

Introduction and background

Referral of the Bill

- 1.1 On 24 February 2020, Mr Andrew Wilkie MP presented a private members' Bill for an Act to amend the *National Greenhouse and Energy Reporting Act 2007*.
- 1.2 On 27 February 2020, the House of Representatives Selection Committee referred the National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020 (the Bill) to the House of Representatives Standing Committee on the Environment and Energy for inquiry and report.
- 1.3 On 3 March 2020, Mr Andrew Wilkie MP was appointed by the House of Representatives to the Committee as a supplementary member for the purposes of the inquiry.
- 1.4 At its private meeting on 4 March 2020, the Committee resolved to open the inquiry for public submissions, publish details on its website and expressed an intention to hold public hearings.
- 1.5 The Committee's inquiry received ten submissions and held one public hearing where five witnesses gave evidence.

Objective and scope of the inquiry

- 1.6 The objective of the inquiry is to investigate the adequacy of the Bill in achieving its policy objectives and, where possible, identify any unintended consequences.

Purpose and overview of the Bill

- 1.7 The Bill seeks to amend the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) to ensure transparency and accountability in the way the Australian Government reports carbon emissions.¹
- 1.8 The Bill seeks to make two key changes to the NGER Act. Firstly the Bill seeks to amend the Act to include ‘scope 3’ emissions in all reporting obligations and secondly, the Bill seeks to amend the NGER Act to ensure that the Minister tables Australia’s national greenhouse gas inventory estimates in Parliament each quarter.

Capture of scope 3 emissions data in all reporting obligations

- 1.9 The Bill’s Explanatory Memorandum states that this amendment allows Australia to track its impact as an exporter of fossil fuels and allows the public access to information about Australia’s position in contributing to global greenhouse gas emissions.²
- 1.10 The first objective of the Bill is that it seeks to capture scope 3 emissions data in the reporting of Australia’s national greenhouse gas emissions. The reporting is done through a program administered by the Clean Energy Regulator (CER) known as the National Greenhouse and Energy Reporting Scheme (NGERS). NGERS is established by the NGER Act.
- 1.11 The National Greenhouse and Energy Reporting (Measurement) Determination 2008 prescribes methods, criteria and measurement standards for calculating greenhouse gas emissions and energy data under the NGER Act. The Determination requires that only scope 1 and 2 emissions are reported.³
- 1.12 Under the NGERS, scope 1 emissions are defined as:
... the emissions released to the atmosphere as a direct result of an activity, or series of activities at a facility level. Scope 1 emissions are sometimes referred to as direct emissions ...⁴

1 Explanatory Memorandum, National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, p. 2.

2 Explanatory Memorandum, National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, p. 2.

3 Clean Energy Regulator, ‘Measurement Determination’
<http://www.cleanenergyregulator.gov.au/NGER/Legislation/Measurement-Determination>
viewed 16 June 2020.

4 Clean Energy Regulator, ‘Greenhouse gases and energy’
<http://www.cleanenergyregulator.gov.au/NGER/About-the-National-Greenhouse-and-Energy-Reporting-scheme/Greenhouse-gases-and-energy>, viewed 16 June 2020.

- 1.13 Under the NGERs, scope 2 emissions are defined as:
- ... the emissions released to the atmosphere from the indirect consumption of an energy commodity. For example, 'indirect emissions' come from the use of electricity produced by the burning of coal in another facility.⁵
- 1.14 In seeking to have scope 3 emissions data included in Australia's international reporting obligations, the Bill's Explanatory Memorandum provides some understanding of the concept of a scope 3 emission.⁶
- 1.15 The Department of Industry, Science, Energy and Resources (DISER) provided the Committee with additional background about the basis for scope 3 emissions:
- Scope 3 is a concept that comes from the World Business Council Greenhouse Gas Protocol. Scope 3 emissions are indirect emissions that occur in the value chain of the reporter, including both upstream and downstream emissions. ... It is all the emissions generated by your upstream suppliers and all the emissions generated by downstream users of your products – and these could be anywhere in the world.⁷
- 1.16 DISER also submitted its own interpretation of a scope 3 emission as would be applicable under the Bill:
- The concept of an emission used by the UN transparency framework is that of a release of gas from a specific location to the atmosphere. 'Scope 3 emission' calculations, on the other hand, attach estimates of emission impacts to the production, supply and use of goods and services. Elements of these scope 3 emission calculations relate to the economic flows of goods and services that cross international borders and are, therefore, not consistent with the UN transparency framework established by the international community to ensure transparency and accountability in emissions reporting.⁸

5 Clean Energy Regulator, 'Greenhouse gases and energy' <http://www.cleanenergyregulator.gov.au/NGER/About-the-National-Greenhouse-and-Energy-Reporting-scheme/Greenhouse-gases-and-energy>, viewed 16 June 2020.

6 Explanatory Memorandum, National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, p. 2.

7 Mr Rob Sturgiss, General Manager, National Inventory Systems and International Reporting Branch, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 1 May 2020, p. 3.

8 Department of Industry, Science, Energy and Resources, *Submission 10*, p. 3.

Quarterly update of National Greenhouse Gas Inventory to be tabled in Parliament

- 1.17 The second objective of the Bill is that it seeks to have the quarterly update of Australia's National Greenhouse Gas Inventory (NGGI) be provided to the Minister and for the update to be tabled in each House of Parliament within 15 sitting days after the day on which the report is provided to the Minister.
- 1.18 The Explanatory Memorandum provides the following outline and rationale for this amendment:

The Bill additionally amends the NGER Act to ensure that the Minister tables Australia's national greenhouse gas inventory estimates in Parliament each quarter. This will provide certainty for the Minister in his or her reporting obligations, and make the report accessible to the public soon after it is completed. This measure is intended to increase the transparency of emissions reporting, and promote accountability for the Government as it enacts climate change policy. This amendment is in response to criticism of the Government suggesting it delays or times the release of emissions data.⁹

Key provisions of the Bill

- 1.19 In seeking to amend the NGER Act, the Bill includes the following key provisions:
- 1.20 *Item 1* of the Bill inserts the term 'scope 3 emission of greenhouse gas' into the Dictionary of the Act.¹⁰
- 1.21 *Items 2 through 19* insert the term 'scope 3 emissions' into various reporting requirements within the Act.¹¹
- 1.22 *Item 20* inserts a new section after section 24 of the Act.¹² Section 24 of the Act deals with the publishing of information relating to greenhouse gas emissions, energy production and energy consumption. The Bill seeks to

9 Explanatory Memorandum, National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020.

10 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, item 1.

11 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, items 2 - 19.

12 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, item 20.

insert a new section into the Act, section 24A. The new section includes four key elements:

- Section 24A(1): would cause the regulator (in this case, the Clean Energy Regulator) to have to provide the Minister with ‘a report on the estimates of Australia’s national greenhouse gas inventory as at the end of the quarter.’¹³
- Section 24A(2): prescribes three statistical elements that the report must include:
 - (a) national emissions estimates for the quarter; and
 - (b) national emissions estimates for the year ending at the end of the quarter; and
 - (c) the estimates referred to in paragraphs (a) and (b) broken down by sector.¹⁴
- Section 24A(3): the Minister must table the report in each House of Parliament within 15 sitting days after the day on which the report is received.¹⁵
- Section 24A(4): prescribes the meaning of the term ‘quarter’ for the purposes of the new section to mean ‘...period of 3 months commencing on 1 January, 1 April, 1 July or 1 October of a year.’¹⁶

1.23 Item 21 inserts the term ‘under section 24’ into subsection 25(1) of the Act, after the existing term ‘published’. Subsection 25(1) prescribes that a registered corporation or person required to provide a report under sections 22G, 22X or 22XB of the Act or a person required to provide information under section 20 of the Act ‘... may apply to the Regulator requesting information not be published if the information reveals, or could be capable of revealing ...’ matters relating to trade secrets or those of a commercial value that would or could be destroyed or diminished if the information were disclosed.¹⁷

13 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, item 20.

14 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, item 20.

15 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, item 20.

16 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, item 20.

17 National Greenhouse and Energy Reporting (Transparency in Carbon Emissions Accounting) Bill 2020, schedule 1, item 21.

Greenhouse reporting obligations

- 1.24 This section considers Australia's greenhouse gas reporting obligations including domestic and international frameworks.

Greenhouse gas reporting frameworks

- 1.25 Australia is a signatory to international climate agreements under the United Nations Framework Convention on Climate Change (UNFCCC).
- 1.26 The UNFCCC came into force in 2005 under the instrument known as the Kyoto Protocol, which committed industrialised countries to limit and reduce greenhouse gases emissions in accordance with agreed individual targets.¹⁸
- 1.27 The Paris Agreement, which built upon the UNFCCC's objectives, entered into force in 2016. The Paris Agreement was negotiated by all major governments and provides a framework to undertake ambitious efforts to combat climate change and adapt to its effects, while also providing enhanced support for developing countries to do so. The Paris Agreement aims to limit global temperature rise this century while strengthening the ability of countries to deal with the impact of climate change.¹⁹
- 1.28 The UNFCCC website advises that:
- The Paris Agreement requires all Parties to put forward their best efforts through nationally determined contributions (NDCs) and to strengthen these efforts in the years ahead. This includes requirements that all Parties report regularly on their emissions and on their implementation efforts.²⁰
- 1.29 Australia ratified the Paris Agreement on 9 November 2016.²¹

National Greenhouse Accounts and National Greenhouse Gas Inventory (NGGI)

- 1.30 Australia's National Greenhouse Accounts (NGA) track national emissions from 1990 onwards. Australia's greenhouse gas emissions are estimated as a nation, by state and by industry.²²
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18 Kyoto Protocol to the United Nations Framework Convention on Climate Change, opened for signature 16 March 1998, 2303 UNTS 162 (entered into force 16 February 2005).

19 Paris Agreement to the United Nations Framework Convention on Climate Change, opened for signature 22 April 2016, (entered into force 4 November 2016).

20 United Nations Framework Convention on Climate Change, 'The Paris Agreement' <https://cop23.unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> viewed 18 June 2020.

21 Paris Agreement to the United Nations Framework Convention on Climate Change, opened for signature 22 April 2016, (entered into force 4 November 2016).

- 1.31 The NGA consists of a range of publications, databases and inventories that are used to:
- meet Australia's reporting commitments under the UNFCCC
 - track progress against Australia's emission reduction commitments
 - inform policy makers and the public.²³
- 1.32 As well as submitting the National Greenhouse Gas Inventory (NGGI), the Department produces a *Quarterly Update of Australia's National Greenhouse Gas Inventory*. The quarterly update tracks Australia's progress towards its annual NGGI report. The most recent version of the quarterly update provides estimates of Australia's national inventory of greenhouse gas emissions up to the December quarter of 2019, and emissions from the National Electricity Market (NEM) up to the March quarter of 2020.²⁴

National Greenhouse and Energy Reporting Scheme (NGERS)

- 1.33 The NGERS provides a national framework for reporting and disseminating company information about greenhouse emissions, and energy production and consumption. The reporting published under NGERS informs the Australian Government's policy and program development nationally and contributes to Australia's international greenhouse gas reporting obligations.²⁵
- 1.34 Under the NGERS, Australian facilities and controlling corporations must register with the CER under the requirements of the NGER Act. In the case of corporations, registration is only required once for the first year that it triggers a threshold.²⁶

22 Department of Industry, Science, Energy and Resources, 'Tracking Australia's greenhouse gas emissions' <https://publications.industry.gov.au/publications/climate-change/climate-change/climate-science-data/greenhouse-gas-measurement/tracking-emissions.html>, viewed 18 June 2020.

23 Department of Industry, Science, Energy and Resources, 'Tracking Australia's greenhouse gas emissions' <https://publications.industry.gov.au/publications/climate-change/climate-change/climate-science-data/greenhouse-gas-measurement/tracking-emissions.html>, viewed 25 June 2020.

24 Department of Industry, Science, Energy and Resources, 'National Greenhouse Gas Inventory: September 2019' <https://www.industry.gov.au/data-and-publications/national-greenhouse-gas-inventory-december-2019>, viewed 28 July 2020.

25 Clean Energy Regulator, 'National Greenhouse and Energy Reporting Data', <http://www.cleanenergyregulator.gov.au/NGER/National%20greenhouse%20and%20energy%20reporting%20data>, viewed 25 June 2020.

26 Clean Energy Regulator, 'About the National Greenhouse and Energy Reporting Scheme', <http://www.cleanenergyregulator.gov.au/NGER/About-the-National-Greenhouse-and-Energy-Reporting-scheme>, viewed 25 June 2020.

- 1.35 Broadly, the CER defines a facility as ‘an activity or series of activities that generate greenhouse gas emissions and produce or consume energy.’²⁷ Additionally, the CER defines a controlling corporation as:
- ... a 'constitutional corporation' that does not have an Australian incorporated holding company. It is usually the corporation at the top of the corporate hierarchy in Australia and can be a 'non-operational' holding company that does not handle day-to-day business. It can also be a foreign incorporated entity that operates directly in Australia without an Australian incorporated subsidiary.²⁸
- 1.36 Facilities and controlling corporations registered under the NGERs must provide an NGER report each year until it is deregistered under the NGERs.
- 1.37 Three types of reports can be submitted. For the purposes of this inquiry, only reports made under section 19 of the NGER Act dealing with energy and emissions will be considered. According to the CER:
- Controlling corporations who exceed either a corporate group or a facility threshold must report their scope 1 and scope 2 emissions and energy production and consumption data to the Clean Energy Regulator under section 19 of the NGER Act.²⁹
- 1.38 Registered corporations must report their greenhouse gas emissions data, and energy production and consumption, to the CER by 31 October each year. A registered corporation's report must contain greenhouse and energy information in relation to the activities of the facilities under the operational control of it or its group members as at 30 June of the relevant reporting year.³⁰
- 1.39 By 28 February each year, the CER is required to publish a point-in-time extract of reported scope 1 and scope 2 greenhouse gas emissions in

27 Clean Energy Regulator, ‘Facilities and Operational Control’, <http://www.cleanenergyregulator.gov.au/NGER/Reporting-cycle/Assess-your-obligations/Facilities-and-operational-control>, viewed 25 June 2020.

28 Clean Energy Regulator, ‘Understand your corporate group’, <http://www.cleanenergyregulator.gov.au/NGER/Reporting-cycle/Assess-your-obligations/Understand-your-corporate-group>, viewed 25 June 2020.

29 Clean Energy Regulator, ‘Report’, <http://www.cleanenergyregulator.gov.au/NGER/Reporting-cycle/Report>, viewed 25 June 2020.

30 Clean Energy Regulator, ‘Report’, <http://www.cleanenergyregulator.gov.au/NGER/Reporting-cycle/Report>, viewed 25 June 2020.

addition to net energy consumption for each corporation or facility that exceeds its threshold.³¹

Relevant recent reports

1.40 Two recent reports consider Australia's performance against its greenhouse gas reporting obligations.

2018 Climate Change Authority Review of the National Greenhouse and Energy Reporting legislation - final report

1.41 In 2018, the Climate Change Authority (CCA) released a review of the National Greenhouse and Energy Reporting legislation and is required to conduct a review every five years thereafter.³² In conducting an extensive review with a broad range of stakeholders, the CCA found that:

... the legislation is operating well, is meeting its objectives and is generally fit for purpose. The reporting scheme continues to enjoy broad support from industry, governments and others. It is widely considered to be a best-practice approach to measuring and reporting emissions and energy and compares favourably to schemes in other countries. The high quality data collected by the scheme is used extensively by governments and others to develop energy and climate change policies and is a critical input to meeting Australia's international energy and emissions reporting obligations.³³

1.42 With particular reference to scope 3 emissions, the CCA found that the collection of scope 3 emissions data would be resource intensive and unlikely to be proportionate to its value for data users at this stage. In addition, the CCA noted that other Australian Government and international fora existed to support scope 3 emissions reporting. The CCA concluded that '... reporting of scope 3 emissions should not be

31 Clean Energy Regulator, 'National Greenhouse and Energy Reporting Data', <http://www.cleanenergyregulator.gov.au/NGER/National%20greenhouse%20and%20energy%20reporting%20data>, viewed 25 June 2020.

32 Climate Change Authority, 'Review of the National Greenhouse and Energy Reporting legislation - final report' <https://www.climatechangeauthority.gov.au/publications/review-national-greenhouse-and-energy-reporting-legislation-final-report>, viewed 28 July 2020.

33 Climate Change Authority, 'Review of the National Greenhouse and Energy Reporting legislation - final report' *Fact Sheet* <https://www.climatechangeauthority.gov.au/publications/review-national-greenhouse-and-energy-reporting-legislation-final-report>, viewed 28 July 2020.

required at this stage under the National Greenhouse and Energy Reporting scheme.’³⁴

Auditor-General Report No. 1 of 2017-18 Accounting and Reporting of Australia’s Greenhouse Gas Emissions Estimates and Projections

- 1.43 In 2017, the Auditor-General released his report considering the effectiveness of the then Department of the Environment and Energy’s arrangements for the preparation and reporting of Australia’s greenhouse gas emissions estimates and projections.³⁵ The audit found that Australia’s national greenhouse gas inventory compared favourably to those of other developed countries. The audit concluded that the arrangements established by the department for the preparation and reporting of Australia’s greenhouse gas emissions estimates and projections were largely effective.
- 1.44 The audit made three recommendations to which the Department agreed. These were that the Department should:
- introduce consistent quality control and assurance procedures to improve the accuracy of inventory data and referencing to source data
 - to the maximum extent practicable, publish projected abatement from Australian Government greenhouse gas emission reduction measures, along with related key assumptions, in future projections documents; and expand its release of emissions projections information to include key data inputs, assumptions, formulas and methods sufficient to enable users to recalculate emissions projections within a reasonable degree of precision
 - undertake fit-for-purpose risk assessments for the preparation and reporting of inventory estimates and emissions projections in accordance with the department’s risk management policy and guidelines, and actively monitor its implementation of risk treatments.³⁶

34 Climate Change Authority, ‘Review of the National Greenhouse and Energy Reporting legislation - final report’ <https://www.climatechangeauthority.gov.au/publications/review-national-greenhouse-and-energy-reporting-legislation-final-report>, p. 55, viewed 28 July 2020.

35 Australian National Audit Office, ‘Accounting and Reporting of Australia’s Greenhouse Gas Emissions Estimates and Projections’, Auditor-General Report No. 1 of 2017-18.

36 Australian National Audit Office, ‘Accounting and Reporting of Australia’s Greenhouse Gas Emissions Estimates and Projections’, Auditor-General Report No. 1 of 2017-18.