

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 127**

Issued by the Authority of the Minister for Climate Change and Water,  
Senator the Honourable Penny Wong

*National Greenhouse and Energy Reporting Act 2007*

*National Greenhouse and Energy Reporting Regulations 2008*

The *National Greenhouse and Energy Reporting Act 2007* (the Act) establishes the National Greenhouse and Energy Reporting (NGER) System, which is a national framework for reporting greenhouse gas emissions, greenhouse gas projects (abatement actions) and energy consumption and production by Australian corporations.

Section 77 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act makes it mandatory for Australian corporations, which trigger certain thresholds, to report annually on their greenhouse gas emissions, energy consumption and energy production.

Data reported under the Act will inform decision making during the establishment and on-going implementation of the national emissions trading scheme, assist Australia meet its international reporting obligations and inform government policy, programs and the Australian public. The Act also establishes the Greenhouse and Energy Data Officer (GEDO) as the regulatory and administrative decision maker under the Act.

The Regulations provide necessary details that will allow compliance with, and administration of, the Act. The Act specifies particular matters for which regulations may be made and these are set out in Attachment A.

In line with the particular matters specified by the Act, the Regulations deal with issues of interpretation, registration requirements for corporations, reporting obligations of registered corporations, disclosure of information by the GEDO and requirements for corporations applying to the GEDO for determinations on issues that will assist in clarifying corporate responsibility for reporting and the form in which it is presented. Details of the Regulations are set out in Attachment B.

The Act also allows for Regulations to define requirements for reporting on greenhouse gas reduction and removal projects (sections 7, 21 and 24 of the Act). Because of the links between greenhouse gas projects and emissions trading, Regulations on greenhouse gas projects and related definitions are not proposed at this time. Regulations on greenhouse gas projects will be proposed when emissions trading design features are finalised.

The Act and Regulations reflect the outcomes of comprehensive consultation with business and other stakeholders between May 2005 and June 2008. The legislation is designed to create an effective national reporting system, while not imposing an unnecessarily heavy compliance burden on business.

Regulations specific consultation began after the Act was passed in September 2007. In October 2007, the then Australian Greenhouse Office released for public comment the *National Greenhouse and Energy Reporting System, Regulation Discussion Paper*. This contained preliminary proposals for Regulations to be made under the Act. Public information sessions were held in most capital cities (excluding Hobart and Darwin). Over 1000 people attended the information sessions and 80 formal submissions were received from interested organisations and individuals.

In addition, in January 2008 the Department released for public comment a discussion paper on the *Technical Guidelines for the Estimation of Greenhouse Emissions and Energy at Facility-Level*, seeking feedback on the proposed methodologies for business to calculate greenhouse gas emissions and energy consumption and production. This informed both the development of Regulations and the methods and criteria legislative instrument under section 10(3) of the Act. In response, over 70 submissions were received from interested organisations and individuals.

Incorporating the feedback from the Discussion Paper, the Department of Climate Change released for public comment the *National Greenhouse and Energy Reporting System, Regulations Policy Paper* in February 2008. The paper sought to further inform stakeholders about the system and again gather feedback on final approaches to Regulations.

Public information sessions on the Policy Paper were again held in most capital cities (excluding Hobart and Darwin). Over 1000 people attended the information sessions and 100 submissions were received from interested organisations and individuals.

Industry specific focus groups and one-on-one meetings were also held with over 30 key representative industry sector organisations and their members to discuss policy issues and regulation development.

Most recently, the proposed Regulations were provided to a group of industry organisations and businesses that had actively engaged in the development of the system for review and to provide feedback on how the proposed Regulations practically reflect the stated policy intent.

The Act does not specify conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations would commence on 1 July 2008.

## ATTACHMENT A

### Particular matters specified by the *National Greenhouse and Energy Reporting Act 2007* for which regulations may be made

Section 7 of the Act allows regulations to define the meaning of energy, industry sector, external auditor qualification specifications and kinds of oil or gas extraction activities for the purposes of the Act. These Regulations do not include external auditor qualifications.

Paragraphs 8(6)(a) and 8(6)(b) of the Act allow regulations to be made establishing rules under which participants in a joint venture or partners in a partnership may make, and revoke, nominations for a partner or participant be a responsible entity under the Act.

Paragraphs 9(1)(a), 9(4)(a) and 9(4)(b) of the Act allow regulations to be made specifying the requirements for an activity or activities to constitute a facility, specifically the circumstances in which an activity, or a series of activities will form part of a single undertaking or enterprise (a facility) and what activities are attributable to particular industry sectors.

Subsection 10(1) of the Act allows regulations to define the meaning of *emissions* of greenhouse gas, *production* of energy and *consumption* of energy.

Paragraphs 15(1)(c) and 15(1)(d) of the Act allow regulations to specify the form of applications for registration and the information to be included in a corporation's application for registration to the Greenhouse and Energy Data Officer (GEDO).

Paragraph 16(4)(b) of the Act allows regulations to specify the information that will be entered on the National Greenhouse and Energy Register.

Paragraph 18(2)(a) and 18(2)(b) of the Act allow regulations to be made to specify the form of applications for deregistration and the information to be included a corporation's application for deregistration to the GEDO.

Paragraph 19(6)(c) and subsection 19(7) of the Act allow regulations to specify the information to be provided in a report from a registered corporation to the GEDO. They allow regulations to specify different requirements for different circumstances.

Subsection 19(8) of the Act allows regulations to specify the requirements for a report to the GEDO where a registered corporation does not meet any threshold or does not meet specified thresholds.

Subsection 20(2) of the Act allows regulations to specify the manner and form for an application from a registered corporation to the GEDO for information to be provided by the 'other person'. This is in circumstances where the data cannot be obtained because of confidentiality issues.

Subsection 20(4) of the Act allows regulations to specify the requirements to be met by the 'other person' to provide information to the GEDO.

Subsection 26(1) of the Act allows regulations to specify persons to whom the GEDO may disclose greenhouse and energy information.

Paragraph 54(2)(c) of the Act allows regulations to specify information requirements that must be included in a corporation's application to the GEDO to declare that an activity or series of activities is a facility.

Paragraph 55(2)(c) of the Act allows regulations to be made to specify other information requirements that must be included in a corporation's application to the GEDO to declare operational control over a facility.

*Details of the National Greenhouse and Energy Reporting Regulations 2008*

**Part 1 Preliminary**

Regulation 1.01 – Name of Regulations

This regulation provides that the title of the Regulations is the *National Greenhouse and Energy Reporting Regulations 2008*.

Regulation 1.02 – Commencement

This regulation provides for the Regulations to commence on 1 July 2008, to coincide with the beginning of the first reporting period under the *National Greenhouse and Energy Reporting Act 2007* (the Act).

Regulation 1.03 – Definitions in the Regulations

This regulation provides definitions for key terms used within the Regulations.

**Part 2 Interpretation**

Regulation 2.01 – Purpose of Part

Regulation 2.01 provides that this Part contains regulations made for the purposes of Division 2 of Part 1 of the Act dealing with matters of interpretation.

**Division 2.2 Section 7 definitions**

Regulation 2.02 – Definition of *carbon dioxide equivalence* – values specified for determining *carbon dioxide equivalence*

Regulation 2.02 lists the global warming potential (GWP) for the six Kyoto gases (carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulphur hexafluoride (SF<sub>6</sub>) and the hydrofluorocarbon (HFCs) and perfluorocarbon (PFCs) gas groups), to be reported under the Act. Section 7 of the Act specifies that greenhouse gases will be measured in carbon dioxide equivalents, and outlines that these equivalents would be determined by multiplying the amount of gas by the GWP of that gas.

GWPs for the six types of Kyoto gases listed in this regulation are based on the 1995 Intergovernmental Panel on Climate Change (IPCC) Second Assessment Report, in line with international requirements for national greenhouse gas inventories. These GWPs have been agreed internationally for use in national inventories under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

### Regulation 2.03 – Definition of *energy* – specified fuel and other energy commodities

Regulation 2.03 specifies the fuels and other energy commodities to be included in the definition of ‘energy’ under section 7 of the Act. The definition covers fuels, and other energy commodities used for energy purposes (i.e. electricity) and used as products (i.e. bitumen and solvents). Schedule 1 to these Regulations provides a list of fuels and other commodities to be considered energy for the purposes of the Act and Regulations.

### Regulation 2.04 – Definition of *greenhouse gas* — specified kinds of hydrofluorocarbons

Regulation 2.04 provides a table of hydrofluorocarbons (HFCs) and their chemical formulae to be included in the definition of ‘greenhouse gas’ under section 7 of the Act. This list of HFCs will be mandatory to report and is consistent with the list in the 1995 IPCC Second Assessment Report.

HFCs are included in the group of six Kyoto greenhouse gases reported under the UNFCCC. HFCs are potent greenhouse gases, with high GWPs and extremely long atmospheric lifetimes.

### Regulation 2.05 – Definition of *greenhouse gas*— specified kinds of perfluorocarbons

Regulation 2.05 provides a table of perfluorocarbons (PFCs) and their chemical formulae to be included in the definition of ‘greenhouse gas’ under section 7 of the Act. This list of PFCs will be mandatory to report and is consistent with the list in the 1995 IPCC Second Assessment Report.

PFCs are included in the group of six Kyoto greenhouse gases reported under the UNFCCC. PFCs are potent greenhouse gases, with high GWPs and extremely long atmospheric lifetimes.

### Regulation 2.06 – Definition of *industry sector*

This regulation defines industry sector based on the Australia New Zealand Standard Industrial Classification (ANZSIC) levels and codes mentioned in the table at Schedule 2. This table is based on industry classifications under the ANZSIC 2006 at the Subdivision and Group level. These levels were chosen based on achieving a balance between the requirements for collecting data for government programs and to provide statistics that are comparable with other data sets, such as those collected by the Australian Bureau of Statistics (ABS).

### Regulation 2.07 – Specified activities for the definition of *oil or gas extraction activity*

The Act limits reporting of activities within the Exclusive Economic Zone (EEZ) to:

- (a) any activity involving extraction of, or exploration for, oil or gas;
- (b) any activity, of a kind specified in the Regulations that is connected with such extraction or exploration.

Accordingly this regulation lists these activities as:

- (a) the operation of a liquefied natural gas floating platform;
- (b) the transportation of oil or gas, but only to the extent that the transportation is through a pipeline.

These are activities in the EEZ that can have high levels of greenhouse gas emissions and it is therefore important that they be captured by the National Greenhouse and Energy Reporting (NGER) System framework.

### **Division 2.3                      Section 8 rules**

Section 8 of the Act defines a controlling corporation's group and members of its group. Section 8 also establishes that a group includes a joint venture or partnership if a member of the group is nominated as the responsible entity for the joint venture or partnership (the ***responsible entity***). If no one is nominated as the responsible entity for the joint venture or partnership, all participants or partners *must* report on the joint venture or partnership as part of their corporate group. Regulations made under paragraph 8(6)(a) of the Act establish a process for nomination and revocation of a nomination of a responsible entity for a joint venture. Regulations under paragraph 8(6)(b) establish a process for nomination and revocation of a nomination of a responsible entity for a partnership.

Within regulations for section 8 and elsewhere, the method for authenticating a corporation's identity is to be approved by the GEDO and notified in the Gazette. Throughout the Regulations and Explanatory Memorandum references to the 'Gazette' are references to the Commonwealth Government Notices Gazettes.

#### Regulation 2.08 – Rules for making nominations — responsible entity for joint venture

This regulation specifies that a written nomination for a joint venture must include statements that the nominee is to be the responsible entity for the joint venture (the ***nominated member***) and that all other members have agreed to the nomination. A nomination is also to include identifying and contact details for the nominee, its controlling corporation, other joint venture participants, and identifying and contact details for the joint venture itself. A nomination takes effect when it is received by the GEDO. The nomination must be in a form approved by the GEDO and published in the *Gazette*.

#### Regulation 2.09 – Rules for revoking nominations — unilateral revocation by responsible entity for joint venture

A nomination of a responsible entity for a joint venture may be revoked with the agreement of the other members or unilaterally. This regulation applies when a revocation application is unilateral. The responsible entity must give a written ***notice of intention*** to each member, stating that it intends to revoke its nomination as the responsible entity. A notice to that effect is to be given to the GEDO no sooner than 28 days after the notice of intention has been provided to other participants. The notice to the GEDO must include details for the nominated member, its controlling corporation, the joint venture participants and the joint venture itself, and must state that the member revokes its nomination as the responsible

entity for the joint venture. The notice revocation must be in a form approved by the GEDO and published in the *Gazette*.

A revocation takes effect on the later of either the day on which the GEDO receives the notice, or the day (if any) on which the revocation is expressed to take effect.

#### Regulation 2.10 – Rules for revoking nominations — revocation by participants in a joint venture

Where a revocation application is made by members of a joint venture other than the nominated responsible entity, a written revocation notice is to be provided to the GEDO. The agreement of the nominated member to its nomination being revoked is not required. This is to ensure that in circumstances where all participants in a joint venture are no longer supportive of an existing nomination, the nomination may be revoked and the issue of responsibility for reporting reconsidered.

The notice to the GEDO must include details for the nominated member, its controlling corporation, the joint venture participants and the joint venture itself, and it must state that all participants (not necessarily including the nominated member) decide to revoke the nomination. The notice of revocation must be in a form approved by the GEDO and published in the *Gazette*.

A revocation takes effect on the later of either the day on which the GEDO receives the notice, or the day (if any) on which the revocation is expressed to take effect. For any period for which there is not a nominated member, all members are liable to report.

#### Regulation 2.11 – Rules for making nominations — responsible entity for partnerships

This regulation specifies that a written nomination for a partnership must include statements that the nominee is to become the responsible entity for the partnership and that the other partners have agreed to the nomination. A nomination is also to include identifying and contact details for the nominee, its controlling corporation and other partners, and identifying and contact details for the partnership itself. A nomination takes effect when it is received by the GEDO. The nomination must be in a form approved by the GEDO and published in the *Gazette*.

#### Regulation 2.12 – Rules for revoking nominations — unilateral revocation by responsible entity for partnership

Revoking a nomination as the responsible entity for a partnership may be done with the agreement of the other partners or unilaterally. This regulation applies when a revocation application is unilateral. The responsible entity must give a written **notice of intention** to the other partners, stating that it intends to revoke its nomination as the responsible entity and will give a notice to that effect to the GEDO no sooner than 28 days after the notice of intention has been provided. The notice to the GEDO must include identifying and contact details for the responsible entity, its controlling corporation, other partners and the partnership itself, and it must state that the responsible entity revokes its nomination as the responsible entity for the partnership. The notice of revocation must be in a form approved by the GEDO and published in the *Gazette*.



A revocation takes effect on the later of either the day on which the GEDO receives the notice, or the day (if any) on which the revocation is expressed to take effect.

### Regulations 2.13 - Rules for revoking nominations — revocation by partners in partnership

Where a revocation application is made by the other partners, a written revocation notice is to be provided to the GEDO. The agreement of the responsible entity to its nomination being revoked is not required. This is to ensure that in circumstances where other partners in a partnership are no longer supportive of an existing nomination, that the nomination may be revoked and the issue of responsibility for reporting reconsidered.

The notice to the GEDO must include details for the nominated member, its controlling corporation, the other partners and the partnership itself, and it must state that all partners (not necessarily including the nominated member) decide to revoke the nomination. The revocation must be in a form approved by the GEDO and published in the *Gazette*.

A revocation takes effect on the later of either the day on which the GEDO receives the notice, or the day (if any) on which the revocation is expressed to take effect. For any period for which there is not a nominated entity, all partners are liable to report.

## **Division 2.4            Facilities: section 9**

### **Subdivision 2.4.1    General**

#### Regulation 2.14 – Meaning of *overall control*

Regulation 2.14 outlines the meaning of overall control. The concept of *overall control* is similar to the concept of operational control in the Act. Overall control, however, refers to control over an activity or series of activities (including ancillary activities) whereas operational control refers to control over the facility itself.

The operational control definition under the Act refers specifically to ‘operational control over a facility’, and therefore cannot be used in relation to control over activities that form part of a facility.

Under subregulation 2.14(1) a corporation is considered to have overall control of an activity or series of activities (including ancillary activities) if it has the authority to introduce and implement operating, health and safety and environmental policies. In some circumstances it will be clear which corporation has overall control over the activities or series of activities (including ancillary activities). However, where more than one corporation could satisfy the requirements of subregulation 2.14 (1), subregulation 2.14(2) specifies that the corporation with the *greatest* authority to introduce and implement operating and environmental policies is taken to have overall control over the activity or series of activities (or series of activities).

## **Subdivision 2.4.2      Circumstances in which an activity or activities will form part of a single undertaking or enterprise**

### Regulation 2.15 - Purpose of Subdivision

Regulation 2.15 provides that this Subdivision sets out the differing circumstances in which an activity, or a series of activities (including ancillary activities), will form part of a facility.

### Regulation 2.16 – Forming part of a single undertaking or enterprise – activities at a single site

This regulation specifies the circumstances in which an activity or series of activities (including ancillary activities) will form part of a single undertaking or enterprise at a single site.

This regulation applies to the majority of facilities, which are identifiable by two common traits as outlined in subregulation 2.16(1):

- 1) the activities that form the facility are at a single site; and
- 2) the activities that are at the single site are all connected to a primary production process that produces one or more products or services.

A single site is defined under regulation 1.03 as a physical location or series of physical locations in close proximity to one another. Close proximity is not defined as this will be dependent on the context. For example, in an urban area three factories spread across a city with three separate addresses would be three different sites. However, in a non-urban setting close proximity could imply longer distances. For example, a series of mines within a single area (i.e. series of physical locations) that form a primary production process may be kilometres apart. Although these activities are kilometres apart, if they are on the same or adjoining tenements or are the only activities occurring in that area they may be considered to be a single site.

In most instances each site will have its own street address. In addition, in a small number of circumstances, such as offshore activities, an address may not exist. In these cases the boundary of the activities would generally be equated to a location such as a group of platforms or exploration site.

An example of a facility based on subregulation 2.16(1) is a wine manufacturing facility at a single address, 105 Barclay Lane, Clare Valley. The primary production process at this facility could include:

- a primary productive activity, wine manufacturing; and
- other activities (including ancillary activities) such as grape growing, transport and administrative activities such as record keeping.

In the case of grape growing, grapes may or may not be sold as a secondary product to the market. In either case they would be considered part of the primary production process.

As all of these activities form part of the primary production process (wine manufacturing) and are at a single site, they will form part of a single facility regardless of who has control of individual activities.

In some cases there can be more than one production process at a site. In this instance the other activity or series of activities that form the 'other production process' will be part of the same facility as the primary production process if they are at the same site as a primary production process and satisfy the requirements of paragraphs 2.16(2)(a) and 2.16(2)(b).

For example, at the same site as the primary production process (wine manufacturing) there could be an 'other production process', such as olive growing, which produces product/s or service/s (i.e. olives) in accordance with 2.16(2)(b). If this activity is under the overall control of the same corporation as the corporation with overall control of the wine manufacturing activity, in accordance with 2.16(2)(a), all activities that are part of the wine manufacturing and the olive growing production processes will form part of a single facility.

This means that if the corporation with overall control of the activities associated with the wine manufacturing production process does not have overall control of the activities associated with the olive growing production process, because the olive growing is a completely separate production process from the wine manufacturing, the olive growing would be a separate facility in its own right regardless of the fact that the processes occur at the same site.

On-site listed activities (refer to regulation 2.17) will always be attributed to the primary production process or other production process that they support at a site as they are part of these production processes.

#### Regulation 2.17 - Forming part of a single undertaking or enterprise – listed activity at different site

Ancillary activities may occur at the same location as the activities that they are supporting (on-site) or at a separate location (off-site). An example of this is on-site or off-site transport or on-site or off-site administrative activities such as record keeping. This regulation and the following regulation, 2.18, apply to off-site ancillary activities.

This regulation applies to an activity that is a listed activity, as defined in subregulation 1.03, that is at a different site (i.e. off-site), to the primary production process. For example a listed activity, 'transport of goods' occurs at a different site to a wine manufacturing activity. As long as the transport is undertaken to support the wine manufacturing activities, occurs in the same State or Territory as the wine manufacturing and is under the overall control of the corporation that has overall control over the wine making, the corporation can either:

- 1) under subregulations 2.17(2) – 2.17(5) decide that the transport activity will be part of the same facility as the wine manufacturing activity; or
- 2) under subregulation 2.17(5) decide that the transport activity is a separate facility in its own right.

Regulation 2.18 - Forming part of a single undertaking or enterprise — listed activity for more than 1 single undertaking or enterprise

This regulation applies to an activity that is a listed activity, as defined in subregulation 1.03, that is at a different site (i.e. off-site), to multiple primary production processes.

For example, a listed activity, ‘transport of goods’, occurs at a different site to:

- 1) a wine manufacturing primary production process that occurs at a site in the Barossa; and
- 2) a wine manufacturing primary production process that occurs at a site in the Clare Valley; and
- 3) a bottling primary production process that occurs at a site in McLaren Vale;

such that the transport of goods occurs between the three sites.

As long as the transport of goods is undertaken to support all three primary production processes, occurs in the same State or Territory as the three sites (in this instance within South Australia) and is under the overall control of the corporation that has overall control over the primary production process at each site, the corporation must under subregulations 2.18(2) – 2.18(6) decide that the transport activity will be:

- 1) a separate facility in its own right; or
- 2) part of the same facility as the primary production process at only one of the sites, e.g. the transport activity is part of the Clare Valley wine manufacturing facility; or
- 3) part of the same facility as the primary production process at each of the sites provided that the corporation has identified and recorded the proportion of the transport activity that will be attributed to each of the sites. For example, the corporation records that 30% of the transport is attributed to the Clare Valley site, 30% is attributed to the Barossa site and 40% is attributed to the McLaren Vale site.

A corporation must record the decisions that it makes under this regulation.

Regulation 2.19 – Forming part of a single undertaking or enterprise – transport sector activities

This regulation outlines the circumstances in which a transport activity is taken to be a facility. Under subregulation 2.19(1) if an activity:

- 1) provides the most value out of any of its activities and is a transport activity attributable to an industry sector listed in subregulation 2.19(3); and
- 2) that transport activity is attributable to a single State or Territory, based on the location of fuel purchased as in subregulation 2.19(2);

then the activity or series of activities and all of its ancillary activities, that are under the overall control of the same corporation, will form part of a single facility.

For example, a corporation conducts trucking activities. These activities are attributable to the one of the industry sectors listed in subregulation 2.19(3), ‘Road Freight Transport’. These activities occur in New South Wales and Victoria based on the location of fuel purchased. These activities would therefore be divided into two facilities:

- 1) a New South Wales facility that consists of fuel purchased in New South Wales and used in trucking activities combined with any ancillary activities that occur within New South Wales and are under the overall control of the same corporation such as depots or warehousing; and
- 2) a Victorian facility that that consists of fuel purchased in Victoria and used in trucking activities and any ancillary activities that occur within Victoria and are under the overall control of the same corporation such as the company's head office and fuelling stations.

Note that ancillary activities can only be attributed to a transport activity if they are supporting that activity. For example, if there is a rail freight transport activity that involves the transport of maintenance equipment for trucking and the rail freight activities are under the overall control of the same corporation that has overall control of the trucking activities, then the rail freight may be taken to form the same facility as the trucking facility, provided all of the activities occur in the same State or Territory. If the rail freight activity is not ancillary to the trucking, the rail freight activity will form part of a separate facility in its own right.

#### Regulation 2.20 – Forming part of a single undertaking or enterprise – electricity, gas etc activities

Under this regulation, if an activity is in one of the industry sectors mentioned in subregulation 2.20(2), then in accordance with 2.20(1) the activity and any ancillary activities that are under the overall control of one corporation will be taken to form part of a single facility. For example, a water pipeline that has a series of pumping stations that are ancillary to that pipeline would be defined as a single facility. Another example of this is a gas pipeline that has compressor stations which are ancillary to the pipeline.

### **Subdivision 2.4.3 Activities attributable to industry sectors**

#### Regulation 2.21 – Purpose of Subdivision

Regulation 2.21 provides that this Subdivision defines how activities that form part of a facility will be attributed to an industry sector under the regulation making power in paragraph 9(1)(a) of the Act.

#### Regulations 2.22 – Activities to be attributable to the same industry sector as the principal activity

Under regulation 2.22, the activities that form a facility are attributed to the same industry sector (as per Schedule 2) as the principal activity of the facility. Subregulation 2.22(5) outlines the meaning of principal activity for the purpose of this regulation.

For example, although a facility could be engaged in grape growing and wine manufacturing, if the wine manufacturing creates the most value for that facility, the activities within the facility and therefore the facility itself would be classified under the industry sector of Beverage Manufacturing (ANZSIC code 121).

Subregulation 2.22(3) is an exception to subregulation 2.22 (1). It outlines that if a company has overall control over an activity that involves the construction of infrastructure and will also have overall control over the future activity that the infrastructure is being made for, then the facility that these activities form a part of will be attributed to the industry sector of the future activity. For example, if a road construction company constructs a tunnel and also operates that tunnel in the future, the facility that includes the construction of the tunnel will be classified to the industry sector of Other Transport Services (ANZSIC code 529).

**Division 2.5                      Meaning of *emissions, production and consumption*: section 10**

Regulation 2.23 – Meaning of *emissions, production and consumption*

Subregulation 2.23(2) specifies the meaning of *emissions* of greenhouse gas. For the purposes of the Act, emissions include both Scope 1 and Scope 2 emissions. These are defined relative to a given facility. Scope 1 emissions are greenhouse gases released directly from a facility. Scope 2 emissions arise from the generation of electricity, heating, cooling or steam that a facility consumes. In this way, the same release of greenhouse gases may be counted as Scope 1 emissions for one facility (such as a coal-fired power plant that provides electricity to the main grid) and as Scope 2 emissions for another facility (such as a factory that purchases electricity from the main grid).

Scope 1 and Scope 2 emissions definitions are intended to be consistent with the World Business Council for Sustainable Development and World Resource Institute’s Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (revised edition). Scope 3 emissions, which are indirect emissions other than Scope 2 emissions, are not included in the definition of emissions for the purposes of the Act.

Scope 2 emissions are included using the powers under subsection 10(2) of the Act, which provides that regulations may specify a meaning of emissions that includes emissions related to the consumption of specified kinds of energy.

To derive total emissions for the purposes of the Act, such as determining whether thresholds under section 13 have been met, Scope 1 and Scope 2 emissions should be added together for a given facility.

Subregulation 2.23(3) provides the meaning of *production* of energy. Energy is already defined under regulation 2.03, so any reference to energy refers to Schedule 1 as specified under that regulation. Each paragraph under (3) refers to both energy produced for final consumption within a facility and production of energy that is for use outside a facility (in activities that are not part of the facility). This means that reporting of intermediate production is not required unless specified in relation to greenhouse gas emissions. Paragraph (3)(a) refers to primary energy production, for example the extraction of fuel from fossil fuel resources and biofuel sources and the capture of renewable energy from water, wind, sunlight etc. Paragraph (3)(b) refers to secondary energy production such as the refining of petroleum.

Subregulation (4) provides the meaning of *consumption* of energy. Energy is already defined under regulation 2.03, so any reference to energy refers to Schedule 1 as specified under that regulation. Consumption of energy includes the use of energy as feedstock or in

chemical products as outlined in Part 4 of the Regulations and the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (the Determination). It also includes energy disposal and losses that occur in transmission and distribution activities.

## **Part 3                      Registration**

### **Division 3.1                Purpose of Part**

#### Regulation 3.01 – Purpose of Part

Regulation 3.01 provides that this Part contains regulations made for the purposes of Part 2 of the Act dealing with registration.

### **Division 3.2                Requirements for applications**

#### Regulation 3.02 – Requirements for applications for registration - contents of applications

Regulation 3.02 specifies the information that a controlling corporation must include when applying for registration under section 12 of the Act. This information will be used as the basis for actions by the GEDO to register a corporation. Some of the information provided in the application will be included on the Register as per regulation 3.04.

Subregulation 3.02(1) relates to basic information to identify the controlling corporation, its Chief Executive Officer (CEO) or equivalent, a primary contact person, members of its group and the section of the Act under which the application is made. It is possible that corporations incorporated in Australia do not have a CEO, but have an equivalent position with a different title - subregulation 3.02(1) covers this eventuality by reference to a CEO 'or equivalent'.

To assess the due date of applications under section 12 of the Act, which depends on the year in which a threshold is met, the regulation requires an application under section 12 of the Act to specify the year in relation to which it is made. This is necessary because an application may be made up to two months after the end of the corporation's initial reporting year, or trigger year.

Australian Business Numbers (ABNs) are required to identify a controlling corporation and members of its group. The regulation does not require business names to be included in an application, as these will be derived from the Australian Business Register by reference to the ABNs provided.

#### Regulation 3.03 – Requirements for applications for registration - form of applications

Regulation 3.03 provides that an application for registration under section 12 or section 14 of the Act must be in writing and must include the corporation's authenticated identity, using a method approved by the GEDO and notified via *Gazette*. The requirement that an application be written encompasses an electronic application process. The authenticated identity could include an electronic or physical signature of the corporation's Chief Executive Officer or other representative, or authenticate the applicant's identity in some other form as appropriate.

It is intended that corporations will be able to prepare a registration application through a form available on the website of the National Greenhouse and Energy Reporting System.



### **Division 3.3            The Register**

#### **Regulation 3.04 – Information to be entered on the Register**

Regulation 3.04 specifies the information that must be entered on the National Greenhouse and Energy Register, including basic details of a registered corporation, members of its group, the section of the Act under which it applied for registration and an internet address (if any). The Register is also to include greenhouse and energy data from a registered corporation's annual report published under section 24 of the Act, and whether the corporation has complied with the Act.

Importantly, by being entered on the Register, this information may be publicly disclosed at the discretion of the GEDO as provided by subsection 16(3) of the Act.

### **Division 3.4            Deregistration**

#### **Regulation 3.05 – Requirements for applications for deregistration – content of application**

Regulation 3.05 specifies the information that a registered corporation must include when applying for deregistration under the Act. This information will be used by the GEDO to deregister a corporation and remove its name from the Register.

Deregistration applications must include the ABN of the registered corporation, the ABN of members of its group, statements as to which members, if any, are nominated responsible entities for joint ventures and partnerships, and a statement and information as to why the registered corporation's group is unlikely to meet any of the thresholds under section 13 of the Act for the financial year in which the application is made and the following two financial years. This information will assist in assessing the application.

There are many reasons why a controlling corporation's group might not meet a threshold where it has in the past. Examples could be changes to the corporate group's structure or practices that lead to significant, long term reductions in levels of greenhouse gas emissions, energy consumption or energy production.

#### **Regulation 3.06 – Requirements for applications for deregistration - form of application**

Regulation 3.06 provides that an application for deregistration must be in writing and must include the corporation's authenticated identity, using a method approved by the GEDO and notified via *Gazette*. The requirement that an application be written encompasses an electronic application process. The authenticated identity could include an electronic or physical signature of the corporation's Chief Executive Officer or other representative, or authenticate the applicant's identity in some other form as appropriate.

## **Part 4                      Obligations of registered corporations etc**

### **Division 4.1                Purpose of Part**

#### Regulation 4.01 – Purpose of Part

Regulation 4.01 provides that this Part contains regulations made for the purposes of Part 3 of the Act dealing with the reporting obligations of registered corporations.

### **Division 4.2                General**

#### Regulation 4.02 – Purpose and application of the Part

Section 19 of the Act establishes the requirement for a registered corporation to provide a report (in this part: ‘the report’ or ‘a report’) to the GEDO relating to greenhouse gas emissions, energy production and energy consumption from facilities under the operational control of the corporation’s group. A report is provided for the corporation’s trigger year and each successive financial year in which it is registered.

Paragraph 19(6)(c) of the Act allows regulations to specify information to be provided in a report or part of a report, subsection 19(7) of the Act provides for regulations to specify different reporting requirements for different circumstances and subsection 19(8) of the Act provides for regulations to specify different reporting requirements for registered corporations which either do not meet the reporting thresholds contained in section 8 of the Act, or which meet only some thresholds.

### **Division 4.3 – General reporting requirements**

#### Regulation 4.03 – Purpose of Division

This Division specifies information relating to a registered corporation, members of the corporation’s group and facilities of the corporation that must be included in every registered corporation’s report for a reporting year. The general reporting requirements apply to all registered corporations and members of its corporate group, regardless of the formats available under the Regulations (i.e. business unit reporting) to report their greenhouse gas emissions, energy consumed and energy produced.

#### Regulation 4.04 – General reporting requirements

Regulation 4.04 establishes reporting requirements for identification, contact and location details for the registered corporation and members of its corporate group, including facilities under the corporate group’s operational control.

Specifically, subregulation 4.04(1) specifies that a report is to include the registered corporation’s Australian Business Number (ABN), the postal and street addresses of its head office, contact details for its CEO and contact details for an additional contact person for the corporation. The inclusion of these details in a report serves to update the equivalent information provided at the time of registration or in previous reports.

Subregulation 4.04(2) specifies that a report must also include ABNs for all members of the corporation's group that have operational control over facilities, as well as for the holding companies of those members. ABNs are required as a primary, unique identifier for each relevant subsidiary, joint venture and partnership.

The corporate group includes joint ventures and partnerships, for which a member of the group has been nominated as the responsible entity, or a member of the group is a participant and no-one has been nominated as the responsible entity (meaning that the obligation to report is transferred to all participants in accordance with section 8 of the Act).

Where the corporate group includes joint ventures or partnerships their ABNs (if any) and ABNs for all participants are to be included in the report. A statement is required as to whether the member has been nominated as the responsible entity, or whether no entity has been nominated, as the responsible entity is also required. Inclusion of this information ensures notices to nominate or revoke a nomination of a responsible entity can be accurately matched with a registered corporation's report, and manages the risk of receiving duplicative data by more than one participant or member.

Subregulation 4.04(3) specifies that a report is to contain details of facilities under the operational control of members of the corporate group determined by subregulation 4.04(2). A report is to include a facility's street address, latitude and longitude (excluding transport facilities), the industry sector to which the facility is attributable, and, if the facility is a transport facility, the State or Territory to which it is attributed. A report is also to include a statement as to which member of the corporate group has operational control over the facility.

It is intended that corporations will be able to prepare a report through an online tool available via the National Greenhouse and Energy Reporting System website.

## **Division 4.4                    Reporting greenhouse gas emissions, energy production and energy consumption**

### **Subdivision 4.4.1        Purpose of Division**

#### Regulation 4.05 – Purpose of Division

Regulation 4.05 provides that this Division sets out greenhouse gas emissions, energy production and energy consumption data to be included in a registered corporation's report if the corporation's group meets a threshold in subsection 13 (1) of the Act for that year.

Subdivisions 4.4.2 and 4.4.3 cover reporting requirements for greenhouse gas emissions from various sources. Different requirements reflect the range of different processes that may generate emissions. The sources in the Regulations are classified according to IPCC classifications. These are:

- 1A: emissions from the combustion of fuels for energy;
- 1B: fugitive emissions from the extraction, production, processing and distribution of fossil fuels;

- 2: emissions from industrial processes where a mineral, chemical or metal product is formed using a chemical reaction that generates greenhouse gases as a by-product; and
- 3: emissions from waste disposal - either in landfill, management of wastewater and waste incineration.

Subdivision 4.4.4 relates to energy production and subdivision 4.4.5 relates to energy consumption. Further details on calculating greenhouse gas emissions and energy production and energy consumption are included in the Determination made under section 10(3) of the Act.

#### **Subdivision 4.4.2 Greenhouse gas emissions from consumption of energy**

##### Regulation 4.06 – Purpose of Subdivision

Regulation 4.06 provides that this Subdivision relates specifically to a registered corporation's reporting requirements in relation to its emissions of greenhouse gases from the consumption of energy.

##### Regulation 4.07 – Greenhouse gas emissions from the consumption of energy if method 1 used

Regulation 4.07 applies to corporations that have chosen to utilise method 1 to estimate emissions from the consumption of a particular energy type (that is, each fuel or energy commodity listed in Schedule 1 to these Regulations). Method 1 means that corporations are using the National Greenhouse Account default energy content and emission factors to estimate emissions from their consumption of energy. If a corporation chooses to use method 1, its report must include the amount of each greenhouse gas emitted during the reporting year. This would be calculated from energy consumption data which is mandated under regulation 4.22.

##### Regulation 4.08 – Greenhouse gas emissions from consumption of energy if methods 2, 3 or 4 used

Regulation 4.08 applies to corporations that have chosen method 2, 3 or 4 to estimate emissions from a particular energy type. These methods require corporations to use facility-specific information about the qualities of the energy type consumed (for instance, the carbon content of the fuel) or the emissions from the consumption, measured directly by approved instruments (for example, direct monitoring of stack gas emissions from a plant).

Subregulation 4.08(2) specifies that such corporations should report:

- 1) the facility-specific emission factor for each type of energy;
- 2) the energy content factor for each type of energy; and
- 3) the amount of each greenhouse gas that is emitted during the reporting year for each energy type (that is, each fuel or energy commodity listed in Schedule 1) .

### **Subdivision 4.4.3 Greenhouse gas emissions from particular sources**

#### Regulation 4.09 – Purpose of this Subdivision

Regulation 4.09 provides that this Subdivision relates specifically to a registered corporation's greenhouse gas emissions reporting for sources other than from the consumption of energy.

The majority of regulations under this Subdivision are tabulated showing:

- 1) an item number (regulation specific only);
- 2) for each item number, the name of the emissions source to be reported;
- 3) the methods that a corporation can use to calculate greenhouse gas emissions; and
- 4) the information to be provided in relation to that source, depending on the method chosen by the corporation.

#### Regulation 4.10 – Greenhouse gas emissions – coal mining source

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from each coal mining source mentioned as an item in the table.

#### Regulation 4.11 – Greenhouse gas emissions – oil and gas source

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from each oil and gas source mentioned as an item in the table.

#### Regulation 4.12 – Greenhouse gas emissions from carbon capture and storage source

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from a carbon capture and storage source.

#### Regulation 4.13 – Greenhouse gas emissions – mineral product source

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from each mineral product source mentioned as an item in the table.

#### Regulation 4.14 – Greenhouse gas emissions – chemical product source

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from each chemical product source mentioned as an item in the table.

#### Regulation 4.15 – Greenhouse gas emissions – metal product source

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from each metal product source mentioned as an item in the table.

#### Regulation 4.16 – Greenhouse gas emissions – use of commercial air conditioning source etc

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from the operation of any of the items listed in paragraph 4.16(1)(a).

#### Regulation 4.17 – Greenhouse gas emissions – waste source

This regulation outlines the information that a report must include for a facility in relation to greenhouse gas emissions from each waste source mentioned as an item in the table.

### **Subdivision 4.4.4 Energy Production**

#### Regulation 4.18 – Purpose of Subdivision

Regulation 4.18 provides that this Subdivision specifies information that a registered corporation must report in relation to energy produced. This is to meet data requirements for national energy statistics.

#### Regulation 4.19 – Energy produced

Regulation 4.19 specifies that where a facility under the operational control of the registered corporation's group *produces* energy during a reporting year, the report must identify the type and amount of energy produced during that reporting year.

#### Regulation 4.20 – Electricity produced

Regulation 4.20 specifies that where a facility under the operational control of the registered corporation's group produces energy that is *electricity* during the reporting year, the report is to describe whether the electricity was produced using either thermal, geothermal, solar, wind or water generation. The corporation's report is also to identify how much electricity was produced within the facility, produced and used within the facility, and produced within but used outside the facility.

## **Subdivision 4.4.5 Energy consumption**

### Regulation 4.21 – Purpose of Subdivision

Regulation 4.21 provides that this Subdivision specifies the information that a registered corporation must report in relation to energy consumption.

### Regulation 4.22 – Energy consumption

Regulation 4.22 specifies that the corporation must report energy consumption of energy by purpose. This assists the estimation of greenhouse gas emissions. The purposes include:

- 1) combustion of energy (i.e. fuel) for the production of electricity;
- 2) the use of energy (i.e. fuel) to produce a chemical or metal product;
- 3) combustion of energy (i.e. fuel) for transport (excluding international bunker fuels);  
or
- 4) any other combustion of a fuel for energy.

Energy consumed as an international bunker fuel is not included in reporting. A 'bunker fuel' means 'a fuel that powers an engine of a ship or aircraft' and an 'international bunker fuel' means 'a supply of bunker fuel:

- (a) for use on an aircraft on a flight that has a destination outside Australia; or
- (b) for use in a ship on a voyage that has a destination outside Australia  
whether or not part of the flight or voyage involves a journey between places in Australia.'

Subregulation 4.22(1)(b) states that corporations should report the amounts of energy (i.e. fuel types) that have been consumed without combustion. Examples include:

- 1) fuel used in a non-energy manner – for example, fuels used directly as solvents or flocculants, waxes, bitumen;
- 2) fuel used as an ingredient in the manufacture of short-life products such as paints, cleaning agents and explosives manufactured for sale;
- 3) fuel packaged for non-internal combustion engine use (restricted to containers less than 20 litres and kerosene, mineral turpentine, white spirit, liquid aromatic hydrocarbons and other petroleum products as defined in item 10.28 of the Schedule to the *Excise Tariff Act 1921*); and
- 4) fuel blended with other products and then packaged for non-internal combustion engine use.

This consumption only needs to be reported if certain thresholds outlined in the Determination are exceeded.

Types of energy (i.e. fuels) may also be used in the production of a chemical or metal product through a chemical reaction either as a carbon reductant (e.g. as happens with steel) or as a feedstock (e.g. ammonia). In these cases, the fuel may be used for its carbon content rather than for its energy content and must be allocated according to the IPCC classification for industrial processes.

Some petrochemical processes, such as the production of certain plastics, act to store carbon in products - for this storage to be taken account of in the estimation of emissions the fuel consumed in the production of these products needs to be separately identified.

Paragraph 4.22(1)(c) also specifies that corporations must report the methods used to estimate energy consumed. Options for methods are outlined in the Determination and corporations will need to identify which of these they have used (e.g. by reliance on data on purchases or the use of direct measurement at the point of combustion). Methods used to estimate greenhouse gas emissions should also be reported (also see regulation 4.08).

#### Regulation 4.23 – Consumption of energy if both electricity and another product are produced

Regulation 4.23 specifies that, in cases where the same energy is used to produce both electricity and another product in an integrated system (known as co-generation), the corporation must identify the amounts of energy that should be attributed to the production of electricity and the amount that should be attributed to the production of the other product. This distinction is important for the accuracy of estimated emissions attributable to the electricity production and consequently estimates of Scope 2 emission factors.

### **Division 4.5                    Other reporting requirements**

#### Regulation 4.24 – Purpose of Division

Regulation 4.24 provides that this Division specifies alternate or additional information requirements to be included in a registered corporation's report in particular circumstances.

#### Regulation 4.25 – Reporting aggregated amounts from facilities

Regulation 4.25 facilitates registered corporations aggregating data for facilities which have greenhouse gas emission, energy use and energy production totals which are smaller than the facility threshold in paragraph 13(1)(d) of the Act. This is included to minimise the regulatory burden on registered corporations.

Subregulation 4.25(2) specifies that registered corporations are able to aggregate greenhouse gas emissions, energy used and energy produced, subject to meeting conditions established by subregulation 4.25(1). Paragraph 4.25(1)(a) establishes the facility level thresholds from paragraph 13(1)(d) of the Act as being the size below which facilities can be aggregated. For State and Territory policy and program purposes, paragraph 4.25(1)(b) specifies that facilities aggregated under this regulation must be located within a single State or Territory and must be attributable to only one industry sector.

For clarity in the data set, subregulation 4.25(3) requires data aggregated under this regulation to be identified where it has been aggregated either by member of the corporate group or by business unit. Subregulation 4.25(6) defines *business unit* for the purposes of the regulation as a unit recognised by the corporation as having administrative responsibility for facilities of the corporation. Aggregation to business unit is permitted in



order to facilitate corporations matching greenhouse gas emission and energy data reporting to their internal corporate structures.

If registered corporations choose not to aggregate reportable data from sub-threshold facilities, data from each facility must be reported separately. Data reported in aggregate need not be separately reported for each facility.

#### Regulation 4.26 - Reporting percentages of emissions and energy

To minimise the regulatory burden on registered corporations, regulation 4.26 establishes a threshold for reporting data from facilities with low levels of greenhouse gas emissions, energy use and energy consumption. This regulation recognises that monitoring and measuring (or estimating) data from small facilities may be difficult and costly for corporations, particularly in relation to the value of the information gained. For facilities which meet the requirements of the regulation, corporations can report an estimate of the percentage share of the corporate group's total greenhouse gas emissions, energy used and energy produced attributed to these facilities.

Subregulation 4.26(1) specifies the maximum levels of greenhouse gas emissions, energy used and energy produced by a facility for the regulation to apply. A facility must:

- emit greenhouse gases with a carbon dioxide equivalence of 3 kilotonnes or less, and produce and consume 15 terajoules or less of energy; and
- comprise less than 2% of the corporate group's total greenhouse gas emissions, energy produced and energy consumed.

Facilities aggregated under regulation 4.26 must total no more than 5 per cent of the corporate group's total greenhouse gas emissions, energy produced and energy consumed. Facilities with greenhouse gas emissions and energy data below the levels specified by subregulation 4.26(1), but which make up more than 5 per cent of the corporate group's total greenhouse gas emissions, energy produced or energy consumed, may *not* be reported under this regulation.

The report must identify the number of facilities aggregated under this regulation. Subregulation 4.26(4) notes that data reported subject to this regulation need not be reported separately for each facility.

#### Regulation 4.27 – Reporting about incidental emissions and energy

Regulation 4.27 establishes a threshold for reporting data from specific greenhouse gas emissions and energy consumption and production sources within a facility. This regulation is made in recognition that monitoring and measuring (or estimating) data from small greenhouse gas emission and energy sources may be difficult and costly for corporations. Sources that meet the requirements established by this regulation are classed as *incidental*.

Data from these incidental sources may be reported as an estimate in line with the method specified in the Determination for this purpose. These methods do not require the same degree of precision as the standard methods.

Paragraphs 4.27(5)(c), (6)(c) and (7)(c) establish that this regulation does not apply to information already collected under another Commonwealth, State or Territory law. If information is already collected, there is no case for being treated as incidental on the basis of the difficulty or cost of measuring the source.

Subregulations 4.27(5), (6) and (7) establish the criteria for sources to be treated as incidental:

- Greenhouse Gas Emissions

For a given reporting year, individual greenhouse gas emission sources must represent no more than 0.5 per cent of the total emitted from the facility's operation and have a total carbon dioxide equivalence not greater than 3 kilotonnes.

Greenhouse gas emission sources treated as incidental for a given facility may not exceed 2 per cent of the total amount of greenhouse gases emitted from the facility and may not exceed 12 kilotonnes of carbon dioxide equivalent emissions.

- Energy consumption

For a given reporting year, individual sources of energy consumption must represent no more than 0.5 per cent of the total energy consumed from the facility's operation and may not exceed 15 terajoules of energy.

Energy consumption sources treated as incidental for a given facility must represent no more than 2 per cent of the facility's total energy consumption and may not exceed 60 terajoules of energy.

- Energy production

For a given reporting year, individual sources of energy production must represent no more than 0.5 per cent of the total produced from the facility's operation and may not exceed 15 terajoules.

Energy production sources treated as incidental for a given facility must represent no more than 2 per cent of the facility's total energy production may not exceed 60 terajoules.

Information reported under this regulation is to be accompanied by a statement that information from greenhouse gas emission and energy sources treated as incidental would cause the corporation significant hardship or expense if it were to be estimated using other methods specified in the Determination.

#### Regulation 4.28 – Reporting for facilities that are networks and pipelines

Regulation 4.28 specifies that data reportable for a facility that crosses State or Territory borders within network and pipeline industry sectors, such as electricity transmission and distribution, gas supply, water, sewerage and drainage services and telecommunications services, must be reported by State and Territory. This apportionment will provide data necessary for State and Territory government policy and programs.

## Regulation 4.29 – Reporting for facilities that are vertically integrated production processes

Aggregating facilities into a vertically integrated production process is optional for registered corporations. Regulation 4.29 establishes rules for facilities which can form a vertically integrated production process.

Subregulation 4.29(1) specifies that the regulation applies where a registered corporation has operational control over facilities that form vertically integrated production processes. It establishes that facilities can only be reported as a vertically integrated production processes in the one State or Territory, including the offshore waters adjacent to the State or Territory. An integrated production process with facilities on either side of a State and Territory border cannot be grouped for reporting.

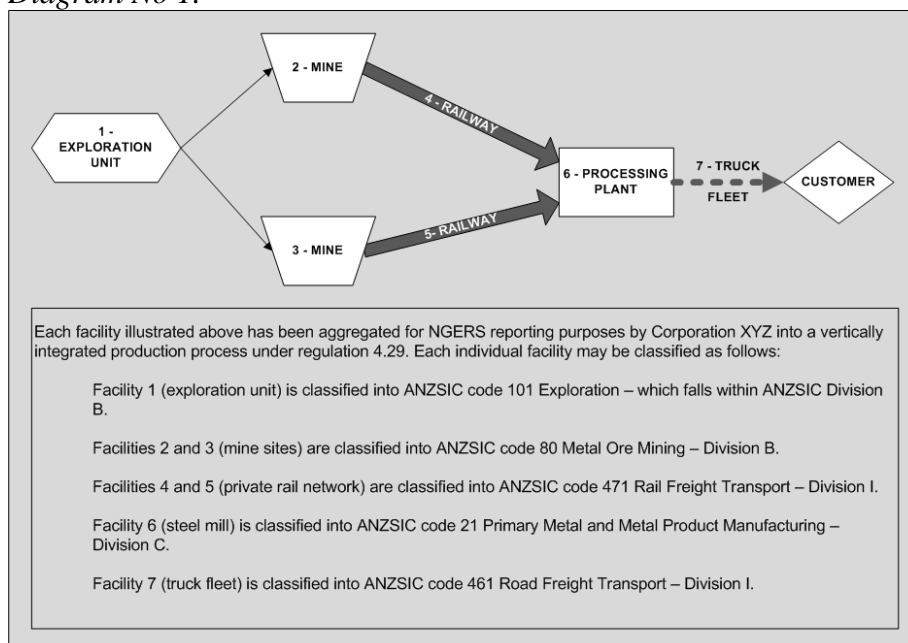
Subregulations 4.29(2) and (3) establish that the greenhouse gas emissions, energy use and energy production information for vertically integrated facilities may be aggregated for reporting.

Regulation 1.03 (*vertically integrated production process*) defines a vertically integrated production process. The definition is consistent with the general use of the phrase and captures the concept of raw materials or intermediate products transferring from one stage of a production process to another under the control of a single entity.

A steel manufacturer may be an example of vertical integration if the operator of the steel mill also operates the mine the raw product is sourced from, the transport network used to transport raw material to the steel mill or to customers (for example: a rail network or truck fleet), or any intermediate processing plants or export facilities. Similarly, a wine manufacturer may be vertically integrated if it also operates vineyards, trucks to transport grapes to the winery, a distribution network, or wine wholesaling or retailing businesses.

Subregulation 4.29(4) specifies that where facilities are aggregated under this regulation, information from facilities that are classified into different ANZSIC Divisions must be separately apportioned, or estimated, and reported. The effect of subregulation 4.29(4) is illustrated by an example in *Diagram No 1*. below.

*Diagram No 1.*



In the diagram above, facilities have been grouped for reporting by Corporation XYZ, as they form a vertically integrated production process under regulation 4.29. Corporation XYZ may report in aggregate data for all seven facilities. As a secondary step Corporation XYZ must separate, or apportion, reported data according to ANZSIC Divisions. Hence:

- data for the exploration unit (facility 1 – Division B) and mines (facilities 2 and 3 - Division B) can be grouped as they are in the same Division – i.e. data for both mines may be reported as an aggregate under Division B;
- data for the rail network (facilities 4 and 5 – Division I) and truck fleet (facility 6 – Division I) can be grouped as they are in the same Division; and
- data from the steel mill (facility 6 – Division C) is separately identified.

Aggregation of facilities which form a vertically integrated production process may be chosen to reduce administrative costs of separate monitoring and measurement frameworks for sites that are intrinsically linked within a corporation's business structure. While separate reporting of data at the ANZSIC Division level is required for statistical and policy making purposes, it is intended to minimise the regulatory burden by permitting disaggregation to Division level to be done using estimates.

Subregulation 4.29(6) specifies the meaning of offshore waters for the purposes of this regulation in relation to a State or Territory. The Regulations also provide a note that the application of the Regulations to the exclusive economic zone is limited based on the definitions of facility and greenhouse gas project in the Act.

#### Regulation 4.30 – Reporting about contractors

Regulation 4.30 establishes specific reporting requirements for a corporation with operational control over an entire facility within which one or more contractors are responsible for large amounts of greenhouse gas emissions or large amounts of energy use or production.

Subregulation 4.30(2) specifies that a report for a facility must separately identify greenhouse gas emissions, energy production and energy consumption totals for contractors which meet the thresholds specified in subregulation 4.30(1). Subregulation 4.30(2) also specifies that the name and ABN of contractors reported under regulation 4.30 is required.

This data disaggregation is important for statistical analysis of greenhouse gas emissions production and energy use and through the economy.

#### Regulation 4.31 – Reporting a change in principal activity for facility

Regulation 4.31 requires a registered corporation whose group has operational control over a facility where the principal activity changes, to update the principal activity and its industry classification in its next annual report to the GEDO. Accurate classification of data reported under NGERs is necessary for statistical analysis and policy development.

Subregulations 4.31(1) and (2) specify that if the principal activity for a facility changes for a period of at least 24 months, the registered corporation must nominate a new principal

activity and industry sector classification for the facility. Subregulations 4.31(3) and (4) establish the requirement for the registered corporation to report the new classification and record the date that the principal activity changed.

Subregulation 4.31(5) defines *principal activity* in relation to a facility for the purposes of this regulation. The definition is consistent with the definition specified by subregulation 2.22(4) for the purposes of classifying an undertaking or enterprise.

#### **Division 4.6                      No Thresholds Met**

##### Regulation 4.32 – Reporting where no section 13 thresholds met

A report is still required for each reporting year for which a corporation is registered, even when the thresholds contained in section 13 of the Act have not been met. Regulation 4.32 specifies that where no thresholds contained in section 13 of the Act have been met, a corporation's report must state that no thresholds have been met for the reporting year.

#### **Division 4.7                      Reporting of information by another person**

##### Regulation 4.33 – Application for a determination

Section 20 of the Act enables the GEDO to exempt a registered corporation from reporting information if it determines that the information is to be provided by someone else. This is to allow commercially sensitive information held by a contracted corporation or person to be reported to the GEDO directly from the other person rather than through the registered corporation. Subsection 20(2) of the Act provides for regulations to establish the manner and form of applications from the registered corporation or other person for section 20 declarations.

Regulation 4.33 specifies that applications for a section 20 determination are to be in writing and will include identifying and contact details for the registered corporation and the other person and a description of the information to be provided by the other person. Where the application is made by the registered corporation, it must include a statement that the other person has refused to give the information and any reasons given for the refusal. It will also need to outline whether the other person supports, or does not support, the registered corporations application.

## **Part 5** **Disclosure of Information**

### **Division 5.1** **Purpose of Part**

#### 5.01 Purpose of Part

Regulation 5.01 provides that this Part covers regulations made under Part 4 of the Act dealing with disclosure of information.

### **Division 5.2** **Information**

#### Regulation 5.02 – Specified persons for disclosure of information

Section 26 of the Act permits the GEDO or the GEDO's staff to disclose information to Commonwealth Ministers, Departmental heads and Commonwealth Government employees on condition that they are responsible for a program or collection of statistics related to greenhouse emissions or energy and that they are specified in regulations made under subsection 26(1) of the Act. This disclosure will be at the discretion of the GEDO.

Paragraph 5.02(a) specifies that the GEDO or staff can disclose information to the Minister and Secretary of Commonwealth Departments with responsibility for administering programs or collecting statistics relating to greenhouse gas emissions, energy production, energy consumption or a national emissions trading scheme. Agencies are described broadly and according to function to enable disclosure to appropriate Commonwealth authorities without updating the regulation if departmental responsibilities change. Exceptions are the Australian Energy Regulator, the Australian Bureau of Agricultural and Resource Economics, and the Australian Bureau of Statistics. The need for these agencies to access data is expected to be consistent across time given their regulatory roles.

The authorities which had the functions described at the time of these Regulations are proposed to be made include the Department of Climate Change, The Treasury, and the Department of Resources, Energy and Tourism and the Department of the Prime Minister and Cabinet and the Department for the Environment, Water, Heritage and the Arts. The need for these agencies to access NGERS data is dependant upon their responsibilities, as amended from time to time.

## **PART 6 Administration**

### **Division 6.1 Purpose of Part**

#### Regulation 6.01 – Purpose of Part

Regulation 6.01 provides that this Part contains regulations made for the purposes of Part 6 of the Act dealing with administration.

### **Division 6.2 Other Information Required**

#### Regulation 6.02 – Application under section 54 – other information required

Regulation 6.02 specifies information to be included in an application by a controlling corporation under section 54 of the Act. Section 54 of the Act provides the GEDO with the authority to declare that an activity or series of activities (including ancillary activities) is a facility, either in response to an application or on his or her own volition.

In considering making a declaration under section 54 of the Act, the GEDO must have regard to the matters dealt with regulations made for the purposes of paragraph 9(1)(a) of the Act. Regulations in Division 2.4 specify the circumstances in which an activity or activities (including ancillary activities) will form a facility, and what activities are attributable to particular industry sectors.

Where a declaration is sought through an application, the controlling corporation (the applicant) must meet the requirements outlined in subsection 54(2) of the Act and regulation 6.02. The information provided in the application will assist the GEDO in making a declaration.

This regulation requires the applicant to provide:

- information about its identity;
- details about the member of the controlling corporation's group with operational control over the activities subject to the application;
- a description and location of the activities that are subject of the application;
- a statement as to whether the activities are, or are to be, carried out at a single location or multiple locations; and
- which of these activities is proposed to be the *principal* activity and the industry sector to which it is attributable.

The GEDO will also require a statement from the applicant as to whether another application under section 54 of the Act is to be made in relation to the same location. If this is the case, the applicant is required to provide the details of other activities and explaining how all of the activities at the location relate, or will relate, to each other.

### Regulation 6.03 – Application under section 55 – other information required

Regulation 6.03 specifies the information to be included in an application by a controlling corporation or another member of the corporation's group under section 55 of the Act. Section 55 of the Act provides the GEDO with the authority to declare operational control of a facility, either in response to an application by a corporation or on his or her own volition.

The obligation to report greenhouse gas emissions and energy consumption and energy production from a facility is based on a corporation having operational control as defined in section 11 of the Act. In considering making a declaration under section 55, the GEDO must also have regard to the matters dealt in section 11 of the Act. The information provided in the application will assist the GEDO to make a declaration of operational control.

This regulation requires the member of the corporation's group (the applicant) to provide information about its identity, the controlling corporation (if it is not the applicant), and the member in relation to which a declaration is sought. The applicant must also provide information on corporations not in the corporate group that the applicant considers could have authority to introduce and implement policies mentioned in paragraph 11(1)(a) of the Act.

The applicant must provide details of the facility for which the declaration is sought. They must also provide any information on contracts or arrangements that would assist the GEDO consider which corporation has the greatest authority to introduce and implement policies mentioned in paragraph 11(1)(a) of the Act in relation to that facility.

### **Schedule 1            Fuels and other energy commodities specified for the purposes of the definition of energy in section 7 of the Act**

Schedule 1 of the Regulations provides a list of fuels and other energy commodities for the purpose of defining energy. Schedule 1 is established under section 7 of the Act (*energy*), which provides for regulations to specify fuels or other energy commodities.

Schedule 1 is used in establishing reporting obligations for registered corporations.

### **Schedule 2            Meaning of industry sector for the purposes of section 7 of the Act**

Schedule 2 of the Regulations provides a list of industry categories for the purpose of defining industry sector. Schedule 2 is established under section 7 of the Act (*industry sector*), which provides for regulations to define industry sector.

Schedule 2 is used to categorise facilities by economic sector for statistical analysis purposes.