

National Greenhouse and Energy Reporting Amendment Bill 2009

The inquiry

1.1 On 19 March 2009, the Senate referred the provisions of the National Greenhouse and Energy Reporting Amendment Bill 2009 to the Senate Standing Committee on Finance and Public Administration (the committee) for inquiry and report by 7 May 2009.

1.2 The committee received 5 public submissions, and one item of correspondence. A list of organisations that made public submissions can be found at Appendix 1. The committee did not hold any hearings for this inquiry. Submissions may be accessed through the committee's website at http://www.aph.gov.au/senate/committee/fapa_ctte/index.htm.

Purpose of the bill

1.3 The purpose of the bill is to amend the *National Greenhouse and Energy Reporting Act 2007* (the act) 'to better reflect the original policy intent of the act, and to better facilitate its administration'.¹ The bill incorporates two schedules, the first being amendments relating to audits and the second being an amendment relating to the publishing of information.

1.4 The act established a national framework for reporting greenhouse gas emissions, certain abatement actions, as well as energy consumption and production by corporations, from the 2008–09 financial year.²

1.5 The act was amended through the National Greenhouse and Energy Amendment Bill 2008. The amendments sought to improve the administration of the act, and to 'slightly expand the number of matters which may be published by the Greenhouse and Energy Data Officer (GEDO), in order to improve public access to information on corporate use of energy and greenhouse gas emissions'.³ The National

1 National Greenhouse and Energy Reporting Amendment Bill 2009 Explanatory Memorandum, p. 2.

2 National Greenhouse and Energy Reporting Bill 2007 Bills Digest, Parliamentary Library, 10.9.07, p. 3. Please note that the NGER Bill 2007 was referred to the Standing Committee on Environment, Communications, Information Technology and the Arts for inquiry. Details of this inquiry and the report can be found at http://www.aph.gov.au/Senate/committee/ecita_ctte/completed_inquiries/2004-07/greenhouse/index.htm.

3 National Greenhouse and Energy Reporting Amendment Bill 2008 Explanatory Memorandum, p. 2.

Greenhouse and Energy Reporting Amendment Bill 2009 (the bill) is thus the second bill introduced with the intention of amending the act.

1.6 The bill is aimed at improving the operation of the act, and incorporates some stakeholder feedback received by the Government since the introduction of the act. The Hon Greg Combet, MP, Parliamentary Secretary for Climate Change commented:

In some cases, the amendments better reflect the original policy intent behind the act. In other cases, the bill responds to issues raised by stakeholders in consultations. In particular, the bill focuses on the audit framework to be established under the act and for the Carbon Pollution Reduction Scheme, and responds to feedback from consultation on this framework.⁴

1.7 The key amendments include replacing the potentially confusing term 'external audit', establishing a register of auditors, tightening privacy conditions surrounding audit information, while mandating the publishing of greenhouse and energy audits, granting ministerial control of the audit guidelines, and eliminating the need to publish corporate level energy production data.

Changes to terminology

1.8 The bill makes several changes to the terminology used to describe the auditing framework under the act. The key change is the removal of the term 'external audit' in favour of the more accurate 'greenhouse and energy audit', and the term 'external auditor' in favour of 'registered greenhouse and energy auditor'. This removes the potential for confusion mentioned by some stakeholders in the consultation process over the definition of 'external audit'.⁵

1.9 The term 'registered greenhouse and energy auditor' references the establishment of a register of auditors, which is discussed below. Under the framework established by the amendment bill, audits will be conducted by teams of auditors, with an audit team leader and audit team members. The explanatory memorandum states that the use of audit teams will allow for cross-disciplinary expertise in the conduct of audits.⁶

Establishment of register of auditors

1.10 One of the key amendments is the establishment of a register of greenhouse and energy auditors under the new section 75A. This register, which is separate from the National Greenhouse and Energy Register, would list auditors who had been

4 The Hon G Combet, MP, Parliamentary Secretary for Climate Change, Second Reading Speech, *House Hansard*, 18.3.09, p. 3035.

5 National Greenhouse and Energy Reporting Amendment Bill 2009 Explanatory Memorandum, p. 3.

6 National Greenhouse and Energy Reporting Amendment Bill 2009 Explanatory Memorandum, p. 3.

assessed by the GEDO as fulfilling requirements such as 'qualifications, knowledge, expertise, competence, independence and other matters'.⁷ The exact details of these requirements and the administrative detail of the register are left to subsequent legislative instruments for which the GEDO would be responsible.

1.11 As audit team leaders would have to be drawn from this register, this amendment seeks to ensure that the quality of auditors will be maintained to reflect existing domestic and international best practice.⁸

1.12 A further amendment in the bill would make any decision by the GEDO to refuse to register an auditor reviewable by the Administrative Appeals Tribunal.

Publishing of audit results

1.13 Item 7 of the bill adds 'the results of a greenhouse and energy audit carried out in relation to the corporation' to the list of information which must be entered on to the National Greenhouse and Energy Register (the register). The GEDO has the discretion to make information on the register publicly available, though the explanatory memorandum notes that such an action 'would have to take a variety of issues into account including the possibility of publishing inaccurate information and the potential impacts on audited companies'.⁹ The second reading speech states that 'Stakeholders...have indicated a significant interest in the public having access to audit outcomes. This will assist the public to ascertain the reliability of a corporation's published greenhouse and energy information'.¹⁰

Secrecy provisions

1.14 In order to protect commercially sensitive information, the bill contains an amendment to the act that extends secrecy provisions to audit team leaders and members. It makes the disclosure of greenhouse and energy information or audit information obtained through the audit process an offence for these individuals, punishable by imprisonment for two years.

Elimination of need to publish energy production information

1.15 The bill removes the need for the GEDO to publish corporate level totals of energy production. According to the second reading speech, this has been done to:

7 National Greenhouse and Energy Reporting Amendment Bill 2009, section 36.

8 The Hon G Combet, MP, Parliamentary Secretary for Climate Change, Second Reading Speech, *House Hansard*, 18.3.09, p. 3035.

9 National Greenhouse and Energy Reporting Amendment Bill 2009 Explanatory Memorandum, p. 4.

10 The Hon G Combet, MP, Parliamentary Secretary for Climate Change, Second Reading Speech, *House Hansard*, 18.3.09, p. 3036.

...eliminate confusion between economy-wide energy production statistics produced by the Government and corporate-level energy production totals ...the amendment will remove the obligation for the regulator to publish information that is aggregated in such a way as to be unusable and potentially misleading.¹¹

1.16 The second reading speech also notes that the proposed amendment will not remove the need for corporations to report energy production to the GEDO, or affect the publication of greenhouse gas emissions or energy consumption data.

Ability to audit individuals outside the company

1.17 The bill grants the GEDO authority to audit entities that report under section 20 of the existing act. This section operates where information that would ordinarily be reported under the NGER act is held by a third-party. The amendment is thus aimed at ensuring audit provisions can be extended to a third party where necessary.

Ministerial control of requirement for audit

1.18 The bill gives the Minister the power to determine the requirements for carrying out greenhouse and energy audits, and in preparing the reports. The requirements will be set out by legislative instrument, and will also allow scope for different types of audit. In the current act, the GEDO is to determine guidelines for audits, also by legislative instrument.

Issues raised in submissions

1.19 The five submissions received over the course of this inquiry were generally supportive of the proposed amendments. However, there were some minor criticisms and suggestions for further amendment provided to the committee.

Terminology used in the act

1.20 Two organisations which submitted to the inquiry voiced concerns over the terminology used in association with the audit process. CPA Australia, while supporting the change from 'external auditor' to 'audit team leader', took issue with the use of the term 'audit' as it is used in the act and the proposed amendments. CPA Australia stated:

...we believe that the use of the term 'audit' within the legislation, which we understand the Department of Climate Change (DCC) proposes to use to refer to both 'assurance engagements' and 'agreed-upon-procedures' engagements, is problematic. It has potential to create conflicts for members of the professional accounting bodies who are obliged by professional requirements to conduct an 'audit' in accordance with audit and assurance standards issued by the Australian Auditing and Assurance

11 The Hon G Combet, MP, Parliamentary Secretary for Climate Change, Second Reading Speech, *House Hansard*, 18.3.09, p. 3036.

Standards Board (AUASB). Also, use of the term 'audit' has the potential to create confusion in the marketplace about the type of engagement being undertaken, and the work being performed by the auditor.¹²

1.21 CPA Australia also commented that the definition of 'greenhouse and energy audit' may not be sufficient to address the assurance requirements of the Carbon Pollution Reduction Scheme (CPRS). The submission also included other examples of terms that CPA Australia considered lacking in clarity. Both CPA Australia and PricewaterhouseCoopers commented that the use of the term 'results' in the amendment to subsection 16(4)(b) was not specific enough and grounds for concern.¹³

1.22 To avoid problems arising as a result of this, CPA Australia suggested the adoption of more specific language and definitions within the act, particularly in relation to audits.

1.23 The Department of Climate Change (the department) addressed the issue of terminology and stated:

The Office of Parliamentary Counsel advised that the common meaning of the term 'audit' is consistent with its use in the Act. The Department has undertaken extensive consultation on this issue in response to stakeholder confusion about the purpose of audits under the Act. The Bill includes the words 'greenhouse and energy' in front of the term 'audit' to be clear that these audits are for the purposes of the Act. The draft auditing standard will be released in May/June for public consultation.¹⁴

Independence requirements

1.24 Three of the submissions commented on the independence criterion for greenhouse and energy auditors registering with the GEDO, as specified in proposed section 75A. To be registered, an individual would need to 'meet such requirements as to qualifications, knowledge, expertise, competence, independence and other matters as are set out in the regulations for the purposes of this paragraph or in legislative instrument made under the regulations in accordance with subsection (4)'.¹⁵

1.25 Both PricewaterhouseCoopers and CPA Australia made the point that independence is relative to the corporation being audited, and suggested that independence should be verified at the beginning of each audit, rather than upon registration. PricewaterhouseCoopers suggested the removal of the independence criterion for registration, stating:

12 CPA Australia, *Submission 1*, p. 1.

13 CPA Australia, *Submission 1*, p. 2; PricewaterhouseCoopers, *Submission 3, Attachment*, p. 1.

14 Department of Climate Change, *Submission 5*, p. 4.

15 National Greenhouse and Energy Reporting Amendment Bill 2009, section 36.

Independence considerations should not be applicable at registration. The ethical principles binding auditor independence should be adhered to but auditor independence will need to be determined at the engagement.¹⁶

1.26 In response to this concern, the department stated that:

The treatment of independence under the Act and Bill is based on the independence requirements of the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*. The location of independence requirements will be decided as part of developing the subordinate legislation. Consultation on these requirements will occur in May/June 2009.¹⁷

Appealing deregistration

1.27 The bill includes an amendment that makes a decision by the GEDO not to register an individual in the greenhouse and energy auditor registry reviewable by the Administrative Appeals Tribunal (AAT). This amendment attracted no criticism in any submission, but both CPA Australia and the National Australia Bank suggested that an auditor who is deregistered by the GEDO from the registry should also be able to apply to the AAT for a review of the decision.

Publication of audit results/reports

1.28 The proposed amendments would require the 'results of a greenhouse and energy audit carried out in relation to the corporation' to be published on the National Greenhouse and Energy Register. CPA Australia voiced a concern in its submission that the term 'results' is too ambiguous, and that 'potentially, the 'results' could include only the opinion paragraph of the assurance report; the entire assurance report; or more detailed information'.¹⁸

1.29 National Australia Bank (NAB) was supportive of the requirement to publish audit results publicly, stating 'disclosure of outcomes of audits to the public in the form of an audit statement will improve transparency around the reliability and consistency of published greenhouse and energy data'. However, NAB went on to state:

NAB notes that it is typical, following an audit of financial or CR reports, for the auditor to provide an assurance statement and a detailed report to management regarding areas of best practice and recommendations for improvement. NAB does not believe that it is appropriate for the Act to require the detailed report to management or to the GEDO to be published. As the intended 'audience' of the report is management or the GEDO, the report is a highly technical and detailed document. For this reason, NAB

16 PricewaterhouseCoopers, *Attachment to Submission 3*, p. 4.

17 Department of Climate Change, *Submission 5*, p. 4.

18 CPA Australia, *Submission 1*, p. 2.

considers that it may be difficult for the public to read such a report and as such, its publication may create a risk of misinterpretation.¹⁹

1.30 In response to these concerns, the department made the following comment:

In making this information publicly available, the Government recognises the importance of establishing clear criteria for disclosure. The amendment does not mean that the GEDO must publish all outcomes of audits. Rather, the GEDO may make audit outcomes available to the general public. This will be subject to regulations being made. Development of regulations will take a variety of issues into account (including commercially sensitive information).²⁰

1.31 The department also stated that this would be the subject of further consultation.

Operational vs. financial control of operations

1.32 In their submission to the inquiry, Leighton Holdings raised concerns that the definition of operational control given under the act would make contract mining corporations liable for reporting on emissions directly associated with a resource (such as fugitive emissions) in addition to operator liabilities such as emissions produced during extraction and haulage of a resource. In Leighton Holdings opinion, this would place an unfair burden on contract miners that should be borne by the financial operators (owners) of a mine:

The problem relates to the definition of ‘operational control’ in the NGER Act which does not apply logically or fairly to the mining sector, where a third of work is undertaken by contractors. The definition has the potential to draw service providers into the trading scheme and make them liable for emissions not of their own making, such as fugitive emissions from coal, with limited potential for recovering the costs of carbon permits and additional administration. Obligations to reduce emissions should properly rest with those best able to do so and those benefiting most from the mining industry – the mine owners.²¹

1.33 As a result of this, Leighton Holdings suggested amendments to the definition of operational control. The department responded to this concern, stating:

The Department is currently engaged in discussions with stakeholders on this issue with the aim of identifying the best possible solution and incorporating it into later amendments. This issue also relates directly to the proposed CPRS. Further amendments on this issue therefore will also need to be considered in light of the CPRS legislation being finalised.²²

19 National Australia Bank, *Submission 2*, p. 1–2.

20 Department of Climate Change, *Submission 5*, p. 4.

21 Leighton Holdings, *Submission 4*, p. 2.

22 Department of Climate Change, *Submission 5*, p. 4.

1.34 The committee agrees that the bill needs to be amended to provide flexibility and certainty for the mining industry. Whilst the committee recognises that it would be preferable to have the bill amended prior to passage, the committee accepts that the department is undertaking continued consultation with industry stakeholders on this issue, with views to making further amendments in light of the finalisation of mining industry treatment in the proposed CPRS legislation.

Conclusion

1.35 The committee commends the process of consultation that has been undertaken by the department in the drafting of this legislation. The committee notes that much of the detail of the legislation will depend on the development of regulations and legislative instruments referenced in the amendments. The committee encourages the department to ensure that adequate consultation continues in the formulation of these regulations and legislative instruments.

1.36 The *National Greenhouse and Energy Reporting Act 2007* provides the backbone for Australia's efforts to control greenhouse gas emissions by establishing a robust reporting and accounting mechanism. The National Greenhouse and Energy Reporting Amendment Bill 2009 will make several key improvements to the existing act. It addresses concerns raised in consultation with stakeholders by providing a more comprehensive and clear audit framework. It will also ensure that commercially sensitive information is protected. For these reasons, the committee supports the passage of the bill.

Recommendation 1

1.37 The committee recommends that the Senate pass the bill.

Senator Helen Polley

Chair