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## Carbon Pollution Reduction Scheme delayed but greenhouse reporting obligations continue

**The Federal Government's proposed Carbon Pollution Reduction Scheme (CPRS) has met significant obstacles in its relatively short history. First, the Federal Government delayed its commencement until 1 July 2011. Now the Senate seems set to delay the CPRS bill in the Senate until early next year.**

**Regardless of the fate of the CPRS legislation, the deadlines for reporting large scale greenhouse gas emissions and energy consumption/production under the National Greenhouse and Energy Reporting Act 2007 (NGER) remain.**

**This newsflash provides a reminder on the terms of NGER.**

## **Deadlines by which certain corporations must register and report under NGER are fast approaching.**

Whilst the CPRS may not commence until July 2011, NGER which imposes certain reporting obligations by the end of 2009, remains operative.

NGER is a national framework for corporations to report post 1 July 2008 greenhouse gas (GHG) emissions, energy consumption and energy production. Administered by the Department of Climate Change (DCC), NGER makes registration and reporting mandatory for corporations whose energy production, energy consumption or GHG emissions meet or exceed certain thresholds.

Failure to register and report when required may leave a controlling corporation and its CEO liable to civil penalty action.

## Objectives

NGER introduces single national reporting and dissemination of information on GHG emissions, energy consumption and energy production. Specifically, NGER seeks to:

- underpin a future emission trading scheme in Australia (the CPRS)
- inform government policy formulation and the Australian public
- meet Australia's international reporting obligations
- provide data to assist Commonwealth, State and Territory government programs and activities, and
- avoid duplication of similar reporting requirements across Australia.

## Who is liable to register and report?

NGER provides that a "controlling corporation" that has "operational control" over a "facility" in their corporate group has an obligation to register and report if it meets one or more of the relevant thresholds.

Under NGER, the corporation at the top of the corporate hierarchy will generally be considered the controlling corporation. This will usually be the ultimate holding company. The members of a controlling corporation include subsidiaries, joint ventures (JV), partnerships and alliances. In the case of JV and alliances, the parties may nominate a "responsible entity" to report for all facilities under the operational control of the JV or alliance. Otherwise all parties to the JV or alliance may have an obligation to report for the relevant facilities.

A "facility" is defined under NGER as *"an activity, or series of activities, that form a single undertaking or enterprise."*

NGER goes some way to define facility "operational control" attributing it to the party with the authority to introduce and implement operating, environmental and, health and safety policies for the facility. If more than one party satisfies all criteria, then the party with the greatest authority to introduce and implement certain policies will be considered to have operational control over the facility.

### Thresholds and timeframes

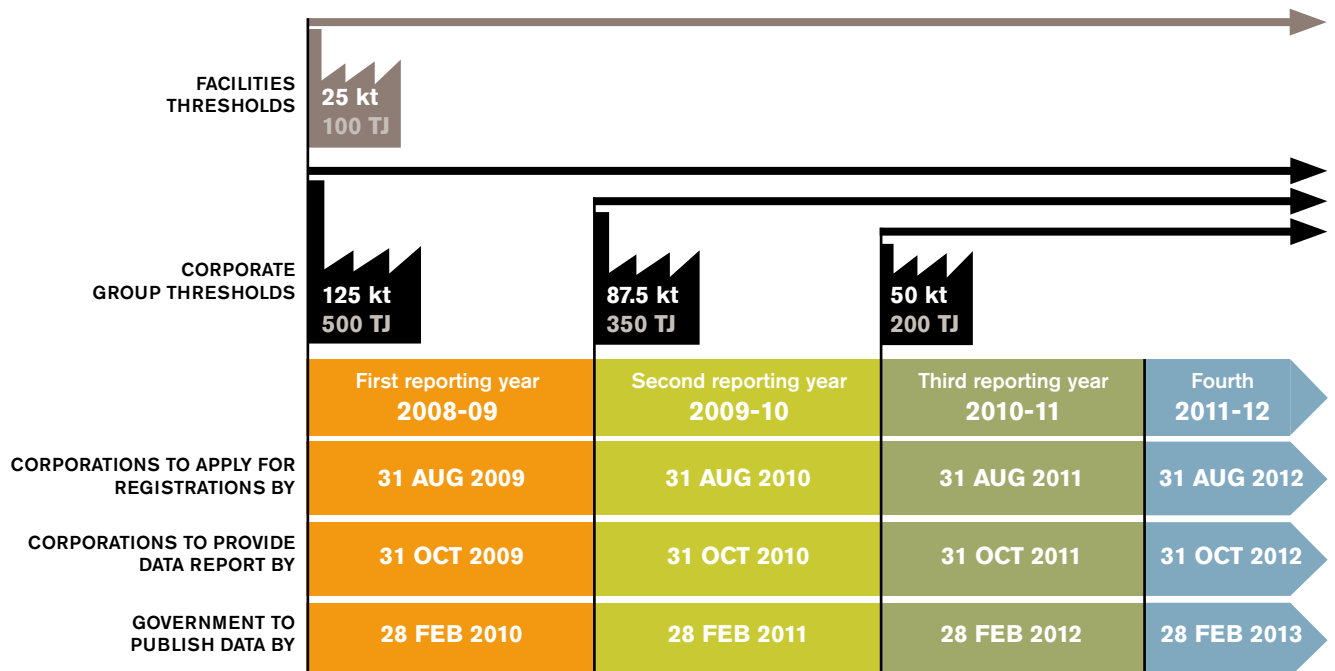
NGER requires controlling corporations to report when specified aggregated and facility thresholds are exceeded. The following diagram published by the DCC illustrates the thresholds each fiscal year commencing July 2008. Businesses should note the ratcheting down of the thresholds for registration and reporting over the next three fiscal years.

As illustrated, a controlling corporation will meet the threshold in the 2008-2009 financial year if during that year, the facilities under the operation of members of the corporate group emit GHG at or above 125 kilotonnes carbon dioxide equivalent or produce or consume 500 terajoules or more of energy.

Where controlling corporations exceed the corporate threshold, data for all facilities must be reported. Otherwise, only data for facilities which exceed the facility threshold must be reported. Even if only one threshold is exceeded (for example energy production), it is still necessary for all reporting elements (GHG emissions, energy consumption and energy production) to be reported.

Controlling corporations that have exceeded any threshold in a reporting year must register by **31 August** following relevant year end and submit data by **31 October**.

Reporting corporations and/or facilities will also need to keep records for a seven year period to allow them to report emissions accurately and enable the DCC to monitor compliance.



**NOTES** TJ - terajoule ( $10^{12}$  joules) of energy consumed or produced; kt - kilotonnes ( $10^3$  kilograms) CO<sub>2</sub>-e equivalent of greenhouse gases emitted, Conversions factors: Energy - 1 terajoule = 1000 gigajoules, 1 gigajoule = 1000 megajoules, 1 megajoule = 1000 kilojoules, 1 kilojoule = 1000 joules; CO<sub>2</sub>-e emissions-1 kilotonne=1000 tonnes, 1 tonne = 1000 kilograms.

### **Collecting and Calculating Data**

Registered corporations will be required to report all energy consumed, all energy produced and all GHG emissions. Obviously the raw data will vary, but in general terms the following information will be required:

- the amount of energy consumed by fuel type
- the quality of fuel consumed
- the unit for the fuel type
- the time period for the fuel consumption.

The DCC has fact sheets and an Online System for Comprehensive Activity Reporting (OSCAR) to assist corporations to self assess.

### **In practical terms...**

While still relatively early days for NGER, we expect the implementation of the test for "operational control" will result in uncertainty in contractual relationships and possible confusion in reporting requirements. Principals and contractors will need to review contracts to determine how operational control is considered and whether a reporting obligation enlivened. If a reporting obligation exists, there will be questions as to how and by whom relevant data should be collected.

Corporations may too readily assume that they are the controlling corporation in relation to a facility. For example, a contractor that has been appointed as the Principal Contractor for OHS regulatory purposes does not automatically assume operational control of a site for the purpose of NGER.

It may be necessary for parties to undertake a close examination of their contractual arrangements to determine which party has the greatest NGER relevant authority under the contract. In some instances the contract may not reflect the practice between the parties. Contractual variations may be necessary to deal with data collection and NGER reporting obligations.

For any questions as to the operation of NGER and compliance issues, please contact David Miller on 8281 4555.

**David Miller  
Partner**

T: 02 8281 4419  
E: dem@cbp.com.au

**Lindsay Lau  
Solicitor**

T: 02 8281 4509  
E: ljl@cbp.com.au

**Michael Russell  
Solicitor**

T: 02 8281 4612  
E: mer@cbp.com.au