



## *Express law* *fast track information for clients*

4 October 2007

### **New national greenhouse and energy reporting framework**

The [National Greenhouse and Energy Reporting Act 2007](#) was enacted on 28 September 2007. The NGER Act will establish a national framework for the reporting of greenhouse gas emissions, energy production and consumption, and greenhouse gas abatement activities by corporations.

The National Greenhouse and Energy Reporting System (NGER System) is intended to be the single reporting mechanism for a range of Commonwealth, state and territory programs. In particular, it is intended to underpin a future Australian Emissions Trading Scheme. The NGER System will commence on 1 July 2008.

#### ***Background***

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Currently, a range of Commonwealth, state and territory programs require corporate entities to report data relating to energy production, energy consumption, and greenhouse gas emissions levels (for example, the New South Wales / Australian Capital Territory Greenhouse Gas Abatement Scheme, the Queensland ecoBiz scheme, the Victorian EPA Industry Greenhouse Program, and the Commonwealth Greenhouse Challenge Plus and Energy Efficiency Opportunities schemes).

The Australian Government's 2004 Energy White Paper, [Securing Australia's Energy Future](#), stated that the government would reduce the greenhouse and energy reporting burden on companies by streamlining reporting through a single system operating across all Australian jurisdictions. To this end, the government introduced the National Greenhouse and Energy Reporting Bill into Parliament on 15 August 2007.

## ***Key elements of the National Greenhouse and Energy Reporting Act***

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### **Establishment of the Greenhouse and Energy Data Officer**

The NGER Act provides for the appointment of the Greenhouse and Energy Data Officer (GEDO), who has a number of functions and decision-making powers under the NGER Act. The GEDO will be engaged under the Public Service Act 1999.

### **Which entities are required to participate in national greenhouse and energy reporting**

The controlling corporation of a corporate group is the responsible entity in relation to that corporate group for the purposes of the NGER System. A controlling corporation is a constitutional corporation (within s 51(xx) of the Constitution) that does not have a holding company incorporated in Australia. The members of the controlling corporation's group include its subsidiaries (and any subsidiaries of those subsidiaries), as well as partnerships and joint ventures that the controlling corporation is involved in (unless another partner or participant has been nominated to be responsible for the partnership or joint venture for the purposes of the NGER System).

### **Registration**

A controlling corporation must register for the NGER System if its corporate group meets the relevant thresholds for energy consumption or production, or greenhouse gas emissions, in the relevant financial year.

Greenhouse gas emissions, or energy production or consumption, must be counted towards the corporate group's total if the emissions, production or consumption result from the operation of a facility over which a corporate group member has operational control. These terms are partially defined in the NGER Act and further content to these definitions will be included in the regulations made under the NGER Act. The GEDO also has a power to decide whether certain activities constitute a 'facility' and which corporate entity has operational control over a particular facility.

For the 2008–09 financial year, the registration thresholds are:

- gas emissions for the corporate group: 125 kilotonnes or more
- energy production for the corporate group: 500 terajoules or more
- energy consumption for the corporate group: 500 terajoules or more.

The threshold levels progressively reduce over the following two financial years.

A controlling corporation must also register for the NGER System if a single facility over which a group member has operational control meets one of the following thresholds:

- greenhouse gases: a carbon dioxide equivalence of 25 kilotonnes or more

- production of energy of 100 terajoules or more, or
- consumption of energy of 100 terajoules or more.

### **Mandatory reporting**

Registered corporations must lodge a report with the GEDO within four months of the end of each financial year. The report must contain certain information relating to the greenhouse gas emissions, energy production and energy consumption for the corporate group during the financial year.

Persons other than the registered corporation may be required to report information that the registered corporation would otherwise have to report, pursuant to a determination of the GEDO. The GEDO may make such a determination, in general, where a person other than the registered corporation has possession or control of the data and the registered corporation is not entitled to acquire the data from that person.

### **Voluntary reporting about greenhouse gas projects**

The NGER Act also incorporates a voluntary reporting scheme for corporations involved in greenhouse gas reduction, removal and offset projects that meet the requirements set out in the regulations.

### **Publication of national greenhouse and energy reporting information**

The GEDO must keep a register of registered corporations, and may publish it. The register is expected to contain information about the corporations' compliance with the NGER System; however, the details of the information to be entered on the register will be set out in regulations.

The GEDO must also publish an annual financial year report which includes the totals of the greenhouse gas emissions, energy production and energy consumption reported in relation to certain corporate groups for the year. The GEDO may also publish information relating to greenhouse gas projects undertaken by a corporation during the year.

Participants may apply to the GEDO not to publish information about the corporate group if the information reveals, or may reveal, trade secrets or other information of commercial value where publication may diminish that value. The GEDO may accept or reject the application.

### **Compliance and monitoring provisions**

A court may, on application from the GEDO, award a civil penalty of up to 2,000 penalty units against a corporation for breach of its obligation to register or obligation to report under the NGER Act. In some circumstances, chief executive

officers of the corporation may be personally liable for a civil penalty in relation to a breach.

An alternative compliance regime is provided through the GEDO's power to issue an infringement notice to a person whom the GEDO reasonably believes has contravened a civil penalty provision. The person may pay the infringement notice penalty (one-fifth of the maximum penalty a court could impose for that contravention) to avoid the GEDO commencing court proceedings in relation to the contravention. The GEDO may also accept enforceable undertakings from participants relating to the compliance by the participant with the NGER Act and regulations.

The NGER Act provides for a scheme for 'authorised officers' to be appointed by the GEDO. In prescribed circumstances, authorised officers have powers to enter and search premises, inspect documents and activities, and question persons in relation to compliance with the NGER Act.

In addition, the GEDO has powers to:

- request information relating to compliance with the NGER Act
- require corporations to undertake an external audit of compliance
- seek monitoring warrants for access to premises for compliance purposes.

### ***Relationship with other Commonwealth, state and territory schemes***

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The NGER Act will apply to the exclusion of a state or territory law in relation to a constitutional corporation where that law:

- provides for the reporting or disclosure of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption or energy production
- that law (or part of the law) is specified in regulations under the NGER Act.

The NGER Act contains standard secrecy provisions relating to information reported under the NGER Act. However, the NGER Act also establishes an information sharing scheme to allow for information reported through NGER to be disclosed to prescribed Commonwealth, state and territory officers for the purposes of administering programs relating to greenhouse gas emissions or energy consumption or production. Certain information may also be disclosed to states and territories.

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