

Climate Change Group

7 July 2008



National Greenhouse and Energy Reporting Scheme

1. What is the scheme?

National Greenhouse and Energy Reporting Scheme was created by the National Greenhouse and Energy Reporting Act 2007 and Regulations 2008 ('the scheme'). The scheme requires corporations which emit greenhouse gases or consume or produce energy above certain threshold levels to register and report on the emissions and energy consumption or production of their corporate groups. Reports also need to detail the activities of contractors where those activities produce emissions or produce or consume energy over certain threshold levels.

Penalties for failing to register and report as and when required are substantial:

- up to \$220,000 for corporations which fail to register
- daily penalties of up to \$11,000 may also apply for each

day that the controlling corporation's group remains unregistered

- up to \$110,000 apply for breaching the reporting requirements and
- in certain circumstances CEOs may be held personally liable.

2. Who does the scheme apply to?

The scheme applies to corporations registered in Australia, which must report on their own emissions, energy production & consumption and those of their subsidiaries, and in certain circumstances, the joint ventures or partnerships they are involved in. The scheme covers emissions, energy production and consumption which result from 'facilities under the operational control' of the corporate group.

A facility is an activity or series of activities which involves

the production of greenhouse gas emissions or the production or consumption of energy. Specific provisions apply to, for example, primary production, transport and electricity and gas production. A corporation has 'operational control' over facilities if it has the authority to introduce and implement operating, health and safety and environmental policies.

(a) What is the greenhouse gas emissions threshold?

Greenhouse gas emissions are measured as units of carbon dioxide, and as Scope 1 (emissions directly resulting from the activities) or Scope 2 emissions (generated by consumption of electricity, heating, cooling or steam at the facility).

For the 2008/2009 financial year ("Stage 1"), the threshold is 125 kilotonnes or more of carbon dioxide. The threshold decreases in the 2009/2010 financial year ("Stage 2") to 87.5 kilotonnes, and thereafter ("Stage 3") the threshold will be set at 50 kilotonnes.

(b) What is the energy production or consumption threshold?

Production of energy can occur either by extraction or capture of energy from a natural source, or by manufacturing energy from one form to another. It is irrelevant for the purposes of the scheme whether this energy is used by the facility itself or by another party. Consumption of energy includes the use of energy by the facility and losses during the extraction, production or transmission of energy.

The thresholds for consumption or production of energy are: 500 terajoules or more in Stage 1; 350 terajoules or more in Stage 2; and 200 terajoules or more in Stage 3.

According to a report published by HAC Consulting Pty Limited in November 2007 (the 'HAC Report'; available at: <http://www.HACAustralia.com>) the use of 100 terajoules of energy is equivalent to use of over 2.5 million litres of petrol per annum, operation of a fleet of more than 75 buses or 1500 cars, or a spend of more than A\$2m or more per annum on electricity or A\$600K on natural gas.

(c) What is the single facility threshold?

If a single facility causes greenhouse gas emissions of more than 25 kilotonnes or produces or consumes more than 100 terajoules of energy, the scheme will apply to the corporate group with operational control of the facility.

3. Is your business affected?

The Government has made an online calculator available at <http://www.climatechange.gov.au/reporting/calculator/index.html>. The calculator allows input of specific data relating to the activities of corporations. This data is then used to calculate whether a corporation is likely to trigger any of the NGER thresholds.

4. Corporate compliance: important dates

	Registration period opens	Registration period closes	Annual report due
Stage 1	July 1 2008	August 31 2009	October 31 2009
Stage 2	July 1 2009	August 31 2010	October 31 2010
Stage 3	July 1 2010	August 31 2011	October 31 2011

5. Collecting and Reporting Data

The National Greenhouse and Energy Reporting (Measurement) Determination 2008 outlines methods for measuring GHG emissions, energy production and consumption. The Regulations specify reporting standards which must be adopted. An authorised officer appointed by the Greenhouse and Energy Data Officer has the power to enter any premises during normal business hours for the purpose of determining compliance with the scheme's registration and reporting requirements.

6. Liability of CEOs

Breach of the civil penalty provisions under the Act may lead to personal liability for the CEO of a corporation or corporate group. This could occur if the CEO is reckless or negligent as to the breach of a civil penalty provision, influenced the conduct of the corporation so as to breach the provision or failed to take all reasonable steps to prevent the contravention. In such circumstances, a court could impose a fine on the CEO.

For further information please contact:

Eleanor Whyte | Senior Associate
D +61 3 9672 9153
E ewhyte@landers.com.au

Olga Hancock | Senior Associate
D +61 2 9230 7612
E ohancock@landers.com.au

Christopher Stevens | Lawyer
D +61 3 9672 9348
E cstevens@landers.com.au

Melbourne

Level 12 Bourke Place
600 Bourke Street
Melbourne VIC 3000
T +61 3 9672 9111
F +61 3 9670 2723

Sydney

Level 5 Angel Place
123 Pitt Street
Sydney NSW 2000
T +61 2 9233 5092
F +61 2 9233 5091

www.landars.com.au