



NEWSLETTER

CLIMATE CHANGE

Introduction

The election of the Rudd Government has radically changed Australia's response to addressing climate change. Already the Government has ratified the Kyoto Protocol, begun work on a national renewable energy scheme, introduced interim renewable energy legislation and continued the work on a national emissions trading scheme. These developments underscore the need to plan for the anticipated impacts on your organisations' activities.

To plan appropriately and effectively, you will need ongoing access to timely information. HDY's Climate Change group will be helping you by providing ongoing client alerts, newsletters and seminars to keep you informed. In this issue of our newsletter, we update you on a range of international, national and state developments.

International developments

Conference of the Parties to the United Nations Framework Convention on Climate Change, **Bali, 3 - 14 December 2007**

The Bali Conference included a meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change, its subsidiary bodies, as well as a meeting of the Parties to the Kyoto Protocol. Altogether there were more than 10,000 participants, including representatives of over 180 countries.

The Conference culminated in the adoption of the Bali Roadmap, which charts the course for a new negotiating process to be concluded by 2009 that will ultimately lead to a post-2012 international agreement on climate change. Progressive action was taken, including recognition that huge reductions in global emissions are required, the launch of the Adaptation Fund (to assist developing countries vulnerable to the impacts of climate change in their adaptation) and decisions on technology transfer and reducing emissions from deforestation.

National Developments

National Renewable Energy Scheme

The Federal Government is in detailed discussions with the States and Territories concerning the introduction of a national renewable energy target and trading scheme. This initiative has meant that the NSW Renewable Energy Bill introduced in June 2007 has stalled. We expect legislation to be introduced

towards the end of 2008 to establish a nationally consistent renewable energy scheme and target.

Bill to amend the Mandatory Renewable Energy Target

As part of the process of moving to a national scheme, on 14 February 2008 the Federal Government introduced the *Renewable Energy Legislation Amendment (Renewable Power Percentage) Bill 2008 (the Bill)*. The Bill amends the *Renewable energy (Electricity) Regulations 2001* which establishes the Commonwealth Mandatory Renewable Energy Target Scheme (MRET).

Currently, the MRET scheme places a legal liability on the wholesale purchasers of electricity to proportionately contribute towards the generation of an additional 9,500 GWh of renewable energy a year by 2010 and then maintain those levels to 2020. Liable parties meet their obligations by surrendering RECs (Renewable Energy

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Certificates), which are created by renewable generators, to the regulator equal to the annual requirement or pay a penalty.

The Bill expands the renewable energy target incrementally from 2008 in line with the ALP election policy that at least 20% (approximately 60,000GWh) of electricity is to be generated from renewable sources by 2020. This will provide certainty and encourage investment in renewable energy, which has lagged since 2006.

The amendments recognise that without new targets, investment would not occur until a new national scheme was in place. As that is unlikely to occur within the year, it was acknowledged that without an interim scheme identifying the new targets, the renewable energy industry would suffer.

National Emissions Trading Scheme and the Garnaut Review

The State and Territory Governments proposed a national emissions trading scheme (**NETS**) in August 2006 and suggested it could commence as early as 1 January 2010. This policy was supported by Labor prior to the election. The Government is now preparing the detailed design of the scheme.

One of the central issues is establishing the appropriate target for reducing greenhouse emissions. Before committing to a target, the Government is awaiting the final report from Professor Ross Garnaut. Professor Garnaut's Climate Change Review is examining the impacts of climate change on the Australian economy in order to recommend medium to long-term policies and policy frameworks to improve the prospects for sustainable prosperity.

The Review's interim report was released on Thursday 21 February. The Interim Report takes the view that in 2008, Australia should make firm commitments to appropriate targets for 2020 and 2050 similar to those adopted by the European Union. A version of the 60% reduction by 2050 is generally supported. These targets will form the basis of a national emissions trading regime. The Interim Report notes that the global economy is growing at a higher rate than expected, and that much of the growth is based on fossil fuel consumption. This is resulting in greater climate change impacts than had been anticipated. Thus, costs for reducing emissions are likely to be higher for Australia and the rest of the world.

If emissions were not reduced, the Interim Report considers that Australia would suffer serious consequences. This includes impacts on our own sensitive environments but also wider consequences due to the impacts on our trading partners in the Asia-Pacific region.

The final report is due on 30 September 2008, with a draft for discussion by 30 June 2008. A number of forums will also be held around Australia to engage the public on various issues relating to the Review.

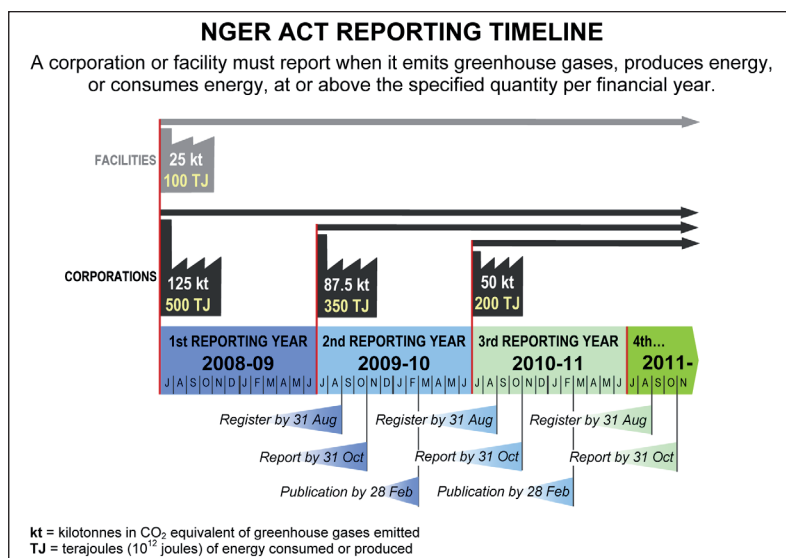
National Greenhouse and Energy Reporting Act

In late September 2007, *The National Greenhouse and Energy Reporting Act 2007 (NGER Act)* was passed. It is due to commence operation in mid 2008.

The NGER Act introduces a single national reporting framework for the reporting greenhouse gas emissions, energy consumption and energy production of corporations. It is intended to lay the foundation for a future national emissions trading scheme.

Corporations are required to record data from 1 July 2008. The first reports for the period 1 July 2008 to 30 June 2009, will be due on 31 October 2009. These time frames are set out in the graph below taken from the Australian Government Department of Climate Change website.

The reporting obligations under the Act overlap with some elements of the *Energy Efficiency Opportunities Act (EEO Act)* which already has reporting requirements for energy "use". We anticipate that, in time, all the reporting requirements of the EEO Act will eventually be met through the reporting requirements under the NGER Act.



For reporting purposes, the NGER Act sets maximum levels for greenhouse gas (GHG) emissions, and energy produced and consumed at two levels, either for the entire group or for a single facility. For example, for the first year of the scheme, 1 July 2008 to 30 June 2009, the thresholds for total GHG emissions for a corporate group are 125,000 tonnes of CO₂ equivalent, and for 25,000 tonnes for each facility. The time periods and the thresholds, which are to be progressively lowered, are set out in the graph below. This means that, over time, the thresholds will become lower and more corporations will be required to report.

If a controlling corporation's group meets one of the thresholds set by the NGER Act, it must apply to be registered under the Act. Registered corporations must then report to the Greenhouse and Energy Data Officer (GEDO) on the greenhouse gas emissions and energy production and consumption of each facility under the operational control of the corporation, and entities that are members of the corporation's group, after each financial year.

The GEDO is required to publish data reported for each registered corporations group which will become publicly available in the February of the following financial year.

The NGER Act imposes significant record keeping obligations on companies which need to be retained for at least seven years. There are civil penalties for non-compliance of companies. For failing to register a company or carry out reporting requirements, for example, a company can be fined \$220,000 and an additional \$11,000 for each day of non-compliance, with CEO's also able to be held personally liable.

The NGER Act is intended to cut red tape and simplify the current patchwork of reporting requirements. It precludes reporting of greenhouse gas emissions or projects via the National Pollution Inventory and also provides that the regulations may exclude the operation of any State or Territory law that duplicates reporting obligations under the proposed national reporting scheme.

Will your organisation have to report?

To determine your organisation's reporting requirements, you will need to consider the following documents:

- *Greenhouse and Energy Reporting System Regulations Policy Paper (Regulations Policy Paper)* released in February 2008, for which submission due **27 February 2007**; and
- *Technical Guidelines for the Estimation of Greenhouse Emissions and Energy at the facility level: the Energy, Industrial Process and Waste sectors in Australia- Discussion Paper (Technical Guidelines)*, released in January 2008, for which submissions were due 13 February 2008.

These documents set out the detailed reporting requirements under the NGER Act.

The Policy Paper sets out the proposed definitions of certain key terms referred to in the NGER Act. These include:

- *Emissions*: "the release of greenhouse gases into the atmosphere covering direct releases of greenhouse gases (scope 1 emissions) and indirect releases of greenhouse gases from the consumption of purchased electricity, heat or steam (scope 2 emissions)."

The NGER System will require both Scope 1 and 2 emissions to be reported.

- *Energy*: includes fuel, or any other energy commodity, of a kind specified in the regulations. The Policy Paper sets out a detailed list of fuel types and commodities to be listed as energy in the regulations.
- *Consumption of energy*: is the use of any substance or resource as a source of heat or power. This covers consumption of fuels and energy commodities listed under the energy definition.
- *Production of energy commodities*: includes the extraction of primary fuels from fossil reserves and biofuel sources and the capture of renewable energy from water, wind, sunlight (etc.) as well as the manufacture of secondary fuel products.

The Regulations Policy Paper also provides proposed definitions for *industry sector, joint ventures and partnership* (and how to nominate a reporting partner) and facilities.

Guidance is also provided for determining operational control, where for example more than one organisation could satisfy the definition contained in section 11 of the NGER Act, applying to register and deregister, and reporting under the NGER Act.

The Technical Guidelines set out how to calculate and report greenhouse gas emissions and energy production and consumption.

For example, to record Scope 1 emissions, the Technical Guidelines propose that either:

- Reporters use a general methodology which will involve estimating emission levels by multiplying the quantity of an emission-producing activity (e.g. quantity of fuel type combusted)



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by the relevant National Greenhouse Accounts default emissions factor provided by the Department of Climate Change; or

- Reporters use a higher-order method which requires the conduct of onsite sampling of fuels (or other relevant activity data) to extract samples of fuel characteristics that are representative of the population.

Most entities reporting under the scheme will be able to choose which methodology it applies. The costs of using a higher order method are likely to be higher. But as certain fuels (such as coal) have varying levels of carbon content and energy, this method may be more accurate. Once an organisation has chosen to utilise a higher-order method, the reporter must continue to use the same approach and not revert to the use of NGA default emission factors.

Companies reporting will need to consider the costs and benefits of using a higher-order methodology (which may be more accurate) and should bear in mind that emissions reported under NGER System will form the basis for permit allocations under the proposed NETS.

The Technical Guidelines also propose different approaches for calculating Scope 2 emissions. All emissions attributable to a state or territory's electricity consumption could be allocated amongst individual consumers in proportion to its relative level of consumption.

An alternative approach would be to base the estimates on contract information, whereby consumers of electricity would be allocated the emissions generated by their contracted supplier.

Status of NSW Greenhouse Gas Abatement Scheme (GGAS)

The NSW GGAS is the second largest carbon market in the world with more than 60 million carbon abatement certificates created to date.

The status of the market has been uncertain and the price of credits low, due to the uncertainty surrounding long term commitments of participants in GGAS. This uncertainty in the market is continuing as the new Federal Government is yet to clarify the details of its proposed NETS and how the transition arrangements with the GGAS will operate.

On 31 January 2008, the NSW Energy Minister announced the establishment of a new working group to resolve the existing uncertainty and allow a smooth transition from the NSW GGAS to NETS. The group will be chaired by the Department of Water and Energy, and includes representatives from a wide range of stakeholder groups such as industry associations, environmental groups and government departments.

Henry Davis York's Climate Change Group includes leading experts from the specialist areas of our Environment & Planning, Financial Markets & Derivatives and Financial Services practices. They understand and advise clients on the related issues and opportunities that exist across these areas for corporations, lenders and investors.

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