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Understanding climate risk & the impact on legislation and legal action: State and National perspectives

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Structure

- Nature of Risk
- Existing Commonwealth legislation
- State schemes and clean energy
- Green Paper – Carbon Pollution Reduction Scheme and ETS issues
- Management of corporate risk



Nature of Risk

- Unmitigated climate change risk – Garnaut: balance of probabilities
- National legislative response:
 - measuring and reporting – *National Greenhouse and Energy Reporting Act 2007*
 - proposed Carbon Pollution Reduction Scheme
 - Mandatory Renewable Energy Target



Emissions reporting

- *National Greenhouse and Energy Reporting Act 2007 (Cath)*
- *National Greenhouse and Energy Reporting Regulations 2008*
- Provides foundation for emissions trading scheme
- First reporting period commences 1 July 2008 (first report due by October 2009)



Emissions reporting - coverage

- *'Controlling corporations'* report for *'corporate group'*
 - Normally, *'corporate group'* includes subsidiaries;
 - may include joint ventures and partnerships
- Controlling corporations report for facilities within the *'operational control'* of a company within the group
 - *'Operational control'* means authority to implement operating policies, health and safety policies or environmental policies for the facility



Emissions reporting - thresholds

- Controlling corporation must report if exceeds any of the group or facility-level thresholds
- **Group thresholds:**

Financial Year	Emissions (Co ₂ -e)	Energy produced	Energy consumed
2008-2009	125kt	500TJ	500TJ
2009-2010	87.5kt	350TJ	250TJ
From 2010-2011	50kt	200TJ	200TJ



Emissions reporting – thresholds (cont'd)

- **Facility-level thresholds:**

Financial Year	Emissions (Co₂-e)	Energy produced	Energy consumed
From 2008-2009	25kt	100TJ	100TJ



Emissions reporting – what is reported?

- Controlling corporation must report facilities':
 - greenhouse gas emissions
 - energy production
 - energy consumption
- Importance of NGER Regulations re definitions, including 'activities'



Reporting Risk

- Boundary treatment of joint ventures and partnerships – nomination procedures
- *'Boundary' issues – 'controlling corporation' – 'a constitutional corporation that does not have a holding company incorporated in Australia'*
- Application of NGER Act to *'foreign corporations'*
- Exclusion of foreign corporations' subsidiaries
- Requires careful consideration of corporate structures and 'operational control' issues



Reporting Risk

- Boundary issues re 'facilities'
- CPRS – boundary/drafting issues
- CPRS – proposed quarterly auctions – NGER provides annual snapshot – insufficient for effective CPRS participation. Requires effective integration with existing IT
- CEO liability



Energy Efficiency Opportunities Act

- *Energy Efficiency Opportunities Act 2006* (Cth)
- Came into effect on 1 July 2006
- Requires large energy users to assess and report opportunities for promoting energy efficiency in their operations
- Applies to '*controlling corporations*' (similar to reporting legislation)
- Proposed amendments to streamline EEO obligations with NGER obligations



Mandatory Renewable Energy Target Schemes (MRET)

- Technology-specific scheme during transition to full operation of CPRS and carbon pricing
- Single national scheme proposed – 20% by 2020 (increase of 45,000 GWh)
- COAG review of MRET – design options for expanded national MRET scheme – submissions close 30.07.08



Mandatory Renewable Energy Target (MRET)

- Introduced by Federal Government in 2001
- Wholesale purchasers of electricity (e.g. energy retailers) to purchase additional 9,500 GWh of renewable energy by 2010
- Escalating interim targets
- 'Liable entities' must surrender mandated number of Renewable Energy Certificates (RECs) per year



MRET – creation of RECs

- Can be acquired from accredited renewable energy providers (e.g. renewable energy power stations). Exclusion of clean coal & nuclear
- Can also be created by owners of 'deemed output systems (e.g. solar water heaters) and 'small generation units' (e.g. solar panels)
- RECs apply to generation above the 1997 base level



MRET – REC liability (cont'd)

- Penalty of \$40 per MWh of shortfall:
 - no penalty for shortfall of under 10% (but penalties apply to the full amount of the shortfall if more than 10%)
 - can redeem penalties if shortfall made up within 3 years



MRET Risk

- Transition / regulatory risk
- Changing regulatory environment
- Inadequacy of existing REC acquisition arrangements (wholesale power acquirers, plus REC generators)
- Possible early phase-out of scheme or other significant changes – adequacy of existing contractual arrangements



State Schemes

- State schemes include GGAS, Queensland 13% Gas Scheme, Victorian Energy Efficiency Target Act 2007
- Transition to National Scheme – GGAS working group consultation between NSW/ACT and Cth.
- Transition risk re protection provided to NGAC holders/generators



CPRS - Green Paper

- Targets:
 - 60% reduction by 2050
 - short to medium term targets
 - end 2008:
 - range to 2020
 - Indicative trajectory 10/11 – 12/13
 - 5 year caps in advance – extended each year by Parliament
 - international flexibility



CPRS

- Coverage:
 - stationary energy transport, fugitive emissions, industrial processes, waste and forestry (opt-in basis)
 - decision re agriculture in 2013
 - broad coverage – limited off-set opportunities
 - 1,000 firms - query whether different facility thresholds to NGER thresholds
 - further consultation re liable entities



CPRS

- Transitional arrangements:
 - Green Paper – transitional price cap 10/11 – 14/15
 - Transitional arrangement only
 - query relationship between price cap, emissions gaps and market price
- Assurance:
 - third party verification for large emitters
 - assurance audits



CPRS

- International linkages:
 - preference for open linking
 - potential regional arrangements – query nature of linkages esp re Indonesia, PNG and Timor Leste
 - current availability of CDM/JI
 - limits on international offset credits for surrender
- Post-Kyoto Risk:
 - query risk re. existing Kyoto mechanisms especially CDM/JI post 2012
 - review existing contractual arrangements re. CDM/JI projects



CPRS

- Compensatory arrangements
 - Emissions-intensive trade-exposed industries:
 - emissions intensity above 2,000t CO₂ per \$ million revenue = free allocation of permits set at around 90% per unit of output; and
 - emissions intensity 1,500t CO₂ – 2,000t CO₂ per \$ million revenue = free allocation of permits set at around 60% per unit of output
 - Strongly affected industries (coal-fired electricity generators)
 - Electricity sector adjustment scheme



CPRS

- Risks:
 - Compensatory arrangements transitional only
 - Coverage and access to compensatory arrangements key issues
 - Tax treatment of a free permit allocation and use of those permits
 - Availability of pass through – potential inflationary spike and relationship to pass through clauses
 - Impact of compensatory arrangements on pass through clauses?



Conclusion

- Implications for business:
 - rapidly changing regulatory environment
 - legislative and scheme uncertainty, but certainty now increasing
 - projecting cost of emissions
 - management of carbon liabilities and cost of carbon
 - contractual considerations



Conclusion

- Implications for business:
 - Uncertainty re energy efficiency measures/ renewable energy targets
 - Eligibility for compensatory arrangements
 - Trade practices – greenwash claims – ACCC action
 - Physical re esp re infrastructure and locational risk



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