value of the charge and the associated penalty charge
- other environmental impacts that have resulted from the implementation of the provisions of this Act, including the extent to which non-plantation forestry waste has been utilised
- the possible introduction of a portfolio approach, a cap on the contribution of any one source and measures to recognise the relative greenhouse intensities of various technologies, and
- the level of the overall target and interim targets.

The composition of the MRET review panel was [announced](#) in March 2003 and the report (the [Tambling report](#)) presented in September 2003.

The report contained a large number of recommendations. These are in Attachment A, along with the Government response. Many of the recommendations deal with refinements

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to the MRET to allow it to work more efficiently and transparently, as well as supporting many of the amendments that were included in the Renewable Energy (Electricity) Amendment Bill 2002 (the 2002 Bill).⁹ The Tambling report **also recommended that the timeframe for the MRET scheme to be extended out from 2010 to 2020 and a target for electricity generation for renewable sources be set for 2020 at 20 000 GWh. In releasing its June 2004 Energy White Paper, the Government did not accept this recommendation:**

A recent review of MRET, conducted by an independent panel, recommended that the target be extended from 9500 Gwh by 2010 to 20 000 Gwh by 2020 and beyond (MRET Review Panel 2003). This target, while providing a subsidised growth path for renewable energy, would impose significant economic costs through higher electricity prices. The Review estimated that implementing its recommendations would double the current projected cumulative economic cost of MRET to over \$5 billion by 2020 in net present value terms. The Australian Government does not believe these costs can be justified.

MRET will continue to play a significant role in supporting the renewable sector, and will underpin \$2 billion in renewable energy investment in the period to 2010. The scheme has played an important role in demonstrating the potential for renewable technologies, in reducing renewable energy project costs and facilitating the development of 'soft' infrastructure such as regulatory and market structures. In increasing renewable capacity, the scheme has largely supported currently available technologies, and provides little direct support for the development of new low-emission technologies.

The Australian Government considers a better path is to build on the successful outcomes of MRET to more directly promote the development and demonstration of a broader range of low-emission technologies, and more aggressively address the impediments to the uptake of renewable energy. The \$500 million Low-Emission Technology Development Fund and the \$100 million in funding to promote the strategic development of renewable energy technologies are key parts of the strategy, as are the Solar Cities Trials.¹⁰

The MRET and Renewable energy generation after the Energy White paper

To ensure the MRET measure is implemented in a cost-effective manner and to provide investment certainty up to 2010, the Government has indicated all large buyers will be required to maintain the 9 500 GWh of new renewables between 2010 and 2020. The target would be allocated to liable entities each year in the same manner as to 2010 and incentives for compliance would also remain in place to 2020. This would not require growth in renewable generation in the period from 2010 to 2020 (although generation lost from plant closures may need to be replaced requiring additional capital expenditure), but would maintain the value of certificates to 2020 and ensure that contracts negotiated near to 2010 were not prohibitively expensive.¹¹

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This contrasts with other political parties calling for an increase in MRET, for example an increase to five per cent by the ALP and by other bodies such as the Business Council for Sustainable Energy (BCSE).

The two major programs mentioned above in the extract from the Energy White Paper are now in place. In the case of the larger Low-Emission Technology Development Fund program, applications for the first round of funding close on 31 March 2006. More information is available from the relevant [publication](#). In the smaller [Renewable Energy Development Initiative](#), a first round of funding was [awarded](#) in December 2005, with applications closing for the second round on 9 March 2006.

Financial implications

None for Government.

Main provisions

Schedule 1

Amendment of the *Administrative Decisions (Judicial Review) Act 1977*

Item 1 inserts **new paragraph (gb)** to Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977* (ADJRA). This will mean that the Regulator's assessments as to a liable entity's shortfall and shortfall charge cannot be subject to judicial review under the ADJRA. The objection and appeal procedure set out in existing sections 54-65 of the REEA is unaffected. This procedure provides for a review by the Administrative Appeals Tribunal (AAT) or an appeal to the Federal Court. This item was contained in the 2002 Bill.

Amendment of the *Renewable Energy (Electricity) Act 2000*

Item 29 inserts a **new Division 2A** - Provisional accreditation of power stations.

Electricity-generating power stations must be accredited by the Renewable Energy Regulator (the Regulator)¹² under existing section 15 of the REEA if they are to be entitled to create RECs. Whilst the main condition for accreditation is that the power station, or elements of it, generates some or all of its power from an 'eligible renewable power source', the regulations also require that that the power station is operated in accordance with any relevant Commonwealth, State, Territory and Local government planning and approval requirements.

Item 29 implements recommendation 27 of the Tambling report. The reported noted:

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... however such [Australian Government and State, Territory and Local government planning and approvals] may not be forthcoming until the generation plant is commissioned and operational. These requirements can delay the development of some projects, particularly those that would not be commercially viable in the absence of MRET eligibility, and the capacity to generate revenue from RECs...

At present, ORER seeks to respond to these requests by providing, in some cases, 'indicative approval letters'. These indicative approval letters have provided some comfort, establishing that applications 'could' or, in some cases, 'would' be eligible for accreditation, subject to meeting other eligibility requirements.

ORER, however, has not issued any indicative approvals stating that applications 'will' be eligible for accreditation, subject to other requirements, despite representations from some parties.¹³

Provisional accreditation is in effect a written commitment by the Regulator that based on the information available, if a later application is received for full accreditation in which the details – components of the electricity generation system, renewable energy sources etc – of the application are materially the same as the provisional accreditation, the power station will be eligible for full accreditation under **new section 12B**.

The Regulator must make a decision on provisional accreditation applications within six weeks or a longer period if agreed between the Regulator and the applicant, otherwise the Regulator is deemed to have refused the application **new section 12C**.

Item 30 substitutes a **new subsection 13(1)**. It allows a person to apply for accreditation of the components of an electricity generation system (considered to collectively constitute a single power station) even where they operate those components jointly with others or where they only own some of the components. According to the *Explanatory Memorandum* to the Bill, this amendment, along with related **items 34, 44, and 77** is intended to 'concentrate responsibility and authority for accreditation, REC creation, and reporting in a single person and provide that all other co-owners and co-operators must unanimously agree to this person assuming these powers and responsibilities'.¹⁴ This item was contained in the 2002 Bill.

Existing subsections 14(1)-(2) set out the circumstances under which a power station is eligible for accreditation. **Item 38** inserts **new subsection 14(2A)** that provides that a 'new' power generation system is *not* eligible for accreditation if the Regulator decides that the system in the application effectively represents an expansion or modification to an already-accredited power station rather than a new, separate power station. Presumably this amendment is designed to prevent 'unwarranted' generation of RECs, based on the possibility that the Regulator may not currently have the legislative power to refuse accreditation as a new power station in cases where a generating system either is actually a refurbished system or replaces an existing system within a power station that has 1997 baseline.¹⁵ If, under this scenario, the system was accredited as a new power station, no baseline would apply, and RECs could be created for all electricity generated from this

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system, even if no net additional renewables-based electricity was generated as a result of the system's replacement / refurbishment. This item was contained in the 2002 Bill.

Item 42 introduces a time limit for the Regulator to make a decision on an application for accreditation under existing section 15. The time limit is six weeks, although a longer period can be agreed between the Regulator and the applicant. If this time limit is not met, the Regulator is deemed to have refused the application. **Item 42** implements recommendation 28 of the Tambling report.

Item 43 substitutes a **new section 17** which makes changes to the list of eligible renewable energy sources under the Act. A number of items in the list have been **removed**. Those removed include:

- Photovoltaic and photovoltaic renewable stand alone power supply systems
- Wind and wind hybrid renewable stand alone power supply systems
- Micro hydro renewable stand alone power supply systems
- Solar hot water
- Co-firing, and
- Fuel cells.

The *Explanatory Memorandum* describes these as 'redundant and/or not sources, but rather processes or technologies for transforming energy sources into electricity'.¹⁶ For example, 'wind and wind hybrid renewable stand alone power supply systems' are removed but 'wind' stays. This item was contained in the 2002 Bill.

Item 43 also allows for regulations to add another source to the list of eligible renewable energy sources in **new section 17**. This implements recommendation 25 of the Tambling report. However, fossil fuels and waste products derived from fossil fuels remain excluded from the meaning of eligible renewable energy sources.

Item 49 incorporates a **new** version of **section 19** into the Act. It requires that a REC can be created no later than the end of the year after the relevant electricity was generated.¹⁷ The *Explanatory Memorandum* gives the example of where electricity was generated in July 2005, **new section 19** would require the REC relating to that generation be created by 31 December 2006. This 'cut-off' period is slightly longer than recommended in the Tambling report.

Item 54 incorporates a **new** version of **subsection 21(1)** into the REEA. It removes the existing requirement that, in order to create RECs, a solar water heater must displace water heated by electricity generated from non-renewable sources. This implements recommendation 24 of the Tambling report.

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There is a class of electricity generating devices in the REAA – mainly small-scale solar photovoltaic, wind or hydro electricity generation units - that are not large enough to be classified under the REEA as accredited power stations. In order to be eligible to create RECs, the REAA currently requires them to displace electricity generated from non-renewable sources. However there is no such requirement for large power stations and thus **item 59** deletes the requirement for small generation units. This item was contained in the 2002 Bill.

Item 74 inserts a **new section 28A** into the REEA to the effect that ‘a registered owner’ of a REC may surrender the certificate to the Regulator. The Tambling report noted:

A number of submissions noted that interested individuals or organisations may wish to purchase RECs for philanthropic purposes, seeking to remove these RECs from circulation through voluntary retirement and, therefore, further encourage additional generation of renewable energy. However, while these parties are able to purchase RECs, they are unable to formally surrender these RECs, unless they are MRET-registered liable parties.¹⁸

The effect of **item 74** is that the owner of the certificate may surrender the certificate even if the owner does not have a liability under other sections of the REEA – say if they were an electricity retailer – and as such implements recommendation 29 of the Tambling report.

Item 76 inserts **new section 30A**. Existing section 30 enables the Regulator to suspend a person's registration for up to 2 years if that person has been convicted under existing subsection 24(3) for the 'improper creation' of a certificate.¹⁹ **New section 30A** creates additional grounds for suspension by the Regulator. These are:

- if the Regulator believes on 'reasonable grounds' that the person has committed an offence against the Act or the Regulations, or
- if registration is 'obtained improperly'.

In the first case (**new subsection 30A(1)**), suspension may be for a maximum of 12 months. In the second case (**new subsection 30A(3)**), it can be permanent. The *Explanatory Memorandum* comments that 'this section enables the Regulator to act more proactively manage the risk of renewable energy certificates being created contrary to the intent of the Act.'²⁰ These additional suspension grounds are reviewable by the AAT under section 66 in the same way as existing section 30. It is notable that, unlike existing section 30, a person does not have to be first found guilty of a criminal offence for the Regulator to suspend registration under either **new subsection 30A(1)** or **new subsection 30A(3)**. This is potentially a significant enhancement of the Regulator's power. This item was contained in the 2002 Bill.

Item 77, which was contained in the 2002 Bill, adds a number of new sections to existing Part 2 of the Act. **New sections 30D** and **30E** allow for a power station's accreditation to

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be suspended by the Regulator. Potentially, **new section 30D** is the most far-reaching in that it attempts to combat collusive behaviour amongst power stations designed (at least in part) to generate certificates without an equivalent increase in the amount of electricity from renewable energy sources. Essentially, the Regulator will be able to suspend accreditation if satisfied that a 'gaming arrangement' has occurred. The *Explanatory Memorandum* comments that 'gaming has the potential to significantly dilute the effectiveness of the measure to stimulate the growth of the renewable energy industry and abate greenhouse gas emissions'.²¹ The Regulator must 'have regard' to any information available that demonstrates that the level of electricity generation by one or more of the relevant power stations was *not* the result of a gaming arrangement. A **new section 30D** suspension is reviewable by the AAT. In practice, it is arguable that the application of the anti-collusion provisions of **new section 30D** could involve some degree of subjective judgment by the Regulator as to whether certain REC generation is a result of gaming behaviour.

New section 30E allows the Regulator to suspend accreditation where the Regulator believes on 'reasonable grounds' that the power station is being operated in contravention of a Commonwealth, State or Territory law or other grounds that may be prescribed by the Regulations. A **new section 30E** suspension is reviewable by the AAT.

New section 30F allows the Regulator to vary the 1997 baseline in the circumstances prescribed in the Regulations. According to the *Explanatory Memorandum*, this section addresses 'an inflexibility in the Act' that prevents a 1997 baseline, which has been set for an accredited power station, from being subsequently amended.²² **New subsection 30F(2)** provides an indication under what circumstances the Regulator might exercise this proposed power. It states that 'regulations may make provision for the 1997 eligible renewable power baseline for an accredited power station to be varied if an action or policy of the Commonwealth Government reduces the power station's ability to generate electricity for a sustained period'.

Item 118 inserts a **new subsection 54(2)** which specifies that a liable party that has received an assessment of a penalty charge cannot make an objection under the existing section 54-65 process. This means a dispute about the Regulator's decision as to a penalty charge can be reviewed by the AAT only as provided for in existing section 66. This item was contained in the 2002 Bill.

Item 129 amends existing subsection 66(1). This amendment provides that decisions made under the various new provisions contained in **items 77** and **102** are reviewable by the AAT.²³ This item was contained in the 2002 Bill.

Items 155-168 insert a generic series of amendments that allows various existing information-gathering powers contained in the REEA to be exercised in relation to ensuring compliance with regulations as well as the REEA itself. For example, **item 155** inserts a **new subsection 110(1)** which extends the monitoring powers of an authorised officer to enable him or her to enter premises under warrant or with the agreement of the

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occupier to determine whether the regulations have been complied with. Currently the officer can only enter with the purpose of determining compliance with the Act. This item was contained in the 2002 Bill.

Item 139 adds a **new Part 11A (sections 125A-125F)**. Currently, many information gathering powers under the REEA may only be exercised when premises have actually been entered under warrant or with the agreement of the occupier. For example, under existing section 112, where entry is by warrant, persons may be required to produce documents relevant to compliance matters.²⁴

New Part 11A extends existing information-gathering powers so the Regulator can use them without having to enter premises. The key provision is **new section 125A** which allows the Regulator to require certain persons to provide information and evidence and produce documents 'relevant to the operation of the Act'. As for existing section 113, it creates an offence for failing to comply with a notice setting out the requirement for information, although in this case it is only a fine of 20 penalty units (\$2200) for an individual. This item was contained in the 2002 Bill.

New section 125B deals with self-incrimination. Unlike existing section 113, it provides that an individual is *not* excused from providing information, evidence or documentation under **new Part 11A** on the grounds of self-incrimination, or of exposure of the individual to a penalty. However, the information, evidence or documentation, *or anything obtained as a direct or indirect consequence*²⁵ of the information, evidence or documentation provided cannot be used in evidence against the individual in *criminal* proceedings except for a prosecution for failing to provide information or giving false or misleading information. Note that the information given could be used to criminally prosecute a company. Of course it could also be used to suspend a person's or company's registration, accreditation etc under the Act. This item was contained in the 2002 Bill.

Item 183 adds a new ground, which, if it occurs, the Minister *must* terminate the Regulator's employment.²⁶ The ground is a failure, without reasonable excuse, to notify the Minister of any conflicts of interest. This is a relatively standard ground for termination in similar Commonwealth legislation dealing with regulatory or advisory bodies. **Item 184** inserts a **new section 147A** which provides that the Regulator must give the Minister written notice of all his or her interests (financial or otherwise) that could conflict 'with the proper performance' of his or her function as Regulator. This item was contained in the 2002 Bill.

Concluding comments

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The expansion of the renewable energy sector beyond 2010

Both the Renewable Energy (Electricity) Amendment Bill 2002 and the June 2004 Energy White Paper created considerable debate in Parliament, particularly regarding the future of the MRET scheme beyond 2010. The Government rejected an expansion to the scheme, preferring ‘to more directly promote the development and demonstration of a broader range of low-emission technologies, and more aggressively address the impediments to the uptake of renewable energy’²⁷ through a number of new programs such as the Low-Emission Technology Development Fund and the Renewable Energy Development Initiative. It will probably be some years before the success or otherwise of these programs can be evaluated.

Energy crops, plantations and native forests

Recommendations 19, 21 and 22 of the Tambling Report were implemented through the Renewable Energy (Electricity) Amendment Regulations 2005 (No.3). Notably, this amendment to the regulations included the removal of what was called the ‘primary purpose’ test in relation to energy crops. Previously, this test had to be satisfied before a energy crop – which potentially includes trees²⁸ – would be deemed to be an eligible renewable energy source. The *Explanatory Memorandum* states that the Tambling report noted :

that contrary to the original policy expectations that energy crops would make a contribution to the MRET target, no energy crops have yet been accredited under MRET. During the Review, a number of parties argued that the development of the biomass energy sector was being inhibited by certain provisions of the Regulations. The main concern was with legislative interpretations that exclude plantations and plantings of woody tree species as eligible under the energy crop provisions, and the ‘primary purpose’ test for energy crops, which states that an energy crop must be grown for the primary purpose of energy production.

The Government introduced the ‘primary purpose’ test for energy crops because it recognised the potential in growing crops for energy, but sought to ensure that the intent of the crop, prior to its planting, was for energy production. The ‘primary purpose’ test was also introduced to alleviate any community concerns that other types of biomass, such as wood from native forests, would be used as energy crops for energy production. Following the MRET Review, the Government concluded that the current arrangements for the treatment of native forest wood waste under MRET offer adequate safeguards. Removing the ‘primary purpose test’ is not expected to impact on the current safeguards.

Currently wood waste from plantations is required to meet certain requirements to be eligible under the MRET measure, including a ‘higher value test’. Similar to the ‘primary purpose test’ for energy crops, the Government introduced the ‘higher value test’ as a safeguard to ensure that only genuine waste from plantations was used for

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energy generation. During the MRET Review, it was argued that excessive regulation of the plantation sector ran counter to national plantation industry goals. Parties also suggested that, providing adequate management issues were in place, market forces would be sufficient to ensure only waste and unusable plantation wood would be used for energy generation.

The objective of revising the MRET eligibility tests for energy crops is to provide the bioenergy sector with opportunities to achieve greater participation under the measure. To achieve this objective in relation to energy crops, the Government agreed to consider removing the primary purpose test, providing less restrictive access to biomass from crops grown for multiple purposes and redefining energy crops to include plantations, without the higher value test.

Another concern raised in the MRET Review was that the ORER interpreted that woody stemmed vegetation species are not eligible under the current 'energy crops' regulation as they cannot be classified as an 'agricultural or horticultural' crop. Amending 'energy crops' to remove the 'primary purpose' test and references to 'agricultural or horticultural crops', along with redefining plantations under energy crops, which will remove the 'higher value test', will provide less restrictive access to biomass from crops grown as plantations for multiple purposes.

Increasing the range of circumstances in which bioenergy crops are eligible will encourage the development of the bioenergy sector. Types of bioenergy projects that may become eligible are short-cycle plantations, such as energy crops, wood waste from existing plantations and 'supplementary fuel' plantations.²⁹

According to the Australian Greenhouse Office, the Government intends to amend the regulations again with respect to plantations:

A second package of regulatory amendments to redefine plantation biomass under energy crops will proceed following amendments to the *Renewable Energy (Electricity) Act 2000*. The Government intends to progress these amendments as soon as possible.³⁰

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Attachment A – Recommendations of Tambling Report and Government Response

	Recommendations	Government Response
1	The MRET measure to continue to operate.	Government reconfirmed its commitment to the MRET at the current level of 9500 GWh in <i>Securing Australia's EnergyFuture</i> .
2	Australian Government and State and Territory Ministers to investigate impediments to the inclusion of more renewable energy in National Electricity Markets.	<p>The Government announced in <i>Securing Australia's EnergyFuture</i> that it will work with the states and territories to identify by December 2005 and respond to specific rule changes required in the National Electricity Market to maximize the benefits of distributed generation, including distributed renewable energy generation.</p> <p>Up to \$14 million has also been committed for improved wind forecasting. This would allow wind to play a greater role in the National Electricity Market and assist planning for new wind farms. \$20 million has also been committed to the development of advanced storage systems for electricity, which will assist in dealing with the problem of intermittency in renewable energy supplies, which is a key impediment to the wide uptake of these technologies.</p>
3	MRET to be enhanced to support continued development of the renewable energy industry after 2007.	<p>Government has announced its commitment to improve the operational and administrative efficiency of MRET including through increasing opportunities for bioenergy and solar technologies (see responses to Recommendations 17, 19-22 below).</p> <p>Funding levels for renewable energy have also been boosted with the Government committing \$209 million in <i>Securing Australia's Energy Future</i> to develop renewable energy technologies with commercial potential, improve energy storage technologies for intermittent generation, improve wind forecasting capability and demonstrate solar technologies as part of a Solar Cities trial. Renewable energy will also be eligible for the \$500 million Low Emission Technology Demonstration Fund.</p>

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	Recommendations	Government Response
4	A review to be undertaken with a view to raising the level of research and development (R&D) in renewable energy. This review to consider whether MRET should, or could, be used as a vehicle to stimulate more investment in renewables R&D.	The Government reviewed this issue in the development of the White Paper and announced in <i>Securing Australia's Energy Future</i> that it will set aside \$100 million to fund renewable energy, development, demonstration and commercialisation and \$34 million towards funding R&D of wind forecasting and electricity storage technologies. Government also has in place a suite of programmes through the \$8.3 billion Backing Australia's Ability packages to support R&D more generally, which is accessible to renewable energy. Reducing and capturing emissions in transport and energy generation is a goal under the national research priorities.
5	Australian Government renewable energy industry development programmes to be reviewed with a view to improving the integration and focus of programme support and that the funding levels be maintained on an ongoing basis.	These programmes were reviewed in the development of the White Paper, and <i>Securing Australia's Energy Future</i> outlines a comprehensive set of measures to address impediments to further development of the renewable energy industry. Funding levels have been boosted with the Government committing \$209 million to develop renewable energy technologies with commercial potential, improve energy storage technologies for intermittent generation, improve wind forecasting capability and demonstrate solar technologies as part of a Solar Cities trial. Renewable energy will also be eligible for the \$500 million Low Emission Technology Demonstration Fund.
6	MRET targets to continue to be expressed in gigawatt hours (GWh) and not as a percentage of overall electricity demand.	Government reconfirmed its commitment to the MRET at the current level of 9500 GWh in <i>Securing Australia's Energy Future</i> .
7	Interim targets prior to 2010 and the 9500 GWh target for 2010 to remain unchanged.	Government reconfirmed its commitment to the current MRET in <i>Securing Australia's Energy Future</i> .
8	MRET targets to continue to increase beyond 2010 at a rate equal to the rate before 2010, and to stabilize at 20,000 GWh in 2020.	The Government stated in <i>Securing Australia's Energy Future</i> that it will continue to support the uptake of low emission energy from renewable sources through the MRET but will not extend or increase the target.

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	Recommendations	Government Response
9	The end date of the measure to be extended beyond 2020 so that renewable energy from projects commencing after 2005 receive Renewable Energy Certificates (RECs) for a full 15 year period.	The Government stated in <i>Securing Australia's Energy Future</i> that it will continue to support the uptake of low emission energy from renewable sources through the MRET but will not extend or increase the target.
10	Pre-existing generators and projects commissioned before the end of 2005 to receive RECs until 2020, after which they should be set new baselines.	The Government stated in <i>Securing Australia's Energy Future</i> that it will continue to support the uptake of low emission energy from renewable sources through the MRET but will not extend or increase the target.
11	The shortfall charge to remain fixed at \$40 per megawatt hour (MWh) until 2010 and to be indexed to the Consumer Price Index between 2010 and 2020.	The Government stated in <i>Securing Australia's Energy Future</i> that it will continue to support the uptake of low emission energy from renewable sources through the MRET but will not extend or increase the target.
12	A review of the Act to be initiated by the Minister if a decision is taken to implement a defined, economy-wide greenhouse abatement scheme, or in the event of more than 15 per cent of the overall liabilities being met by shortfall charge payments over two consecutive years.	The Government will continue to monitor the operation of the <i>Renewable Energy (Electricity) Act 2000</i> .
13	The Act to be amended to enable publication of baselines by the Office of the Renewable Energy Regulator (ORER).	The Government agrees with this recommendation.
14	Electricity generation reported to ORER in Electricity Generation Returns for any compliance year to cease to be eligible generation after 10 October of that calendar year.	The Government agrees with this recommendation.
15	The Act to be amended to	The Government agrees with this recommendation.

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	Recommendations	Government Response
	<p>enable ORER to publish:</p> <p>a) Total eligible generation that occurred in the market in that year</p> <p>b) Total number of RECs created that year</p> <p>c) Total actual market liability for the year</p> <p>d) Total number of RECs surrendered to offset that liability</p> <p>e) Individual shortfalls and the proportion of those shortfalls relative to their liability.</p>	
16	<p>As the treatment of wood waste from native forests raises issues outside the Review Panel's Terms of Reference, such as National Forest Policy, two options are proposed:</p> <p>a) wood waste from native forests to be excluded as an eligible renewable energy source; or</p> <p>b) wood waste from native forests to be separately identified as an independent eligible renewable energy source with the existing regulatory arrangements applying to wood waste from native forests to be retained</p>	<p>An expert panel is to be established to examine issues associated with native forest wood waste under MRET.³¹</p>
17	<p>Eligibility for plantation biomass to be redefined under 'energy crops'. Provisions to ensure plantation harvesting operations are conducted according to relevant approvals, and to deter landclearing of native forests, to be retained.</p>	<p>The Government agrees with this recommendation.</p>
18	<p>Eligibility of sawmill residues to</p>	<p>Safeguards are already in place through the ORER</p>

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	Recommendations	Government Response
	be restricted to post-processing residues from sawmilling, veneer or other processing operations (other than woodchipping).	which has the capacity to monitor outputs of eligible sawmills and to audit companies that experience unexplained increases in product to waste ratios.
19	The 'primary purpose' test applying to energy crops to be removed.	The Government agrees with this recommendation.
20	All biomass material directly sourced from a licensed landfill or licensed waste transfer station, which would otherwise be landfilled, to be eligible under the municipal solid waste provisions of MRET	The Government agrees with this recommendation.
21	Photovoltaic Small Generation Units (SGUs) with a rating of not more than 10kW (or 25 MWh per annum) to be eligible to create RECs for a single deeming period of 15 years.	The Government agrees with this recommendation. ³²
22	The threshold generating capacity for eligible photovoltaic SGUs to be increased from 10kW (or 25MWh per annum) to 100kW (or 250MWh per annum). Generators with a capacity between 10kW (or 25 MWh per annum) and 100 kW (or 250 MWh per annum) to have the option for eligibility to be assessed under either the proposed 15 year deeming provisions or under metered power station provisions.	The Government agrees with this recommendation.
23	A review to be undertaken to determine how further consideration can be given to special assistance for the Australian photovoltaics industry, either through enhancement of MRET or other	The Government announced support for the photovoltaics industry in <i>Securing Australia's Energy Future</i> . Photovoltaics will be eligible under the \$75 million Solar Cities package, the \$100 million Renewable Energy Development Initiative and the \$20.4 million Advanced Storage Technologies programme could also support PV.

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	Recommendations	Government Response
	measures	
24	All complete solar water heater systems installed, including replacement systems, to be eligible to create RECs to the full extent of their energy displacement capacity.	The Government agrees with this recommendation.
25	The Act to be amended to empower the Minister to make regulations to clarify the interpretation of Eligible Renewable Energy Sources or to determine the eligibility of new renewable energy sources.	The Government agrees with this recommendation.
26	Other than to accommodate Recommendations 16, 17 and 19, the list of Eligible Renewable Energy Sources contained in the Renewable Energy (Electricity) Amendment Bill 2002 to be adopted.	The Government agrees with this recommendation.
27	ORER to assess proposed generation projects with a view to providing 'provisional accreditation', on the basis of what is known at the time of the application and subject to the proponent satisfying the eligibility requirements of the Act.	The Government agrees with this recommendation.
28	ORER to be required to assess accreditation applications within six weeks after receipt of a completed application and other necessary information.	The Government agrees with this recommendation.
29	The Act to be amended to allow any registered owner of a REC to surrender the REC to ORER, either voluntarily or against a registered liability.	The Government agrees with this recommendation.
30	Except where amendment is necessary to accommodate the	The Government remains committed to improving the operational and administrative efficiency and

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	Recommendations	Government Response
	Review Panel's recommendations for changes to MRET, all other provisions in the Renewable Energy (Electricity) Amendment Bill 2002 to be adopted.	effectiveness of MRET, as outlined in its Renewable Energy (Electricity) Bill 2002.

Endnotes

1. Electricity Supply Association of Australia, *Electricity Gas Australia 2005*, p. 24.
2. Bagasse is the biomass remaining after sugarcane stalks are crushed to extract their juice.
3. Black liquor is a byproduct of the chemical pulping of wood in the papermaking process.
4. Statement by the Hon John Howard, 20 November 1997. See http://www.pm.gov.au/news/media_releases/1997/GREEN.html
5. In 2001, they would have only had to surrender 240, as the RPP was only 0.24%.
6. Personal Communication, Office of the Renewable Energy Regulator, March 2006.
7. Ibid.
8. Page 2.
9. As originally introduced, the Bill was designed to make changes to the list of eligible renewable energy sources and introduce significant new penalties. However, amendments were made to the Bill in Senate on 13 December 2002 that, amongst other things, increased the MRET to 5%. The Government did not accept the amendments and the Bill was not debated again, and eventually lapsed in 2004.
10. Securing Australia's Energy Future, June 2004, p. 148. See http://www.dpmpc.gov.au/publications/energy_future/index.htm
11. Office of the Renewable Energy Regulator, *Overview of the Mandatory Renewable energy Target*, www.orer.gov.au/about/overview.html accessed 23 March 2006
12. The Regulator is the statutory Government administrator of the MRET scheme.
13. Page 197.
14. Page 19.
15. The baseline is zero for post-1997 power generators.
16. Page 21.

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17. Existing section 19 only states that RECs may be created 'immediately after' the relevant generation.
18. Page 199.
19. The relevant 'fault' element for subsection 24(3) is *recklessness* – thus there does not have to be a specific *intention* to improperly create a REC.
20. Page 28.
21. Page 29.
22. Page 30.
23. These items relate to decisions on changing the nominated person for an accredited power station, varying what constitutes a power station, suspending the accreditation of a power station and varying 1997 eligible renewable power baselines.
24. Failure to produce such documents is punishable by six months imprisonment, although a person is excused from the production obligation if the documents would tend to incriminate them or otherwise expose them to a penalty: existing section 113.
25. Thus **new section 125B** provides what is called 'derivative use immunity'.
26. The existing grounds are standard provisions dealing with bankruptcy.
27. Securing Australia's Energy Future, June 2004, p. 148.
28. Biomass from a native forest is excluded from qualifying as an eligible energy crop.
29. Pages 6–7.
30. See <http://www.greenhouse.gov.au/markets/mret/update.html>
31. This panel was not established for the reasons set out at <http://www.greenhouse.gov.au/markets/mret/update.html>
32. As noted in the concluding comments section of this Digest, recommendations 19, 21 and 22 were partly implemented through the Renewable Energy (Electricity) Amendment Regulations 2005 (No.3).

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