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Australian Climate Change Policy – Constructing a Corporate Response



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The Climate Change Juggernaut

- Australia is embarking on one of the most significant legislative programmes in its history
- Full suite of domestic legislation now implemented or being introduced to deal with climate change and establishment of new regulatory institutions:
 - emissions reporting, cap and trade emissions trading, approval of projects with greenhouse impacts, energy efficiency, renewable energy, tax incentives (sinks), carbon claims.
 - Supplemented by state legislation
- Interacts with active trade practices law (ACCC), corporations law and financial services regulation, tax.
- International markets EU & US creating global regime

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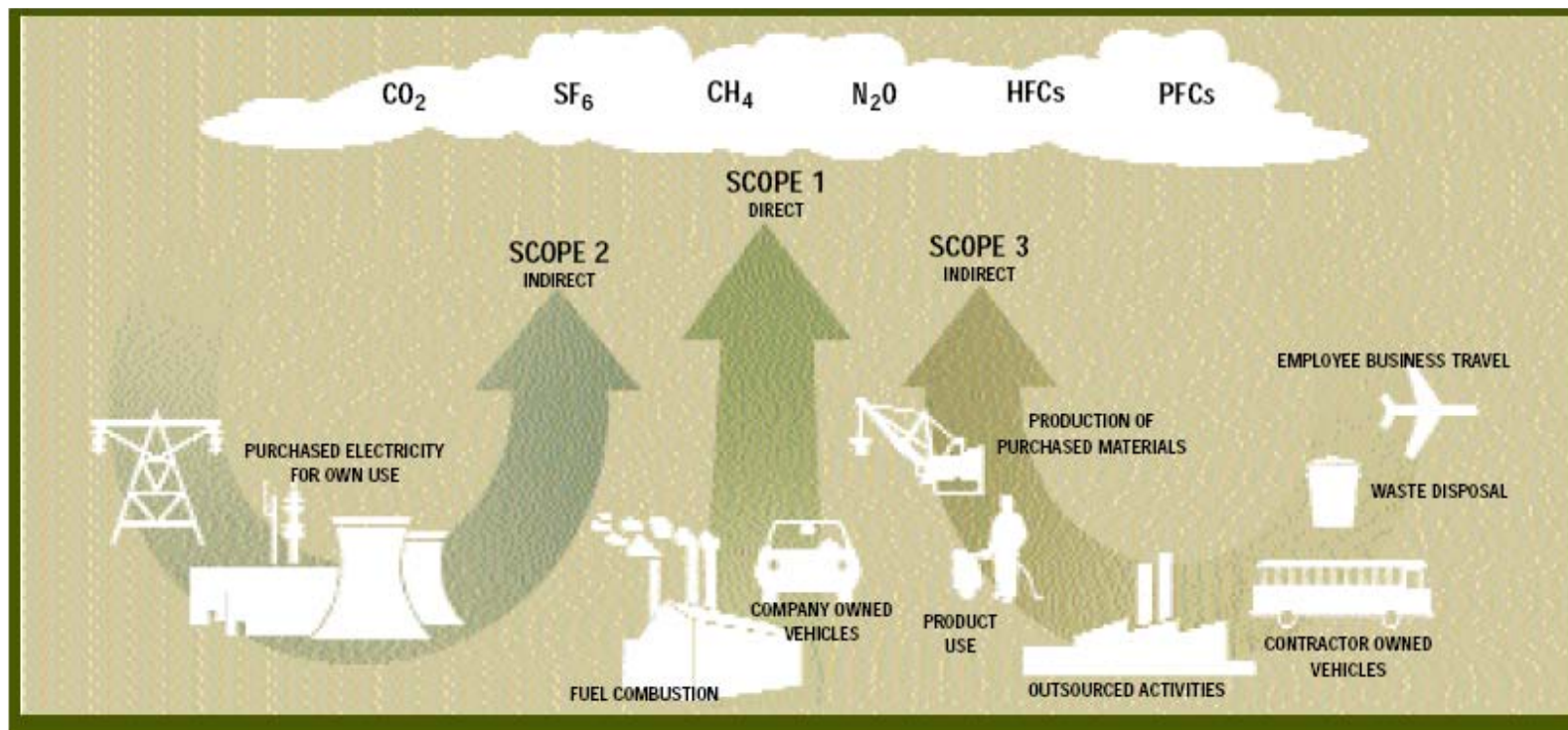


Where have we come from?

- December 2007: ratification of the Kyoto Protocol
- July 2008: NGERs legislation commenced
- July 2008: Publication of [Green Paper](#)
- Stakeholder consultation
- December 2008: Publication of [White Paper](#)
- Discussion/guidance papers:
 - [Assessing emissions intensity](#)
 - [Design issues relating to reforestation](#)
 - [Coverage of synthetic greenhouse gas emissions](#)
 - [Coverage of landfill emissions](#)
 - [Assessment of emissions-intensive trade-exposed activities](#)
- 10 March 2009: [Draft legislation and commentary](#)



The National Greenhouse and Energy reporting obligations





National Greenhouse and Energy Reporting Act 2007

- National framework for reporting and disseminating emission information
- Companies must report greenhouse gas emissions, energy consumption and energy production
- Commenced 1 July 2008 and first reports due Oct 2009
- A civil penalty applies where a corporation has contravened Act, and if the CEO either had knowledge of, or was reckless or negligent to a failure by a company to report, the CEO may be subject to a civil penalty of up to \$220,000.

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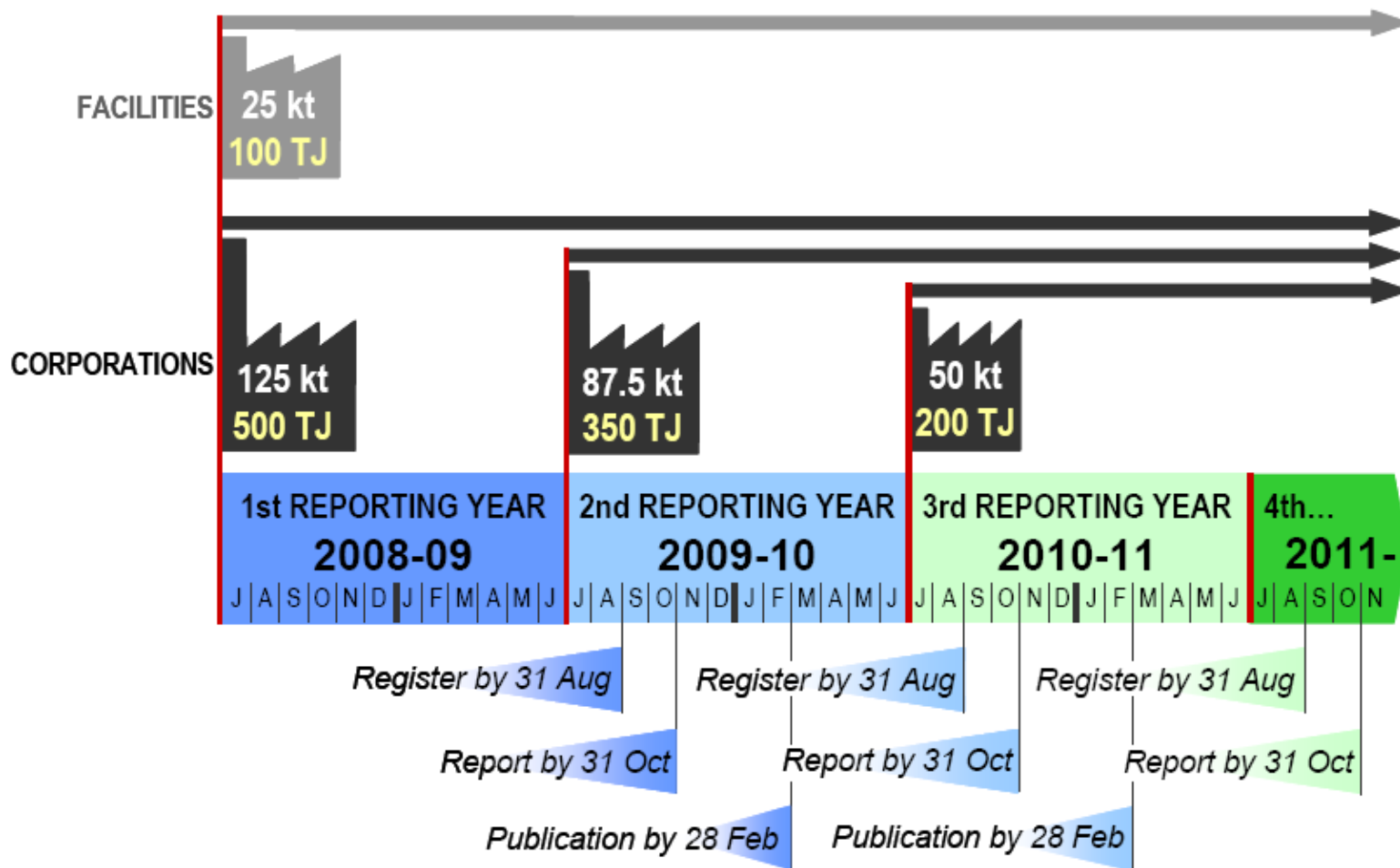
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Reporting thresholds & timelines



Source: Australian Greenhouse Office, National Greenhouse and Energy Reporting System: Regulations Discussion Paper, 2007 Appendix B



Am I liable to report? What must be reported?

- Fuel used & produced at the facility and energy used & produced at the facility:
 - **Scope 1 (direct emissions)** Greenhouse gases emitted from sources within the boundary of a facility and as a result of that facility's activities
 - **Scope 2 (indirect emissions)** Greenhouse gases emitted from the production of electricity, heat or steam that a facility consumes, but that are physically produced by another facility



Who has to report?

- **Controlling corporations** (top level in Australia) in whose corporate group there are companies with **operational control** over facilities that (together or separately) are over the emission/ energy thresholds
- **Operational control** = greatest authority to introduce and implement at the facility: operating policies, environmental policies and health and safety policies
- Controlling corporation's group will include:
 - all of its subsidiaries in Australia
 - joint ventures and partnerships (if they have operational control over facilities)
- Must consider contractors, joint ventures, franchises, fleets

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The Carbon Pollution Reduction Scheme





The legislative package

- Carbon Pollution Reduction Scheme Bill
- Consequential Amendments Bill
 - *Corporations Act 2001*
 - *National Greenhouse and Energy Reporting Act 2007*
 - Tax legislation
- Australian Climate Change Regulatory Authority Bill
 - ACCRA will administer the CPRS, NGERs and RET
- Charges Bills
 - Imposes charges for AEUUs issued at auction or for a fixed charge if the charges are a tax under s 55 of the Constitution



The draft CPRS Bill

- Sets out the legal provisions designed to give effect to the policy positions in the Government's White Paper
 - No significant deviations
- Establishes the Australian Climate Change Regulatory Authority
- The Government has flagged a number of issues on which further details will be provided at a later stage (e.g. forestry)
- A significant amount of detail will be provided in regulations (e.g. EITEs assistance program and scheme caps), due to be released in June 2009



The Carbon Pollution Reduction Scheme- CPRS

- As in-house CFO/Actuary need to be across the CPRS and ascertain if there is a direct liability. If so will it be managed as a compliance obligation alone or approached in a far more strategic fashion where carbon exposures carefully managed.
- In some cases may have no direct liability, but will be exposed to a pass through of CPRS related costs.
- Threshold issues that need to be worked through.



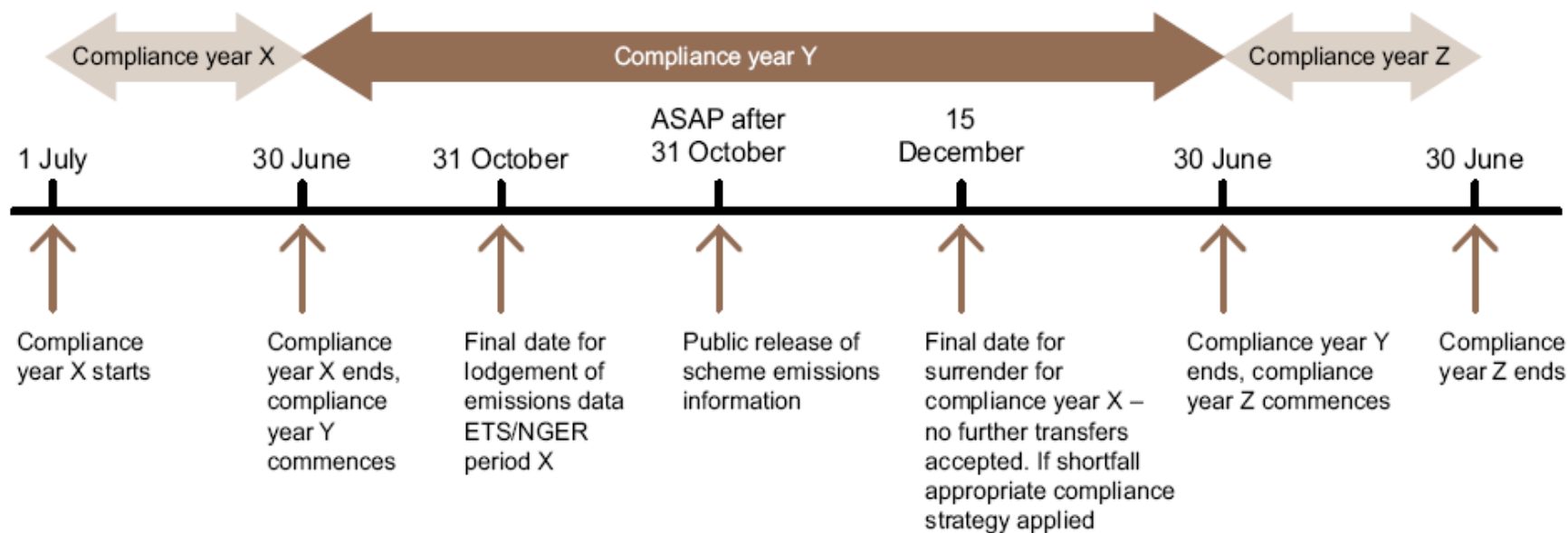
The basics: targets, coverage and compliance



- Long-term target to reduce total greenhouse emissions by 60% below 2000 levels by 2050
- **Target** range for 2020 is **5-15% reduction** from 2000 levels – upper level if international agreement reached
- **Liability:** If entity directly emits **25,000 tonnes** carbon dioxide equivalent in a year, it will have to buy a permit for every tonne
- **Gases covered:** All six GHGs recognised under international law: CO₂, SF₆, CH₄, HFCs, N₂O, PFCs
- **Start date:** 1 July 2010



Figure 5.1 Compliance timeline



Source: Australian Government Department of Climate Change, White Paper: Carbon Pollution Reduction Scheme



The basics: compensation, price regulation, forests & off-shore trading

- Range of compensatory measures for certain industries such as emissions intensive trade exposed sectors, certain other strongly affected industries, fuel rebate, households
- In early years price cap starting at A\$40 increasing 7.5% per year
- Domestic forestry offsets can be utilised in CPRS
- Ability to purchase CERs on international market for compliance- no limit



The basics: compliance and enforcement

- Australian Climate Change Regulatory Authority has extensive monitoring and enforcement powers including auditing of emissions report which mandatory for large emitters ($> 125,000 \text{ tCO}_2\text{-e}$) and can be spot checks for others (modeled on tax system)
- Range of compliance, investigative and enforcement powers and a range of mechanisms, including civil penalty and criminal provisions, to respond proportionately to non-compliance
- Consequences of a unit shortfall:
 - administrative penalty ($\leq 110\%$ average auction price) (s 133)
 - make-good number added to following year's emissions number (s 142)
- Executive officers of companies in breach may be liable



CPRS: threshold questions

- Is my company liable under the CPRS?
- Can I transfer that liability?
- Will I receive free permits or some form of assistance or compensation?
- Do I qualify as an EITE Industry?
- Do I need to purchase permits at auction and if so how many?
- Do I have cash flow to do so?
- Can I pass costs through under contract?
- Will others costs be passed in form of higher electricity costs?
- Is it better in case of fuel costs to opt in?



CPRS: threshold questions

- Should I be purchasing domestic forestry offsets or international offsets- CERs- and if so when and how?
- What is the price of carbon? How do I manage the price cap?
- Do I have offshore operations that can generate carbon assets or are subject to similar liability?
- What is the penalty for non-compliance?
- How do I manage the tax outcomes? When do I get the tax deductions?
- How are new projects I am planning affected?



CPRS: An example

- Assume an entity that is high energy user and polluter has liability to purchase 1 million permits p.a.
- Need to purchase at auction or from sink projects or CERs.
- Estimated permit price A\$25 but could go to A\$40, sinks around A\$20, CERs around A\$16- significant cost to purchase differentials. Eg A\$25m cf A\$16m
- Electricity prices go up 20%
- Need to report now, potentially outlay cash as early as next financial year to buy permits



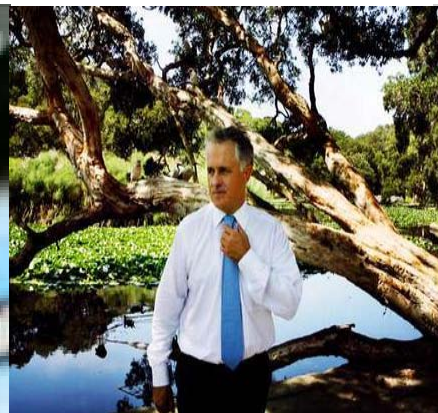
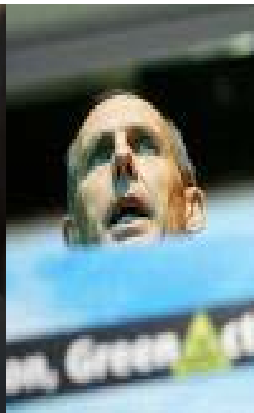
Where to from here?

- Senate Standing Committee on Economics inquiry into draft legislation
 - submissions due 25 March 2009
 - report to Senate by 14 April 2009
- Senate Select Committee on Climate Policy inquiry into emissions trading policy
 - due date for submissions TBA
 - report to Senate by 14 May 2009
- Submissions to DCC due 14 April 2009
- Introduction of legislation in June 2009



The political divide

- Government faces a real challenge in the Senate
- Will Greens compromise on less than perfect scheme?
- The weight of industry lobbying





Australia part of a global picture

- Australia's CPRS brings it into line with other developed countries - namely the EU and their EUETS and now the US with the Waxman- Markey proposal.
- The US renewed focus on climate change will reshape the international agenda.
- Cannot view our scheme in isolation.



What is the impact of the financial crises?

- Financial crises has without doubt limited investment in many areas of climate change and has seen companies express greater concern over compliance costs of reducing emissions. However:
 - Climate change is a long term multi-decade issue.
 - Government is determined to act and act quickly after 10 years of inaction and knowing that the longer that they wait the greater the longer term costs and the costs of inaction (But not necessarily a view shared by all including possibly the opposition?).
 - The crises has seen CPRS provide more compensation in short term than may ordinarily be the case.
- Regulation once in force needs to be complied with regardless of the financial crises.



Conclusions for Corporate Governance

- Entire new legislative regime with national regulator and enforcement
- NGERs has begun: Near enough is not good enough
- Need to understand entire spectrum of climate change legislative package, fact that in part applies now and work through financial liabilities.
- As a regulatory regime economic crises will not change need to comply.

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Thank you

www.bakernet.com/climatechange

www.cdmrulebook.org

www.jirulebook.org

www.globalclimatechangelawguide.com.au