



australian network of environmental defender's offices

Submission on the *National Greenhouse and Energy Reporting Bill 2007*

27 August 2007

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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Submitted to:

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Introduction

The Australian Network of Environmental Defenders Office's (ANEDO) welcomes the opportunity to make a submission regarding the *National Greenhouse and Energy Reporting Bill 2007* (the Bill).

ANEDO has consistently supported proposals for comprehensive and transparent public reporting of greenhouse gas emissions, for example, the inclusion of greenhouse emissions on the National Pollutant Inventory (NPI).¹ We understand the proposed Bill is the preferred alternative to NPI reporting.

ANEDO supports the development of an emissions trading scheme,² and accurate emissions data is essential to underpin such a scheme. As noted in *Australia's Climate Change Policy, Our Environment Our Economy Our Future*, "the ability to monitor, report and verify businesses' emissions data will be essential for maintaining the environmental and financial integrity of the trading system."³

The essential elements of a reporting scheme include: comprehensive coverage of emitters, data at both corporate and facility level, reporting on a range of relevant activities, transparent and objective processes for calculating emissions, and public accountability of the scheme.

Positive aspects of the Bill include the annual reporting requirement, inclusion of facilities in addition to corporations, the coverage of all the six Kyoto greenhouse gases, and the corporate liability, penalty and enforcement provisions.

Our specific concerns with the Bill are set out below.

Status of existing reporting schemes

A key rationale and stated objective of the Bill is to reduce duplication (section 3(e)). The Bill explicitly excludes some state and territory laws (clause 5) and overrides requirements of other schemes (clause 76).

There are state schemes currently operating that require various degrees of reporting on emissions. Schemes such as the NSW GGAS scheme and the NRET scheme require reporting as fundamental to the scheme operation. If the Commonwealth legislation overrides their current requirements, this may significantly effect the operation of those schemes.

While ANEDO supports reduction in unnecessary duplication of reporting requirements, it is essential the Commonwealth legislation does not undermine current state schemes and result in a 'lowest common denominator' approach to reporting

¹ See ANEDO, **Submission on the National Pollutant Inventory NEPM Variation** - 15 September 2006 available at: http://www.edo.org.au/policy/npi_nepm060920.pdf

² **Submission regarding the Possible Design for a National Greenhouse Gas Emissions Trading Scheme** - 22 December 2006; and **Submission on Prime Minister's Task Group on Emissions Trading - Issues Paper** - 7 March 2007, available at: <http://www.edo.org.au/edonsw/site/policy.php>.

³ Australian Government, July 2007, page 10.

requirements. Ministerial discretion must be exercised under clause 5(3) to ensure the new Commonwealth requirements do not hamstring state schemes. State and Territories must be provided with all information necessary to support current schemes.

Furthermore, as noted in *Environmental Manager*,

“[the Bill] also sets a worrying precedent. For the first time in Australia a government is seeking to evade a part of the obligations of a national environment protection measure (NEPM). The Bill includes a provision (clause 76) that would make void any GHG reporting requirement under the National Pollutant Inventory...partially voiding NEPMs is a path we should head down with caution.”⁴

As noted above, while we support reducing unnecessary duplication, a new federal reporting scheme must not undermine beneficial current processes, and replace them with less rigorous and less public reporting.

Meaningful public information

Limitations put on information that is to be made public have the potential to undermine the accountability and legitimacy of the reporting scheme under the Bill. It is essential that the scheme provide comprehensive and verifiable data. This will be an important foundation to any future emissions trading scheme.

The Australian Government policy notes that the information that the scheme collates should be “fit for purpose.”⁵ This should not simply mean that commercial information is given to the new Greenhouse and Energy Data Officer (GEDO) in aggregated totals to inform the allocation of permits in a future trading scheme. An essential element is that comprehensive information is collated and made public. A key purpose therefore is to inform the public and provide detailed information.

The community ‘right to know’ principle requires accurate information at a facility level. The Bill must not allow aggregated totals of corporate groups to subvert this principle. The Bill requires only *total* gross GHG emissions and total energy produced and consumed to be made public. While there is scope for companies to voluntarily provide more specific detail on emissions, offsets, policies and initiatives, this would only be at the company level, and is not mandatory. Furthermore, GHG emissions of a company that meets only the energy threshold, may not be required to be made public. ANEDO submits that data on offsets must also be public.

The Bill covers the six Kyoto Protocol greenhouse gases and the public reports should include emission data on each greenhouse gas as well as data on CO₂-equivalents. This will provide a more detailed monitoring process in which the public can see what kinds of emissions are increased or reduced.

The duration of the reporting scheme and the annual reporting should provide a clear overview of the emission of greenhouse gases per corporation and facility. This would be strengthened by inclusion of a mandatory provision on submitting a publicly accessible report if certain changes appear in the emissions of a corporation or facility. In the case

⁴ August 2007, Issue 638.

⁵ Australian Government, July 2007, *Australia's Climate Change Policy, Our Environment Our Economy Our Future* p10.

of a sudden change or change below or above a certain percentage in comparison to the previous year, a corporation or facility holder will be forced to provide reasons for this change.

Compliance and enforcement

The monitoring scheme, and later the emission trading scheme, will report the emission of corporations and facilities during the coming decade. The Bill requires mandatory reports on the emission of greenhouse gases, the energy production and the energy consumption. The authorized officers and the GEDO are designed to monitor the corporations by checking the corporations and facilities *in situ*. A provision should be included to stipulate that the monitoring reports created by officers during the monitoring process have to be published on the internet. This mandatory publishing of reports will allow the public to be up to date on the monitoring scheme and the status of corporations' compliance.

Where a civil penalty or an infringement notice is given,⁶ there should also be a mandatory reporting provision included in the Bill. This will provide motivation for corporations or facility holders to comply with the reporting scheme.

The external auditors referred to in clause 73 should be accredited by the GEDO to ensure accountability and independence.

Staged commencement

The Bill establishes a threshold programme which is spread out over three years (clause 13). The Minister stated that the reason for this three year programme is to “provide those companies less likely to be reporting under the existing schemes with time to prepare for the scheme”.⁷ ANEDO submits that a 3 year delay for some participants is inappropriate. The issue of reporting has been on the table for some time now, and industry has been well aware of discussions.⁸ Furthermore, many participants will already have similar reporting processes in place due to existing reporting schemes such as the NPI.

The Explanatory Memorandum for the Bill refers to current voluntary reporting schemes, on state and national level, which already cover 60.6 percent of the current share of emissions by corporations and facilities nationwide. This percentage is also used as a basis for the calculation, regarding the provided threshold of 50 kilotonnes or more, that a cumulative share of 61% of the emissions is covered by the Bill. The 60.6 percent that already voluntarily report will therefore not have obvious difficulties in complying with the Bill's reporting scheme. The group of emitters that has to report according to the Bill and falls within the 61% of the (final) estimated covered share of cumulative

⁶ Civil penalties can be found in the reporting obligations in Part 3 of the Bill. Infringement notices can be found in Part 5 division 2 of the Bill.

⁷ Second Reading Speech, National Greenhouse and Energy Reporting Bill 2007, by Mr. Turnbull, available at <http://parlinfoweb.aph.gov.au/piweb/browse.aspx?NodeID=251>.

⁸ For example – in April 2006 a consultation paper was released: “A Streamlined National Reporting Framework for Greenhouse and Energy Data – Reducing the Burden”; followed by a draft Regulatory Impact Statement in October 2006.

emissions will be not substantial.⁹ Therefore clause 13(1) should be amended to require mandatory reporting of corporations emitting 50 kilotonnes or more to commence as soon as possible. The other thresholds which are based on a three year programme in the same clause need to be amended consistently.

The proposed amendment will provide an immediate overview of emissions by corporations for the coming years and therefore a proficient basis for an emission trading scheme to commence as soon as possible.

Confidentiality

ANEDO is concerned that the privacy clauses of the Bill may operate to undermine the transparency and accountability of the scheme (clause 25). There need to be clear guidelines on how the exemptions will be applied.

Furthermore, the Bill puts limitations on the data which may be given to states and territories and their use of information.¹⁰ As noted above, this must not have negative impacts for state initiatives.

Method of assessment

Clause 10(3) provides that the Minister may determine methods and criteria by which emissions will be measured for different sectors and in relation to reduction, removal, offset, production and consumption.

ANEDO submits that a robust methodology for measuring is fundamental to the legitimacy of the scheme, and a detailed methodology for different sectors and projects must be made publicly available on the internet. The reporting methodology should be included in the regulations to provide a greater amount of transparency, and some flexibility should there be a need to be amend it in light of new science etc.

Greenhouse and Energy Data Officer

Part 6 of the Bill refers to the appointment of a Greenhouse and Energy Data Officer (GEDO) and the appointment of authorized officers. The Bill does not include criteria regarding the appointment of the GEDO, for example in relation to expertise and transparency requirements. In addition, criteria for the appointment of officers and employees should also be specified regarding expertise in monitoring or greenhouse gas emissions. The monitoring tasks of the officers need to be fulfilled by experts in order to provide an effective monitoring framework. Furthermore, it is essential that the GEDO and officers be independent and remain free from any conflicts of interest.

ANEDO recommends amendment of Part 6 of the Bill by including appointment criteria for the officers, and processes relating to publicly declaring conflicts of interest. The appointment of the GEDO in particular requires criteria for expertise and transparency in the appointment process.

⁹ National Greenhouse and Energy Reporting Bill 2007 Explanatory Memorandum, 166, available at http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2775&TABLE=EMS.

¹⁰ As noted in *Environmental Manager*, August 2007, Issue 638.

Regulatory detail

A significant amount of detail is to be addressed by regulations, including for example the methodology for calculating emissions; information ‘reasonably necessary’ for assessing applications (clause 15(2)); what information goes on the register (clause 16(4)); differing reporting requirements in certain circumstances (clause 19(7)); and details of greenhouse gas projects (clause 21(3)).

ANEDO submits that draft regulations should be made available for public comment prior to being gazetted.

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