

Should I report?

The National Greenhouse and Energy Reporting Act 2007 (Cth) (the NGER Act) was passed by the Federal Government on 29 September 2007 establishing a mandatory reporting system for corporate greenhouse gas emissions and energy production and consumption. The first reporting period under the Act commenced on 1 July 2008.

The intent of the reporting system is to assist with the forthcoming introduction of the Emissions Trading Scheme.

It is important to understand your obligations under the NGER Act.

The penalties for non compliance can include a maximum fine of \$220,000, with a further maximum daily penalty of \$11,000 for each day the contravention continues. Of concern is that equivalent penalties can be imposed directly on a Chief Executive Officer.

Application

A controlling corporation must register under the NGER Act if they meet one or more of the thresholds for a financial year ending on or after 30 June 2009 (section 12(1)) (known as the trigger year).

A registered corporation must provide in respect of the trigger year and each year the corporation is registered a report in respect of its:

- greenhouse gas emissions;
- energy production; and
- energy consumption.

All of the above relate to the operation of facilities under the operational control of the corporations and entities that are members of the corporation's group during that financial year (section 19(1) and 19(2)). The controlling corporation's group and members of a group can include:

- controlling corporation;
- controlling corporation's subsidiaries;
- joint ventures; and/or
- partnerships.

Circumstances in which an activity will fall within the purview of NGER are contained in the National Greenhouse and Energy Report Regulations 2008.

Section 9 of the NGER Act provides that a 'controlling cooperation' has operational control over a facility if:

'(a) it has the authority to introduce and implement any or all of the following for the facility:

- (i) operating policies;
 - (ii) health and safety policies;
 - (iii) environmental policies;
- and meets the requirements of the regulations, or

(b) the Greenhouse and Energy Data Officer declares the corporation or member to have operational control of the facility.'

Thresholds for reporting

The 'trigger' thresholds that would require reporting by a controlling corporation are as follows:

- Year One (2008-2009) - emission of green house gases that have a carbon dioxide equivalence of 125 kilotonnes or more; 500 terajoules or more of energy produced or consumed;
- Year Two (2009-2010) - emission of green house gases that have a carbon dioxide equivalence of 87.5 kilotonnes or more 350 terajoules or more of energy produced or consumed; and

- Year Three (2010-2011) - emission of green house gases that have a carbon dioxide equivalence of 50 kilotonnes or more; 200 terajoules or more of energy produced or consumed.

There is also a threshold for individual facilities 'under the operational control of entities that are members of the group', with the threshold being:-

- emission of green house gases that have a carbon dioxide equivalence of 25 kilotonnes or more; and
- 100 terajoules or more of energy produced or consumed.

It is not clear at this stage whether the threshold for a 'controlling corporation' will be reduced any further at the conclusion of the Year Three reporting period.

Things to consider

One of the first things to be considered is whether a corporation is required to report now or in the future in accordance with the NGER Act.

If the NGER Act could apply appropriate steps need to be taken to ensure that the corporation can and does comply with their obligations.

In terms of the future projects consideration needs to be taken into account of the following:

- Whether reporting is required?
- Who should be nominated to report, particularly in the case of Joint Ventures and Partnerships?
- Who has control of the information required for reporting?
- Whether an indemnity is required in the event a nominated partner fails to report?

There are a myriad of issues to address in respect of reporting under the NGER Act and every situation should be reviewed to identify such issues.

For further information please do not hesitate to contact Melanie Palmer (08) 9288 6989 or Emma McGrath (08) 9288 6910.

Environmental Focus Group



Peter Beekink
Partner
Property Services
Tel +61 9288 6751
peter.beekink@lavanlegal.com.au



Paul McQueen
Partner
Planning, Environment and Land Compensation
Tel +61 9288 6943
paul.mcqueen@lavanlegal.com.au



Melanie Palmer
Senior Associate
Planning, Environment and Land Compensation
Tel +61 9288 6989
melanie.palmer@lavanlegal.com.au



Bronwyn Davies
Senior Associate
Energy and Resources
Tel +61 9288 6837
bronwyn.davies@lavanlegal.com.au



Tamara Heng
Associate
Property Services
Tel +61 9288 6869
tamara.heng@lavanlegal.com.au



Emma McGrath
Solicitor
Planning, Environment and Land Compensation
Tel +61 9288 6910
emma.mcgrath@lavanlegal.com.au



Mona Gill
Solicitor
Energy and Resources
Tel +61 9288 6949
mona.gill@lavanlegal.com.au