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The National Greenhouse and Energy Reporting Act 2007 - A synopsis

PART 1 – OBJECTIVES

Part 1 of the Act sets out the objects of the Act which, broadly speaking, is to introduce a single national reporting framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption, and energy production of corporations to:

- (1) underpin the introduction of an emissions trading scheme;
- (2) inform government policy formulation and the Australian public;
- (3) meet Australia's international reporting obligations;
- (4) assist Commonwealth, State and Territory government programs and activities;
- (5) avoid the duplication of similar reporting requirements in the States and Territories.

PART 2 – REGISTRATION

A register is kept by the Greenhouse and Energy Data Officer for the purposes of this Act.

Section 13 sets out thresholds relating to the total amount of greenhouse gas emitted and or the total amount of energy consumed or produced by a corporation for a financial year. Corporations that meet these thresholds are obliged to register under the Act to report the following to the Greenhouse and Energy Data Officer at the end of every financial year:

- (a) The total amount of greenhouse gas emissions of any of its facilities;
- (b) The total amount of energy produced by its facilities;
- (c) The total amount of energy consumed by its facilities.

A corporation that is required to register under the Act but does not do so is liable to be penalised of up to 2000 penalty units.

Corporations that do not meet the threshold may still apply to be registered under the Act if it is undertaking or proposing to undertake a greenhouse gas project.

Registered corporations that are no longer likely to meet the threshold for the current financial year or for the next two financial years may apply to be deregistered and released from the obligations of reporting under the Act.

PART 3 – OBLIGATIONS OF REGISTERED COMPANIES

Reporting Obligations

A registered corporation must report the following to the Greenhouse and Energy Data Officer at the end of its trigger year or at the end of every financial year:

- (a) The total amount of greenhouse gas emissions of any of its facilities;
- (b) The total amount of energy produced by its facilities;
- (c) The total amount of energy consumed by its facilities.

A registered corporation that does not report to the Greenhouse and Energy Data Officer can be penalised 2000 civil penalty units for failing to comply with its reporting obligations.

If a corporation is required to provide certain information in its report which it does not possess or control, it must apply to the Greenhouse and Energy Data Officer to make a determination compelling another person to produce that information. Such information includes:

- (a) Information that the corporation is not entitled to acquire from the person possessing the information;
- (b) Information that has been refused to be provided by the person possessing the information.

The person or entity possessing the required information must provide that information to the Greenhouse and Energy Data Officer on or before the day specified in the determination. Failing to do so will expose the person to 400 penalty units if the person is an individual, or 2000 penalty units otherwise.

The information that must be provided by the person need not be included in the corporation's report.

Record-Keeping Obligations



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A registered corporation must keep records of its activities and records of its members' activities which:

- (a) Allow the corporation to report accurately under the Act; and
- (b) Enable the Greenhouse and Energy Data Officer to ascertain whether the corporation has complied with its obligations.

"Members" is defined in section 8 of the Act to include the corporation's subsidiaries, joint ventures, and partnerships.

A registered corporation is required to retain the records for 7 years from the end of the year in which the activities take place.

Similarly, a person compelled to produce information to the Greenhouse and Energy Data Officer is also compelled to keep records of his or her activities.

Failure of the person to keep records will expose that person to 200 penalty units (if the person is an individual) or 1000 penalty units (if the person is not an individual).

A corporation that does not comply with its record keeping obligations will be exposed to a civil penalty of 1000 penalty units.

PART 4 – DISCLOSURE OF INFORMATION

Disclosure of Information

The following persons may be imprisoned for 2 years if they disclose greenhouse and energy information for purposes other than those specified in the Act:

- (a) The Greenhouse and Energy Data Officer;
- (b) A member of the staff of the Greenhouse and Energy Data Officer;
- (c) An authorised officer;
- (d) An external auditor;
- (e) An employee of the Commonwealth, State or Territory, or an authority of the Commonwealth, State or Territory;
- (f) A person appointed to an office under a law of the Commonwealth, State, or Territory.

Greenhouse and Energy Information may be disclosed to the following persons or bodies for the purposes of the Act:

- (a) a Commonwealth Minister, a Secretary of a Department or head of an authority of the Commonwealth;
- (b) the Administrative Appeals Tribunal for the purposes of or in connection with court or tribunal proceedings;
- (c) States and Territories.

Publication of Information

The Greenhouse and Energy Data Officer must publish on a website the information reported by a registered corporation relating to its greenhouse gas emissions and its energy production or consumption.

The Greenhouse and Energy Data Officer may also publish on the website information relating to the greenhouse gas projects undertaken by the registered corporation.

A registered corporation may apply to the Greenhouse and Energy Data Officer not to publish certain information if the information reveals or is capable of revealing the following:

- (a) trade secrets; or
- (b) any other matter with a commercial value that would be or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Similarly, a registered corporation may request that certain greenhouse and energy information be disclosed. The request must be in writing and must specify the information and the person to whom such information is to be disclosed to.

PART 5 – ENFORCEMENT

Civil Penalties

The Federal Court may order a person to pay a pecuniary penalty under the Act (known as a Pecuniary Penalty Order) if it is satisfied that the person contravened a civil penalty provision. The penalty is a civil debt payable to the Commonwealth which may therefore be enforced as if it were an order made in civil proceedings against a person to recover a debt.

Section 35 to 36 state that, if a person has been criminally convicted of an offence that involves conduct which is

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substantially the same as the conduct constituting the contravention of a civil penalty provisions, the Federal Court must not make a Pecuniary Penalty Order against that person for contravention of a civil penalty provision.

- the Federal Court must not make a pecuniary penalty order against that person for contravention of a civil penalty provision; and
- if proceedings for a Pecuniary Penalty Order have been commenced against a person, those proceedings are stayed. The proceedings for the Order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the Order are dismissed.

Although civil proceedings cannot be commenced when a criminal proceeding is on foot against a person, the flipside applies – i.e. criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

Infringement Notices

A person who has breached a civil penalty provision may be provided with an Infringement Notice relating to an alleged contravention. The infringement notice must not be given more than 12 months after the day of the alleged contravention and must not require the person to pay more than one penalty in respect of the same conduct.

Enforceable Undertakings

A person may provide an undertaking to the Greenhouse and Energy Data Officer that he will take or refrain from taking a specified action to comply with the Act and regulations. The undertaking may be withdrawn or varied at any time with the consent of the Greenhouse and Energy Data Officer.

If the undertaking is not complied with, the Greenhouse and Energy Data Officer may apply to the Court for any or all of the following orders:

- (a) an order directing the person to comply with the undertaking;
- (b) an order directing the person to pay to the Greenhouse and Energy Data Officer an amount

equal to the financial benefit that the person obtained as a result of the breach;

- (c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order the Court considers appropriate.

Liability of Chief Executive Officers of Corporations

Section 47 of the Act states that chief executive officers of corporations will be personally liable to pay the pecuniary penalties for contraventions of civil penalty provisions under the Act if:

- (a) their corporation contravenes a civil penalty provision; and
- (b) the chief executive officer knew, or was reckless or negligent as to whether the contravention would occur;
- (c) the chief executive officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention.

PART 6 – ADMINISTRATION

Miscellaneous

Part 6 of the Act sets out the functions and powers of the Greenhouse and Energy Data Officer.

Section 56 of Part 6 also sets out the list of decisions the Greenhouse and Energy Data Officer is entitled to make which are reviewable by the Administrative Appeals Tribunal.

Monitoring Compliance

The Greenhouse and Energy Data Officer may appoint authorised officers under the Act. The authorised officers have the power to do the following to ensure compliance with the Act:

- (a) enter any premises with a search warrant or with the consent of the occupier of the premises;
- (b) search the premises;
- (c) examine any activity conducted on the premises;



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- (d) examine anything in the premises that may relate to information provided for the purposes of the Act;
- (e) take any equipment or copy any document in the premises. Equipment that is taken from the premises may be secured for up to 24 hours unless the authorised officer obtains an extension of the period from a magistrate. The magistrate can extend the period for a further 48 hours;
- (f) ask questions to the occupier or the person representing the occupier. It is an offence for the person to refuse to answer the questions posed to him or her. (Penalty: 10 penalty units);
- (g) compel the person to provide certain information.

External Audits

If the Greenhouse and Energy Data Officer has reasonable grounds to suspect that a corporation has contravened, is contravening, or is proposing to contravene the Act, the Officer may:

- (a) appoint an external auditor of its choice to carry out an external audit on one or more aspects of the corporation's compliance with the Act; or
- (b) require the corporation to appoint an external auditor of its choice.

The corporation must comply with the above, failing which they will be open to the risk of incurring 10000 penalty units.

Once an external auditor is appointed, the corporation must arrange for the auditor to carry out the external audit and provide the auditor with all reasonable facilities and assistance necessary for the effective exercise of the auditor's duties under the Act. Failing to do so will expose the corporation to incurring 250 penalty units.

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