

National Greenhouse and Energy Reporting Act 2007

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Background

On 29 September 2007, the *National Greenhouse and Energy Reporting Act 2007* (Cth) (Act) commenced operation. The Act provides a framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations. The reporting obligations under the Act are intended to lay the foundation for the Federal Government’s proposed national emissions trading scheme, due to be introduced by 2011.

The Act leaves a number of details to be finalised through the regulations that will form part of the legislative framework for a national greenhouse and energy reporting system. The regulations have not yet been promulgated, but in October 2007 the government released its Regulations Discussion Paper (**Discussion Paper**), which provides guidance on the likely impact of the regulations. Other details (such as acceptable methods for measuring emissions) will be determined by the Minister by legislative instrument.

Key aspects of the Act

- **Mandatory registration** – Under the Act, a controlling corporation must register with the National Greenhouse and Energy Register and report to the Greenhouse and Energy Data Officer (**GEDO**) if the total greenhouse gas emissions or energy production or energy consumption from facilities under the operational control of members of the corporate group exceed prescribed thresholds for financial years ending on or after 30 June 2009 (see below). The thresholds will be decreased over the first three years of the Act’s operation, thus increasing the coverage of the reporting regime.

Financial year	Greenhouse gas emissions threshold (kt CO ₂ -e)	Energy production/ consumption threshold (TJ)
FY2009 (ending 30 June 2009)	125	500
FY2010	87.5	350
FY2011 forward	50	200

The Act also provides that a controlling corporation must register if an entity that is a member of the group has operational control of a facility the operation of which during the year emits at least 25 kt CO₂-e of greenhouse gases, or produces or consumes at least 100 TJ of energy. The regulations are yet to resolve what level of reporting will be required if only this facility threshold (as opposed to the group threshold) is met, but it appears likely that the corporation with operational control over the relevant facility will be required to report on all facilities under its operational control (that is, reporting for the entire corporation, but not the entire corporate group).

- **Voluntary registration** – Corporations may also voluntarily register if they are undertaking a greenhouse gas emissions reduction project.
- **Greenhouse gas emissions** – The Act refers the definition of emissions to the regulations. The Discussion Paper notes that the definition of emissions will include both direct (Scope 1) emissions and indirect (Scope 2) emissions. Direct emissions include emissions from sources within the boundary of the relevant facility and as a result of the facility’s activities. Indirect emissions are emissions generated from the production of electricity, heat or steam that the facility consumes, but which is produced by another facility.

- **Operational control** – An entity is taken to have operational control of a facility if it has the authority to introduce and implement the facility's operating and health, safety and environment policies.
- **Corporate groups** – The party obliged to report is the controlling corporation of a corporate group. The concept of a controlling corporation's group includes its subsidiaries as well as any joint ventures and partnerships of which a member of the group is a joint venturer or partner and has been nominated as a responsible entity for the joint venture or partnership for the purposes of the reporting regime. This avoids double reporting and is analogous to the concept of consolidated financial reporting.
- **Report content and form** – Registered corporations must provide the GEDO with a report each financial year on the greenhouse gas emissions, energy production and energy consumption (as applicable) from the operation of facilities under the operational control of members of their corporate group.

Where a corporate group meets the threshold for some of the reportable matters (emissions, energy consumption or energy production) only, reporting by the controlling entity will only be mandatory in relation to those reportable matters and reporting on the other matters will be voluntary.

The report must be in a prescribed form and will be required to contain the information that will be prescribed in the regulations. This will include data in respect of each subsidiary in the corporate group, and where a facility exceeds the facility threshold, that facility must also be reported on separately.

Civil penalties apply for failure to comply with the reporting requirements (though they do not apply to corporations that voluntarily register to report).

- **Report timing** – The report must be given within four months of the end of the relevant financial year.
- **Publication of reported data** – By 28 February each year, the GEDO will publish on the internet totals of the greenhouse gas emissions, energy production and energy consumption reported for a corporate group for the previous financial year. The relevant government official also has a discretion to report these matters disaggregated to a group member level and from the Discussion Paper it appears likely that this will be a common approach. It also appears that the published data will be disaggregated into direct and indirect emissions.
- **Penalties, including personal liability for CEOs** – Various civil penalties apply for failure to register and report. For example, a breach of the obligation to report would carry a maximum civil penalty of \$220,000. CEOs may be personally liable for breaches by their corporations where they had knowledge of the breach, or were reckless or negligent as to the breach, and failed to take reasonable steps to prevent it.
- **Relationship with other reporting regimes** – Reporting under the national scheme will supersede reporting under state or territory laws that are specifically nominated through the regulations that provide for reporting of the same information, and under national environmental protection measures such as the National Pollutant Inventory. This streamlining is not addressed in the Discussion Paper.

Implications for business

- Businesses will need to be in a position to assess whether they are required to register and report for financial years ending on or after 30 June 2009. Where registration is required it must occur by 31 August 2009 and the first report will need to be given by 31 October 2009. Corporations that may be affected will therefore need to monitor their greenhouse gas emissions, energy production and energy consumption from 1 July 2008 and consider putting in place systems and personnel to ensure they comply with their reporting and record keeping obligations.
- Corporations conducting or planning greenhouse gas reduction projects should consider registering to assist them to gain recognition for the emissions reductions achieved as a result of these projects.
- Reporting on emissions and energy production and consumption will be on the same timeframes as corporations' annual reports and will form part of their annual reporting cycle.
- The reporting obligations under the Act will improve public information on companies' emissions profiles and energy production and use and should therefore assist analysts and the market to better assess the impact of companies' emissions profiles on their valuations following the introduction of an emissions trading scheme. It is noteworthy that the Act requires the reporting of direct and indirect emissions when it is likely that the caps under an emissions trading scheme (that will have the most direct economic effect on corporations) will be in relation to direct emissions from large facilities only, with the upstream provider of electricity being subject to caps in relation to the indirect emissions. However, the Discussion Paper suggests that direct and indirect emissions will be separately reported to the public, which will provide important information for analysts.
- Businesses should maintain a watching brief to assess the details of the reporting scheme; of particular importance will be the regulations that are yet to be promulgated and any practical guidance issued by the government.