



SUMMER 2008

## The National Greenhouse and Energy Reporting Act 2007

▶ By Emma Lynch, Senior Associate & Andrew Hawking, Senior Associate

*The National Greenhouse and Energy Reporting Act 2007 (NGER Act) was passed in September 2007. The NGER Act established a mandatory national system to report and record information about greenhouse gas emissions, energy consumption and energy production of corporations.*

The NGER Act forms part of a regulatory framework that provides detail about a corporation's obligations regarding auditing, reporting, monitoring and recording emissions and use and production of energy. The framework includes:

- The National Greenhouse and Energy Reporting Regulations 2008;
- The National Greenhouse and Energy Reporting (Measurement) Determination 2008;
- The External Audit Legislative Instrument (this instrument is under development).

The NGER Act will provide data about emissions and use and production of energy, which will be essential to the operation of Australia's National Emissions Trading Scheme. The AETS is expected to be in operation by mid 2010.

Establishment of the NGER Act as a scheme under Commonwealth authority will provide a national



emissions and energy reporting program and will avoid duplication of or confusion between State and Territory reporting schemes.

Data reported under the NGER scheme will inform government policy and will be available to the Australian public and will enable a quantified understanding of the greenhouse and energy performance of Australian corporations.

Corporations that might meet the threshold criteria are required to register and to collect data on greenhouse gas emissions and production and consumption of energy from 1 July 2008.

The thresholds for the financial year commencing 1 July 2008 are: Continued on page 4 .....

### ALSO IN THIS ISSUE

- ▶ The National Greenhouse & Energy Reporting Act 2007
- ▶ Garnaut Review Supports Establishment of Emission Trading Scheme
- ▶ Orchison's Observations



# Garnaut Review Supports Establishment of Emissions Trading Scheme

► By Vanessa Johnston, Lawyer

The Garnaut Climate Change Review (Review) was commissioned by the Commonwealth and State Governments jointly to investigate the impacts of climate change on the Australian economy in the medium to long term.

The Draft Report, released on 4 July 2008, focuses on climate change in an Australian context and discusses various scientific perspectives on climate change, examines current greenhouse gas emission levels, models future emission levels, proposes mitigation strategies, provides guidance on the barriers to early action and comments on the need for cooperation at an international level.

In particular, the Review is supportive of the prompt establishment of an emissions trading scheme in Australia. Although there has been heated debate about whether a trading scheme or carbon tax is appropriate in an Australian context, at a public forum held in Melbourne on 9 July 2008, Professor Garnaut indicated that "on balance" a well designed and simple emissions trading scheme was preferable to the introduction of a carbon tax. Such a scheme would not only allow for permits to be traded at an international level, but it would also allow funds raised from the trade of carbon permits to be used to support a wider variety of climate change programs. In particular the Report highlights that funds raised from carbon permits could be used to support trade exposed industries and provide additional funding for research and development into innovative technologies.

The key features of the emissions trading scheme

proposed by the Review are:

- The emissions trading scheme will issue permits for greenhouse gas emissions up to limits and release them in line with the reduction targets. Reduction targets will be set from 2010 until 2015 after which time, increased reduction targets will be indicative only. Targets for the period 2010 - 2012 should comply with Australia's emissions reduction targets outlined in the Kyoto Protocol.
- Permit should be bought and sold through a competitive process. Permits should initially be sold at a low fixed price.
- The emissions trading scheme should cover as many industry sectors as possible provided that emission levels can be adequately quantified. This will enable costs associated with the scheme to be shared across a broader section of the economy. The Review argues that sectors (such as Waste) that have been excluded from the current emissions trading scheme should be included as soon as possible.
- Retention of permits for use in future years should be permitted. An independent body should be established from which permits can be loaned for short periods.
- The scheme should operate in a way that can be integrated with other trading schemes at an international level.

The Review is scheduled to release a Supplementary Report in August 2008, with the Final Report to be released on 30 September 2008. The Final Report is expected to also contain detailed information in relation to the impact of climate change on individual industry sectors. ■



## Orchison's observations

► By Keith Orchison, Consultant

One of key issues for the Australian Government is the understanding that a carbon price generated by a domestic emissions trading system will not be sufficient on its own to drive investment in new, cleaner generation technology.

This is the policymakers' thinking behind pursuing the much-enlarged renewable energy target and substantial direct grants to energy industry to support innovation, such as the development of clean coal technology, of geothermal generation and of solar power.

The Government is supporting the accelerated development and deployment of renewable energy technologies through its \$500 million Renewable Energy Fund and the \$150 million Energy Innovation Fund and has committed another \$500 million to cleaner coal technologies through its National Low Emissions Coal Initiative.

Speaking at the launching at Parliament House, Canberra, of the 2008 Powering Australia yearbook, edited by Madgwicks energy adviser Keith Orchison, the Minister for Resources and Energy, the Hon Martin Ferguson, said the Government expected the introduction of a carbon price and a revised renewable energy target will inevitably result in the use of more gas and renewables, a race to clean up coal-fired power generation and greater focus on the gains that can be made from end-use energy efficiency.

Energy reform during the Hawke/Keating and Howard Government years had delivered enormous productivity gains in electricity supply, Mr Ferguson added, and the current Government was committed not just to continuing them, but to accelerating change in the market with the support and co-operation of the Council of Australian Governments' Ministerial Council on Energy.

Among the market areas for particular attention, he

listed:

- retail price regulation;
- a consistent national framework for "smart meters";
- a harmonised approach to technical and safety regulation in the energy industry; and
- a national framework for energy-related community service obligations.

Mr Ferguson's comments were made as one of the world's largest energy equipment manufacturers, Alstom, in a submission responding to the Government's green paper on emissions trading, was both applauding the commitment of federal and State governments to funding clean coal technology demonstrations and warning that emissions trading alone could not make carbon capture and sequestration happen in Australia.

In its submission, Alstom said it believed the call by Mr Ferguson for a breakthrough in coal technology development by 2015-2020 was feasible, but added that, because of the need to prove the technologies at large scale and the risks involved, demonstration projects will not be economic on the basis of the value of the carbon dioxide they abate at the carbon price likely to be generated by domestic emissions trading in the short term.

"Market failures related to research, development and commercialisation of expensive low carbon technologies are likely to remain for some time, even with price signals from an emissions trading system and will need to be addressed through other mechanisms," the company said. "For example, the price in the early years of an emissions trading scheme may not be sufficient to support development and commercial deployment of a strong range of renewable energy technologies. The Government has recognised this in allowing for a significantly enhanced renewable energy target for 2020." ■



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..... Continued from page 1

- If a corporation has operational control of a facility that emits 25 kilotonnes or more of greenhouse gases (CO<sub>2</sub> equivalent), or produces or consumes 100 terajoules or more of energy;
- If a corporation is a member of a corporate group that emits 125 kilotonnes or more of greenhouse gases (CO<sub>2</sub> equivalent), or the corporate group produces or consumes 500 terajoules or more of energy.

Corporations that fall into these categories must register with the Greenhouse and Energy Data Officer before 31 August 2009 and must submit a report for the 2008/2009 financial year by 31 October 2009.

Lower thresholds for corporate groups will be introduced by 2010-11. The final thresholds will be 50 kilotonnes or more of greenhouse gases (CO<sub>2</sub> equivalent) or production or consumption of 200 or more terajoules of energy.

Year starting	Greenhouse gas emissions (in KtCo <sub>2</sub> e)	Energy consumption or production (in Tj)
1 July 2008	125	500
1 July 2009	87.5	350
1 July 2010	50	200

An online calculator is available at [www.climatechange.gov.au/reporting](http://www.climatechange.gov.au/reporting) to enable corporations to assess whether their production of emissions and use and production of energy will meet or exceed the thresholds for reporting.

The NGER covers all greenhouse gas emissions. Sectors covered include stationary energy (eg power stations), transport, fugitive emissions, industrial processes (eg smelting) and the waste sector. Non-energy greenhouse gas emissions from agriculture, land use, land use changes and forestry will not be included.

Participation in the scheme is mandatory for corporations who pass the threshold. Penalties may be imposed for breaching the NGER Act. In some circumstances penalties may be enforced against chief executive officers. ■

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We are one of the few firms outside of the large law firms with experience in advising energy businesses on a range of regulatory and business issues.

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