



Australian Government
Department of Climate Change

C09/1105

Senator Helen Polley
Chair
Standing Committee on Finance and Public Administration
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Polley

Thank you for your letter of 16 April 2009 to the Minister for Climate Change and Water, Senator the Hon Penny Wong, concerning the Inquiry into the National Greenhouse and Energy Reporting Amendment Bill 2009. The Minister has asked that I respond on her behalf.

Attachment A outlines the Department of Climate Change's response to the submissions made to the Inquiry. If you have any further questions about this process please contact Diane Barclay, Director Greenhouse and Energy Reporting Policy, on 02 6159 7391.

Thank you for bringing your issue to the Minister's attention.

Yours sincerely

Bridget Brill
Assistant Secretary
Emissions Reporting and Policy Branch
30 April 2009



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**SENATE COMMITTEE INQUIRY INTO THE NATIONAL GREENHOUSE & ENERGY
REPORTING AMENDMENT BILL 2009**

DEPARTMENT OF CLIMATE CHANGE RESPONSE TO SUBMISSIONS

Background

The National Greenhouse and Energy Reporting Amendment Bill 2009

The *National Greenhouse and Energy Reporting Act 2007* (the Act) came into force on 29 September 2007. On 18 March 2009 the National Greenhouse and Energy Reporting Amendment Bill 2009 (the Bill) was introduced to Parliament. Debate was adjourned until the Winter Sittings.

The Bill will:

- Clarify the definitions of a number of terms relating to greenhouse and energy audits to be conducted under the Act;
- Require results of greenhouse and energy audits to be included on the register established under section 16 of the Act;
- Extend the secrecy requirements to also cover audit information;
- Allow for decisions made by the Greenhouse and Energy Data Officer (GEDO) to not register an applicant as an auditor under the Act to be reviewable by the Administrative Appeals Tribunal;
- Give the GEDO authority to audit entities who report under section 20 of the Act;
- Expand the scope of the legislative instrument to be determined under section 75 of the Act to include requirements for the preparation, conduct and reporting of audits and allow for these requirements to be determined by the Minister rather than the GEDO;
- Require potential auditors under the Act to apply to the GEDO for registration and allow for the detailed requirements for auditor registration to be provided in regulations and / or a legislative instrument determined by the GEDO;
- Make a number of administrative amendments consequential to the substantive amendments outlined above; and
- Repeal the requirement for the GEDO to publish corporate level energy production information.

Summary of stakeholder consultation on the National Greenhouse and Energy Reporting Amendment Bill 2009

In October 2008 the Department released “The National Greenhouse and Energy Reporting Act and Carbon Pollution Reduction Scheme External Audit Consultation Paper” to the public for comment. The paper outlined possible options for the audit framework to be established under the NGER Act. Workshops were held on the consultation paper in a number of capital cities during October 2008. Almost 300 people attended the workshops and 58 written submissions were received on the consultation paper. Based on this consultation, the Government determined a number of

amendments to the NGER Act were needed in order to strengthen the audit framework to better support robust reporting under both the NGER Act and, into the future, the Carbon Pollution Reduction Scheme.

An exposure draft of the National Greenhouse and Energy Reporting Amendment Bill 2009 (the Bill) was released for public comment for a one week period commencing 23 February 2009. 22 formal submissions were received. The submissions were generally supportive of the amendments and focussed on technical details of the Bill.

The Department is currently developing draft regulations and a legislative instrument to outline the detail of the audit framework to be developed under the NGER Act. Further public consultation on this subordinate legislation is planned for May/June 2009 for a four week period.

The Senate Inquiry

On 19 March 2009 the Senate, on the recommendation of the Selection of Bills Committee, referred the provisions of the National Greenhouse and Energy Reporting Amendment Bill 2009 to the Finance and Public Administration Committee for inquiry and report by 7 May 2009. Reasons provided for referral of the Bill and principal issues for consideration are:

To examine the provisions of the bill that relate to the power and authority of the Greenhouse and Energy Data Officer (GEDO).

Stakeholder submissions to the Inquiry

Four stakeholder submissions were received:

- CPA Australia
- National Australia Bank (NAB)
- PricewaterhouseCoopers (PWC)
- Leighton Holdings

All the submissions to the Inquiry are based on earlier submissions provided to the Department of Climate Change as part of the audit framework consultation process conducted over the period since October 2008.

The submissions were all generally supportive of the amendments outlined in the Bill. The table below outlines specific issues raised by the stakeholders in their submissions and the Department of Climate Change's response.

ISSUE	COMMENT
<p>PWC and NAB were concerned that adding the results of audits to items that the GEDO can publish may mean confidential information is released. They suggest only high level information should be published rather than full audit reports.</p>	<p>The amendment allows for regulations to be made to publish results of audits. In making this information publicly available, the Government recognises the importance of establishing clear criteria for disclosure. The amendment <i>does not mean</i> that the GEDO must publish all outcomes of audits. Rather, the GEDO <i>may</i> make audit outcomes available to the general public. This will be subject to regulations being made. Development of regulations will take a variety of issues into account (including commercially sensitive information). Further consultation on this aspect will occur when the draft regulations are released for public comment in May/June.</p>
<p>Suggestion from CPA Australia and PWC that the independence requirements should be included in the legislative instrument to be developed under s 75 of the Act rather than the Regulations to be developed under the new s 75A of the Bill.</p>	<p>The treatment of independence under the Act and Bill is based on the independence requirements of the <i>Corporations Act 2001</i> and the <i>Australian Securities and Investments Commission Act 2001</i>. The location of independence requirements will be decided as part of developing the subordinate legislation. Consultation on these requirements will occur in May/June 2009.</p>
<p>CPA Australia makes a number of suggestions around the terminology used in the Bill, e.g. use of the terms ‘audit’ and ‘auditor’. They suggested that the Act should be consistent with financial auditing standards.</p>	<p>The Office of Parliamentary Counsel advised that the common meaning of the term ‘audit’ is consistent with its use in the Act. The Department has undertaken extensive consultation on this issue in response to stakeholder confusion about the purpose of audits under the Act. The Bill includes the words ‘greenhouse and energy’ in front of the term ‘audit’ to be clear that these audits are for the purposes of the Act. The draft auditing standard will be released in May/June for public consultation.</p>
<p>Leighton Holdings suggested that the Bill should also include amendments to the operational control rule to better deal with differentiating between emissions directly associated with the resource and those produced during extraction and haulage.</p>	<p>The Department is currently engaged in discussions with stakeholders on this issue with the aim of identifying the best possible solution and incorporating it into later amendments. This issue also relates directly to the proposed CPRS. Further amendments on this issue therefore will also need to be considered in light of the CPRS legislation being finalised.</p>
<p>NAB suggests the NGER Act should require an audit team leader to disclose any conflicts of interest.</p>	<p>This will be required under the regulations to be developed under the new section 75A of the Bill.</p>
<p>NAB suggests the NGER Act should have clear guidelines on the content of audit reports provided to corporations.</p>	<p>This will be included in the legislative instrument to be determined under section 75 of the Act.</p>
<p>NAB suggests that guidelines on, what ‘reasonable facilities and assistance’ corporations are expected to provide auditors, under sections 73 to 74A, are necessary.</p>	<p>The Department does not intend to legislate a definition for this phrase. The Regulator may decide to publish further non-legislative guidance.</p>

NAB suggest that paragraph 73A(3) of the Bill should also require that any notices provided under that section detail the form of the audit statement and the kinds of details it is to contain.

This comment was made on an earlier draft of the Bill during public consultation It was addressed in the final Bill.