



australian network of environmental defender's offices

Submission on the *National Greenhouse and Energy Reporting System Regulations Policy Paper 2008*

23rd February 2008

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.

Contact Us

EDO ACT (tel. 02 6247 9420)
edoact@edo.org.au

EDO NSW (tel. 02 9262 6989)
edonsw@edo.org.au

EDO NQ (tel. 07 4031 4766)
edonq@edo.org.au

EDO NT (tel. 08 8982 1182)
edont@edo.org.au

EDO QLD (tel. 07 3210 0275)
edoqld@edo.org.au

EDO SA (tel. 08 8410 3833)
edosa@edo.org.au

EDO TAS (tel. 03 6223 2770)
edotas@edo.org.au

EDO VIC (tel. 03 9328 4811)
edovic@edo.org.au

EDO WA (tel. 08 9221 3030)
edowa@edo.org.au

This submission is on behalf of the Australian Network of Environmental Defender's Offices Inc (ANEDO).

For further information on this submission, please contact:
Robert Ghanem, Policy Officer EDO (NSW) on 02 9262 6989 or
robert.ghanem@edo.org.au

27 February 2008

Submitted to:

Greenhouse and Energy Reporting Taskforce
Department of Climate Change
GPO Box 854
Canberra ACT 2601

By email: reporting@climatechange.gov.au

The Australian Network of Environmental Defender's Offices (ANEDO) welcomes the opportunity to provide comment on the *National Greenhouse and Energy Reporting System Regulations Discussion Paper*. ANEDO is a network of 9 community legal centres specialising in public interest environmental law.

We refer to our previous submissions on the *Greenhouse Gas and Energy Reporting Bill 2007* and the *National Greenhouse and Energy Reporting System Regulations Discussion Paper 2007*.¹

ANEDO acknowledges that some of our key concerns in these submissions have been addressed. We welcome the wide definition of energy, the clarification that offset projects will be subject to government guidelines and the strict requirements for the appointment of auditors. However several of our important concerns have been overlooked by the Policy Paper, which will undermine the efficacy and transparency of the greenhouse and energy reporting system. In this submission we reproduce our previous concerns that have not been addressed for the sake of completeness. In addition, several new issues have arisen in light of the Policy Paper.

Our comments relate to:

1. Reporting obligations
2. Confidentiality
3. Contractors
4. Materiality
5. Compliance and enforcement

1. Reporting obligations

As noted in our previous submissions, ANEDO supports comprehensive and accurate reporting which does not allow companies to avoid reporting requirements by dividing activities to ensure facility thresholds are not exceeded. This issue has not been resolved. Corporations which trigger the corporate reporting threshold will still only be required to report corporate totals, not totals at the facility level. ANEDO reiterates that the publication of accurate information at the facility level and data on offsets should be mandatory. The public should be

¹ See Australian Network of Environmental Defenders Offices Inc (ANEDO) *Submission on the National Greenhouse and Energy Reporting Bill 2007* - 27 August 2007; available at: http://www.edo.org.au/policy/ghg_reporting_bill070827.pdf and *Submission on the National Greenhouse and Energy Reporting System Regulations Discussion Paper 2007* - 23 November 2007; available at: <http://www.edo.org.au/edonsw/site/policy/greenhouse071123.php>.

able to determine the greenhouse gas emissions attributable to individual facilities. There is no means by which the public can find out the level of emissions that are due to particular operations if only corporate totals are made publicly available. A corporate-wide total or an aggregated total for small facilities therefore obscures the true emissions profile of a company.

2. Confidentiality

ANEDO is concerned that the confidentiality clause of the Act may operate to undermine the transparency and accountability of the scheme. Under s25 of the Act, any corporation may apply for information not to be published on the public website if it is ‘commercially sensitive’. If this application is approved by the Greenhouse and Energy Data Officer (GEDO) then it may publish information within a ‘range of values’ to protect the corporation’s confidentiality. As previously argued, we stated that there needs to be clear guidelines on how this confidentiality exemption will be applied. The Policy Paper provides no detail on what circumstances will constitute “commercially sensitive”. However, the Paper says that specific protocols and processes associated with this exemption will be developed through a public disclosure focus group. Subject to further detail on how the focus group would operate, ANEDO would be keen to participate in this process.

The protocols that are developed should clearly set out that the public interest is a relevant and overarching consideration for GEDO when exercising its discretion on whether to approve a confidentiality application. In any event, ANEDO opposes reporting within a range of values, as this is essentially meaningless to members of the public.

3. Contractors

Further clarification is needed regarding whether information supplied directly to the GEDO by a contractor rather than via a registered corporation will be made publicly available. The Policy Paper does not address this issue. Again, ANEDO submits that this emissions data should be made available to the public.

4. Materiality

The Policy Paper introduces a materiality threshold for reporting on small facilities. Corporations will not have to report on certain facilities that constitute less than 2% of the corporate group’s inventory and which emit less than 3 kt CO₂-e of greenhouse gases. However, corporations will still have to report on at least 95% of their emissions. ANEDO has concerns relating to how this provision will operate in practice. Its use should be reviewed within 3 years.

5. Compliance and enforcement

ANEDO reiterates that a provision should be included in the Act or regulations to stipulate that the monitoring reports created by GEDO 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. Further, where a civil penalty or an infringement notice is given, there should also be a mandatory reporting provision included in the Act. This will provide motivation for corporations or facility holders to comply with the reporting scheme.

This behavioural motivator is now under threat. The Policy Paper has made it clear that non-compliance will now only be made publicly available where a corporation has been found guilty of non-compliance in court proceedings. ANEDO is strongly opposed to this suggestion. The vast majority of non-compliance matters will be resolved prior to court proceedings, through fines and civil penalties. Very few matters are likely to proceed to court. This means that the community will be ignorant to the vast majority of non-compliance incidents. This will significantly undermine the community 'right to know' principle and it also removes the motivation to comply, as companies no longer have to fear being 'named and shamed' unless the matter proceeds to court. ANEDO calls for the reinstatement of public disclosure for all non-compliance incidents.

ANEDO believes that these regulations should be reviewed in 3 years. This will provide an opportunity to assess the effectiveness of the regulations and to address any problems in implementation.

ANEDO is keen to engage further on these regulations. Should you require any further information please contact robert.ghanem@edo.org.au or 02 9262 6989.

Yours sincerely,
Environmental Defender's Office Ltd

Rachel Walmsley
Policy Director (EDO NSW)