

Chapter 1

The National Greenhouse and Energy Reporting Bill inquiry

Referral to the committee

1.1 On 16 August 2007, the Senate referred the National Greenhouse and Energy Reporting Bill 2007 (hereafter 'the bill') to the Senate Environment, Communications, Information Technology and the Arts (ECITA) Committee for inquiry and report by 6 September 2007.

1.2 In accordance with the usual practice, the committee advertised the inquiry in *The Australian*, on 22 August 2007 calling for submissions by 27 August 2007. The Committee also directly contacted a number of relevant organisations and individuals to invite submissions.

1.3 Submissions were received from 36 organisations and individuals, as listed in Appendix 1. The committee also held a public hearing in Canberra on Monday, 3 September 2007. A list of those who gave evidence at this hearing is at Appendix 2.

Acknowledgments

1.4 The committee thanks all those who contributed to its inquiry by preparing written submissions and appearing at the public hearing. Their work has been of considerable value to the committee. The committee would particularly like to thank staff in the Parliamentary Library, and from the Greenhouse and Energy Reporting Taskforce of the Department of the Environment and Water Resources, for their assistance with the inquiry.

Background

The bill gives effect to the decision by the Council of Australian Governments (COAG) on 13 April 2007.¹ to streamline the greenhouse and energy emissions reporting obligations of corporations.² This decision by COAG was the outcome of information and research provided by a number of working groups and taskforces specifically commissioned to examine the issue of greenhouse and energy reporting and emissions trading. These activities will be discussed in more detail below. The National Greenhouse and Energy Reporting Bill 2007 also lays the foundation for the

1 Council of Australian Governments web site, *Meeting 13 April 2007*, <http://www.coag.gov.au/meetings/130407/index.htm#skills>, accessed 6 September 2007.

2 Explanatory Memorandum, *National Greenhouse and Energy Reporting Bill 2007*, p. 5.

Australian Emissions Trading System announced by the Prime Minister on 17 July 2007.³

1.5 There has been significant groundwork performed leading up to the bill's creation and this chapter outlines some of the major lead-up activities and research that have resulted in the formulation of the bill.

The variety of emissions reporting systems

1.6 Various Australian governments have put in place over the years a range of greenhouse and energy measurement and reporting programmes, designed to deliver information and data to meet international obligations, to underpin the development of government policies and programmes, and also to encourage actions to reduce greenhouse gas emissions and sustainable use of energy resources.⁴

1.7 As each jurisdiction acted over the years to show their commitment to climate change and future sustainable energy use, a somewhat uncoordinated cross jurisdictional approach resulted in the evolution of a wide range of mandatory and voluntary programmes.⁵ This has meant that some enterprises have had to produce multiple reports on their greenhouse and energy emissions resulting in a significant commitment in terms of available resources, time and expense to uphold those reporting obligations.

1.8 The Regulation Impact Statement released in November 2006 provided a summary of existing programmes with greenhouse and/or energy reporting requirements. Table 1.1 below gives the year each programme was established as well as whether or not the programme is voluntary or mandatory, and whether or not reporting on emissions is required.

Table 1.1 Existing programmes with greenhouse and/or energy reporting requirements⁶

Greenhouse or Energy Reporting Programme	Year Established	Voluntary or Mandatory?	Report greenhouse gas or energy emissions reductions, offsets, or abatement actions?
ABARE Fuel and Electricity Survey (ABARE FES)	1973	V	No
Ozone Protection and Synthetic Greenhouse Gas Management Act	1989	M	No
National Greenhouse Gas Inventory (NGGI)	1990	V	No

3 *Explanatory Memorandum*, p. 5.

4 *Explanatory Memorandum*, p. 10.

5 *Explanatory Memorandum*, p. 10.

6 *Explanatory Memorandum*, p. 11.

Greenhouse Challenge	1995	V	Yes
Australian Petroleum Statistics	1996	V	No
National Pollutant Inventory (NPI)	1998	M	No
NSW Load Based Licensing	1999	M	No
Mandatory Renewable Energy Target (MRET)	2001	M	Yes
Protocol for Environmental Management; Greenhouse Emissions and Energy Efficiency in Industry (EPA Victoria Industry Greenhouse Programme)	2001	M	Yes
NSW/ACT Greenhouse Gas Abatement Scheme ⁷	2003	M & V	Yes
Greenhouse Challenge Plus ⁸	2004	M & V	Yes
Queensland EcoBiz	2004	V	Yes
NSW Energy Savings Plans and Fund ⁹	2005	M	Yes
Queensland 13% Gas Scheme	2005	V	Yes
Energy Efficiency Opportunities (EEO) ¹⁰	2006	M	Yes

1.9 As the preceding table highlights, there are 15 commonwealth, state, and territory programmes that have greenhouse and energy reporting requirements. It is only in recent years that recognition has been given to the onerous nature and impost to industry of having multiple reporting programmes, and the role of governments in addressing this issue will be discussed in more detail later in this chapter. One of the main intentions of the National Greenhouse and Energy Reporting Bill 2007 is to resolve this problem.

Foundations – the energy white paper

1.10 The Australian government produced its energy white paper – entitled 'Securing Australia's Energy Future' – on 15 June 2004. This energy white paper established the policy framework for the development of the energy sector in Australia. It identified three objectives – prosperity, security, and sustainability – that should underpin Australia's energy policy. In working to achieve these goals, the

7 This is a mandatory programme for benchmark participants (eg electricity retailers) but voluntary for abatement certificate providers, including most electricity generators. NSW generators are required to report emissions annually.

8 Mandatory for companies seeking more than \$3 million in fuel credits. Otherwise voluntary.

9 Mandatory for companies using more than 10 GWH/yr at a site.

10 Mandatory for companies greater than 0.5PJ of energy/yr.

government then undertook microeconomic reform and put policies in place to develop what they described as 'effective and efficient energy markets in order to continue to deliver energy at globally competitive prices'.¹¹

1.11 One of the new initiatives announced in the white paper was to introduce a 'requirement that larger energy users undertake, and report publicly on, regular assessments to identify energy efficiency opportunities'.¹² The energy white paper identified that, in order to meet future greenhouse gas reduction objectives, the government would also be facilitating the identification and uptake of commercially attractive abatement options in order to reduce the 'magnitude of any future emissions constraint and enhance the economic capacity to respond to future challenges'.¹³

1.12 At the time the energy white paper was written it was intended that, through mandatory renewable energy targets (MRET) and other programmes, greenhouse gases would be significantly abated as a consequence of emitters striving to attain such targeted reductions. Because emissions data reporting was a mandatory component of the MRET programme, the need to make changes to the existing emissions data reporting regime was not given consideration in the white paper.

1.13 The white paper forecast that its initiatives would deliver a total reduction in greenhouse gases of 38.3 MT across programmes such as minimum energy performance standards for appliances, equipment and buildings, the Greenhouse Challenge, MRET, and the Greenhouse Gas Abatement Scheme. The white paper signalled that the Greenhouse Challenge would be mandatory for larger emitters who would also be required to report their emissions on an annual basis.¹⁴ To this end the government allocated over \$1 billion towards achieving the abatement measures outlined above.¹⁵

Towards a national scheme

1.14 On 10 February 2006 the Council of Australian Governments (COAG) met and acknowledged that high-quality emissions reporting, integrity of emissions data and public reporting were important parts of any climate change action agenda.

11 Energy White Paper web site, <http://www.energywhitepaper.gov.au/>, accessed 6 September 2007.

12 Australian Government web site, *Securing Australia's Energy Future*, http://www.pmc.gov.au/publications/energy_future/docs/energy_overview.pdf, accessed 27 August 2007, p. 3.

13 Energy White Paper, *Overview*, <http://www.energywhitepaper.gov.au/>, accessed 27 August 2007, p. 141.

14 Australian Greenhouse Office web site, *Progress Reporting*, <http://www.greenhouse.gov.au/challenge/members/progressreporting.html>, accessed 6 September 2007.

15 Energy White Paper web site, <http://www.energywhitepaper.gov.au/>, accessed 6 September 2007, p. 139.

COAG also recognised that there was a range of different reporting requirements currently in place, and that these reporting requirements could place an unreasonable and costly burden on business.

1.15 COAG noted that both the Ministerial Council on Energy (MCE) and the Environment Protection and Heritage Council (EPHC) were examining ways to improve emissions reporting, including a cost benefit analysis on mandatory reporting. COAG thus requested these councils fast track their investigations and upon conclusion, to report to COAG by July 2006, recommending options to strengthen emissions reporting approaches, including a possible national reporting system.¹⁶

1.16 In April 2006, a paper was published by the Australian Greenhouse Office in the Department of the Environment and Heritage, as secretariat for the EPHC and MCE Policy and Technical Working Groups, entitled 'A Streamlined National Reporting Framework for Greenhouse and Energy Data: Reducing the Burden'.¹⁷ This consultation paper was prepared to seek stakeholders' views to inform recommendations on a national framework that could be made to Australian, state and territory governments by the mid-2006 deadline set by COAG.¹⁸

1.17 On 14 July 2006 COAG decided a national scheme was the preferred option, and by October 2006 a Draft Regulation Impact Statement had been prepared, published by the Australian Greenhouse Office in the Department of the Environment and Heritage, on behalf of the COAG Greenhouse and Energy Reporting Group. In that report it noted that COAG had agreed that:

a single streamlined system that imposes the least cost and red tape burden is the preferable course of action. The reporting system will be based on national purpose-built legislation to provide for cost-effective mandatory reporting and disclosure at the company-level. COAG has asked senior officials to report back, by December 2006, with a detailed proposal for the reporting system, including advice on timing, thresholds and governance arrangements. A COAG Greenhouse and Energy Reporting Group (CGERG) has been formed under the auspices of the COAG Climate Change Group to prepare this advice.¹⁹

16 Council of Australian Governments' Action Plan for Collaborative Action on Climate Change, *Attachment C*, http://www.coag.gov.au/meetings/100206/attachment_c_climate_change.rtf, accessed 21 August 2007, p. 7.

17 A Streamlined National Reporting Framework for Greenhouse and Energy Data: *Reducing the Burden*, <http://www.greenhouse.gov.au/reporting/pubs/reporting.pdf>, accessed 28 August 2007, cover pages.

18 A Streamlined National Reporting Framework for Greenhouse and Energy Data: *Reducing the Burden* <http://www.greenhouse.gov.au/reporting/pubs/reporting.pdf>, accessed 28 August 2007, p. 2.

19 Draft Regulation Impact Statement, <http://www.greenhouse.gov.au/reporting/pubs/ris.pdf>, accessed 28 August 2007, p. 4.

1.18 The draft statement ultimately envisaged that an inter-jurisdictional governing body would be established to oversight the legislation and the national reporting system, and that its responsibilities which might include review and evaluation of the national reporting system, including the legislation.²⁰

Prime Minister's task group

1.19 On 10 December 2006 the Prime Minister announced the establishment of a joint government-business Task Group on emissions trading and asked the task force to report by May 2007.²¹ The Report of the Task Group on Emissions Trading outlined 'Phase 1: foundations for 2007-08' for the implementation of the government's emissions trading scheme.

1.20 Included in the key actions for phase 1 were the commencement and modelling of the implications of national greenhouse targets and trajectories by 2007, and the passage of legislation to provide for comprehensive national mandatory emissions and commencement of energy reporting by 2008.²² The latter action related to formulation of the National Greenhouse and Energy Reporting Bill 2007 which is currently under consideration.

Outline of the bill

1.21 The National Greenhouse and Energy Reporting Bill 2007 establishes a single, national framework for reporting greenhouse gas emissions, abatement actions and energy consumption and production by corporations from 1 July 2008.

1.22 Currently there are some 15 voluntary and mandatory programs with greenhouse/energy reporting requirements. As they evolved separately, many of the existing reporting requirements have unique characteristics, including reporting formats, methodologies and definitions. While there has been some standardisation of reporting methodologies differences remain with respect to emission source categories covered; fuels covered; greenhouse gases covered and modes of reporting; the emission factors used to derive emissions from energy used and their source; the treatment of 'offsets'; and reporting periods.²³

20 A National System for Streamlined Greenhouse and Energy Reporting by Business, *Draft Regulation Impact Statement*, <http://www.greenhouse.gov.au/reporting/pubs/ris.pdf>, accessed 28 August 2007, p. 48.

21 Prime Ministerial Task Group on Emissions Trading, *Report of the Task Group on Emissions Trading*, <http://dpl/Books/2007/ReportTaskGroupEmissionsTrading.pdf>, accessed 28 August 2007, p. 1.

22 Prime Ministerial Task Group on Emissions Trading, *Report of the Prime Ministerial Task Group on Emissions Trading*, <http://dpl/Books/2007/ReportTaskGroupEmissionsTrading.pdf>, accessed 21 August 2007, p. 141.

23 *Explanatory Memorandum*, pp 10–12.

1.23 Mandatory reporting of greenhouse and energy data by companies will be through a single, online entry point – based on the Online System for Comprehensive Activity Reporting (OSCAR) – the online reporting tool developed for the Greenhouse Challenge Plus programme.

1.24 The bill intends to 'cover the field' by excluding the operation of state laws as well as establishing a reporting regime.

1.25 Reporting is to be undertaken by 'the top of the corporate hierarchy' using a definition of 'controlling corporation'.²⁴ No controlling corporation will have a holding company incorporated in Australia. Whether or not a controlling corporation has to report will depend on whether the emissions of the entities in its 'group' exceed the relevant threshold.

1.26 Under the scheme provided by the bill, it is estimated that about 700 companies will report on their greenhouse gas emissions, energy use and energy production.²⁵ The Explanatory Memorandum indicated that there are an estimated 3 077 companies currently reporting to greenhouse and energy programs – most of these companies will be below the thresholds established in the current bill.²⁶

Thresholds for reporting

1.27 In the Second Reading Speech it was stated that thresholds for reporting, at a minimum, will capture 'a significant proportion' of Australia's national energy and greenhouse gas emissions; and will not significantly increase the cost to business.²⁷

1.28 If a controlling corporation's group 'facilities' exceed emission thresholds under the bill, the controlling corporation must register under Part 2 of the bill. Registered controlling corporations are then referred to as registered corporations. The thresholds that determine whether a company has to be part of the scheme are set in clause 13, and are met if any one of four criteria is satisfied. The criteria relate to:

- total greenhouse gases emitted;
- total energy produced;
- total energy consumed; or
- the level of emission from a major facility.

For the first three of these criteria, there are sliding scales which will progressively capture more emitters and energy producers and consumers, starting with high

24 *Explanatory Memorandum*, p. 180.

25 National Greenhouse and Energy Reporting Bill 2007, *Second Reading Speech*, p. 4. See also *Explanatory Memorandum*, pp 156–67, 169.

26 *Explanatory Memorandum*, p. 14.

27 *Second Reading Speech*, p. 3.

thresholds at 1 July 2008, and lowering these in stages to July 2010. The last criterion does not feature this progressive implementation feature.

1.29 The proposed thresholds include:

- a company-level threshold to be phased in during the first three years following commencement of the legislation, set at:
 - 125 kilotonnes (kt) of carbon dioxide equivalent (CO₂-e) or 500 terajoules (TJ) of energy annually for the first year;
 - 87.5 kt CO₂-e or 350 TJ of energy annually for the second year; and
 - 50 kt CO₂-e or 200 TJ of energy annually for the third and subsequent years.
- a facility-level threshold of 25 kt CO₂-e or 100 TJ of energy annually to apply from the start of the new system.²⁸

1.30 The thresholds from July 2010 onward will be:

- greenhouse gas emissions of 50 kt carbon dioxide equivalent or more;
- energy production of 200 TJ or more; or
- energy consumption of 200 TJ or more.

Companies falling below the thresholds could participate in the national reporting system by voluntarily joining one of the existing programmes.

Data subject to mandatory reporting

1.31 The data to be provided through the proposed reporting system will be fuel and energy produced/consumed by fuel type and equipment type, emissions of each of the six Kyoto Protocol classes of gases (where methodologies permitted separate estimation of the gases), and total emissions of the six classes of greenhouse gases in carbon dioxide equivalent. The six Kyoto Protocol classes of gases are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆). Fuel types and equipment types would be similar to those currently used by the ABARE Fuel and Electricity Survey.²⁹

1.32 The legislation will apply to companies in all sectors of the economy. Reporting of emissions from all sectors, except agriculture and land use change and forestry, would be mandatory from the introduction of the national system. Reporting of agricultural emissions will not be mandatory initially, as methodologies in the agriculture sector are not yet sufficiently robust to provide meaningful data at the company level. Reporting of agricultural emissions will become mandatory once

28 *Explanatory Memorandum* p. 22.

29 *Explanatory Memorandum*, pp 23–24.

robust methodologies were available. The Explanatory Memorandum noted that work to develop such methodologies is being undertaken by the Australian Greenhouse Office and COAG.³⁰

1.33 Emissions from the land use change and forestry sector would not be mandatory unless companies were also reporting carbon sinks within their own boundaries, because Australia already has in place a system to provide detailed data on emissions from land use change and forestry – the National Carbon Accounting System.³¹

1.34 The emissions resulting from the use of fossil fuels extracted within Australia but exported prior to use will not be included, though emissions created as a result of the extraction process are included.

Definition of facility

1.35 Data will be reported on a facility-level basis (although companies will have the option of aggregating smaller sites).

1.36 The definition and regulation of what constitutes an activity that gets 'counted' for the purposes of the legislation are important. Clause 9 defines 'facilities'. A facility:

- can be an activity or a series of activities;
- will involve the production of greenhouse gas emissions, production of energy or consumption of energy;
- must either 'form a single undertaking or enterprise' and meet requirements set by regulations (9(1)(a)) **or** have been declared to be a facility by a new statutory office, the Greenhouse and Energy Data Officer (GEDO) (9(1)(b));
- must **not** include activities in the exclusive economic zone, **except** that oil or gas extraction activities **are** included.

If something is a facility under 9(1)(a), it must take place within one 'industry sector'. Industry sector will be defined in the regulations (according to clause 7 – definitions).

1.37 The Explanatory Memorandum points out that the definition of facilities is critical, and it allows for detail on 'determining the boundaries of facilities in different industry sectors to be provided in the regulations. Regulations on determining boundaries around facilities will need to be very detailed to ensure that corporations have clarity on their reporting obligations'.³²

1.38 The regulations will define emissions of greenhouse gas as well as reductions, removal and offsets. They will also define the production and consumption of energy.

30 *Explanatory Memorandum*, p. 24.

31 *Explanatory Memorandum*, p. 24.

32 *Explanatory Memorandum*, p. 181.

The regulations may also determine methods and criteria for measurement of all of the above (clause 10).

1.39 The regulations can define what information must be supplied in an application to register under the scheme.

1.40 The bill allows business supplying greenhouse gas offsets to register even if they do not meet the thresholds under the bill. This is designed to 'facilitate smaller companies providing offsets into the pre-emissions trading voluntary offsets market and potentially into a future Australian Emissions Trading Scheme'.³³

1.41 The GEDO maintains the National Greenhouse and Energy Register (clause 16). It appears to be up to the GEDO how much of the content is made public, however clause 24 requires certain information to be revealed. The register must only contain the name of registered corporations and any other matters required by the regulations (clause 16(4)). However clause 16(5) does restrict the types of material that the regulations can encompass to:

- the identity of the controlling corporation and the members of its group;
- whether it was obliged to register or has chosen to because it operates an offset scheme;
- whether registered corporations have complied with the Act; and
- information required to be published under clause 24.

Public disclosure

1.42 The bill proposes that company-level data will be made publicly available online by the national reporting system.

1.43 For greenhouse gas emissions, the basic level of disclosure will be a single aggregated total of gross emissions in CO₂-e. Only total energy consumed and produced will be required for public disclosure. Provision is made to publicly disclose additional data where the company had given its consent or requested to do so

1.44 The legislation will establish a procedure through which companies could apply to have confidential data exempted from public disclosure, where necessary to protect commercial confidentiality. Each application would be considered on a case-by-case basis against set criteria.³⁴

Independent verification

1.45 The bill provides for an independent verification system to be established and companies will be required to keep adequate records to allow independent verification of reports.

33 *Explanatory Memorandum*, p. 183.

34 *Explanatory Memorandum*, p. 27.

Independent verification and the required levels of report completeness and data accuracy would be based on the principles of best-practice reporting as described in the GHG Protocol and outlined in detail in the verification guidelines.³⁵

1.46 A proportion of companies would be subject to independent verification each year. As a basic approach, companies would be chosen randomly for verification. In addition, more targeted verification could be conducted based on a risk management approach. The GEDO would bear the cost of verification except where verification had been initiated by the company or another agency.³⁶

Obligations of registered corporations

1.47 Part 3 of the bill (clauses 19 to 22) sets out the reporting responsibilities of corporations that fall within the reporting scheme; while part 4 (clauses 23 to 28) determines what information can be published to whom on what basis, and sets penalties for breaches of these rules.

1.48 Reports have to be provided annually, and the regulations can be used to vary the form according to the criteria etc met by the reporting entity (clause 19). Clause 20 is designed to protect confidentiality agreements between corporations by allowing the GEDO to get information directly from third parties rather than compelling a registered corporation to reveal that information.

1.49 Clause 21 establishes a framework for reporting greenhouse gas abatement projects. Clause 22 requires the keeping of records, which must be retained for 7 years.

Disclosure of information/enforcement

1.50 Clause 23 effectively reproduces the secrecy provision of section 70 of the *Crimes Act 1914*, but extends it to State employees operating under the bill. Clause 24 sets parameters for the GEDO's publication of information. It leaves it to the GEDO to decide whether to publish the data as a range of values or disaggregated by member of the registered corporation's group. It does not require data to be published about activities or facilities. A corporation may apply to prevent publication in order to avoid disclosure of commercially valuable information (clause 25).

1.51 Part 5 of the bill (clauses 29 to 48) details enforcement mechanisms. The Second Reading Speech stated that:

In keeping with the need for the reporting system to underpin emissions trading, the bill allows for a range of enforcement approaches, including criminal offences for corporations which provide false information. It establishes a system for monitoring compliance with the scheme, including

35 *Explanatory Memorandum*, p. 30.

36 *Explanatory Memorandum*, p. 30.

a system of infringement notices and enforceable undertakings. These provide a range of possible alternatives to heavy penalties.³⁷

Administrative arrangements

1.52 Part 6 (clauses 49 to 75) sets out administration arrangements. The bill provides for the creation of a new statutory position – the Greenhouse and Energy Data Officer (GEDO), to administer the scheme. The bill gives the GEDO the power to make certain decisions including:

- declaring that an activity or activities is a facility under the Act;
- declaring that an entity has operational control of a facility.

Both can be reviewed by the Administrative Appeals Tribunal.

1.53 Clauses 59 to 61 give officers authorised by the GEDO powers to enter and examine premises to assist in compliance with the Act. They may also seek warrants to assist in determining compliance with the Act (clause 70). The GEDO can also require a registered corporation to engage an external auditor, or engage one itself, and have an audit undertaken again to ensure compliance with the Act (clauses 73 and 74).

Cost of the proposal

1.54 The costs of the proposed model includes the replacement of existing reporting requirements with a single reporting system and national legislation making reporting mandatory for companies above certain thresholds.

1.55 For reporting entities, costs include:

- annual 'entity costs': representing the fixed cost the business of participating in the scheme, and of collecting and submitting data, irrespective of the number of sites – ranging from \$1000 to \$10 000; and
- site costs: record-keeping costs per site – ranging from \$200-\$2000.

1.56 The administrative costs to government include:

- annual processing costs per report from businesses – ranging from \$300-\$500 per report; and
- recurrent fixed administrative costs of running the national reporting system – \$1 million per year, plus set-up costs of approximately \$2 million.³⁸

1.57 The current total cost of greenhouse and energy reporting by companies is estimated at \$16.2 million per year. It was estimated that single online reporting – (without any increase in number of companies reporting and one report per facility) –

37 *Second Reading Speech*, p. 5.

38 *Explanatory Memorandum*, pp 41,129.

would deliver total annual reporting cost reductions of \$1.7 million (10 per cent of current reporting costs). Cost reduction for reporting entities would be \$1.2 million per year or 9 per cent. The cost reduction to government as a consequence of streamlined administration would be \$0.5 million or 16 per cent.³⁹

1.58 The Government has appropriated \$26.1 million over five years from 2007-08 to introduce the measure.⁴⁰ In addition to set-up and recurrent costs, as noted above, the other costs include verification and other cost items.

39 *Explanatory Memorandum*, p. 14.

40 *Explanatory Memorandum*, p. 5.

