The Senate

Standing Committee on Environment, Communications, Information Technology and the Arts

National Greenhouse and Energy Reporting Bill 2007 [Provisions]

September 2007

ISBN 978-0-642-71873-0

This document was printed by the Senate Printing Unit, Parliament House, Canberra

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Abbreviations

COAG	Council of Australian Governments
DEW	Department of the Environment and Water Resources
ECITA	Environment, Communications Information Technology and the Arts
EPHC	Environment Protection and Heritage Council
GEDO	Greenhouse and Energy Data Officer
KT	Kilotonnes
MCE	Ministerial Council on Energy
MRET	Mandatory Renewable Energy Target
MT	Megatonnes
NPI	National Pollutant Inventory
OSCAR	Online System for Comprehensive Activity Reporting
RIS	Regulatory Impact Statement

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

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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 requirements[6]

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.

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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]

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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]

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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 theTask 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

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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 (CO_2-e) or 500 terajoules (TJ) of energy annually for the first year;
  - 87.5 kt CO_2-e or 350 TJ of energy annually for the second year; and
  - 50 kt CO_2-e or 200 TJ of energy annually for the third and subsequent years.
- a facility-level threshold of 25 kt CO_2-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 (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF_6). 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.

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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 CO_2-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.

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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.

Chapter 2

Issues raised in the inquiry

Introduction

2.1 All stakeholders supported the development of a national greenhouse gas reporting scheme. The Australian Industry Greenhouse Network (AIGN), representing industry associations and corporations, stated that:

> AIGN members have long supported the need to develop a rigorous, transparent, nationally consistent, energy and greenhouse reporting system, underpinned by purpose built Commonwealth legislation.[1]

2.2 Environmental groups were also supportive. The Australian Network of Environmental Defender's Offices (ANEDO) stated that '[it] has consistently supported proposals for comprehensive and transparent public reporting of greenhouse gas emissions'.[2] State governments also indicated their support. The Victorian government for example stated that:

> The implementation of a national mandatory emissions reporting system is a critical building block in the introduction of a national emissions trading scheme. The Victorian Government supports the development of the most efficient emissions reporting system that imposes the least cost and least regulatory burden on business. [3]

2.3 However, several significant specific issues were raised by a range of groups and these are discussed below.

Clause 5

2.4 A number of submissions raised concerns regarding clause 5 of the bill, which, according to submitters, appears to provide the Commonwealth with the power to override and exclude existing state and territory greenhouse and energy measurement and reporting programmes for the purposes of the Act. Clause 4 of the bill sets out the constitutional bases of the bill as paragraphs 51(xi), (xx), (xxix) and (xxxix) of the Constitution.

2.5 In his second reading speech, the minister stated that the bill would 'eliminate duplicative reporting and reduce red tape currently imposed by the patchwork of separate state, territory and national reporting schemes'.[4] Clause 5 of the bill states

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1 AIGN, *Submission 7*, p. 2.

2 ANEDO, *Submission 22*, p. 1.

3 Victorian Government, *Submission 11*, p. 1.

4 *Second Reading Speech*, p. 1.

that, at a date to be proclaimed, the Act would exclude the operation of some state and territory laws. Subclause 5(2) sets out the scope of the exclusion, being all laws of a state or territory which provide for reporting or disclosure of information related to:

(a) greenhouse gas emissions: or

(b) greenhouse gas projects; or

(c) energy consumption; or

(d) energy production;

so far as they apply in relation to a constitutional corporation.

2.6 Subclause 5(3) allows the minister to determine, by legislative instrument, that a state or territory law is not excluded by the operation of clause 5.

2.7 State and territory reporting schemes will be excluded from operation so long as they fall within the categories set out in clause 5, regardless of whether they require different or more detailed information from the scheme set out in the bill. To help offset the transfer of the management of a national scheme to the Commonwealth and move reporting obligations away from the states and territories, subclause 19(9) of the bill stipulates that regulations made for the purposes of a report or part of a report may specify information that a state or territory has requested the Greenhouse and Energy Data Officer to collect. This clause provides the opportunity for the states and territories to request that reports to the Commonwealth include certain information, such as that currently required by their existing reporting schemes. The inclusion of such information at a state or territories' request is ultimately decided by the minister, and the minister is not bound by the bill to fulfil such requests. The explanatory memorandum states that:

> The Government's intention is to apply this subclause judiciously and to work cooperatively with states and territories to ensure that programme needs can be met in the most efficient way.[5]

2.8 State governments highlighted some specific concerns about the impact of clause 5 upon their activities. The submission from the South Australian government was concerned that clause 5 of the bill had far-reaching consequences for the states and territories. They stated:

> Taken in isolation, clause 5 can be viewed as the implementation of the streamlining agreed by all jurisdictions as being desirable and necessary. However, when considered in the context of the rest of the legislation, it has the potential to disrupt legitimate activities being undertaken by other jurisdictions, which were never intended to be prohibited by this legislation.[6]

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5 *Explanatory Memorandum*, p. 184.

6 South Australian Government, *Submission 10*, p. 4.

2.9 The South Australian government also concluded that clause 5 could affect the relationship between the state governments and incorporated entities, that the regulatory role of some corporations might be adversely affected, as would the state government's ability to acquire information from its own corporations to make decisions about its own emissions profile.[7]

2.10 Other governments had similar concerns. The Western Australian government suggested that the bill was in contravention of the spirit of the Intergovernmental Agreement because:

> Clause 5 …gives the Commonwealth Minister complete control over all reporting of greenhouse gas emissions and projects, energy consumption and energy production by constitutional corporations to the exclusion of existing and future State laws that enable or require the collection of emissions and energy information.[8]

2.11 The State Government of Victoria went further and argued that:

> Clause 5 of the legislation has the potential to impact more widely than just the reporting of greenhouse and energy data from business to Government. This clause potentially impinges on States' abilities to efficiently provide essential services such as the safe and reliable provision of energy. References in clause 5 to the dissemination of energy use and production information raise serious questions about possible impacts to the operation of the national electricity market.[9]

2.12 The Queensland government specifically drew attention to the potential for clause 5 to restrict the government's capacity to 'implement its own legislation, policy and programs to combat climate change'[10], while the Tasmanian government pointed out that:

> The device of providing for the reinstatement of State legislation at the discretion of the Commonwealth Minister has the perverse effects of giving the Federal Minister power of veto over State programs and functions ranging from resource development, planning and development controls, energy regulation, energy planning, infrastructure planning, and climate change policy and programs.[11]

2.13 Similarly, the NSW government was concerned that clause 5 unreasonably excluded state and territory legislation, leaving state and territory governments'

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7 South Australian Government, *Submission 10*, p. 4.

8 Government of Western Australia, *Submission 21*, p. 4.

9 State Government of Victoria, *Submission 11*, p. 2.

10 Queensland Government, *Submission 30*, p. 1.

11 Tasmanian Government, *Submission 29*, p. 3.

climate change policy developments exposed to the discretion of the Commonwealth minister and the Greenhouse and Energy Data Officer (GEDO).[12]

2.14 It was not only the state and territory governments that were concerned about the effects of clause 5 of the bill. The Chamber of Commerce and Industry of Western Australia submitted in relation to clause 5 that:

> Whilst CCI strongly supports the intent of the bill to eliminate overlap, duplication, inconsistency and conflicts in greenhouse emissions and energy reporting, we caution against any unintended consequences, such as the preclusion of states from regulating their own energy markets or developing policy.[13]

2.15 Concern was also raised that clause 5 could slow down the deployment of low emission and renewable energy technologies, by stymieing state or territory schemes designed to facilitate such innovation.[14]

2.16 Constitutional law expert Professor George Williams remarked:

> that by denying an effective operation to state and territory laws providing for reporting and disclosure this will prevent those jurisdictions from enacting carbon trading or other schemes. Section 5 may strike at the heart of such schemes and prevent them from being put into place. The Commonwealth may well not wish to operate such a scheme, but until it actually establishes its own regime it should not provide legislation denying the states information vital to their own.
>
> Section 5 should be removed from the Bill. Section 109 of the Constitution… regulates where a federal law cannot operate consistently with a state law. It provides a sufficient mechanism for dealing with such conflicts without needing a Commonwealth Bill to cover the field so widely as to undermine any related state laws.[15]

WWF-Australia was of the same view.[16]

2.17 Professor Williams described the clause as unusual and inconsistent with a cooperative approach to federalism. He noted that an effect of the clause could be actually to prevent state governments gathering information from their own entities, such as state-owned power generators, where they are corporations. He raised the prospect of significant uncertainty resulting in expensive legal advice and possible

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12 Government of NSW, *Submission 19*, p. 1.

13 Chamber of Commerce and Industry of Western Australia, *Submission 25*, p. 2.

14 Hydro Tasmania, *Submission 8*, pp 1–2; Western Australian Sustainable Energy Association, *Submission 18,* p. 1.

15 Professor George Williams, *Submission 2*. Section 109 of the Constitution states 'when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid'.

16 WWF-Australia, *Submission 27*, p. 1.

litigation in the High Court.[17] Tasmania also expressed concern that the current design of clause 5 was undesirable because any oversight in Commonwealth exemptions under clause 5(3) might only emerge in subsequent legal proceedings.[18]

2.18 Professor Williams noted that one of the advantages of taking an alternative cooperative approach is that it could allow inclusion of entities other than constitutional corporations that could and should report.[19] These might include local governments, non-trading corporations, large non-government organisations that might be significant energy consumers, as well as partnerships and sole traders, including many businesses in the agricultural sector.

2.19 Professor Williams, while favouring the deletion of clause 5, also suggested that an alternative formulation of it would allow the exclusion of state laws only when they fell within the scope of regulations made under the bill. This would effectively involve 'reversing the operation 180 degrees', so that regulations would be made to exclude state laws, rather than having to exempt them under clause 5(3).[20] The Tasmanian, South Australian and Western Australian governments also supported this approach.[21]

2.20 The Nature Conservation Council of NSW expressed concern that the clause might have the capacity to actually inhibit environmental reporting initiatives:

> It appears this will provide the Environment Minister with the power to stop the operation of valuable schemes like the NSW Renewable Energy Target and the Greenhouse Gas Abatement Scheme. Without the ability to require reporting it is difficult to see how these schemes could continue operation or measure whether they are being successful.
>
> We believe it is a highly inappropriate use of Federal Government powers to stop the operation of State based schemes aimed at reducing greenhouse gas emissions and protecting our environment for future generations. This is particularly true given the Mandatory Renewable Energy Target has not been extended and the proposed Federal Emissions trading Scheme would not commence operation for 4 to 5 years. We are very concerned that this Bill would stop programs that have shown some success given the scale of rapid action needed to prevent dangerous climate change. Section 5 should therefore be removed from the Bill.[22]

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17 Professor George Williams, *Proof Committee Hansard*, 3 September 2007, pp 23, 25.

18 Mr Jamie Bayly-Stark, Tasmanian Government, *Proof Committee Hansard*, 3 September 2007, p. 40.

19 Professor George Williams, *Proof Committee Hansard*, 3 September 2007, p. 26.

20 Professor George Williams, *Proof Committee Hansard*, 3 September 2007, p. 25.

21 Mr Jamie Bayly-Stark, Tasmanian Government, *Proof Committee Hansard*, 3 September 2007, p. 30; South Australian Government, *Submission 10*, p. 7; Mr Higham, Western Australian Government, *Proof Committee Hansard*, 3 September 2007, pp 28, 41.

22 The Nature Conservation Council of NSW, *Submission 20*, p. 1.

2.21 ANEDO and a number of environment groups warned against clause 5 resulting in a 'lowest common denominator approach that weakened existing schemes.[23] States indicated that the bill would have the capacity to slow down greenhouse gas abatement programs, though this could depend on the details of the regulations, and how clause 5 was implemented.[24] South Australia expressed concern that giving the current clause 5 effect could, for example, present a challenge to implementing recent South Australian legislation on greenhouse targets.[25] In contrast, the intention that had been expressed in the COAG Plan on climate change was that a possible national reporting system would 'strengthen emissions reporting approaches'.[26]

2.22 While there were concerns about clause 5, the committee emphasises that these were expressed in the context of widespread desire (including from state governments) to see removal of regulatory duplication. The Waste Management Association of Australia (WMAA) supported 'the Bill's exclusion of similar regulatory reporting obligations'.[27] Others generally supported the removal of duplicative reporting requirements.[28] State governments indicated that a number of issues raised by them could potentially be dealt with in regulations, but expressed concern that clause 5 was not tenable in its current form.[29]

Clause 5 and the limits of Commonwealth power

2.23 The Constitution gives the Commonwealth power to make laws in many areas, including in respect of corporations. At the same time, the Constitution clearly envisages the ongoing independent capacity of both Commonwealth and the states to exist and exercise powers. The extent to which each level of government may be immune from each other's laws is referred to as intergovernmental immunity.[30] The

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23 ANEDO, *Submission 22*, pp 1–2; ACF, Greenpeace Australia Pacific and the Total Environment Centre, *Submission 31*, p. 1.

24 Mr Jamie Bayly-Stark, Tasmanian Government, *Proof Committee Hansard*, 3 September 2007, p. 32; Mr Andrew Higham, Western Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 32.

25 Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 31.

26 Council of Australian Governments, *Council of Australian Governments' Plan for Collaborative Action on Climate Change*, 10 February 2006, p. 7.

27 WMAA, *Submission 26*, p. 2.

28 See for example Australasian Slag Association, *Submission 1*, p. 1; Shell Company of Australia, *Submission 5*, p. 1; Australian Industry Greenhouse Network, *Submission 7*, p. 2.

29 Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 36; Mr Jamie Bayly-Stark, Tasmanian Government, *Proof Committee Hansard*, 3 September 2007, pp 36–37.

30 Tony Blackshield and George Williams, *Australian Constitutional Law and Theory* (4th edition), Federation Press, 2006, p. 1139.

resolution of conflict between state and Commonwealth laws is a matter of inconsistency of laws.[31] The committee recognises that constitutional issues, particularly in relation to intergovernmental immunities and inconsistency of laws, must be taken into account in the drafting of the current bill. The extent of the Commonwealth's powers in these respects has been discussed in numerous High Court cases, including *Melbourne Corporation v Commonwealth* (the *Melbourne* case),[32] *Queensland Electricity Commission v Commonwealth*[33] and *Austin v Commonwealth*.[34]

2.24 The committee received no direct evidence in relation to the implications of the *Melbourne* case and intergovernmental immunities in relation to the current bill. However the committee did receive evidence on some of the issues to which case law in this field speaks. Professor Williams noted that clause 5 may impact on state utilities:

> It is true that certain state agencies can be constitutional corporations, particularly utilities, water authorities and the like, and this might prevent the states collecting information from their own bodies where those bodies are engaged in the energy industry. That itself seems to be me to be clearly overbroad.[35]

2.25 Some states echoed this concern:

> Some government instrumentalities are also constitutional corporations, and so you could have a situation where the state government needed to go to the Commonwealth government to ask about greenhouse gas emissions from its own instrumentalities.[36]
>
> …we are concerned that the bill contains certain provisions that could effectively restrict the ability of the state and territory governments to take action to address climate change and energy related matters. In particular, the Victorian government is concerned that the bill in its current form may limit important state functions, particularly those where we have powers to provide essential services. An example of that would be the operation of energy markets as set out in Victorian legislation under the Electricity Industry Act 2000 and the Gas Industry Act 2001 and other matters that are currently being progressed through the national energy reform agenda. It also limits, we believe, state functions in respect of environmental assurance processes such as the Environment Protection Authority's works

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31 Tony Blackshield and George Williams, *Australian Constitutional Law and Theory* (4th edition), Federation Press, 2006, p. 375.

32 *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31; [1947] HCA 26.

33 *Queensland Electricity Commission v Commonwealth* (1985) 159 CLR 192.

34 *Austin v Commonwealth* (2003) 215 CLR 185.

35 Professor George Williams, *Proof Committee Hansard*, 3 September 2007, p. 23.

36 Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 31.

> approvals and licensing system and sustainability covenants, and also environmental effects statements as required under relevant Victorian state statutes for major projects and other activities.[37]

2.26 State utilities reporting to state governments are likely to be constitutional corporations, and thus potentially subject to clause 5. The possibility that a state-controlled entity might be prevented from reporting to its state government may be a circumstance in which intergovernmental immunity, as expressed in the *Melbourne* case, might be an issue. A cooperative approach to the law in this area could obviate such concerns.

2.27 The committee notes that the bill has clauses explicitly designed to allow the gathering of data at the request of state or territory governments (clause 19), and the conveying of that information to governments once gathered (clause 27). Whether the discretionary nature of these clauses (discussed separately by the committee below) could have a bearing on the validity of clause 5 is not something that was discussed during this inquiry.

2.28 The committee does not wish, and is not qualified, to explore the constitutional law in any detail. However it notes that the basic principle enunciated in the *Melbourne* case is that the Commonwealth's power to legislate with respect to the states is limited by the 'federal system of government which requires the existence of separate governments exercising independent functions'.[38] The committee notes that amendment of clause 5 of the bill so that certain state laws might be excluded from operation, rather than its current construction which would exclude a whole class of laws unless exemptions were provided, would surely be a construction that has the potential to intrude less into the operations of states than the current wording. The committee therefore does not see intergovernmental immunity as a barrier to considering the alternative construction of clause 5 advocated by many witnesses to this inquiry. The priority should be to ensure a legislative foundation upon which cooperation regarding streamlining greenhouse and energy reporting can continue to be built.

The committee's view

2.29 The committee noted the Commonwealth's intention regarding clause 5, expressed in the Explanatory Memorandum, 'is to work cooperatively with State and Territory governments to transition towards a single reporting system across all jurisdictions'.[39] The committee supports the continuing cooperation between

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37 Mr Mick Bourke, Environment Protection Authority Victoria, *Proof Committee Hansard*, 3 September 2007, p. 29.

38 Anne Twomey, 'Federal Limitations on the Legislative Power of the States and the Commonwealth to Bind One Another', *Federal Law Review*, Vol. 31, No. 3, 2003, http://www.austlii.edu.au/au/journals/FedLRev/2003/13.html, accessed 4 September 2007.

39 *Explanatory Memorandum*, p. 179.

governments in implementing a national greenhouse reporting scheme. It is pleased to note that all parties remain committed to making progress with this initiative, and believes that some fine tuning of clause 5 may help ensure that this cooperation continues.[40]

Recommendation 1

2.30 The committee recommends that clause 5 be re-drafted along the lines proposed by Professor Williams and others, to have the effect that the minister may by regulation exclude the operation of a state or territory law that duplicates reporting under the national reporting scheme.

Interaction with existing Commonwealth laws

2.31 The WMAA sought clarification of how the bill would interact with the Commonwealth's *Energy Efficiency Opportunities Act 2006*.[41] The Western Australian government noted that the bill appeared not to exclude duplicative Commonwealth laws, despite excluding state laws.[42]

2.32 The committee notes the Commonwealth's intention is to streamline its reporting requirements under the new bill:

> Senator MILNE—…Speaking of energy efficiency, how does this bill interact with the Energy Efficiency Opportunities Act, which requires reporting on energy efficiency opportunities and on measurement? How do these two pieces of legislation overlap?
>
> Mr Carter—We have sought to be consistent with the thresholds and definitions of companies in the EEO legislation and we are looking also to streamline that program into this reporting over time as well.
>
> Senator MILNE—How will that operate? Can you explain what you mean by that?
>
> Mr Carter—In terms of the integration of it, all the reporting requirements of EEO would eventually be met through the reporting requirements under this legislation.[43]

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40 See for example Mr Jamie Bayly-Stark, Tasmanian Government, *Proof Committee Hansard*, 3 September 2007, p. 30; Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 38; Mr Mick Bourke, Environment Protection Authority Victoria, *Proof Committee Hansard*, 3 September 2007, p. 42.

41 WMAA, *Submission 26*, p. 2.

42 Mr Andrew Higham, Western Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 28.

43 *Proof Committee Hansard*, 3 September 2007, p. 49.

Thresholds

2.33 The bill provides for certain thresholds for greenhouse and energy reporting (clause 13), which were outlined in chapter 1.

2.34 Some submissions commented on the complexity of the threshold arrangements. The Australian Petroleum Production & Exploration Association (APPEA) argued that a simpler threshold methodology should be applied. The Association argued that the threshold be set at >125 kilotonnes carbon dioxide equivalent or 500 TJ energy (reducing to > 50 kilotonnes carbon dioxide equivalent over three years) and that this be set at a company level (with no facility level threshold equivalent).[44]

2.35 The Australian Industry Group (AI Group) argued that the provisions dealing with reporting triggers are 'confusing' with respect to the interaction between different thresholds. The AI Group raised the following concerns:

> Will the facility threshold also trigger the company-wide threshold where the company falls below the company threshold? AI Group's view is that it should not. Will companies that trigger the facility and/or corporate level energy threshold be required to report on their greenhouse emissions even if they not they meet the threshold for direct emissions? AI Group's view is that they should not. Where a company triggers the corporate-wide threshold but has 98% of its energy consumption on one site, is it required to conduct audits of a number of small sites that are part of the corporate group?[45]

2.36 The Australian Conservation Foundation (ACF) argued that the facility level threshold has been set 'unnecessarily high' and should be reduced to 10 kilotonnes.[46] The Nature Conservation Council of NSW also argued that the thresholds should be lowered to capture more reporting by facilities, arguing that only approximately 20 per cent of the facilities that report under the NPI will be required to report under the proposed bill.[47] The South Australian government also expressed concern that the thresholds set by the bill are too high, pointing out that:

> We are concerned about the companies that do not cross the threshold—less than 50,000 tonnes a year still makes you a significant emitter. It is roughly equivalent to spending $5 million a year on energy. So, a company that is spending $4 million a year on energy is someone in our jurisdiction that we would regard as worth bringing into the fold. We are concerned at the

44 APPEA, *Submission 17*, p. 5.

45 Australian Industry Group, *Submission 23*, p. 2.

46 ACF, *Submission 31*, p. 3. See also Moreland Energy Foundation, *Submission 32*, p. 1.

47 Nature Conservation Council of NSW, *Submission 20*, pp 1–2.

> ability that might be there in the final legislation for companies to use this as a shelter to protect them from scrutiny.[48]

2.37 Victoria indicated that it hoped to work toward thresholds lower than those in the bill in the area of energy efficiency programs.[49]

2.38 The Explanatory Memorandum noted that the proposed model introduces a 'greater level of complexity' to the threshold design than has been considered in previous consultations, however, the different elements are intended to address the aims of maintaining a robust data set and minimising costs to business:

> The company-level threshold is intended to exclude companies with relatively low total emissions/energy use or production, while the lower, facility-level threshold is intended to capture large facilities operated by companies that do not trigger the company-level threshold, recognising the significance of facility-level data to existing data collections.[50]

2.39 The Investor Group on Climate Change argued that phasing in of reporting under the bill should be accelerated so that all facilities report in the second financial year.[51] The ACF also argued that the staged implementation of reporting obligations has the potential to 'undermine' the timely introduction of a national emissions trading scheme.[52]

2.40 The committee notes that reporting under the new national scheme appears not to preclude the gathering of data for existing schemes, either through parallel reporting during a transition period, or through ensuring relevant data is gathered under regulations made under clause 19.

Reporting obligations

2.41 The Australian Industry Greenhouse Network expressed concern about the reporting obligations under clause 19(1). While supportive of reporting responsibilities under the bill, they sought greater clarity about the scope of emissions captured by the clause. The clause requires reporting of greenhouse gas emissions, energy production and energy consumption:

> from the operation of facilities under the operational control of the corporation and entities that are members of the corporation's group, during that financial year (emphasis added).

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48 Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 31.

49 Mr Mick Bourke, Environment Protection Authority Victoria, *Proof Committee Hansard*, 3 September 2007, p. 40.

50 *Explanatory Memorandum*, p. 23.

51 IGCC, *Submission 9*, p. 2.

52 ACF, *Submission 31*, p. 3.

2.42 AIGN were concerned to get further clarification of this clause:

> Senator WORTLEY—I was interested in this comment in your submission:
>
> > AIGN has concerns about the lack of clarity of Section 19(1)—
>
> and you touched on that—
>
> > which requires a registered corporation to report in respect of emissions, production and consumption from facilities (defined) under its control "and entities that are members of the corporation's group".
>
> Would you be able to elaborate on that perceived lack of clarity and shed some light on why you believe the reporting on those entities to be unreasonably burdensome, given that your members supported the need for a vigorous and transparent reporting system?
>
> Mr Dwyer—To put it briefly, the concern is: do the thresholds that are in the bill apply to all of the reporting by those controlled entities? If you read that clause in one particular way, you can interpret it to mean a situation where every single piece of information related to all facilities under the control of that entity, regardless of their size, might be captured, in which case you are getting down into potentially some very small facilities with very burdensome reporting requirements. If it relates only to those entities that breach the thresholds, whatever the thresholds may be in the bill—and there are thresholds in there—and all of the reporting relates to those facilities, then that is an outcome that we are supportive of.[53]

2.43 They advised the committee that DEW had provided them with some reassurance.[54]

2.44 The Explanatory Memorandum and the second reading speech both describe the scheme as based on emissions from facilities (defined in clause 9), including when there is company-wide reporting.[55] The department indicated that it was the intention of the bill to apply to both facilities of corporations and facilities of entities that are members of the corporation's group:

> CHAIR—Is it the intention of clause 19(1) that corporations that have met the threshold under clause 13 will report on emissions from facilities under the operational control of the corporation and facilities under the operational control of entities that are members of the corporation's group? If they meet the threshold, do they have to report on everything in the group?
>
> Ms Barclay—Yes. Clause 19(1) allows for both facilities under the control of a corporation and entities that are members of a corporation's group;

53 Mr Damian Dwyer, AIGN, *Proof Committee Hansard*, 3 September 2007, p. 2.

54 Mr Damian Dwyer, AIGN, *Proof Committee Hansard*, 3 September 2007, p. 3.

55 See, for example, *Explanatory Memorandum*, pp 22–23, 184.

> 19(8) also allows for regulations to specify different requirements for registered corporations that only meet one of the thresholds.[56]

2.45 The committee notes the capacity to modify the detail of reporting requirements through regulations under clause 19(8).

Maintenance and dissemination of information

2.46 The bill provides that company-level data will be made publicly available online by the national reporting system. For greenhouse gas emissions, the basic level of disclosure will be a single aggregated total of gross emissions in CO_2-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.[57]

2.47 The ACF noted that the public disclosure of each company's emissions will not necessarily be a specific quantitative value:

> Section 24(3) of the Bill allows the relevant authority either to report specific emissions levels for a corporation, or simply to report that the corporation's emissions fall "within a particular range of values". This kind of disclosure would not be particularly useful.[58]

2.48 Some submissions argued that greenhouse emissions and energy data should be disclosed at the facility level.[59] ANEDO stated that:

> The community 'right to know' principle requires accurate information at a facility level. The Bill must not allow aggregated totals of corporate groups to subvert this principle. The Bill requires only total gross GHG emissions and total energy produced and consumed to be made public. While there is scope for companies to voluntarily provide more specific detail on emissions, offsets, policies and initiatives, this would only be at the company level, and is not mandatory.[60]

2.49 The department explained the rationale for providing that public disclosure should be at a company level:

> Concerning public right to know at a facility level, public right to know generally applies to emissions that might be of the nature that would have a

56 *Proof Committee Hansard*, 3 September 2007, p. 53.

57 *National Greenhouse and Energy Reporting Bill 2007*, clauses 13, 24 and 28.

58 ACF, *Submission 31*, p. 2.

59 ACF, *Submission 31*, p. 2; BCSC, *Submission 15*, p. 5; Nature Conservation Council of NSW, *Submission 20*, p. 2; EBA, *Submission 16*, p. 1.

60 ANEDO, *Submission 22*, p. 2.

> potential local impact on people's health or amenity, and greenhouse gas emissions are a global impact rather than a localised impact.[61]

2.50 The bill provides that confidential data may be exempted from public disclosure under certain circumstances. Some submissions argued that this provision may undermine the quality of the publicly available data set as a whole and undermine the public accountability function of the emissions register.[62] The Australian Business Council for Sustainable Energy (BCSE) argued that where commercially sensitive material is not published, there should be public disclosure to this effect.[63] Industry groups pointed to the importance of rigorous data confidentiality and access protocols to protect the data required to be reported by corporations.[64] DEW also noted that a major issue with disclosure at the facility level:

> is the commercial-in-confidence nature of that. It can go directly to the efficiency of production and their competitiveness with other facilities.[65]

2.51 The Investor Group on Climate Change (IGCC) argued that the information publicly available should be expanded to include disaggregation of different emissions and a list of facilities covered by the emissions inventory.

> The total sum of greenhouse emissions does not provide investors with sufficient information to make accurate and appropriate decisions on the nature of the greenhouse risk or opportunities associated with a particular company. This is particularly the case given the existing uncertainty about both the rules for the emissions trading scheme and the need for investors to understand potential equity exposure of companies.[66]

2.52 DEW explained that it is encouraging a greater scope of reporting with regard to disaggregation and that it could be included in the future once technical issues are resolved:

> In fact there has been quite a bit of interest from some companies in being able to report more precisely on the non-CO_2 emissions from fuel combustion. It is just whether or not it is robust reporting that is a bit of an issue.[67]

2.53 ANEDO argued that the reporting scheme should provide a clear overview of the emission of greenhouse gases by corporation and facility. Both it and state governments believed that if the bill was implemented in its current form it would lead

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61 Mr Peter Brisbane, DEW, *Committee Hansard*, 3 September 2007, p. 49.

62 BCSC, *Submission 15*, p. 5; ACF, *Submission 31*, p. 2; Nature Conservation Council of NSW, *Submission 20*, p. 2.

63 BCSC, *Submission 15*, p. 5. See also ANEDO, *Submission 22*, p. 4.

64 AIGN, *Submission 7*, p. 2; AIP, *Submission 6*, p. 3; APPEA, *Submission 17*, p. 4.

65 Mr Peter Brisbane, DEW, *Committee Hansard*, 3 September 2007, p. 49.

66 IGCC, *Submission 9*, p. 3.

67 Mr Peter Brisbane, DEW, *Committee Hansard*, 3 September 2007, p. 57.

to reduced reporting of information compared to existing reporting schemes.[68] ANEDO suggested that there should be a mandatory provision on submitting a publicly accessible report if significant changes appear in the emissions of a corporation or facility.[69]

2.54 DEW, responding to this issue, noted that:

> There will be the opportunity for companies to provide some contextual information around their emissions. We know there is interest from both the companies themselves and data users…So there are things that companies are interested in reporting—things like offsets and things like actions that they are undertaking to reduce their emissions profile. We will be looking at the voluntary disclosure as an administrative task.[70]

2.55 The committee notes that clause 16, which establishes the National Greenhouse and Energy Register, is complex. Clause 16(5) appears to contain an unnecessary double negative, making it hard to understand, particularly as it has to be read in conjunction with clause 24. The department undertook to raise this issue with the Office of Parliamentary Counsel,[71] and the committee hopes that a more straightforward wording of the clause will be possible.

State access to information

2.56 The bill includes provisions for releasing information to states and territories that has been gathered by the GEDO:

> The Greenhouse and Energy Data Officer, or a person authorised by the Greenhouse and Energy Data Officer, may disclose greenhouse and energy information to a State or Territory or an authority of a State or Territory if:
>
> (a) it is information mentioned in subsection 19(9); or
>
> (b) it is information relating to facilities that are wholly or partly located in the State or Territory.
>
> (2) The Greenhouse and Energy Data Officer may make disclosure of information under this section subject to conditions including:
>
> (a) restrictions on disclosure of the information to other persons; and
>
> (b) security measures required in relation to the confidentiality of the information; and

68 ANEDO, *Submission 22*, pp 1–2; Mr Mick Bourke, Environment Protection Authority Victoria, *Proof Committee Hansard*, 3 September 2007, pp 32–33, Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 33; WA Government, *Submission 21*, pp 8-10.

69 ANEDO, *Submission 22*, p. 2.

70 Mr Peter Brisbane, DEW, *Committee Hansard*, 3 September 2007, p. 57.

71 Mr Ross Carter, DEW, *Proof Committee Hansard*, 3 September 2007, p. 58.

> (c) the State, Territory, or authority not requiring the reporting or disclosure of other information of a kind similar to greenhouse and energy information.[72]

2.57 Clause 19 requires corporations that meet certain criteria under the legislation to provide regular reports to the GEDO on their greenhouse gas emissions, energy production and energy consumption. The bill proposes that:

> (6) A report or part of a report under this section must:
>
> …
>
> (c) include any information specified by the regulations for the purposes of this paragraph;
>
> …
>
> (9) Regulations made for the purposes of paragraph (6)(c) may also specify information that a State or Territory has requested the Greenhouse and Energy Data Officer to collect.[73]

2.58 All state governments objected to the formulation of these clauses.[74] They were all of the view, as expressed by South Australia, that:

> One of the fundamental principles of the original proposal to COAG for the streamlining of mandatory reporting was that state jurisdictions would forego their reporting requirements in return for guaranteed access to the data collected as part of the national scheme. Clause 27 provides the Greenhouse and Energy Data Officer (GEDO) with discretion as to whether or not information is provided to a State or Territory that relates to facilities in that State. The GEDO can make the provision of information subject to conditions including confidentiality and the State or Territory not collecting the same information that is being collected under the legislation.[75]

2.59 State governments reiterated at the public hearing their concerns about clause 27.[76] They sought removal of the GEDO's discretion in providing data, and a narrowing of the conditions that could be placed upon the data when released.[77] The

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72 *National Greenhouse and Energy Reporting Bill 2007*, clause 27.

73 *National Greenhouse and Energy Reporting Bill 2007*, clause 19.

74 South Australian Government, *Submission 10*, p. 7; Victorian Government, *Submission 11*, p. 4; New South Wales Government, *Submission 19*, p. 2; Western Australian Government, *Submission 21*, p. 12; Tasmanian Government, *Submission 29*, p. 2; Queensland Government, *Submission 30*, p. 2.

75 South Australian Government, *Submission 10*, p. 7.

76 Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, pp 31, 36; Mr Mick Bourke, Environment Protection Authority Victoria, *Proof Committee Hansard*, 3 September 2007, pp 29, 37; Mr Andrew Higham, WA Government, *Proof Committee Hansard*, 3 September 2007 p. 28.

77 Mr Mick Bourke, Environment Protection Authority Victoria, *Proof Committee Hansard*, 3 September 2007, p. 29.

South Australian government emphasised the inappropriateness of the release of data being discretionary even where the states have satisfied the conditions laid out in the clause:

> about clause 27…the default is either the minister's discretion or that default is that the states have automatic access. The point in the middle there is about the conditions. What we are saying is that at the moment 27 has got both. If you satisfy the conditions, the data officer may give you access to the data. In our judgement a balanced approach would be that, if you satisfied the conditions, what else have you got to do? You should be given access to the data.[78]

Environmental groups supported the states' position.[79]

2.60 It is clear that the provision of information to states and territories is envisaged to be part of the scheme. The Regulatory Impact Statement (RIS) (which is incorporated into the Explanatory Memorandum) concluded that the preferred option for regulation would involve legislation that would 'require the administrator to make available to each jurisdiction' information gathered under the scheme,[80] to 'ensure that all jurisdictions had access to data'.[81]

2.61 It was proposed that the matter be addressed by replacing the word 'may' in subclause 27(1) with an alternative: either 'will'[82] or 'must'.[83] The department indicated that an alternative formulation such as this would be feasible, but that the intention was to enable providing data subject to conditions.[84]

The committee's view

2.62 The committee notes that the intention of the scheme, as set out in the RIS, was that it 'required' the provision of data to other jurisdictions. It also notes the point emphasised by South Australia that the provision of data is subject to conditions that should meet the needs of participants in the reporting scheme for the protection of sensitive data. The committee can see advantages, discussed earlier, in continuing to ensure a cooperative approach amongst all jurisdictions to greenhouse reporting. In these circumstances, and recognising the department's acknowledgement that an alternative construction of this clause may be feasible, the committee believes that it

78 Mr Tim O'Loughlin, South Australian Government, *Proof Committee Hansard*, 3 September 2007, p. 41.

79 ACF, Greenpeace Australia Pacific and the Total Environment Centre, *Submission 31*, p. 1.

80 *Explanatory Memorandum*, p. 28.

81 *Explanatory Memorandum*, pp 42–43.

82 Victorian Government, *Submission 11*, p. 5.

83 South Australian Government, *Submission 10*, p. 7.

84 Mr Ross Carter; Mr Peter Brisbane, DEW, *Proof Committee Hansard*, 3 September 2007, p. 44.

should be made clear that data will be provided to states and territories on an appropriate basis.

Recommendation 2

2.63 The committee recommends that:

- **subclause 27(1) be redrafted to replace the word 'may' with the word 'must'; and**
- **(for consistency) consideration be given to the deletion of subclause 27(2)(c).**

External audit

2.64 The bill proposes that external audits may be initiated:

> if the Greenhouse and Energy Data Officer has reasonable grounds to suspect that a registered corporation has contravened, is contravening, or is proposing to contravene, this Act or the regulations.[85]

2.65 Concerns were raised about the rigour of the audit process under the bill. The Tasmanian government outlined the problem as it saw it:

> Tasmania supports the inclusion of mandatory validation, so that provision is made in the Bill for a proportion of company reports to be independently verified each year through a random sample. The quality and integrity of data collected under the scheme is vital to build confidence in the carbon market that will be established by a national emissions trading scheme.
>
> The current provision in the Bill requires the regulator to have reasonable grounds to suspect an offence. This is not consistent with good audit practice and does not provide a systematic or sufficiently rigorous approach to verifying data. This would serve to undermine business confidence in the integrity of the data collected under the scheme.[86]

The Victorian government likewise endorsed a less restrictive external audit framework.[87]

2.66 Two proposals were made to modify the external audit provision. Tasmania suggested the bill be amended to include a new provision 'that provides for mandatory independent audit/verification of a randomly selected proportion of companies

85 *National Greenhouse and Energy Reporting Bill 2007*, clause 73(1).

86 Tasmanian Government, *Submission 29*, pp 2–3.

87 Mr Mick Bourke, Environment Protection Authority Victoria, *Proof Committee Hansard*, 3 September 2007, p. 29.

registered with the scheme'.[88] ANEDO made a more modest suggestion that external auditors operating under clause 73 should be accredited by the GEDO.[89]

2.67 CPA Australia commented that:

> A key element influencing the success of the reporting and dissemination of [greenhouse gas emissions] in Australia and an emissions trading scheme is the ability for users to rely on information prepared and disclosed by organisations. An independent and robust verification of emission data will help achieve this.[90]

2.68 While supportive of the bill, CPA Australia appeared concerned that less sustainability reporting is done by major accounting firms in Australia than other countries. Australian firms appear more likely to favour technical or environmental consulting firms.[91]

2.69 The committee notes that the framework for monitoring and auditing companies varies from sector to sector, and from state to state. The audit regulations made under the *NSW Electricity Supply Act 1995* do not confine the scope of audits under that act to those situations where contravention of the law is suspected.[92] On the other hand, the form of the audit provision in the Commonwealth's bill is broadly similar to that contained in Tasmania's *Environmental Management and Pollution Control Act 1994* (s. 30).[93] The external audit provision of the bill should also not be considered in isolation. The committee notes that the powers of Commonwealth officials to enter premises to monitor compliance are governed by Division 4 of the bill. The exercise of these powers is not confined to situations where there is doubt about compliance with the law. The committee believes that, taken together, the compliance powers and the audit provisions are adequate.

Conclusion

2.70 The committee is satisfied with the bill as a whole. The committee believes that the bill lays the foundation for a rigorous, transparent and nationally consistent greenhouse and energy reporting system. This will also help form the vital foundation for any future emissions trading scheme in Australia.

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88 Tasmanian Government, *Submission 29*, p. 3.

89 ANEDO, *Submission 22*, p. 5.

90 CPA Australia, *Submission 24*, p. 2.

91 CPA Australia, *Submission 24*, p. 2.

92 *NSW Electricity Supply Act 1995* s. 97HB; *Electricity Supply (General) Regulation 2001*, reg. 73M.

93 *Environmental Management and Pollution Control Act 1994,* http://www.austlii.edu.au/au/legis/tas/consol_act/emapca1994484/s30.html, accessed 30 August 2007.

2.71 The committee recognises the need, expressed by many stakeholders, for on-going consultation in the development of the regulations that will underpin the proposed system. The committee is confident that the government is committed to processes that will ensure constructive dialogue with stakeholders in the development of these regulations.

Recommendation 3

2.72 The committee recommends that, apart from those recommendations made above, the bill be passed.

Senator Alan Eggleston
Chair

Additional Comment – Labor Members

The Labor members of the Committee support the urgent implementation of a comprehensive mandatory greenhouse gas emissions and energy reporting scheme.

Mandatory reporting is a critical first step towards the implementation of a national emission trading scheme. Federal Labor has a long standing commitment to implement emissions trading as a practical, sensible and flexible approach to reducing greenhouse gas emissions.

However, the slow-start timeframe and reporting thresholds that this Bill sets out may be insufficient to meet the reporting needs of an emissions trading scheme with the aim to begin in 2010.

Submissions to the Inquiry made clear that the intent of the Bill is warranted, but that it is variously and significantly flawed in construction. Significant oversights and problems have been identified in virtually all submissions and by witnesses appearing at the Committee hearings.

It is the view of Labor members of the Committee that significant amendments are needed to redress these issues.

In the absence of Federal Government leadership on climate change, State Governments have led the way and their efforts should be supported rather than handicapped. Labor members of the Committee therefore support the Majority recommendation to amend Clause 5 to rein in the proposed overbroad Commonwealth powers over State laws and also to amend subclauses 27(1) and 27(2)(c) so as to necessarily provide reporting information to State Governments.

The Committee heard that during the time in which this Bill was prepared, the Government failed to undertake due consultation with relevant stakeholders, including large emitters, State Governments, environment groups and other relevant experts.

As emission reporting legislation is a foundation for a national emissions trading scheme - a significant economic reform - it is of serious concern to Labor members that stakeholder consultation was not undertaken during the drafting of this Bill.

Rather than reducing uncertainty for industry, the Bill in its current form has the potential to increase uncertainty due to unintended consequences such as the introduction of legal ambiguities, which may also increase the compliance burden upon reporting entities. Despite the rushed nature of the Senate Inquiry process, many of these shortcomings were noted by the Committee and now should be taken into account by the Government.

The Government's eleventh hour efforts to draft and rush this Bill through Parliament have been taken at the expense of due process and good governance. It should be noted however that such efforts are consistent with the Government's record of eleven years of delay, denial and inaction on climate change.

Labor members of the Committee support recommendations 1 and 2 of the majority report.

The sooner we act on emissions trading, the longer the economy will have to adjust to new market signals, and the better placed we'll be to prosper in new and growing international carbon markets.

Senator Dana Wortley
ALP, South Australia

Senator Ruth Webber
ALP, Western Australia

Senator Kate Lundy
ALP, Australian Capital Territory

The Australian Greens Additional Comments

The Australian Greens support the intent of the Bill, namely to establish a national streamlined greenhouse gas and energy reporting regime which clearly establishes the obligations of corporations.

Clause 5 and the limits of Commonwealth power

The Australian Greens support the deletion of Clause 5 consistent with the preferred position of Professor George Williams, whose submission to the inquiry stated that:

> *Section 5 should be removed from the Bill. Section 109 of the Constitution deals regulates where a federal law cannot operate consistently with a state law. It provides a sufficient mechanism for dealing with such conflicts without needing a Commonwealth Bill to cover the field so widely as to undermine any related state laws.*

However, the Greens welcome the Committee's consideration of the submissions from the State governments and the recommendation, " *that clause 5 be re-drafted along the lines proposed by Professor Williams and others, to have the effect that the minister may by regulation exclude the operation of a state or territory law that duplicates reporting under the national reporting scheme*" as an improvement to what was originally proposed. We remain concerned that the proposed change is not specific enough and needs to be further amended to read, "to have the effect that the minister may by regulation exclude the operation of *those parts* of a state or territory law that duplicates reporting under the national reporting scheme." Without the qualification of "those parts", the whole of the Victorian EPA Act for example might be overridden when only the part that refers to emissions data is relevant.

The Greens support the proposed changes to Clause 27 as the replacement of "may" with "must" will provide a greater level of assurance to the states about access to data that they require. However, Clause 56 should also be amended to allow for an appeal by a state or territory to the Administrative Appeals Tribunal if under Clause 5 there is a dispute about whether all or any part of a state or territory law does or does not duplicate reporting.

Thresholds

The Australian Greens concur with the Environmental Defenders Office assertion that the community's 'right to know' principle requires accurate information at a facility level and that the Bill must not allow aggregated totals of corporate groups to subvert this principle.

Specifically the Australian Greens support the position of the Investor Group on Climate Change whose submission stated that:

> *To ensure any mandatory reporting legislation provides relevant and complete climate change information for investors (so as to remove the need for investors to make their own information request and thereby streamlining reporting for companies) the IGCC make the following recommendations:*
>
> *• The introduction to reporting should be accelerated such that all facilities are reporting in the second financial year*
>
> *• The information publicly available should be significantly expanded to include:*
>
> > *a) Separate detailing of total Scope 1 and Scope 2 emissions;*
> >
> > *b) Scope 1 emissions disaggregated into category, e.g. combustion, industrial process, fugitive, etc; and type, e.g. N2O, CH4, etc. of emission;*
> >
> > *c) List of facilities covered by the emissions inventory;*
> >
> > *d) Scope 1 and Scope 2 emissions for all facilities above the facility threshold of 25 kilotonnes CO2-e, along with the details outlined in point (b) above; and*
>
> *• Further clarification of the definition of operational control.*

Senator Christine Milne
Australian Greens

Appendix 1

Submissions

1. Australasian (iron & steel) Slag Association
2. Professor George Williams
3. Telstra Corporation
4. BP Australia Pty Ltd
5. The Shell Company of Australia Limited
6. Australian Institute of Petroleum
7. Australian Industry Greenhouse Network (Revised Version)
8. Hydro Tasmania
9. Investor Group on Climate Change
10. Department of Premier and Cabinet, South Australia
11. Department of Premier and Cabinet, Victoria
12. Australian Council of Super Investors
13. Australian Trucking Association
14. The Griffin Group
15. Australian Business Council for Sustainable Energy
16. Environment Business Australia
17. Australian Petroleum Production & Exploration Association Limited
18. Western Australian Sustainable Energy Association Inc (WASEA)
19. Department of Premier and Cabinet, New South Wales
20. Nature Conservation Council of NSW
21. Office of the Premier, Western Australia
22. Environmental Defender's Office (NSW)
23. Australian Industry Group

24. CPA Australia

25. Chamber of Commerce and Industry of WA

26. Waste Management Association of Australia

27. WWF-Australia

28. Business Council of Australia

29. Department of Premier and Cabinet, Tasmania

30. Queensland Government

31. Australian Conservation Council with the support of Greenpeace Australia Pacific and the Total Environment Centre

32. Moreland Energy Foundation Ltd

33. Thiess Pty Ltd

34. Dr Philip Laird

35. Energy Users Association of Australia

36. Confidential

Appendix 2

Public Hearings

Monday, 3 September 2007 – Canberra

Australian Industry Greenhouse Network

Mr Damian Dwyer, Director, Economic and Trade, Australian Petroleum Production and Exploration Association; and, Member, Australian Industry Greenhouse Network

Australian Network of Environmental Defender's Offices and World Wide Fund for Nature

Mr Jeff Smith, Director, Australian Network of Environmental Defender's Offices

Ms Rachel Walmsley, Policy Officer, Australian Network of Environmental Defender's Offices

Mr Paul Toni, Program Leader, Development and Sustainability, World Wide Fund for Nature

Professor George Williams, Private capacity

Government of Victoria

Mr Mick Bourke, Chairman, Environment Protection Authority Victoria

Mr Geoff Latimer, Manager, Atmosphere and Noise Unit, Environment Protection Authority Victoria

Government of South Australia

Mr Tim O'Loughlin, Deputy Chief Executive, Sustainability and Workforce Management, Department of the Premier and Cabinet

Ms Stephanie Ziersch, Director Policy, Sustainability and Climate Change Division, Department of the Premier and Cabinet

Government of Tasmania

Mr Jamie Bayly-Stark, Director, Policy, Department of Premier and Cabinet

Government of Western Australia

Mr Andrew Higham, Manager, Policy, Office of Climate Change, Department of Environment and Conservation

Department of the Environment and Water Resources

Mr Ross Carter, Acting First Assistant Secretary, Industry, Communities and Energy Division

Mr Peter Brisbane, Director, Greenhouse and Energy Reporting Taskforce

Mr Andrew Bray, Assistant Director, Greenhouse and Energy Reporting Taskforce

Ms Diane Barclay, Assistant Director, Greenhouse and Energy Reporting Taskforce