



Environmental Accounting White Paper

The National Greenhouse and Energy Reporting (NGER) Legislation and Contractors/Subcontractors

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To facilitate the development of this white paper, an informal working group of AIEA members and representative of the Clean Energy Regulator was formed. It comprised the following members:

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Various levels of consultation and review have been undertaken with the members of this group and the information expressed herein may not reflect the views of the working group members or their employers.

This document does not replace the need for a corporation to determine its own reporting responsibilities and processes.

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Introduction

The National Greenhouse and Energy Reporting (NGER) Act 2007 established the legislative framework for corporations which trigger specified thresholds to report greenhouse gas (GHG) emissions, energy consumption and energy production under the National Greenhouse and Energy Reporting System. The NGER Act is supported by a range of instruments which form the NGER scheme. In addition to reporting GHG emissions, energy consumption and energy production associated with a corporation's own activities, the scheme requires corporations to report GHG emissions, energy consumption and energy production resulting from the activities of their contractors and subcontractors, where these activities fall under the overall control of the reporting entity. This reporting must be carried out in accordance with general principles of measuring emissions – transparency, comparability, accuracy, completeness¹.

The purpose of this paper is to:

- clarify the way in which contractor reporting is treated under the NGER legislation,
- provide a simplified framework for collecting data and reporting on contractor activities, and
- discuss some of the issues associated with contractor reporting.

The paper is relevant to all corporations that have NGER reporting obligations and overall control of activities conducted by contractors or subcontractors, as well as to their advisors, auditors and regulators.

This paper has been prepared by the Australian Institute of Environmental Accounting (AIEA). The AIEA is a body of environmental accounting professionals, many of whom work either directly for corporations with NGER reporting obligations, or as advisors or auditors to these organisations. For further information, visit www.environmentalaccounting.org.

Contractors and the legislation

Contractors do not receive extensive attention in the key pieces of NGER Legislation. However, there are inferences made as to how they should be treated in NGER reporting, as described below.

The NGER Act

¹ *National Greenhouse and Energy Reporting (Measurement) Determination 2008*, Section 1.13

The *National Greenhouse and Energy Reporting Act 2007* (the NGER Act) indirectly addresses the issue of data provision by contractors. In circumstances where a corporation is unable to obtain data that is controlled by another person and that data is required to be reported by the corporation, the NGER Act empowers the Clean Energy Regulator (the Regulator) to request the data directly from that person². Further, the NGER Act states that a corporation's CEO is expected to take reasonable steps to ensure that the reporting corporation's contractors have knowledge and understanding of the requirements necessary to comply with the NGER Act³.

These sections of the NGER Act mean that contractors (and other persons) have an obligation to provide the activity data they control which is required to be reported by corporations (i.e., data associated with activities over which the corporation has overall control).

The NGER Regulations

The *National Greenhouse and Energy Reporting Regulations 2008* (the NGER Regulations) provide an interpretation of each part of the NGER Act. On the issue of data provision by other persons, the NGER Regulations outline information that must be provided for the Regulator to request data under Section 20 of the NGER Act (as discussed above)⁴. The obligation for contractors to provide activity data to corporations with whom they have contracts is also, therefore, indirectly required by the NGER Regulations.

The NGER Regulations stipulate additional reporting requirements regarding the reporting of contractor data in cases where a contractor's activities are under the overall control of the reporting corporation and exceed certain thresholds⁵. However, reporting requirements in cases where contractors' activities do not exceed these thresholds are not discussed.

Guidance on this issue is provided by the Clean Energy Regulator in NGER Fact Sheet 7⁶, which states that where a contractor's activities at a facility are under the overall control of the reporting corporation the associated emissions, energy production and/or energy use would generally be considered to be part of that facility's NGER obligations.

Collecting contractor data

The controlling corporation is responsible for reporting all GHG emissions and energy data associated with a facility. This includes GHG emissions from, and energy consumed and produced by, the activities of contractors and subcontractors, where the controlling corporation has overall control⁷ of those activities.

² *National Greenhouse and Energy Reporting Act 2007*, Part 3, Section 20

³ *National Greenhouse and Energy Reporting Act 2007*, Part 5, Division 4, Section 48(1)(iii)

⁴ Division 4.7 Regulation 4.33 of the NGER Regulations

⁵ Division 4.7 Regulation 4.30 of the NGER Regulations

⁶ <http://www.climatechange.gov.au/reporting/~media/publications/greenhouse-report/nger-factsheet-7-contractsleasing.ashx>

⁷ Operational control and overall control are defined in the same manner under the NGER Act, the difference being that operational control refers to control of a facility, whereas overall control refers to control of an activity or series of activities. Additional guidance on how operational control and overall control are assessed is available in the Operational Control Supplementary Guidelines available at <http://www.cleanenergyregulator.gov.au/National-Greenhouse-and-Energy-Reporting/Fact-sheets-FAQs-and-guidelines/Guidelines/Pages/default.aspx>.

All contractor data must be included for contractors over whom the controlling corporation has overall control. There is no threshold below which contractor information can be excluded. Contractor data is to be reported in the Emissions and Energy Reporting System (EERS) against the appropriate facility. Where contractors individually trigger the NGER reporting threshold (25kt CO₂-e at a particular facility), additional information should be supplied in relation to that contractor, and their energy consumption, production and GHG emissions must be reported separately⁸. In the majority of instances, reporting entities will be required to incorporate contractor reporting into their own reporting for individual (or aggregated) facilities.

To ensure a consistent approach to contractor reporting, the AIEA proposes the following method for identifying, collecting and reporting contractor data which is outlined as a series of steps below.

1. **Compile a list of all contractors** used by the reporting entity during the relevant year, together with information on the activities carried out by each contractor and the supply expenditure. Contractors should include all those external groups associated with construction, maintenance, transportation, provision of professional services and procurement of goods.
2. **Establish the reporting boundary in two stages.**
 - a) **Assess whether each contractor is likely to have reportable sources and exclude those without reportable sources.** Reportable sources include fuel consumption (both stationary and mobile), consumption of oils and greases, and electricity consumption (where this is part of the reporting entity's facility and is separately metered). At this stage, suppliers of professional services (legal, finance) could likely be excluded. Similarly, providers of procured goods, including plant and equipment, could be excluded since these are unlikely to have reportable sources. Finally, contractors who undertake activities under the overall control of the reporting entity but that use energy sources already being reported by the reporting entity (for example cleaners who simply plug into site power) can also be excluded at this stage.
 - b) **Determine overall control** by conducting operational/overall control tests in relation to groups of contractors according to their operational activities and **exclude those contractors over whose activities the reporting entity does not have overall control**⁹. Appendix 1 provides examples of reporting entities which extensively use contractors, indicating with whom overall control would likely rest for a range of common contractor activities. These examples may also assist in determining overall control for a broader range of situations.
3. **List out the remaining contractors and establish which of these are significant.** Some factors that might be relevant in determining whether a contractor is significant are:
 - What length of time are the services provided for?
 - What activities are undertaken by the contractor, are they likely to be intensive?
 - What is the value of the contract?
 - How dependent are operations on the activities of the contractor?

⁸ There is a tab in the facility data entry page of the EERS system where large contractors should be separately reported.

⁹ Where a contractor is required to submit an NGER report in its own right, the reporting entity should communicate with that contractor in determining overall control of the contractor's activities and which organisation will report the relevant data. Data should only be reported by one entity to avoid double-counting.

4. For those contractors assessed as being material, list from greatest to least expenditure, and select sufficient contractors to ensure coverage of at least 90% (or an alternative threshold) of supplier expenditure. The threshold should be set taking into account the absolute and relative thresholds for incidental sources¹⁰. For those suppliers which represent the threshold supplier expenditure, **prepare and distribute a letter explaining NGER reporting and requesting data relating to reportable sources. A supplier data request form should be provided.** Any contractor data not collected should fall below the incidental thresholds and should therefore be estimated.
5. Collate energy consumption, production and GHG emission data for the relevant contractors.
6. Extrapolate collated data out to 100% of supplier expenditure based on the data received from contractors. For example, if data is collected from contractors representing 95% of expenditure on the relevant subset of contractors, energy consumption, production and GHG emissions should be extrapolated by dividing collated data by 95% or 0.95¹¹. For example:

$100\% \text{ contractor data} = 95\% \text{ contractor data} / 0.95$

7. Endeavour for continuous improvement of contractor data in subsequent reporting periods.

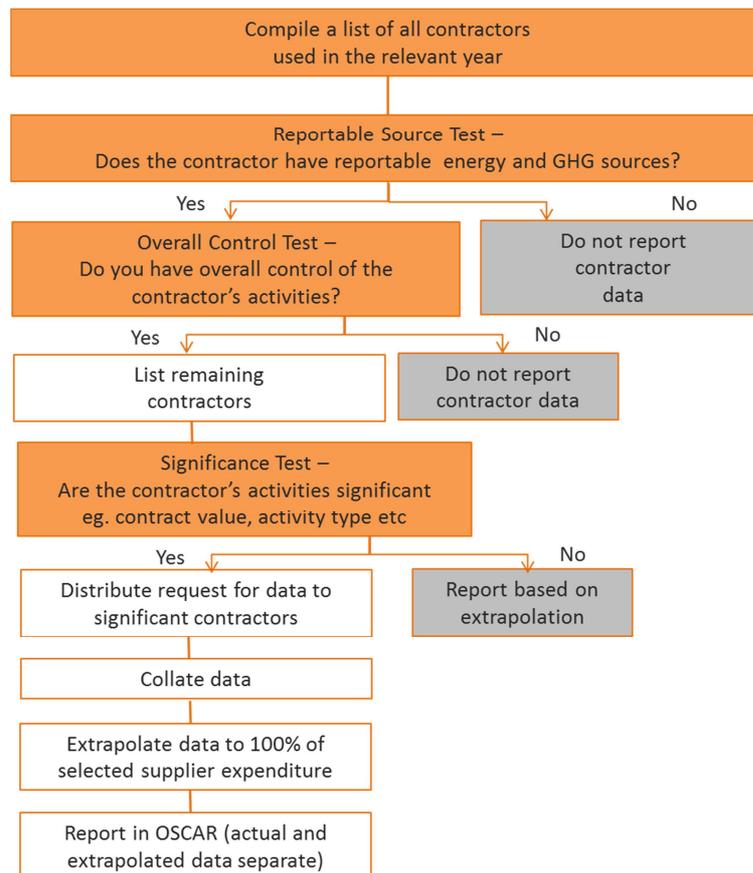


Figure 1: Decision tree for reporting contractor data under NGER Legislation

¹⁰ The provisions for incidental sources and the thresholds which apply are outlined in Division 4.5 Regulation 4.27 of the NGER Regulations.

¹¹ As an alternative, and for a potentially more accurate result, emissions intensities may be calculated using available data for each activity type (eg civil contracting) undertaken by contractors and extrapolated to contractors undertaking similar activities for which data is unavailable.

Reporting contractor data

The NGER Regulations identify additional reporting requirements in cases where a contractor's activities under the overall control of the reporting corporation result in over:

- + 25kt CO₂-e per year of GHG emissions;
- + 100TJ per year of energy production; or
- + 100TJ per year of energy production.

Reporting 'small' contractors (<25kt CO₂-e and 100TJ of energy production or consumption)

It is suggested that data collected directly for small contractors should be reported as a separate line item in EERS and labelled '*contractor data*' and that the extrapolated amount be labelled '*estimated contractor data*'. A check should be performed to confirm that estimated contractor data falls below the thresholds for incidental sources and can therefore be estimated. Any such estimated data should be identified in EERS as incidental.

It is also acceptable for corporations to aggregate small contractor activity data into overall facility activity data.

Reporting 'large' contractors (>25kt CO₂-e or 100TJ of energy production or consumption)

In cases where a contractor's activities result in annual GHG emissions, energy production or energy use that exceed the relevant thresholds, the NGER Regulations require that those activities be reported separately in a facility's reporting along with:

- + the name of the contractor;
- + the contractor's identifying details;
- + the total greenhouse gas emissions produced by the contractor's activity or activities;
- + the total energy produced by the contractor's activity or activities; and
- + the total energy consumed by the contractor's activity or activities.

There is a tab in the facility data entry page of the EERS system where large contractors should be separately reported.

Contractor refusal to supply data

In circumstances where a contractor has refused to provide information to the reporting corporation and the corporation is entitled to acquire that information solely because the contractor is obliged to assist the corporation to comply with the NGER Act, then the corporation may refer the issue to the Regulator under Part 3 Section 20 of the NGER Act. The Regulator is then empowered to request the data from the contractor directly.

In cases where a contractor has refused to provide the necessary information to the reporting corporation and that contractor's activities are expected to exceed one or more of the thresholds outlined in the NGER Regulations (thereby triggering additional reporting requirements), there is a clear obligation for the reporting corporation to refer the issue to the Regulator.

Accuracy of contractor data and responsibility for data

While the NGER Legislation requires contractors (and other persons) to provide activity data to relevant reporting entities, the Legislation does not discuss the contractor's responsibility for data accuracy.

Contractor identification and data requests

It is likely that the reporting entity will be held responsible for taking reasonable steps to identify which of its contractors have reporting obligations under the NGER Act. It will also be incumbent on the reporting entity to formally and clearly request the required data from its contractors in a suitable format.

Compilation and forwarding of contractor data

The role of compiling and forwarding contractor data to the reporting entity can generally only be undertaken by the contractor. It is therefore difficult for the reporting entity to ensure the quality of this data.

However, to provide assurance in the face of scrutiny, reporting entities should be able to demonstrate that they have taken a 'best endeavours' approach to obtaining data, and have conducted some degree of data checking to assess its accuracy and completeness.

In line with NGER requirements, records of all communication with contractors should be retained to provide evidence that the reporting entity has fulfilled its responsibilities related to obtaining contractor data of a suitable standard. As a minimum it is suggested that supporting documentation include completed contractor data forms. This form of supporting information would likely be consistent with measurement criterion BBB, which is likely to be the most common criterion for contractor data.

Contractor data and legal contracts

Overall control agreements and obligation to supply data

The NGER legislation has relevance to contractors over which the reporting corporation has overall control. Aside from this, no individual threshold test applies, which indicates that reporting entities must account for the emissions, energy use and energy production of contractors over which it is they are deemed to have overall control.

Many contractors will not be familiar with the requirements of greenhouse and energy reporting, and may not have systems in place to collect this data. These entities will nevertheless be required to supply data and, for some contractors, development of appropriate systems may come at a cost. A risk therefore exists for reporting entities that contractors may pass on any costs associated with the provision of data. However, the costs associated with the provision of data are likely to be minor when compared with the cost of a carbon price related to contractor activities. Reporting entities should consider how these costs will be borne for any new contracts.

Pass through clauses – pass through of compliance costs from contractors

Reporting entities may wish to ensure through their future contractual arrangements that any compliance costs associated with the collection and aggregation of NGER data by contractors is borne by those contractors and is not the responsibility of the reporting entity.

Pass through clauses – pass through of the costs of permits associated with contractor data

With a price on carbon now in place, reporting entities may want to clarify through future contractual arrangements which party has responsibility for paying the cost of direct liabilities associated with contractor emissions.

Obligation to report contractor data versus financial obligations for emissions

Under the Clean Energy Legislative Package, the obligation to pay the carbon price rests with large Scope 1 emitters. The Regulator outlines on its webpage the conditions which cause a facility to incur a carbon price liability and the circumstances which cause a “person” to be responsible for covered emissions of greenhouse gas from the operation of a facility¹². Where Covered emissions¹³ arise from contractor activities, it is the reporting entity (with operational control of the facility) that has financial responsibility for paying the carbon price in the first instance.

¹² <http://www.cleanenergyregulator.gov.au/Carbon-Pricing-Mechanism/Liable-entities/Pages/default.aspx>

¹³ <http://www.cleanenergyregulator.gov.au/Carbon-Pricing-Mechanism/About-the-Mechanism/What-emission-types-are-in-and-out/Pages/default.aspx>

Appendix 1 – Likely overall control outcomes for a sample of reporting entity and contractor activity combinations

Company Type →	Major Oil & Gas Company	Mid-size or Smaller Oil & Gas Company	Owner/Operator Miner	Contract Miner	Large Construction Company
↓ Activity type					
Exploration	Overall control likely to rest with the oil & gas company. It is possible that some specialist activities, e.g. seismic testing or drilling, might fall under the control of contractors.	Overall control likely to rest with specialist seismic and drilling contractors, though the oil & gas company may have responsibility for extended production flow testing, especially if flaring.	May depend on where exploration is occurring (on an existing tenement or elsewhere) and the type of exploration activity (eg. drilling or seismic testing). Overall control will either rest with the miner if they direct these activities, or with a specialist contractor.	Contract miner is unlikely to have overall control of exploration activities.	Not applicable.
Facility construction	Overall control of construction activities within the permit area are likely to rest with the oil & gas company.	Overall control of construction activities within the permit area may rest with the oil & gas company if they are able to direct these activities, or a construction subcontractor if management of a portion of the permit area is handed over to the subcontractor.	Possibly under the overall control of the miner, if they directly manage the construction process (earthworks, etc). Otherwise, responsibility will likely rest with the construction company.	Contract miner is unlikely to have overall control of site establishment or preparing to extend operations to new areas.	Overall control during establishment of the site will likely rest with the construction company.
Transport of materials onto site	Not applicable.	Not applicable.	Transport of materials by subcontractors will likely be outside the overall control of the miner.	Transport of materials by subcontractors will likely be outside the overall control of the miner.	Transport of materials by subcontractors will likely be outside the overall control of the construction company.
Core activity – Production or Operations	Overall control will rest with the oil & gas company.	Overall control will rest with the oil & gas company.	Overall control will rest with the miner.	Overall control will likely rest with the contract miner. It is possible that some activities, e.g. haulage, may be the responsibility of the contract miner, and that others, e.g. processing, may be undertaken by the client.	Construction company will almost certainly have overall control of greenfield sites and will likely have control of brownfield sites unless the client actively directs all day-to-day activities.

Company Type →	Major Oil & Gas Company	Mid-size or Smaller Oil & Gas Company	Owner/Operator Miner	Contract Miner	Large Construction Company
↓ Activity type					
Maintenance and general services	Ancillary activities undertaken by subcontractors are likely to fall under the overall control of the oil & gas company.	Ancillary activities may be under overall control of the oil & gas company or a subcontractor depending on the extent to which the oil and gas company directs these activities.	Ancillary activities undertaken by subcontractors are likely to fall under the overall control of the miner.	Ancillary activities may be under overall control of the contract miner or client, depending on who the subcontractors report to.	Ancillary activities undertaken by subcontractors are likely to fall under the overall control of the construction company, unless these are separately managed by the client.
Transport of product to market	Overall control likely to rest with oil & gas company unless these activities are contracted out to specialist company and not directed by the oil & gas company.	Overall control of road or sea transport is likely to rest with specialist contractor. Overall control of pipeline transport will rest with pipeline operator (which may be the oil & gas company).	Mining company unlikely to have control of these activities. Transfer of responsibility likely to occur at weighbridge or loading. Exception may be where materials are transported between sites controlled by the miner, when transport is likely to be included within the overall control of the mining company.	Contract miner unlikely to have control of these activities. Transfer of responsibility likely to occur at weighbridge or loading.	Not applicable.
Decommissioning and rehabilitation	Overall control will likely rest with the oil & gas company.	Overall control will likely rest with the oil & gas company.	Overall control will likely rest with the miner.	Overall control for this activity may depend on whether rehabilitation is progressive, or occurs after contract miner has left site. Progressive rehabilitation may be part of contract activities. Otherwise overall control will rest with client.	Overall control of site cleanup is likely to rest with construction company. Operational control is likely to be handed over to the client at practical completion.