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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIONAL GREENHOUSE AND ENERGY REPORTING BILL 2007**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for the Environment and Water Resources,  
the Honourable Malcolm Turnbull MP)

## **NATIONAL GREENHOUSE AND ENERGY REPORTING BILL 2007**

### **OUTLINE**

The *National Greenhouse and Energy Reporting Bill 2007* (the Bill) establishes a single, national framework for reporting greenhouse gas emissions, abatement actions and energy consumption and production by corporations from 1 July 2008.

The Government amendments to the National Greenhouse and Energy Reporting Bill 2007 will:

- (1) – reverse the emphasis of the ‘covering the field’ provision to ensure that only State and Territory laws dealing with greenhouse gas or energy reporting which are specifically nominated through regulation can be excluded;
- (2) and (3) – make a technical amendment to clarify language used;
- (4) – clarify the situation with regard to when an ‘other person’ may be able to report directly to the Greenhouse and Energy Data Officer (GEDO);
- (5), (6) and (7) – remove the civil penalty which would previously have applied to corporations which made non-mandatory reports to the GEDO which were not in accordance with manner and form or timeliness requirements;
- (8) allow a further exception from secrecy requirements for employees of the Commonwealth who are performing functions under State or Territory laws;
- (9) and (10) – clarify that the GEDO must provide certain data to State or Territory governments if certain conditions have been met; and
- (11) – provide a right of appeal to the Administrative Appeals Tribunal against decisions by the GEDO to withhold information under clause 27.

### **FINANCIAL IMPACT STATEMENT**

The additional financial impact of these amendments is expected to be nil.

## **NOTES ON ITEMS**

### **EXPLANATION OF AMENDMENT 1**

1. This amendment will delete clause 5 as introduced and replace it with a new clause which will provide for the exclusion of specific State or Territory laws (or part thereof) applying to constitutional corporations if they provide for the reporting or disclosure of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption or energy production.
2. The proposed amendment reverses the emphasis of clause 5 of the Bill as introduced, which provided for blanket exclusion of all laws of a State or Territory in this field unless specifically exempted by the Minister.
3. As previously drafted, the exclusion of State or Territory laws would only have applied at a date specified by regulations made under subclause 5(1) as introduced.
4. The proposed amendment will allow the Government to deliver the goal of streamlining duplicative programmes, whilst reducing the likelihood of perverse outcomes from the clause as originally drafted such as the inadvertent exclusion of a State or Territory law not intended to be covered by the scope of the new scheme (including the National Electricity Law and National Gas Law).

### **EXPLANATION OF AMENDMENT 2**

5. This amendment will omit paragraph 16(4)(b) and replace it with a new paragraph to simplify the language concerning matters which must be entered on the National Greenhouse and Energy Register. The proposed amendment is a technical amendment which simplifies the clause without altering the meaning.

### **EXPLANATION OF AMENDMENT 3**

6. This amendment will delete subclause 16(5). The provisions of this clause are now part of subclause 16(4) (see explanation of amendment 2 above). This amendment is technical in nature and does not alter the meaning of the clause.

### **EXPLANATION OF AMENDMENT 4**

7. This amendment will modify paragraph 20(3)(b) to alter a condition under which the Greenhouse and Energy Data Officer (GEDO) may determine that certain information should be provided by a person other than a controlling corporation. The amended paragraph will allow the GEDO to make this determination either where the corporation is not entitled to acquire information from the other person, or if the corporation is entitled to acquire such information from the other person only because there is an obligation for that person to assist the corporation to meet obligations under the Bill. This amendment is required to ensure that the need for a corporation to comply with Bill alone cannot be sufficient grounds for a facility operator to acquire information from another person, if the other person does not wish to disclose that information to the operator.

#### **EXPLANATION OF AMENDMENT 5**

8. This amendment will delete paragraphs 21(4)(a) and 21(4)(d) as introduced. This will restrict the conditions under which the civil penalty provision created by subclause 21(4) might be breached, so that a company which voluntarily opts to provide a report on greenhouse gas projects will not be subject to a heavy penalty for relatively technical breaches relating to the manner and form and timeliness by which the report is provided.

#### **EXPLANATION OF AMENDMENT 6**

9. This amendment is required as a result of amendment 5. It is a technical amendment which does not change the meaning of the bill.

#### **EXPLANATION OF AMENDMENT 7**

10. This amendment will create a new subclause 21(6). This will clarify that a report provided by a corporation which chooses to supply a report on greenhouse gas projects will not be regarded as a report for the purposes of this bill if it is not in the manner and form approved by the GEDO, if it is not given in a period specified by the regulations and if subclauses 21(3) and 21(4) have not been complied with.

#### **EXPLANATION OF AMENDMENT 8**

11. This amendment will add a further condition to paragraph 23(1)(b), which creates conditions under which it would not be an offence under this clause to disclose greenhouse or energy information. The new clause would allow an employee of the Commonwealth or Commonwealth authority, or someone appointed to an office under a law of the Commonwealth, to disclose such information in the performance of their duties in relation to a law of a State or Territory. An example of where this might occur is in the case of an officer of the Australian Energy Regulator performing functions under State or Territory legislation such as the National Electricity Law or the National Gas Law.

#### **EXPLANATION OF AMENDMENT 9**

12. The amendment will replace the word 'may' in clause 27(1) with the word 'must'. The purpose of the proposed amendment is to clarify that States and Territories will have access to data obtained under the scheme, should certain conditions be met, including conditions regarding the confidentiality of the information.

#### **EXPLANATION OF AMENDMENT 10**

13. This amendment will add a new subclause 27(1A) which will allow GEDO to refuse to disclose information under clause 27 to States and Territories if the GEDO is satisfied that there would not be adequate security measures in place to ensure appropriate protection of the information. A decision by the GEDO under

this subclause to withhold information will be reviewable under clause 56, as provided by amendment 11.

#### **EXPLANATION OF AMENDMENT 11**

14. This amendment will add a new paragraph 56(ea) which will enable an application to be made to the Administrative Appeals Tribunal by State and Territory Governments against a decision taken by the GEDO under clause 27 not to disclose information to the State and Territory Governments.