

***AIGN Response to Review of the National
Greenhouse and Energy Reporting Legislation - A
Consultation Paper (July 2018)***

TABLE OF CONTENTS

1 INTRODUCTION..... 3

2 OVERVIEW..... 3

3 CLEAN ENERGY REGULATOR..... 3

4 CONSULTATION ON PROPOSED NGER AMENDMENTS..... 4

 4.1 DISCLOSURES4

5 REPORTING OBLIGATIONS..... 4

 5.1 CENTRALISED REPORTING.....4

 5.2 HARMONISATION5

 5.3 MATERIALITY5

 5.3.1 *Streamlining reporting*.....5

6 AUDITING FRAMEWORK..... 6

 6.1 COMMISSIONED AUDITS.....6

 6.2 VOLUNTARY AUDITS.....6

 6.3 DISCLOSURE OF AUDIT COSTS6

7 SAFEGUARD MECHANISM..... 7

 7.1.1 *Addressing trade exposed industry*.....7

 7.1.2 *Coverage of Safeguard Mechanism*8

 7.1.3 *Timeliness of review*.....8

8 CARBON CREDIT MARKET..... 8

9 CONCLUSION..... 8

ATTACHMENT 1: AIGN POLICY PRINCIPLES 9

1 INTRODUCTION

AIGN welcomes the opportunity to provide a submission to the Climate Change Authority on its *Review of the National Greenhouse and Energy Reporting Legislation – A Consultation Paper (July 2018)*.

AIGN is a network of industry associations and individual businesses which contribute to the climate change policy discussion and see value in joint industry action on climate change to promote sustainable development.

In considering this submission, the Climate Change Authority (CCA) should note AIGN's broad membership base, and this submission should be read alongside member feedback.

2 OVERVIEW

The National Greenhouse and Energy Reporting Act 2007 (NGER Act) establishes the legislative framework for the NGER Scheme.

Several legislative instruments sit under the NGER Act:

- NGER Regulations 2008 - commenced on 1 July 2008.
- **Measurement and reporting of greenhouse gases and energy**
NGER (Measurement) Determination 2008 - commenced on 1 July 2008)
- **Auditing and auditor prequalification**
NGER (Audit) Determination 2009 and The NGER (Auditor Registration) Instrument 2017 (No.2) – commenced 7 January 2010.
- **Safeguard mechanism**
National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 - commenced on 1 July 2016.

The stated objectives of the Act are to:

1. introduce a single national reporting framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations; and to
2. ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.

AIGN members represent a substantial portion of NGER liable entities and they have a strong track record of compliance.

Since the enactment of the legislation in 2007 AIGN's members have invested considerable industry (and support services e.g. consulting and audit firms) resources in building capability and in the implementation of compliance requirements (e.g. emissions databases and appointment of personnel).

As such, AIGN's review of the Act and the comments contained within this submission relate to incremental improvements not substantive changes.

3 CLEAN ENERGY REGULATOR

The Clean Energy Regulator is bound by the Clean Energy Regulator Act 2011, which established the Clean Energy Regulator and sets out its functions and powers.

The Clean Energy Regulator (the Regulator) has sensibly adopted a consultative approach with liable entities (clients) and has sought to encourage compliance by assisting clients that have mandatory obligations under the various schemes through timely consultation, provision of information, and the establishment of clear and consistent client expectations.

The Regulator is widely respected for its constructive and rational approach to engaging with its clients and

discharging its duties. This consultative approach is well recognised by AIGN and has been key to the successful implementation of the Act and its related legislative instruments.

It would be advantageous for the Regulator to be given powers to make rulings or provide guidance with more legal weight than they are currently able to. This would assist reporting entities in terms of their internal governance obligations (e.g. where internal processes require a certain level of legal assurance on activities such as lawful compliance with relevant legislative instruments). A good model for this is the rulings the Australian Tax Office (ATO) is enabled to make.

4 CONSULTATION ON PROPOSED NGER AMENDMENTS

AIGN members appreciate the consultative approach adopted by the Department over the past year. Effective legislation and regulation are premised on deep understanding of both policy objectives (government) and the regulated activities (industry).

Industry seeks a cooperative approach to policy development / review and continues to constructively engage in this regard.

Early and informed engagement is essential. AIGN members are pleased to note the Department's commitment to allow more time for stakeholder feedback ahead of future changes to measurement determinations.

4.1 Disclosures

Detailed consultation and careful consideration of relevant disclosures was addressed in the drafting of the NGER Act. These confidentiality provisions are appropriate and address the important issue of commercial confidentiality for many Australian businesses.

The CCA review poses a number of questions regarding the options for further application and publication of NGERS data.

It should be noted that AIGN members prepare their respective NGERS reports based off their own internal emissions data management systems – not the other way around.

Therefore, NGERS does not make it easier for entities to meet these numerous other obligations such as Taskforce of Climate Related Financial Disclosures (TCFD), corporate reporting requirements, internal carbon pricing, risk assessment, and other corporate shareholder disclosures. NGERS is simply another reporting obligation that businesses readily accept is necessary for transparency and to facilitate national inventory reporting by the Australian government.

Further publication of NGER data or evolution of NGERS over time is not required to meet these obligations. Noting that, in addition to NGER data being published by corporation, emissions data from over 200 specific facilities is also published under the Safeguard Mechanism Rule.

AIGN believes that the current settings for these factors within NGERS are appropriate.

Any changes to data disclosures must be determined following detailed consultation with industry to ensure there are no unintended consequences resulting from any proposed changes. Noting also that the costs are borne by the liable entities, not the Government or those seeking additional information

5 REPORTING OBLIGATIONS

5.1 Centralised Reporting

A central tenant of AIGN's climate change policy principles is the implementation of streamlined, efficient and effective emissions greenhouse gas emissions reporting.

AIGN members actively supported the implementation of centralised streamlined national emissions reporting – which ultimately lead to the introduction of NGERS. And prior to NGERS, were active contributors to the Australian Government Greenhouse Challenge (then Challenge Plus) voluntary reporting program.

5.2 Harmonisation

AIGN members support NGERS and the National Pollutant Inventory (NPI) remaining separate due to their different purposes. Nevertheless, there may be merit in aligning certain elements, such as facility definitions, reporting periods and potentially reporting timelines. This would streamline the reporting and authorisation process.

Of particular benefit for industry would be the development of an ‘auto-upload’ tool for both NPI and NGER. Currently, businesses are required to manually input data into the emissions and energy reporting system (EERS) and relevant NPI systems. This creates unnecessary administrative burden for industry – who in the large have implemented sophisticated internal emissions measurement and reporting databases.

5.3 Materiality

It is AIGN’s view that the Australian NGER Scheme is one of the, if not the, most comprehensive reporting schemes globally. It requires all greenhouse gas emissions to be measured and reported at a facility level – at a relatively low facility threshold of 25,000 tCO₂-e.

The scheme recognises the complexity and variance of facilities in Australia and sensibly has provided some flexibility in the determination of measurement methodology, from direct metering to scientific/engineering calculation or application of an emissions factor (i.e. methods 1-4).

AIGN members have previously conveyed some difficulties with the interpretation of the concept of materiality within NGERS. Materiality is not considered in *de minimis* terms, which is widely applied in other jurisdiction.

The threshold effectively functions as a materiality lever; however, there is insufficient attention to the materiality of emissions sources within a facility.

Simplified reporting options are offered in some instances but they are abortive – in order to work out if they qualify for simplified reporting options, entities must first make the detailed and time-

consuming calculations to ascertain the immateriality of the emissions in question.

Whilst this does save a little time by negating the requirement to enter some data into the Emissions and Energy Reporting System (EERS), by far the most time is spent to calculate emissions – that may be less than 1% of total facility emissions.

In some cases, reporting entities are spending excessive time calculating very small emissions sources. These processes must then be independently audited, adding further time and costs to reporting negligible emissions sources.

AIGN proposes a review of the approach to materiality in NGERS reporting. The Department could provide reporting entities access to simplified options for *de minimis* emissions (e.g. estimates, default factors) on the basis of aggregate materiality - a practice applied in other jurisdictions e.g. United States.

5.3.1 Streamlining reporting

AIGN has identified an opportunity to streamline reporting obligations for business and the Regulator through the removal of the obligation to report SF6, petroleum lubricants and related products via the NGER system.

The emissions attributable to these products are not material (typically less than 0.1%) and the time taken to collect and audit the data is significant – as they are not usually embedded in emissions reporting systems and must be collected additionally.

Reporting of petroleum lubricants and related products

There is a mandatory reporting obligation under the *Petroleum and Other Fuels Reporting Act 2017*.

This reporting covers recycling used lubricants and oils (producing fuel from used lubricant and specialty oils), including imported, recycled, and produced in Australia.

The Australian Petroleum Statistics is a publication which collects national and state statistical information on sales of petroleum products, exports and imports of petroleum products and crude oil,

production of crude oil and condensate, refinery input and output, and stocks of petroleum products.

If these products were to be used as an energy source then they would already be covered under the energy sources listed in NGER (as they are simply refined petroleum) and so should not be a separate category.

SF6

A strong case is also evident for the streamlining of SF6 obligations. For example, SF6 typically represents less than 0.01% of facility's overall emissions and data on SF6 is available to Government from other sources.

The Government tracks all SF6 imports, manufacture in Australian (if any) and destruction. This data could easily be accessed to account for Australia's SF6 emissions in Australia's international reporting.

6 AUDITING FRAMEWORK

6.1 Commissioned audits

AIGN recognises the merit of effective and efficient audit provisions and guidelines – these provide stakeholders with increased confidence in the validity of reported data.

However, audits are resource and time intensive and typically require significant planning to provide access to relevant personnel, documentation and facilities within highly complex (often geographically disperse) operating environments. For example, site metering at facility and reporting and calculations conducted at a city-based head office.

When the Regulator elects to trigger its provision to conduct a mandatory client audit, consideration should be given to timing of the audit within the client's compliance schedule (e.g. NGER, SGM, RET, NPI, etc.). A flexible approach is required and given that it is based on historic data there are no resulting compliance issues if a small delay is required.

AIGN members would also encourage the Regulator to consider the need for audits, especially where it

would be practical to apply a more efficient method to procure the desired data – such as through direct client engagement.

AIGN supports the adoption of two-step audit process: initially a desktop audit; followed by a field audit only where sufficient risk identified.

6.2 Voluntary audits

Careful consideration (avoidance) of the application of mandatory audits over the top of voluntary audits is necessary to avoid sending signals to the market to cease voluntary audits altogether.

Where the Regulator has concerns about an auditor's approach/methodology/capability, this should be addressed directly with the auditor, or through the Regulator's auditor qualification process and auditor guidelines.

Imposing an additional cost burden on a reporting entity, which has striven to go beyond compliance through the application of a voluntary audit, is a problematic approach that does not resolve the core issue, while potentially creating unintended consequences.

6.3 Disclosure of audit costs

The introduction of the reporting of audit costs is unnecessary. Audit costs cannot be used as a proxy for the quality or appropriateness of an audit.

For many businesses audit costs may be incorporated into a single financial and NGER audit contract or may be further consolidated at a global head office as part of single service agreement with a large audit firm. The experience of the firm and their understanding of the businesses emissions reporting system may also substantive impact the cost of an audit.

Where the Regulator (or others) have concerns regarding the quality of an audit or an audit service provider, AIGN would argue that this is a matter to be raised directly with the auditor – rather than the liable entity. Any changes should be implemented either through the audit guidelines or the auditor prequalification process.

7 SAFEGUARD MECHANISM

The Emissions Reduction Fund is central to the Government's 'Direct Action Plan' to cut emissions to five per cent below 2000 levels by 2020 and to 26 to 28 per cent below 2005 levels by 2030. It comprises an element to credit emissions reductions, a fund to purchase emissions reductions, and a safeguard mechanism.

The stated objective of the safeguard mechanism is to protect taxpayers' funds by ensuring that emissions reductions paid for through the crediting and purchasing elements of the Emissions Reduction Fund are not displaced by significant increases in emissions above business-as-usual levels elsewhere in the economy.

Importantly, it was designed to reflect business-as-usual emissions – so as not to penalise Australian industry ahead of its international competitors.

The Safeguard Mechanism is meeting its stated intent. Businesses are required to operate below their emissions baseline or purchase equivalent offsets to ensure they do so. This gives effect to an implicit carbon price on liable entities.

7.1.1 Addressing trade exposed industry

When considering Australian industry's international competitors, it is important to do this at a sectoral level. For example, countries that are competing with Australian industries producing aluminium are different from those that are producing LNG.

AIGN commissioned CIE/CM Group to undertake a Competitiveness Study to better understand the relative impacts of international carbon pricing policy on Australia's trade exposed industries.

Examining the nature of climate policies and their actual implementation sector by sector around the world (and particularly in competitor countries) provides some important lessons for Australian policy development.

These findings can be summarised as follows.

- Competitiveness issues are an inevitable consequence of carbon policies that focus on the production basis of emissions. All policies affect imports and exports differently, and the non-uniformity of policies around the world enhances this effect.
- While the Paris Agreement can be seen as a step forward for global action, the competitiveness issue is actually exacerbated by the nature of the Paris Agreement, which includes considerable variation between countries.
- Focusing only at the aggregate or macroeconomic detail obscures what is going on at the individual sector or facility level. Aggregate outcomes (as seen, for example, in impressive reductions in emission growth in China in recent years) say nothing about the treatment of individual sectors within an economy and tend to hide underlying competitiveness effects.
- Competitiveness needs to be understood on a sector by sector level, and by examining what is happening at a facility level. If not, policies may unintentionally exacerbate adverse competitiveness outcomes.
- The implementation details of a policy are crucial. A range of case studies illustrate the vast difference between the notional impacts of a policy and the actual impact 'on the ground', at a facility level.
- There is a big difference between announcement of a policy and the actual implementation of that policy.

The development of Australian policy should explicitly account for competitiveness issues as part of the process of policy development.

The case studies examined in the CIE/CM Group report for AIGN illustrate the sort of attention that needs to be applied when considering competitiveness issues.

7.1.2 Coverage of Safeguard Mechanism

In meeting its obligations under the Paris Agreement, the Australian Government has in place a number of carbon policies and supporting legislation including greenhouse reporting, an emissions reduction fund, the renewable energy target, and the safeguard mechanism.

However, when considering the Safeguard Mechanism, it is important to recognise its narrow scope in the context of Australia's emissions profile. The Safeguard Mechanism only covers approximately 25% of Australia's emissions and care is needed to not disproportionately impose a burden on this sector of the nation's emissions.

The Safeguard Mechanism currently constrains industrial and fugitive emissions only. The challenge for Australia is to successfully transition to a low carbon economy across all emission sources – electricity, stationary energy, transport, fugitive emissions, industrial processes and product use, agriculture, waste, land use and land use change and forestry.

7.1.3 Timeliness of review

With respect to the operation of the safeguard mechanism, AIGN notes that it has been in operation a relatively short-time compared to NGERS, and that a detailed consultative process is currently underway to make amendments to the Safeguard Rule.

The timing of the CCA's legislated review of NGERS therefore creates some challenges in terms of giving meaningful feedback on the core elements of the safeguard framework.

In the main, AIGN members are satisfied with the Department's approach to the amendments to the Safeguard Rule arising from the 2017 review of climate change policies. Particularly, AIGN appreciates the Departments detailed consultation briefing sessions and considered approach to this review.

8 CARBON CREDIT MARKET

In light of Australian emissions reduction targets, as per the Paris Agreement, AIGN members have a strong interest in seeing a deep and liquid market for carbon credits develop.

The market for Australian Carbon Credit Units (ACCUs) is limited and largely dominated by the Emissions Reduction Fund (ERF).

The CCA could usefully investigate the liquidity of the ACCU market for potential future compliance needs. This could include how the Government might encourage the market to grow post ERF, for example by improving the flow of information to aid in market growth and price discovery (e.g. a comprehensive supply-side public registry of ACCUs to counterbalance the publication of demand-side information relative to liable entities) and access to international units.

9 CONCLUSION

Thank you for the opportunity to provide input on this consultation paper.

AIGN recognises that the NGER legislation is an important and effective component of the Australian Government's approach to climate change management and its obligations under the Paris Agreement. As such, NGER is an effective and efficient mechanism and AIGN recommends relatively minor incremental improvements (outlined in this submission) rather than substantive changes to the legislation.

AIGN supports the continued involvement of stakeholders in the preparation of this review.

AIGN's position on climate change and energy policy is underpinned by our principles, which have been the basis of AIGN's contributions to the climate change policy discussion for many years (see Attachment 1 or www.aign.net.au).

AIGN welcomes future opportunities to engage with the CCA. Please contact Susie Smith (CEO), with any further questions regarding this submission (susie.smith@aign.net.au).

ATTACHMENT 1: AIGN POLICY PRINCIPLES

Australia should make an equitable contribution, in accordance with its differentiated responsibilities and respective capability¹, to global action to reduce greenhouse gas emissions and to adapt to impacts of climate change.

Australia should engage the international community to pursue global action to reduce greenhouse gas emissions leading to identified and beneficial environmental outcomes which:

- allows for differentiated national approaches;
- promotes international cooperation;
- minimises the costs and distributes the burden equitably across the international community;
- is comprehensive in its coverage of countries, greenhouse gases, sources and sinks;
- recognises the economic and social circumstances and aspirations of all societies; and
- is underpinned by streamlined, efficient and effective administrative, reporting and compliance arrangements.

In this global context, Australia should develop a strategic national approach to responding to climate change which:

- is consistent with the principles of sustainable development;
- is consistent with other national policies including on economic growth, population growth, international trade, energy supply and demand, and environmental and social responsibility;
- takes a long-term perspective;
- maintains the competitiveness of Australian export and import competing industries;
- distributes the cost burden equitably across the community;
- adopts a consultative approach to the development of new policies; and
- is consistent and effectively co-ordinated across all jurisdictions throughout Australia.

¹ Australia's contribution to the global climate change effort as set out here reflects the principle in Article 3.1 of the United Nations Framework Convention on Climate Change. Differentiated responsibilities and respective capabilities could take account of such matters as a country's economic growth and structure, population growth, energy production and use etc.