



australian network of environmental defender's offices

Submission to the COAG Working Group on
Climate Change and Water - *Design Options
for the Expanded National Renewable Energy
Target Scheme*

30 July 2008

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

Contact Us

EDO ACT (tel. 02 6247 9420)

EDO NSW (tel. 02 9262 6989)

EDO NQ (tel. 07 4031 4766)

EDO NT (tel. 08 8982 1182)

EDO QLD (tel. 07 3211 4466)

EDO SA (tel. 08 8410 3833)

EDO TAS (tel. 03 6223 2770)

EDOVIC (tel. 03 9328 4811)

EDO WA (tel. 08 9221 3030)

Executive Summary

Renewable energy has a crucial role to play as part of Australia's long-term mitigation response to climate change. In light of recent IPCC reports, which show that we have in some respects underestimated the potential implications of climate change, renewable energy must become the focal point of the Australian Government's response.¹ However, up to this point renewable energy has been a largely underutilised resource in Australia despite the fact we have a greater capacity than most other nations to implement a viable renewable energy industry. In ANEDO's opinion renewable energy represents the primary long-term viable solution to climate change.

The Australian Network of Environmental Defender's Offices Inc (ANEDO) is a network of 9 community legal centres in each state and territory, specialising in public interest environmental law and policy. ANEDO welcomes the opportunity to provide comment on the Submission to the COAG Working Group on Climate Change and Water – *Design Options for the Expanded National Renewable Energy Target Scheme*.

ANEDO strongly supports the use of regulation, such as the Mandatory Renewable Energy Target (MRET), to facilitate reductions in greenhouse gas emissions that progress Australia to 60% cuts in 1990 levels by 2050. However, only a robustly designed renewable energy scheme will be successful in displacing fossil fuels as the dominant form of energy in Australia.

We note that there is considerable uncertainty surrounding the future operation of the upcoming Australian Emissions Trading Scheme, and how the scheme will interact with the MRET. We recommend that the renewable energy industry is regularly reviewed to track its performance in light of the emissions trading scheme. Indeed, it is unclear whether renewable energy will be in a competitive market position by 2030 when the MRET is proposed to come to an end. For example, if the emissions trading market results in increased carbon capture and storage, renewable energy generation may not increase as expected.

We make the following recommendations:

- Interim MRET targets should be set annually to adjust for increases in electricity demand to ensure that the 2020 target is met;
- Renewable energy producers must demonstrate that their operations are ecologically sustainable;
- Wood waste should not be included as an eligible source of renewable energy because of the significant environmental impacts of logging activities on our forests and biodiversity;

¹ Stefan Rahmstorf *et al*, (2007), "Recent Climate Observations Compared to Projections" 416 *Science* 709.

- ANEDO supports the inclusion of solar water heaters as an eligible source of RECs;
- ANEDO recommends some limitations be considered in relating to banking to ensure the 2020 target is not compromised;
- Project eligibility periods should be reassessed at 2020 and should be informed by ongoing reviews of renewable energy development;
- Caution should be exercised when considering pre-1997 generators to ensure that RECs are generated only for production above business as usual;
- The phase out of MRET should not be a foregone conclusion. There should be an assessment of the competitiveness of renewable energy prior to 2030. A mechanism should be introduced allowing the extension of the scheme;
- ANEDO supports high penalties and ‘make good’ provisions to deter non-compliance and to ensure targets are met; and
- Trade-exposed, electricity-intensive industries should not be exempt from the MRET scheme. It is important that these high consuming industries begin the transition away from fossil fuels as soon as possible.

This submission makes comment on the following areas of discussion:

1. Liability and annual targets
2. Eligible sources
3. Banking
4. Project Eligibility Periods
5. Existing generators
6. Duration and phase-out
7. Compliance mechanisms
8. Trade-exposed, electricity-intensive industries

1. Introduction

It is clear that a focal element of Australia’s climate change response is a move towards renewable sources of energy, which Australia has in abundance, especially solar and wind energy. Hence, there is a need to put in place legal obligations that ensure that there is substantial market penetration by renewable sources of energy. An expanded MRET constitutes a central facet of Australia’s mitigation response. However, the MRET target at current levels is tokenistic and ineffectual. ANEDO therefore welcomes the government’s expansion of the MRET. Although we believe that a target of 25% by 2020 is preferred, the expansion of the MRET is a significant step forward. Indeed, several developed countries have put in place strong renewable energy targets. For example, California has a target of 33% by 2010 and Denmark 28% by 2010. A stronger target will place Australia in a comparable position on the world stage.

A strong renewable energy target cannot work in isolation. An MRET must be complemented by demand management strategies and energy efficiency measures to

restrain the significant increases in energy demand. Indeed, over the past thirty years energy consumption in Australia has more than doubled from approximately 2700 petajoules to more than 5500 petajoules in 2006.² Hence, the government must provide incentives to households and businesses to restrain their energy use and must fund research into energy efficiency programmes in order to maximise the benefits of an MRET.

2.1. Liability and Annual targets

ANEDO supports a progressively increasing renewable energy target to 2030. The interim target should be set annually to determine the additional gigawatt hours of generation required each year along a trajectory towards the long-term percentage target. An annual determination allows the target to take into account growth in electricity demand to ensure that the 2020 target is met. A volumetric target set years in advance will do little to increase the share of renewable energy and reduce greenhouse gas emissions if growth in demand increases at greater than expected levels. Indeed, the setting of a long term volumetric target has been a significant failing of the MRET thus far. On its inception, the MRET set a figure of 9500 gigawatt hours of additional renewable energy generation by 2010. This was to represent an additional 2% increase in the share of Australia's renewable electricity as compared to 1997 levels. However, as a result of greater than expected growth in electricity consumption, the target only just kept pace with this increase.³ In other words, up to this point the MRET has not led to an increase in the percentage share of renewable energy, and, as a consequence, it has had a negligible effect on reducing greenhouse gas emissions. ANEDO is therefore concerned that the government has continued with this trend by setting a volumetric target of 45,000 additional gigawatt hours by 2020. There is a danger that this will not constitute 20% of Australia's electricity supply by 2020 if electricity demand continues to rise significantly. Hence, we submit that an annual target, which is adjusted to demand, must be set to ensure that the 2020 target is met.

2.2. Eligible sources

ANEDO supports and encourages the use of all renewable sources of energy, provided that they are ecologically sustainable and that they do not lead to other negative environmental impacts. We therefore call for an express provision in the MRET requiring renewable energy producers to demonstrate that their operations are using is ecologically sustainable. This is consistent with one of the express objects of the Act which is "to ensure that renewable energy sources are ecologically sustainable". Sources that may not meet sustainability criteria include: new hydro-electric power schemes (as these can have significant detrimental

² ABARE, *Energy Update 2006* at 2.

³ *The Great Opportunity: 25% Renewable Energy for NSW*- October 2006 at 1. Found at: http://www.acfonline.org.au/uploads/res_NSWrenewables.pdf (13 July 2007).

environmental impacts), and certain “low emission energies” that are not in fact renewable.⁴

We make particular comment on two sources:

- Solar water heaters; and
- wood waste

Solar water heaters

ANEDO supports the inclusion of solar water heaters as an eligible source of Renewable Energy Certificates (RECs). Solar heating systems form an essential element of the mix of renewables needed to transition to a low-carbon future. Australia has a hot climate and an abundance of solar access, so solar energy is a logical investment. We therefore supports initiatives such as MRET that aim to expand the use solar water heating.

Wood Waste

ANEDO opposes the inclusion of wood waste as an eligible source for renewable energy certificates in the MRET. We believe that the provisions in the regulations limiting the use of native forest biomass provide little protection for native forests. Although fuel sources are limited to waste and by-products of harvesting operations, these are defined very broadly. For example they include thinnings, which are defined as the selective removal of trees and branches from a forest during the growing stage and at harvest. Furthermore, the limitation of eligibility only to operations Regional Forest Agreement (RFA) areas and to operations that are conducted in accordance with ecologically sustainable forest management principles, is insufficient. As was found in the first instance in the *Weilangta case*⁵, operations conducted under an RFA are not necessarily sustainable, even if the words of the RFA are amended to so claim. Moreover, woodchipping operations, which have significant environmental impacts for little financial return may also be eligible to create RECs under the regulations. ANEDO is concerned that these provisions provide an economic incentive to produce more wood waste (rather than encouraging efficiency in sawmilling) and to fell smaller trees as thinnings that would not normally be cleared in a logging operation for use as fuel. This would significantly increase the logging in our native forests and will impact on biodiversity. Furthermore, there are significant environmental impacts associated with the burning of forest biomass to create electricity. For example, the burning of wood contributes to particulate pollution which is a serious environmental problem. ANEDO therefore supports The Wilderness Society in calling for a complete prohibition of wood waste as a renewable energy source. The MRET scheme should be focussed on the development of ecologically sustainable sources that do not impact deleteriously on biodiversity and air quality. Wood waste

⁴ For example, “low emissions energy is currently included in Queensland’s target, and this includes ‘clean’ coal, which is not a genuine renewable energy source.

⁵ *Brown v Forestry Tasmania* (No 4) [2006] FCA 1729

should be added to the list of energy sources that are not eligible renewable energy sources in Section 17(2) of the Act.

2.3. Banking

ANEDO recommends some limitations on banking be considered to ensure the 2020 target is not compromised. Although unlimited banking may create an incentive for early movers and investors to produce a lot of RECs at the commencement of the scheme, which is important, such an approach may discourage action in later years as liable parties will rely on their banked RECs in order to fulfil their legal obligations. This may lead to a stagnation of renewable energy initiatives which is counter-productive to the main aims of the MRET. Indeed, we agree with concerns expressed in the discussion paper that unlimited banking may mean that target levels of generation will not be met in later years. We therefore support **Approach 2** proposed by COAG in allowing limited banking of RECs subject to modelling outcomes.

2.4. Project eligibility periods

ANEDO is supportive of renewable energy as a central facet of Australia's long-term response to climate change. We believe that given the imminent threats projected, mitigation action must be taken sooner rather than later. Therefore, ANEDO supports any incentives provided to potential renewable energy investors to invest in REC generation as early as possible. We therefore support **Approach 2** but eligibility of accredited renewables-based power stations should be informed by the ongoing 5 year reviews of the renewable energy industry. This will ensure that market-ready technologies are available quickly to stimulate the renewable energy market and ensure the early deployment of innovative technologies.

2.5. Existing generators

It is important that the MRET ensures that the increased percentage targets of renewable energy are achieved over and above current levels of generation. This additionality requirement is crucial to ensuring that the MRET goes beyond a 'business as usual' approach. We submit that the use of a historical baseline to determine "additionality" in pre-1997 generators is problematic, since it does not take into account natural increases in business revenue but assumes that a business would have maintained a stagnant baseline had the MRET not come into force. As a result, ANEDO submits that caution should be exercised in determining the treatment of pre-1997 generators.

2.6. Duration and phase-out

ANEDO submits that the proposed phase out of the MRET in 2030 should not be a foregone conclusion. Although it is likely that renewable energy will become an attractive option by 2030 due to an emissions trading scheme making fossil-fuel derived energy more expensive, this may not necessarily be the case. We therefore

submit that a 5 yearly assessment of the market attractiveness and performance of renewable energy should be conducted, along with a major assessment by 2030. The MRET should incorporate a mechanism allowing the scheme to be extended if renewable energy is not in a competitive position by 2030. Indeed, ensuring that the renewable energy market continues to flourish beyond 2030 will be crucial to Australia's mitigation long-term efforts, especially in the context of tightening emissions budgets under the proposed Australian emissions trading scheme.

The particular phase out option to be adopted if renewable energy is deemed competitive by 2030 should only be chosen after detailed assessment and modelling.

2.7. Compliance mechanisms

ANEDO has previously advocated for stringent, enforceable and robust penalty regimes in the context of emissions trading.⁶ Similarly, we call for stronger compliance mechanisms to be introduced into MRET. We submit that an appropriately high penalty is crucial to ensuring that the renewable energy targets are met. Low penalties are relatively ineffective for large businesses where it may be more cost-effective to write-off any fines as simply a cost of doing business. Hence, we support a shortfall charge set at a high enough level above the expected REC price to deter non-compliance with the scheme. The shortfall charge should be adjusted periodically corresponding to the permit price to ensure that the deterrence factor is maintained.

The scheme must also include a 'make good' provision for companies to compensate for breaches in successive compliance periods. Liable parties who do not surrender enough RECs in one year should have to make up the shortfall in the successive year. The addition of such a provision adds additional weight to the financial incentive of compliance provided by a high penalty.

2.8. Trade-exposed, electricity-intensive industries

ANEDO is opposed to the exemption of trade-exposed, electricity-intensive industries (TEEIs) from the MRET scheme. TEEIs industries are significant consumers of electricity, accounting for a large percentage of total electricity consumption. Indeed, consumption by the aluminium smelting, metals and manufacturing industries comprised 37.3% of Australia's total energy consumption in 2004-05.⁷ A legal obligation to surrender RECs under the MRET is therefore essential in order to reduce the carbon impact of these industries and help them to transition to a carbon constrained business future.

⁶ For example, see *Submission regarding the Possible Design for a National Greenhouse Gas Emissions Trading Scheme* December 2006. It is available to be accessed at http://www.edo.org.au/edonsw/site/pdf/nets_anedosub061221.pdf (13 July 2007).

⁷ CSIRO, *The Heat is on- the future of energy in Australia*, 2006 at 26. Found at: <http://www.csiro.au/resources/pfnd.html> (13 July 2007).

The rationale given for exempting TEEIs is that the MRET would disadvantage the competitiveness of these industries as long their overseas competitors are not subject to the same legal obligations. Although ANEDO understands the arguments relating to economic impacts and the potential shifting of activities overseas, and although they may have some merit, we believe that increasing the competitiveness of *renewable energy* should be the focus of the scheme, rather than exempting existing polluters. Indeed, there has been a lack of genuine discussion by government of the potential economic benefits that may flow from a viable renewable energy industry. Australia has plentiful supply and capacity to develop renewable energy sources which is likely to provide economic benefits in future, especially given the likely tightening of greenhouse gas targets towards a 60% reduction by 2050. Hence, the economic analysis of the MRET's impacts should not be inordinately focused on the plight of TEEIs.

It is important to note that TEEIs will be granted compensation under the current proposals for an emissions trading scheme.⁸ This compensation significantly reduces the incentive to conduct mitigation activities, as TEEIs are likely to receive a significant number of free emissions permits. However, this compensation is proposed to reduce each year taking into account best practice efficiency technologies available to TEEIs. Consequently, TEEIs must begin investing in renewable sources of energy in the near future as their ETS compensation begins to progressively decrease. A gradually increasing MRET target will therefore assist these industries in meeting their future obligations. Early action in renewables will lead to lesser costs for TEEIs compared to the costs of later action taken once a truly international climate change plan is drawn up that encompasses global competitors.

⁸ Australian Government, *Carbon Pollution Reduction Scheme – Green Paper* (July 2008) <http://www.climatechange.gov.au/greenpaper/report/index.html> (24 July 2008)