



National Greenhouse and Energy Reporting Amendment Bill 2009

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National Greenhouse and Energy Reporting Amendment Bill 2009

Date introduced: 18 March 2009

House: House of Representatives

Portfolio: Climate Change and Water

Commencement: On the 28th day after Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill proposes minor amendments to the *National Greenhouse and Energy Reporting Act 2007* (the Act) to enhance the robustness of its operation making it more consistent with the original policy intent by:

- clarifying the definition of certain key operational terms relating to greenhouse and energy audits conducted under the Act
- making it a requirement that the results of greenhouse and energy audits be included in the National Greenhouse and Energy (corporation) Register
- broadening the secrecy provisions to include audit information
- enabling a decision by the Greenhouse Data Officer (GEDO) not to register an auditor under the Act to be reviewed by the AAT
- expanding the scope of guidelines that may be determined by legislative instrument (pursuant to section 75 of the Act) to include requirements for the preparation, conduct and reporting of audits, and for these determinations to be made by the Minister rather than the GEDO
- requiring potential auditors to register with GEDO and providing for detailed conditions on auditor registration to be made by way of regulations and a legislative instrument to be determined by the GEDO; and
- removing the obligation for the GEDO to publish corporate level energy production information, due to difficulties in providing meaningful corporate level ‘totals’.

Warning:

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Background

The Act, passed in September 2007, established a national mandatory corporate reporting system for, and dissemination of information related to, greenhouse gas emissions, energy use and production. The reporting obligations under section 24 of the Act provide useful public information and serve as an important guide for government policy; also laying the foundation for the proposed national Carbon Pollution Reduction Scheme.¹ The first reporting year under the Act commenced on 1 July 2008. By August 2008 many of the largest corporate groups in Australia began compiling data to comply with the Act, which made emissions registration and reporting mandatory for controlling corporations whose corporate groups produce energy or consume energy at or above specified quantities over a financial year (1 July to 30 June). Corporations may also voluntarily register if they are undertaking a greenhouse gas emissions reduction project.

According to the Department of Climate Change's website:²

By the 2010-11 reporting period the legislation is expected to cover around **700 medium and large corporations**.

The reporting system will improve data coverage to over **70% of greenhouse gas emissions** in the covered sectors.

Lower thresholds for corporate groups will be phased in by 2010-11. The final thresholds will be 50 kilotonnes of greenhouse gases (CO₂ equivalent) or 200 terajoules of energy.³

It is expected that a significant number of companies required to report in the third phase (2010-2011) may lack the requisite reporting experience and make costly errors in their calculations and thus reporting.

The system is backed up by a variety of tough pecuniary penalties for a failure to register and report, and there is also the potential for personal liability for CEOs under certain circumstances. The penalties highlight the significance of diligent bona fide reporting for the purposes of effective policy planning.

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1. Department of Climate Change, 'Consultation Paper: Proposed Amendment to section 24(1)(b) of the *National Greenhouse and Energy Reporting Act 2007*: public disclosure on energy production data', p. 1, viewed 16 June 2009, http://www.climatechange.gov.au/reporting/publications/pubs/nger-consultation-paper_.pdf.
 2. Department of Climate Change, 'National Greenhouse Reporting and Energy Reporting System', viewed on 13 May 2009, <http://www.climatechange.gov.au/reporting/publications/fs-ngers.html>,
 3. Department of Climate Change, 'National Greenhouse Reporting and Energy Reporting System'.

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Ensuring the highest integrity of the data produced under this system will better enable analysts and the market to meaningfully assess the impact of companies' emissions profiles on their valuations following the introduction of the Government's proposed Carbon Pollution Reduction Scheme.

Basis of policy commitment

In October 2008 the Department of Climate Change released *The National Greenhouse and Energy Reporting Act and Carbon Pollution Reduction Scheme External Audit Consultation Paper*⁴ to the public for comment. The paper proposed options for the development of external auditor regulations and an external audit guidelines legislative instrument under the NGER Act. Organisations and individuals were invited to provide feedback on the approaches suggested by the paper by 14 November 2008. Also, External Audit Workshops were held on the consultation paper in a number of capital cities during October 2008. Just under 300 people attended the workshops and 58 written submissions were received on the consultation paper.⁵ The outcomes of the consultation were used to inform a number of amendments to the NGER Act, required to strengthen the audit framework to provide for more robust reporting under both the NGER Act. This will assist with meeting Australia's international obligations and is a key component of the Government's proposed Carbon Pollution Reduction Scheme.

In February 2009, the Department of Climate Change released an exposure draft of the Bill for public consultation for a one week period commencing 23 February 2009. 22 formal submissions were received, focusing mainly on the technical details of the Bill and were reportedly supportive of the proposed amendments.⁶ Following this, the Department stated that it:

is in the process of developing draft regulations and a legislative instrument to outline the detail of the audit framework to be developed under the NGER Act. Further public

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4. Department of Climate Change, *The National Greenhouse and Energy Reporting Act and Carbon Pollution Reduction Scheme External Audit Consultation Paper*, October 2008, viewed 5 June 2009, <http://www.climatechange.gov.au/reporting/publications/pubs/external-audit.pdf>.
 5. Emissions Reporting and Policy Branch, Department of Climate Change, Submission to Senate Standing Committee on Economics *Inquiry into National Greenhouse and Energy Reporting Amendment Bill 2009*, Canberra, 30 April 2009, p. 3, viewed 13 June 2009, http://www.aph.gov.au/senate/committee/fapa_ctte/national_greenhouse_energy_reporting/submissions/sub5.pdf.
 6. Emissions Reporting and Policy Branch, Department of Climate Change, Submission to Senate Standing Committee on Economics *Inquiry into National Greenhouse and Energy Reporting Amendment Bill 2009*.

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consultation on this subordinate legislation is planned for May/June 2009 for a four week period.⁷

Committee consideration

On 19 March 2009 the Bill was referred to the Senate Finance and Public Administration Committee for inquiry. The Committee reported on 7 May 2009. Details of the inquiry are at

http://www.aph.gov.au/Senate/committee/fapa_ctte/national_greenhouse_energy_reporting/index.htm

The final conclusion of the committee:

[...] notes that much of the detail of the legislation will depend on the development of regulations and legislative instruments referenced in the amendments. The committee encourages the department to ensure that adequate consultation continues in the formulation of these regulations and legislative instruments.⁸

Financial implications

The Explanatory Memorandum states that the Bill will have no financial impact.

Main provisions

Part 1—Amendments relating to audits

Items 1-3 and **5-6** propose the following definitions be inserted into **section 7** of the Act:

audit information: means ‘information obtained by or on behalf of an audit team leader in the course of carrying out a greenhouse and energy audit’. This clarifies the information that will enjoy protection by the secrecy provisions provided for in the proposed amendment to section 23 of the Act.

audit team leader: ‘means a registered greenhouse and energy auditor appointed to carry out a greenhouse and energy audit’. They will be responsible for the overall

7. Emissions Reporting and Policy Branch, Department of Climate Change, Submission to Senate Standing Committee on Economics *Inquiry into National Greenhouse and Energy Reporting Amendment Bill 2009*.

8. Senate Finance and Public Administration Committee, *Inquiry into the National Greenhouse and Energy Amendment Bill 2009*, viewed 14 June 2009, http://www.aph.gov.au/Senate/committee/fapa_ctte/national_greenhouse_energy_reporting/report/c01.htm#anc4.

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conduct of the audit. Their tasks typically include: providing briefing about the scope, details of the audit, and signing-off on the audits conducted pursuant to the Act.

audit team member: ‘a person assisting the audit team leader to carry out the audit’. Reference to an ‘audit team’ member is designed to provide for flexibility to be used in selecting persons with cross-disciplinary expertise to be valuably and appropriately used in confidently conducting a successful meaningful audit.

greenhouse and energy audit: ‘means an audit under any of sections 73 to 74A’ of the Act. The Explanatory Memorandum points out that the term ‘auditor’ is used as a generic indicator of the activity to be performed and does not have the same meaning as ‘auditor’ under the *Corporations Act 2001*.⁹

registered greenhouse and energy auditor: ‘an individual registered in the register of greenhouse and energy auditors kept under section 75A’.

Publication of results of greenhouse and energy audits

Item 7 amends paragraph **16(4)(b)** so that the results of a greenhouse and energy audit carried out in relation to a corporation must be made public by the GEDO. The significance of this lies in its contribution to transparency, accountability and reliability of data. Currently, the regulator does not have the power to make audit results publicly available. However, what (level) of information may be made available will be dealt with by regulations which will be tailored to take account of issues such as commercially sensitive information.

Guarding against breaches of commercial confidence

Item 8 amends **paragraph 23(1)(a)** so as to deal with potential commercial breaches by making it an offence to release ‘audit information’, other than for the purpose of the Act or other Commonwealth, state and territory laws.

Furthermore, under proposed **paragraph 23(2)(d)** audit team members will be required to keep greenhouse and energy information and audit information obtained under the Act confidential (**item 10**).

AAT review of refusal to register auditor

Item 15 enhances transparency and accountability by enabling the Administrative Appeals Tribunal (AAT) to review decisions by the regulator not to register an individual as an auditor in the register of greenhouse and energy auditors (**proposed paragraph 56(j)**).

Appointment of Auditors

9. Explanatory Memorandum, National Greenhouse and Energy Reporting Amendment Bill 2009, p. 4.

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Item 17 enables the GEDO to provide a list of possible auditors (rather than only specifying a particular auditor) in a written notice requiring that a corporation undertake an audit (**proposed paragraph 73(2)(a)**).

Audit Specification

Item 21 imposes an obligation by the GEDO to specify the type of audit that is to be undertaken, as well as an existing obligation such as stating the matters to be covered by the audit in any notice provided by the GEDO (**proposed paragraph 73(3)(a)**).

Auditor Assistance and Facilities

Item 22 – the proposed amendment to **paragraph 73(4)** is designed to make it clear that a corporation is to provide ‘all reasonable facilities and assistance necessary for the effective exercise’ of duties of the auditor to *all* members of the audit team [emphasis added]. The amendment however, is silent as to what may be included under the rubric of ‘reasonable facilities and assistance’. While this phrase is commonly used in other pieces of Commonwealth legislation without elaboration, it may be useful to provide some guidance in this context for practical purposes.

Power to audit information under section 20¹⁰

Item 24 ensure that entities providing information to the GEDO pursuant to section 20 of the Act are also subject to audit provisions (**proposed section 74A**). **Item 34** mirrors this amendment.

Legislative instruments and audit requirements

Item 35 expands the scope of guidelines that may be determined by legislative instrument to include requirements for the preparation, conduct and reporting of audits and making these subject to ministerial rather than the GEDO determination (**proposed section 75**). The instrument provides opportunity for flexibility in tailoring for different audit requirements.

Item 36 provides that a Minister may determine by legislative instrument, requirements to be met by audit team leaders in preparing for and carrying out greenhouse and energy audits and in preparing audit reports. The Ministerial determination may set out different requirements for different types of audits (**proposed section 75**).

Auditor registration

10. Section 20 of the Act deals with the liability of other persons to provide information.

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Item 37 creates a requirement that auditors register with GEDO and provides detail of the registration requirements (**proposed section 75A**). Requirements for registration are that an individual:

- has applied for registration in accordance with regulations;
- meets such requirements as to qualifications, knowledge, expertise, competence, independence, and
- other matters as are set out in the regulations or in a legislative instrument made under the regulations.

It is unclear as to whether the requirement of auditor independence (sufficiently) covers the issue of conflict of interest, and if not, then whether this needs to be included in the legislation or may be dealt with by way of legislative instrument.

Publication of corporate total levels of production

Item 37 proposes that paragraph **24(1)(c)** of the Act be repealed, thus removing the obligation of the GEDO to publish corporate level totals of energy production because of the difficulties in providing meaningful corporate level ‘totals’. This is significant because as the government’s consultation paper explains:

the current use of the term ‘totals’ in section 24(1) of the Act means all energy produced or manufactured in a corporation’s group will be aggregated for public disclosure by the GEDO. This could result in an overestimation (or ‘double counting’) of energy produced.¹¹

11. Department of Climate Change, Consultation Paper: Proposed Amendment to section 24(1)(b) of the *National Greenhouse and Energy Reporting Act 2007*: public disclosure on energy production data, p. 1.

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