



Australian Government

Clean Energy Regulator

# Clean Energy Regulator

Carbon Pricing Mechanism

## Registration as a liable entity

under the National Greenhouse and Energy Reporting  
(*NGER*) Act 2007



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# Introduction

This document sets out information about a liable entity's obligations under the NGER Act to apply to the Clean Energy Regulator for registration as a liable entity.

The information in this document is provided as guidance only. It has been developed by the Clean Energy Regulator to help persons understand their responsibilities under the law. This document should be read in conjunction with the *Clean Energy Act 2011* (Clean Energy Act), the NGER Act, and their supporting Regulations, in their current form at the time of reading. Changes to the legislation may affect the information in this document. It is intended that this document will be updated in light of any legislative changes or if further clarity on a particular issue is required. Ultimately, liable entities are responsible for determining their liabilities and obligations under the law, and for applying the law to their individual circumstances. This document is not intended to provide legal advice and is not a substitute for independent professional advice.

# All liable entities must be registered under the NGER Act

All liable entities must apply to the Clean Energy Regulator, for registration as a liable entity, if they are not already registered on the National Greenhouse and Energy Register. Further information about the different types of liable entities can be found in the 'Who is a liable entity' section of this document.

## Section 15AA applications - registration under the NGER Act for liable entities with interim emissions numbers

In 2012-13, 2013-14 and 2014-15, if as at 1 April of a financial year, a person is a liable entity, or it may reasonably be expected that the person will be a liable entity, *and* either they have, or it may reasonably be expected that they will have, an interim emissions number for that financial year, the person must have applied for registration by **1 May of the year** in which they first expect to have an interim emissions number. This means that a liable entity that will have an interim emissions number in 2012-13, must have applied for registration by 1 May 2013.

### Is a liable entity

For example, a person that has operational control over a facility, that as at 1 April 2013 had covered emissions of 26,000 tonnes of carbon dioxide equivalence (CO<sub>2</sub>-e), will *be* a liable entity, as the facility they are responsible for has already reached the liable entity threshold in subsection 20(4) of the Clean Energy Act.

### May reasonably be expected to be a liable entity

A person that has operational control over a facility, that as at 1 April 2013 had covered emissions of 24,500 tonnes of CO<sub>2</sub>-e, and expects to emit a further 15,000 tonnes of CO<sub>2</sub>-e by 30 June 2013, *would be reasonably expected to be* a liable entity, as while the facility had not reached the liable entity threshold in subsection 20(4) of the Clean Energy Act by 1 April, it is reasonable to expect that it will have by the end of the financial year.

A direct emitter that is a liable entity will have an interim emissions number for a facility unless any of the following are satisfied:

- a report under the NGER scheme for the previous financial year was not required
- the facility had provisional emissions number of less than 35,000 in the previous financial year, or
- the facility is reasonably expected to have a provisional emissions number of less than 35,000 in the current financial year.

A direct emitter's interim emissions number will be 75 per cent of the sum of the relevant facilities' provisional emissions numbers for the previous financial year. Alternatively a direct emitter may submit a reasonable estimate of 75 per cent of the provisional emissions number for a facility for the current financial.

The interim emissions number of natural gas suppliers, OTN holders and designated opt-in persons, will be the amount of potential emissions embodied in natural gas/fuel supplied, for which they are liable, during the first three quarters of the eligible financial year (i.e their provisional emissions number from 1 July – 31 March).



## Has an interim emissions number

A person that, as at 1 April is a liable entity *and* meets any of the above criteria for having an interim emissions number, will be required to have applied for registration as a liable entity, under section 15AA of the NGER Act, by 1 May, unless they are already registered.

For example, in 2012-13, Company A holds an LTC in relation to a facility that, as at 1 April 2013, had liable covered emissions of 45,000 tonnes of CO<sub>2</sub>-e. Based on the section 19 NGER report for the facility in 2011-12, the facility would have had a provisional emissions number of 46,000. Company A *is* a liable entity as it is the direct emitter responsible for a facility that has already triggered the liable entity threshold in subsection 22(4) of the Clean Energy Act. Company A has an interim emissions number in relation to the facility as it already has a provisional emissions number that will be 35,000 or more, and in the previous year it had a provisional emissions number of 35,000 or more. **Therefore, Company A will need to apply for registration under section 15AA of the NGER Act, by 1 May 2013.**

## May reasonably be expected to have an interim emissions number

A person that, as at 1 April is, or it may reasonably be expected that the person will be, a liable entity and may reasonably be expected to meet any of the above criteria for having an interim emissions number, will be required to have applied for registration as a liable entity, under section 15AA of the NGER Act, by 1 May, unless they are already registered.

For example, in 2012-13, Company Z has operational control over a facility that, as at 1 April 2013, had liable covered emissions of 25,000 tonnes of CO<sub>2</sub>-e. It is expected that operations from the facility will give rise to additional liable covered emissions of 10,000 tonnes of CO<sub>2</sub>-e by 30 June 2013. Based on the section 19 NGER report for the facility in 2011-12, the facility would have had a provisional emissions number of 36,000. Company Z *is* a liable entity as it is the direct emitter responsible for a facility that has already triggered the liable entity threshold in subsection 20(4) of the Clean Energy Act. Company Z *may reasonably be expected* to have an interim emissions number in relation to the facility as it while its current provisional emissions number is less than 35,000, by the end of the financial year, it may reasonably be expected that the facility will have a provisional emissions number of 35,000, and in the previous year it had a provisional emissions number of 35,000 or more. **Therefore, Company Z will need to apply for registration under section 15AA of the NGER Act, by 1 May 2013.**

Further information on interim emissions numbers is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

## Section 15A applications - registration under the NGER Act for liable entities that do not have interim emissions numbers

All other liable entities (those that do not have interim emissions numbers) must have applied for registration by **31 August following the year** in which they first became a liable entity. For example, an entity that was a liable entity in 2012-13, but who did not have an interim emissions number, must have applied for registration by 31 August 2013.

## Registration of a group member, when its controlling corporation is already registered under the NGER Act

All liable entities are required to be registered under the NGER Act. This includes liable entities whose controlling corporations are currently on the National Greenhouse and Energy Register.

## Registration of a liable entity that is also a controlling corporation

Where a person that is not on the National Greenhouse and Energy Register is a liable entity and a controlling corporation, it is *advised that they apply for registration under section 12 of the NGER Act, on the basis that they are a controlling corporation.*

This will reduce the amount of applications the person will be required to submit. A controlling corporation that applies for registration under section 12 of the NGER Act is not required to reapply for registration under sections 15A or 15AA if they are also a liable entity. However, a liable entity that applies for registration under either sections 15A or 15AA of the NGER Act, must additionally apply under section 12 of the NGER Act, if they are also a controlling corporation.

## Registration and the Liable Entities Public Information Database (LEPID)

The Clean Energy Regulator keeps a public information database known as the LEPID. The LEPID is a list of persons that the Clean Energy Regulator has reasonable grounds to believe are, or are likely to be, liable entities in relation to a particular financial year. **Entry on the LEPID does not equate to being registered under the NGER Act.**

The form, *Registration of a liable entity under section 15A and section 15AA of the National Greenhouse and Energy Reporting Act 2007*, and further information on completing the form, are available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

## Requirement for an Australian National Registry of Emissions Units (ANREU) account

All liable entities must hold an ANREU account in order to acquire and surrender eligible emissions units. Liable entities that surrender eligible emissions units to the value of their interim emissions number(s) and emissions number by the required dates will acquit their liability without incurring a unit shortfall charge. The ANREU account must be in the name of the liable entity that wishes to acquire and surrender units.

An ANREU account may be opened by completing the relevant application process. Further information on the how to open an ANREU account and the application form is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

## Who is a liable entity?

The Clean Energy Act sets out the circumstances in which a person will be a liable entity. A person may be a liable entity under one or more of the provisions of the Clean Energy Act.

## What is a person?

Any 'person' that meets the tests set out in the Clean Energy Act, will be a liable entity. A 'person' is defined as being any of the following:

- body corporate
- trust
- corporation sole
- body politic
- local governing body, and
- individual.

### ***Body corporate***

The term body corporate covers an artificial legal entity having a separate legal personality. These entities have perpetual succession. They also have the power to act, hold property, enter into legal contracts, sue and be sued. Examples include a company or a body corporate established under legislation.

**Many liable entities will fall into the category of body corporate, as all companies will meet this definition.** A body politic and a corporation sole are subsets of a body corporate. However, if the participant meets the definition of a body politic or corporation sole, these categories should be used rather than body corporate.

Note: the term body corporate is also used in property law to refer to a controlling body of a scheme constituted under strata titles legislation. This meaning has no application in the context of the Clean Energy Act.

### ***Trust***

A trust is a fiduciary relationship (a relationship of trust and confidence or a confidential relationship) where a trustee holds property/assets for the benefit of others (the beneficiaries). Trusts do not have separate legal personalities. The trustee acts on behalf of the trust. For the purposes of the NGER and Clean Energy Acts, a 'trust' is defined to mean a person in the capacity of trustee or, as the case requires, trust estate.

### ***Corporation sole***

A corporation consisting of one natural person only and that person's successors to a particular position, for example the person appointed to a particular position created by statute that provides that the holder of the position will be a corporation sole or a minister of the Crown.

A corporation sole constitutes an artificial legal person who can sue and be sued in the title of the position and in whom title to property can be vested.

## ***Body politic***

A body politic includes the Crown in right of the Commonwealth, a State or Territory. However, government departments are not bodies politic in their own right. Instead, they are part of the larger body politic of the Commonwealth or State or Territory. Bodies such as municipal councils are usually local governing bodies rather than bodies politic.

A body politic, like a body corporate and corporation sole, has the ability to continue in existence indefinitely and to keep its identity regardless of changes to its membership. It also has the power to act, to hold property, to enter into legal contracts and to sue and be sued in its own name.

The term 'body politic' can also mean a foreign nation and its government.

## ***Local governing body***

Under the Clean Energy Act a local governing body is defined as a local governing body established by or under a law of a State or Territory.

A local governing body includes a body established by or under a law of a State, other than a body whose sole or principal function is to provide a particular service, such as the supply of electricity or water, and which undertakes certain governmental activities at a local (sub-state) level.

## ***Individual***

An individual is a natural person – that is, a human being.

## **When is a person a liable entity?**

Liable entities can be divided into four general categories:

- direct emitters
- suppliers of natural gas
- Obligation Transfer Number (OTN) holders, and
- from 1 July 2013, a designated opt-in person, under the liquid fuel Opt-in Scheme.

The following sections provide information on the different types of liable entities. Please be aware that a person might be a liable entity because they fall into one or a number of the following categories.

### **Direct emitters**

From 2012-13 onwards, a direct emitter will be a liable entity if during a financial year they:

- have operational control over a facility, or
- hold a liability transfer certificate in relation to a facility, or
- are a participant in a designated joint venture that has a facility, **and**

during that financial year:

- the operations of the facility released covered emissions of 25,000 tonnes of CO<sub>2</sub>-e or more, or
- the facility was a large gas consuming facility, or



- the facility was a landfill facility that released covered emissions plus legacy emissions of 25,000 tonnes of CO<sub>2</sub>-e or more (note that for landfill facilities, legacy emissions are included when determining whether a person is a liable entity, but do not contribute to the carbon liability).

Where a liable entity is responsible for a facility for part of a financial year only, liability thresholds are calculated on a pro-rata basis. The part-year threshold is determined by multiplying 25,000 tonnes by (the number of days the person was responsible for the facility, divided by the number of days in the financial year).

## Types of direct emitters

### ***Person with operational control***

The default position is that liability in relation to a facility rests with the person with operational control over the facility. For the purposes of the Clean Energy Act, a person will have operational control over a facility if:

- they are the only person with the authority to introduce and implement any or all of the operating, health and safety and environmental policies in relation to the facility, or
- there is more than one person with the ability to introduce and implement any or all of the operating, health and safety and environmental policies in relation to the facility, but the person has the *greatest* ability to introduce and implement the operating and environmental policies in relation to the facility, or
- they have been nominated as having operational control over the facility (under either section 11B or 11C of the NGER Act), **and** the facility is not a facility of a designated joint venture, or
- the Clean Energy Regulator has made a declaration that they have of operational control over the facility under section 55 or 55A of the NGER Act.

Further information on operational control is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

### ***Mandatory Designated Joint Ventures***

An exception to the operational control rule for determining who is a liable entity is where a mandatory designated joint venture exists. By definition, a mandatory designated joint venture exists where:

- more than one person has the ability to introduce and implement any or all of the operating, health and safety and environmental policies in relation to the facility, and
- no particular person has the greatest ability to introduce and implement the operating and environmental policies in relation to the facility, and
- the Clean Energy Regulator has not made a declaration of operational control under section 55 or 55A of the NGER Act.

In these circumstances, the default position is that each participant in the mandatory designated joint venture will be a liable entity.

Note that the existence of a nomination of operational control (under either section 11B or 11C of the NGER Act) has no effect on liability in relation to a facility of a mandatory designated joint venture.

Further information on mandatory designated joint ventures is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

### ***Transferring liability - Declared Designated Joint Ventures***

The Clean Energy Act provides for a number of transfer mechanisms, to allow persons to reach agreements to better manage their carbon liability.

Where a joint venture exists, but there is one person with operational control (other than as a result of a nomination under section 11B or 11C of the NGER Act) over a liable joint venture facility, participants in the joint venture may apply to the Clean Energy Regulator for a declaration of the joint venture as a Declared Designated Joint Venture. Where such a declaration is made, each participant in the joint venture will be a liable entity, and will be the liable in relation to the facility for the period of time that the declaration is in place.

The person with operational control of the facility will only be a liable entity in relation to the facility if they are also a participant in the designated joint venture. In this case, they are a liable entity by virtue of the fact that they are a participant in a Declared Designated Joint Venture, not because they have operational control over the facility.

Further information on declared designated joint ventures is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

### ***Transferring liability - Liability Transfer Certificates (LTCs)***

If a member of a corporate group has operational control over a liable facility, another member of the same corporate group can apply to the Clean Energy Regulator for a **corporate group LTC**.

Alternatively, where a person has operational control over a facility, and another person has financial control over the facility, the person with financial control can apply to the Clean Energy Regulator for a **financial control LTC**, provided that they are not in the same corporate group as the person with operational control.

If either type of LTC is granted, the LTC holder will be a liable entity in relation to the facility for the period of time that the LTC is in place (rather than the person with operational control).

Further information on LTCs is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

### **Facilities that give rise to a direct emitter liability**

If a person has operational control over, holds an LTC in relation to, or is a participant in either type of designated joint venture that has a facility, that that person will be a liable entity if during the year:

- the operations of the facility released covered emissions of 25,000 tonnes of carbon dioxide equivalence CO<sub>2</sub>-e or more, or
- the facility was a large gas consuming facility, or
- the facility was a landfill facility that released covered emissions plus legacy emissions of 25,000 tonnes of CO<sub>2</sub>-e or more (note that for landfill facilities, legacy emissions are included when determining whether a person is a liable entity, but do not contribute to the carbon liability).

### ***Facility with covered emissions of 25,000 tonnes of CO<sub>2</sub>-e or more***

If a person is the direct emitter responsible for a facility that has covered emissions of 25,000 tonnes of CO<sub>2</sub>-e or more during an eligible financial year, the person will be a liable entity.

Note: when determining the covered emissions from a facility, emissions from the combustion of natural gas should be counted towards this threshold assessment **regardless of whether an OTN was quoted in relation to the supply of the natural gas**. However, having applied the liable entity threshold, if it is determined that

the facility is a liable facility, covered emissions from the combustion of natural gas where an OTN **was not** quoted, will not be included in the person's liability in relation to the facility.

Where a person is the direct emitter responsible for a facility for part of the year only, liability thresholds are calculated on a pro-rata basis. The part-year threshold is determined by multiplying 25,000 tonnes by (the number of days the person was responsible for the facility, divided by the number of days in the financial year).

### ***Large Gas Consuming Facility***

A direct emitter that is responsible for a large gas consuming facility will be a liable entity in relation to the facility *regardless of whether the facility had total covered emissions of 25,000 tonnes of CO<sub>2</sub>-e or more in a particular eligible financial year.*

A facility will be a *large gas consuming facility* on the **second** 1 July that occurs after it reaches the large gas consuming facility threshold. For example, if the facility reached the large gas consuming facility threshold in the 2010-11 financial year, it will become a large gas consuming facility on 1 July 2012.

A facility will pass the threshold for becoming a large gas consuming facility if, during a financial year, the operations of the facility give rise to covered emissions of 25,000 tonnes CO<sub>2</sub>-e or more, *where the emissions are attributable to the combustion of natural gas.*

The 2010-11 financial year is the first year in which the large gas consuming facility threshold can be met. Therefore, the 2012-13 financial year is the first year in which a facility can become a large gas consuming facility. Once a facility has become a large gas consuming facility, it will remain a large gas consuming facility, regardless of its actual emissions, until the Clean Energy Regulator determines that the facility has ceased to be a large gas consuming facility.

For example, in 2010-11, Facility A gave rise to covered emissions of 30,000 tonnes of CO<sub>2</sub>-e, 25,000 tonnes of which were attributable to the combustion of natural gas.

### ***Landfill Facility***

A landfill facility is a facility for the disposal of solid waste as landfill and includes a facility that is closed for the acceptance of waste. However, emissions attributable to solid waste will not be covered emissions in relation to a landfill facility that has not accepted any waste from 1 July 2012, onwards.

A legacy emission is an emission of greenhouse gas from the operation of a landfill facility, where the emission is attributable to waste accepted by the facility before 1 July 2012.

If a facility is a landfill facility that released covered emissions *plus* legacy emissions of 25,000 tonnes of CO<sub>2</sub>-e or more during an eligible financial year, the direct emitter responsible for the facility will be a liable entity. However, legacy emissions that are included when determining whether a person is a liable entity, do not contribute to the carbon liability of the direct emitter responsible for the facility.

Where a person is the direct emitter responsible for a landfill facility for part of the year only, liability thresholds are calculated on a pro-rata basis. The part-year threshold is determined by multiplying 25,000 tonnes by (the number of days the person was responsible for the facility, divided by the number of days in the financial year).

Further information on the definition of a facility is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

## Suppliers of natural gas

There are no thresholds that apply when determining whether a natural gas supplier is a liable entity. This means that from 2012-13 onwards, if a person supplies natural gas to another person during a financial year and:

- it may reasonably be expected that the natural gas is wholly or partly for use by the other person, and
- the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use, and
- the withdrawal takes place in Australia, and
- the person that was supplied with the gas, did not quote their OTN in relation to the supply,

the person that supplied the natural gas will be a liable entity.

## OTN holders

As with suppliers of natural gas, there are no thresholds that apply when determining whether an OTN holder is a liable entity. This means that from 2012-13 onwards, if a person quotes their OTN in relation to an amount of natural gas that is supplied to them during a financial year and:

- it may reasonably be expected that the natural gas is wholly or partly for use by the OTN holder, and
- the natural gas is withdrawn from a natural gas supply pipeline for the purposes of the use, and
- the withdrawal takes place in Australia, and
- not all of the natural gas that the OTN quotation was made in relation to was, or is to be, combusted at a large gas consuming facility

the OTN holder is a liable entity.

Further information on natural gas suppliers and OTN holders is available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

## Import or production of liquefied petroleum gas (LPG) or liquefied natural gas (LNG) for non-transport use

**From 1 July 2013** onwards, importers and producers of LPG and LNG for non-transport use will be liable entities. They will be liable for the potential emissions embodied in the amount of LPG and LNG that they import or manufacture for non-transport use, provided that an OTN was not quoted in relation to that LPG or LNG.

Further information on coverage of LPG and LNG will be made available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

## Quotation of an OTN in relation to LPG or LNG for non-transport use

**From 1 July 2013** onwards, an OTN holder that quotes its OTN in relation to an amount of LPG or LNG that would otherwise have counted towards an importer or producer's carbon liability, will be liable for the potential emissions embodied in the amount of LPG and LNG that the OTN was quoted in relation to.

Further information on coverage of LPG and LNG will be made available on the Clean Energy Regulator website at [www.cleanenergyregulator.gov.au](http://www.cleanenergyregulator.gov.au).

## Liquid Fuel Opt-in Scheme

**From 1 July 2013** onwards, large liquid fuel users will have the ability to manage their carbon price liabilities under the carbon pricing mechanism instead of paying the equivalent carbon price through the fuel tax systems. Having opted-in the Designated Opt-in Person will be a liable entity.

Opting in is voluntary and businesses should make their own assessment on whether to opt in. The Clean Energy Regulator will make further information available as it comes to hand.

## Further information

If you require further information on registration as a liable entity, please contact the Clean Energy Regulator by:

- Email: [reporting@cleanenergyregulator.gov.au](mailto:reporting@cleanenergyregulator.gov.au)
- Phone: 1300 553 542