Chapter 13

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **1** Date: **21/9/2012** Time: **12:1:33**
bwpageid:: 1::
bwservice::0::

 © LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **2** Date: **21/9/2012** Time: **12:1:33**
bwpageid:: 2::
bwservice::0::

Carbon Claims Disclosure Reporting

Introduction

[270,001]

The Australian government's aim to create a low carbon economy will be supported by and in turn foster transparency about greenhouse gas emissions. Chapters 4 and 5 discuss information accessible in the Liable Entities Public Information Database (LEPID) and/or published by the Clean Energy Regulator (regulator) on its website: www.cleanenergyregulator.gov.au.

This chapter deals with carbon claims, carbon disclosure and carbon reporting.

If a person or entity is required to prepare financial statements of profit and loss for the income year and financial position as at the end of the income year[1] then expenditure for the acquisition of eligible emissions units and any stock of such units held on hand at the end of the financial year must, by accounting convention, be captured somewhere in those financial statements.

Currently, there is no International Financial Reporting Standard (IFRS)[2] or Australian accounting standard that specifically deals with the treatment and disclosure in financial statements of emissions numbers, of transactions in eligible emissions units or with liability under the Clean Energy Act 2011 (Cth).

The Australian Accounting Standards Board (AASB) identified the following potential treatments in a staff paper released in July 2012 (AASB Staff paper):[3]

Activity	Item to be accounted for	Accounting Standard
Permits purchased	Financial asset	AASB 139
Free permits received	Intangible asset	AASB 138
	or	or
	Financial asset	AASB 139
	Government grant	AASB 120/AASB 1004
Emissions made	Provision (liability)	AASB 137
Entity qualifies for Australian Carbon Credit Units (ACCUs)	Intangible asset	AASB 138
	Government grant	AASB 120/AASB 1004
Shortfall in permits and penalties incurred for the shortfall	Liability	AASB 137 and AASB 139
Carrying amount of assets no longer recoverable	Asset (reduction)	AASB 102, AASB 136, AASB 139

The detail about transactions in eligible emissions units and acquittal of liability, even if material, may not, in the absence of specific mandate, be transparent in financial statements.

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **3** Date: **21/9/2012** Time: **12:1:34**
bwpageid:: 3::
bwservice::0::

Notes

1 The income year for accounting may be a different period to the 1 July–30 June compliance year for the Clean Energy Act 2011 (Cth).

2 The International Financial Reporting Interpretations Committee (IFRIC) of the International Accounting Standards Board (IASB) released “IFRIC 3 Emission Rights” in September 2004 and withdrew it June 2005.

3 Ahmad Hamidi-Ravari, “Possible Financial Reporting Implications of the Fixed Price Phase of the Carbon Pricing Mechanism for Emitter Entities”, (AASB Staff paper, Australian Accounting Standards Board, July 2012) at 1.

Sources of law

[270,025]

This chapter references:

- Australian Accounting Standards Board, AASB Standards;
- Competition and Consumer Act 2010 (Cth);
- Corporations Act 2011 (Cth); and
- Australian Government, National Carbon Offset Standard.

Financial statement disclosure

[270,050]

The following discussion references law that specifies accounting standards that apply to companies, but could be applied to other entities.

All disclosing entities, all public companies, all large proprietary companies and all registered schemes must prepare a financial report and a directors’ report for each financial year.[4]

The financial report for a financial year consists of:

- the financial statements for the year;
- the notes to the financial statements; and
- the directors’ declaration about the statements and notes.[5]

The financial report must comply with accounting standards made by the AASB for the purposes of the Corporations Act 2001 (Cth).[6] Accordingly, the financial statements for the year are the financial statements or consolidated financial statements required by the accounting standards.[7]

A company is obliged to keep written financial records that correctly record and explain:

- its transactions; and
- financial position and performance

and which enable true and fair financial statements to be prepared in accordance with the accounting standards and audited.[8]

Notes

4 Corporations Act 2001 (Cth) s 292.

5 Corporations Act 2001 (Cth) s 295(1).

6 Corporations Act 2001 (Cth) ss 296 and 334.

7 Corporations Act 2001 (Cth) s 295(2).

© LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **4** Date: **21/9/2012** Time: **12:1:34**
bwpageid:: 4::
bwservice::0::

8 Corporations Act 2001 (Cth) s 286.

[270,075]

There is no IFRS or Australian AASB Standard that specifically deals with the treatment and disclosure in financial statements of emissions numbers, of transactions in eligible emissions units or with liability under the Clean Energy Act 2011 (Cth). In such circumstances, AASB Standard AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors[9] provides:

> **10** In the absence of an Australian Accounting Standard that specifically applies to a transaction, other event or condition, management shall use its judgement in developing and applying an accounting policy that results in information that is:
> (a) relevant to the economic decision-making needs of users; and
> (b) reliable, in that the financial statements:
> (i) represent faithfully the financial position, financial performance and cash flows of the entity;
> (ii) reflect the economic substance of transactions, other events and conditions, and not merely the legal form;
> (iii) are neutral, that is, free from bias;
> (iv) are prudent; and
> (v) are complete in all material respects.

AASB 108 continues:

> **11** In making the judgement described in paragraph 10, management shall refer to, and consider the applicability of, the following sources in descending order:
> (a) the requirements in Australian Accounting Standards dealing with similar and related issues; and
> (b) the definitions, recognition criteria and measurement concepts for assets, liabilities, income and expenses in the *Framework*.
>
> **12** In making the judgement described in paragraph 10, management may also consider the most recent pronouncements of other standard setting bodies that use a similar conceptual framework to develop accounting standards, other accounting literature and accepted industry practices, to the extent that these do not conflict with the sources in paragraph 11.

Both the IASB and the AASB made an early attempt to define the approach to accounting for emissions rights and similar schemes. The AASB released "UIG Interpretation 3 Emissions Rights" applicable to annual reporting periods ending on or after 28 February 2006,[10] to parallel "IFRIC 3 Emissions Rights" released in September 2004 by the International Financial Reporting Interpretation Committee (IFRIC).

IFRIC 3 and UIG Interpretation 3 provided that emission allowances, whether issued by government or purchased, should be treated as intangible assets accounted for in accordance with "IAS 38 Intangible Assets"/"AASB 138 Intangible Assets". Allowances should be recognised at fair value initially. Subsequently, an entity could choose to measure them under either a cost or revaluation model. For allowances issued for less than fair value, the difference between their fair value and the amount paid should be accounted for as a government grant and if appropriate amortised to income on a systematic basis over the compliance period for which the allowances were allocated.

IFRIC 3 and UIG Interpretation 3 provided that a liability for the obligation to deliver allowances should be recognised as emissions are made. The liability should be accounted

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **5** Date: **21/9/2012** Time: **12:1:34**
bwpageid:: 5::
bwservice::0::

for as a provision in accordance with "IAS 37 Provisions, Contingent Liabilities and Contingent Assets"/"AASB 137 Provisions, Contingent Liabilities and Contingent Assets" measured at the current market value of the required number of allowances. Changes in market value should then be recognised in profit or loss.

IFRIC 3 was withdrawn in June 2005, and UIG Interpretation 3 was withdrawn in September 2005.

Notes

9 AASB 108 replicates international accounting standard IAS 8: Accounting Policies, Changes in Accounting Estimates and Errors (Accounting Standard, International Accounting Standards Board).

10 UIG Interpretation 3 is reproduced in the Appendix.

ACQUISITION OF ELIGIBLE EMISSIONS UNITS

[270,100]

Is the acquisition of an eligible emissions unit the acquisition of an asset or an expense?

For accounting purposes, an asset is defined as a resource controlled by an entity as a result of past events and from which future economic benefits are expected to flow to the entity.[11] The AASB Staff paper suggests that eligible emissions units satisfy the definition of an asset in the AASB Conceptual Framework because "they are future economic benefits controlled by the emitter entity as a result of a past event — being the purchase or receipt of the permits".[12] Conceptually, the accounting treatment should not depend upon the type of eligible emissions unit acquired, or upon whether the unit was acquired for value or nil consideration. The future economic benefit derives from the surrender or sale of the eligible emissions units.

Expenditure is generally recognised as an expense unless it is expenditure incurred in producing an asset (or inventory) that is recognised in the financial statements, in which case it would be capitalised (or absorbed).[13] Expenditure to acquire an item within the scope of the AASB Standards that does not meet the definition of an asset (including intangible asset or financial asset) or equity, is to be recognised as an expense when it is incurred.[14] Expenditure on an intangible item is recognised as an expense when it is incurred unless it forms part of the cost of an intangible asset that meets prescribed recognition criteria.[15]

Is an eligible emissions unit an intangible asset or a financial asset?

An intangible asset is an identifiable non-monetary asset without physical substance.[16]

A financial asset is:

- cash;
- an equity instrument of another entity;
- a contractual right to receive cash or another financial asset from another entity;
- a contractual right to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity; or
- a contract that will or may be settled in the entity's own equity instruments and is:
  - — a non-derivative (for which the entity is or may be obliged to receive a variable number of the entity's own equity instruments) or
  - — a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments.[17]

Monetary assets are money held and assets to be received in fixed or determinable amounts of money.[18]

© LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **6** Date: **21/9/2012** Time: **12:1:34**
bwpageid:: 6::
bwservice::0::

Notes

11 AASB Glossary of Defined Terms, AASB 138: Intangible Assets (Accounting Standard, Australian Accounting Standards Board) at [8].

12 Ahmad Hamidi-Ravari, "Possible Financial Reporting Implications of the Fixed Price Phase of the Carbon Pricing Mechanism for Emitter Entities", (AASB Staff paper, Australian Accounting Standards Board, July 2012) at [16].

13 Ibid at [35].

14 AASB 138 at [10].

15 AASB 138 at [68].

16 AASB 138 at [8].

17 AASB 132, Financial Instruments: Presentation (Accounting Standard, Australian Accounting Standards Board) at [11].

18 AASB 138 at [8].

Carbon units

[270,125]

As eligible emissions units, carbon units will be the currency of the Australian emissions trading scheme. However, this does not make them financial assets.

In both the fixed charge period and the flexible charge period of the carbon pricing mechanism, carbon units may be acquired under the statutory scheme or by private treaty. Carbon units may be acquired:

- from the regulator by successful application to the regulator (either for a fixed charge, or as a result of participating in an auction);
- free from the regulator under an assistance program; or
- by transfer from a third party.[19]

The issue of carbon units by the regulator does not make carbon units an equity instrument of the Commonwealth.

The ability of the regulator in the fixed charge period to buy-back free carbon units[20] and the provision by the Commonwealth of a refund of the fixed charge amount for any final surplus surrender number,[21] whilst monetising carbon units, does not make carbon units cash.

Paragraph AG10 in the Assistance Guide to AASB Standard AASB 132 Financial Instruments: Presentation, provides that:

> Physical assets (such as inventories, property, plant and equipment), leased assets, and intangible assets (such as patents and trademarks) are not financial assets.

If a carbon unit is properly classified as an intangible asset, then it will not be a financial asset.

Carbon units do not have physical substance — they are issued and exist as an electronic entry in the Registry.[22] Carbon units are choses-in-action: they are intangible property.

There are three key features of an intangible asset that meet the definition of intangible asset in AASB Standard AASB 138 Intangible Assets. The key features are:

- identifiability;
- control over a resource; and
- existence of future economic benefits.[23]

Each carbon unit can be identified by its unique identification number.[24]

Control over carbon units will be possible because carbon units are personal property.[25]

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **7** Date: **21/9/2012** Time: **12:1:34**
bwpageid:: 7::
bwservice::0::

For accounting purposes, an entity will control an asset if the entity has the power to obtain the future economic benefits flowing from the underlying resource and to restrict the access of others to those benefits.[26]

Carbon units embody future economic benefits. The right to release 1 t CO2-e GHG into the atmosphere in Australia is inherent in every carbon unit, liberated by surrender.[27] Carbon units (other than carbon units acquired for a fixed charge) will be transferrable by assignment and by operation of law.[28] However, the holder of a carbon unit (other than a fixed charge carbon unit) may decide to hold it, to surrender it, to transfer it or to relinquish it.

Accounting under AASB 138 requires an entity to demonstrate that an item meets both the definition of an intangible asset and its prescribed recognition criteria.

Recognition requires that it be probable that the expected future economic benefits that are attributable to the asset will flow to the entity. This means that an entity must demonstrate that carbon units have been acquired for surrender or sale, and not to be relinquished.

Recognition also requires that the cost of the asset can be measured reliably.

In the AASB Staff paper, and following the withdrawal of IFRIC 3/UIG Interpretation 3, the AASB does not categorically assert that the treatment of carbon units as intangible assets is the correct or preferred accounting treatment.

Notes

19 Save that carbon units acquired for a fixed charge may not be transferred because they are deemed to be automatically surrendered after issue by the regulator: Clean Energy Act 2011 (Cth) s 100(7).

20 Clean Energy Act 2011 (Cth) s 116.

21 Clean Energy Act 2011 (Cth) s 132. In the fixed charge period, if there is a final surplus surrender number (ie a liable entity has surrendered more eligible emissions units than their emissions number) then the Commonwealth will refund the fixed charge amount for the surplus.

22 Clean Energy Act 2011 (Cth) s 98; Australian National Registry of Emissions Units Act 2011 (Cth) s 17.

23 AASB 138 at [10].

24 Clean Energy Act 2011 (Cth) s 95.

25 Clean Energy Act 2011 (Cth) s 103.

26 AASB 138 at [13].

27 Clean Energy Act 2011 (Cth) s 122(2) and Pt 6 Div 3.

28 Clean Energy Act 2011 (Cth) Pt 4 Div 3.

ACCUs

[270,150]

An ACCU, like a carbon unit, is an eligible emissions unit. ACCUs will be part of the currency of the Australian emissions trading scheme.

ACCUs may only be acquired from the regulator.

No payment is made by a carbon farming initiative (CFI) project proponent to the regulator for the issue of ACCUs. When a CFI project proponent has all regulatory approvals, and is carrying out the CFI project, the proponent applies to the regulator to obtain a certificate of entitlement and ACCUs from the registry issued by the regulator.

ACCUs do not have physical substance. Each ACCU will be represented by an entry in the Registry.[29]

Control over ACCUs will be possible because ACCUs are personal property.[30]

 © LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **8** Date: **21/9/2012** Time: **12:1:35**
bwpageid:: 8::
bwservice::0::

ACCUs embody future economic benefits. Control of ACCUs creates an opportunity to generate an inflow of cash through sale to other entities or to avoid a future cash outflow by use in surrendering to cover GHG emissions. The future economic benefits of ACCUs flow initially to the CFI project proponent through that sale or use.

Notes

29 ANREU Act 2011 (Cth) s 17(1).

30 Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth) s 150.

Accounting entries

[270,175]

An intangible asset is to be recognised initially at cost.[31]

Historic cost will be the purchase price paid for the issue or transfer of a carbon unit or other eligible emissions unit.

At the date of acquisition, the accounting entries could be:

	CU	CU
Dr Carbon units (an intangible asset)	xxx,000	
Cr Bank (as appropriate)		xxx,000

To record carbon units purchased at their cost (xxx,000 units at $yy per unit).

The issue of free carbon units (and the issue of ACCUs) do not involve any expenditure with the regulator, and, once issued, free carbon units will be indistinguishable from other carbon units.[32] IFRIC 3 and UIG Interpretation 3 stipulated that if eligible emissions units were issued free, then they were to be recognised initially at fair value as at date of acquisition.[33] The AASB Staff paper suggests that free carbon units and ACCUs should be accounted under AASB Standard AASB 120 Accounting for Government Grants and Disclosure of Government Assistance.

The issue of free carbon units to liable entities under the Jobs and Competitiveness Program (JCP) meets the definition of government assistance for the purposes of AASB 120 — action by government designed to provide an economic benefit specific to an entity or range of entities qualifying under certain criteria.[34]

At the date of issue of free carbon units, the accounting entries could be:

	CU	CU
Dr Carbon units (an intangible asset)	xxx,000	
Cr Government grant (deferred income)		xxx,000

To recognise free carbon units at their fair value (xxx,000 units at $yy per unit).

The issue of ACCUs under the CFI would be treated as a government grant under AASB 120. For the purposes of AASB 120, government grants are assistance by government in the form of transfers of resources to an entity in return for past or future compliance with certain conditions relating to the operating activities of the entity.[35]

At the date of issue of ACCUs, the accounting entries could be:

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **9** Date: **21/9/2012** Time: **12:1:35**
bwpageid:: 9::
bwservice::0::

	ACCU	ACCU
Dr ACCUs (an intangible asset)	xxx,000	
Cr Government grant (deferred income)		xxx,000

To recognise ACCUs at their fair value (xxx,000 ACCUs at $yy per ACCU).

Notes

31 AASB 138 at [24].

32 Save that in the fixed charge period, free carbon units of a particular vintage not surrendered by the 1 February surrender deadline in the next vintage year will be automatically cancelled: Clean Energy Act 2011 (Cth) s 115.

33 IASB, "IFRIC 3 Emission Rights"/AASB, "UIG Interpretation 3 Emissions Rights" at [6]. AASB 138 [Aus 14.1] requires not-for-profit entities to use fair value as cost at the date of acquisition.

34 AASB 120, Accounting for Government Grants and Disclosure of Government Assistance (Accounting Standard, Australian Accounting Standards Board) at [3].

35 AASB 120 at [3].

SURRENDER UNDER THE CLEAN ENERGY ACT 2011

[270,200]

A surrender of eligible emissions units is an expense because it reflects the depletion of those assets (decrease in economic benefits) during the accounting period.[36]

At the time of surrender, the accounting entries could be:

	CU	CU
Dr Emissions expense	xxx,000	
Cr Carbon units (an intangible asset)		xxx,000

To record surrender of carbon units (at cost) (xxx,000 units at $yy per unit).

Because the acquisition of fixed charge carbon units in the fixed charge period will be followed by the immediate deemed surrender of those carbon units,[37] and all of the asset recognised on acquisition will no longer be held, the de-recognition expense reflects the surrender of all the carbon units.

If carbon units have been acquired free, then AASB 120 requires government grants or assistance recognised as deferred income to be brought to account, over the period of use of the government grant or assistance.

At the end of the reporting period, the accounting entries could be:

	CU	CU
Dr Government grant (deferred income)	xxx,000	
Cr Income		xxx,000

To recognise as income the portion of the free carbon units that offsets the cost of emissions in the period (xxx,000 units at $yy per unit, being the fair value recorded on acquisition).

 © LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **10** Date: **21/9/2012** Time: **12:1:35**
bwpageid:: 10::
bwservice::0::

	CU	CU
Dr Emissions expense	xxx,000	
Cr Liability to surrender eligible emissions units		xxx,000

To recognise the liability for emissions to balance date (xxx,000 units at $yy per unit).

At the point of surrender of the free carbon units, the accounting entries could be:

	CU	CU
Dr Government grant (deferred income)	xxx,000	
Cr Income		xxx,000

To recognise as income any remaining portion of the free carbon units surrendered (xxx,000 units at $yy per unit, being the fair value recorded on acquisition).

	CU	CU
Dr Emissions expense	xxx,000	
Cr Liability to surrender eligible emissions units		xxx,000

To recognise as expense and liability remaining emissions covered by the surrender.

	CU	CU
Dr Liability to surrender eligible emissions units	xxx,000	
Cr Carbon units (an intangible asset)		xxx,000

To record extinguishment of liability and surrender of carbon units (at cost)[38] (xxx,000 units at $yy per unit).

The accounting treatment for free carbon units may be different to the income tax treatment for free carbon units. The issue of free carbon units does not give rise to assessable income. If free carbon units are held on balance sheet at the end of the year of income in their year of issue, s 420-58 of the Income Tax Assessment Act 1997 (Cth) provides that they will be valued at nil in the rolling balance calculation.

Notes

36 AASB, "Framework for the Preparation and Presentation of Financial Statements" at [70b].

37 Clean Energy Act 2011 (Cth) s 100(7).

38 AASB 138 also permits the use of a revaluation methodology.

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **11** Date: **21/9/2012** Time: **12:1:35**
bwpageid:: 11::
bwservice::0::

OTHER DISPOSALS OF ELIGIBLE EMISSIONS UNITS

[270,225]

When an entity reduces its stock of eligible emissions units other than by surrender, the accounting treatment will depend upon whether the eligible emissions units are transferred by way of sale or otherwise relinquished.

At the time of sale of eligible emissions units, the accounting entries could be:

	CU	CU
Dr Cash	xxx,000	
Dr/Cr Loss/Profit on disposal of carbon units	Loss	Profit
Cr Carbon units (an intangible asset)		xxx,000

To record sale of carbon units and recognition of profit/(loss) on sale.

A relinquishment of eligible emissions units will deplete the stock of eligible emissions units, but the relinquishment will not qualify as a surrender under the Clean Energy Act 2011 (Cth). If eligible emissions units are relinquished, the accounting entries could be:

	CU	CU
Dr Loss on relinquishment of carbon units	xxx,000	
Cr Carbon units (an intangible asset)		xxx,000

To record relinquishment of carbon units and extra-ordinary loss on relinquishment.[39]

Notes

39 Alternatively, the relinquishment may be treated as an emissions expense, reflecting the depletion of the stock of eligible emissions units.

SEPARATE ASSET AND LIABILITY OR NET TREATMENT?

[270,250]

The AASB Staff paper discusses whether the accounting treatment should reflect a "single position" approach or "separate positions" approach.

In a separate positions approach the holding of eligible emissions units is recognised as an asset and the obligation to cover emissions of GHG is recognised as a liability, and each of these represent separate positions. In a single position approach there is only a net asset or a net liability position, depending on whether there is an excess or deficiency of eligible emissions units held.

The AASB and the IASB tend to the view that a separate liability should be recognised for the obligation to surrender eligible emissions units. This liability is a provision that is within the scope of AASB 137. AASB 137 requires an entity to recognise a provision when it has a legal or constructive present obligation arising from a past (obligating)

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **12** Date: **21/9/2012** Time: **12:1:35**
bwpageid:: 12::
bwservice::0::

event, which can be reliably estimated, and where there will be a probable outflow of resources embodying economic benefits to settle that obligation. The liability therefore is likely to be equal to uncovered emissions that have been made in the reporting period (ie after accounting for the surrender of eligible emissions units in the reporting period) measured at the best estimate of the expenditure required to settle the present obligation for those uncovered emissions at the balance sheet date. This will usually be the present market price of the number of eligible emissions units required to cover emissions made up to the balance sheet date.

MANDATORY FINANCIAL STATEMENT DISCLOSURES

[270,275]

If eligible emissions units are accounted as intangible assets, then AASB 138 mandates the disclosures required in financial statements.[40]

Table 270,275-1 sets out modified AASB 138 disclosures suitable for each class of eligible emissions units.

Table 270,275-1 — Financial statement disclosures for eligible emissions units
• the gross carrying amount of each type of eligible emissions units at the beginning and end of the period
• reconcile the carrying amount of each type of eligible emissions units at the beginning and end of the period showing:
— additions, indicating separately those acquired free, those acquired for consideration, and those acquired through business combinations
— units classified as held for surrender in the next financial period to meet an expected emissions liability
— units classified as held for sale or included in a disposal group classified as held for sale in accordance with AASB 5, and other disposals of units
— increases or decreases during the period resulting from revaluation(s) and from surrender or relinquishment
• any income recognised in profit or loss during the period from the sale of eligible emissions units
• emissions expense recognised in profit or loss during the period and the line item(s) of the statement of comprehensive income and expenses in which the emissions expense is included
• emissions liability at the end of the period
• net exchange differences arising on the translation of the financial statements into the presentation currency, and on the translation of a foreign operation into the presentation currency of the entity
• other changes in the carrying amount during the period.

Notes

40 AASB 138 at [118].

MANDATORY ENVIRONMENTAL DISCLOSURES

[270,300]

Corporate law transparency in stakeholder accountability, directors' duties and financial statement disclosure may also require environmental law disclosures.[41]

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **13** Date: **21/9/2012** Time: **12:1:35**
bwpageid:: 13::
bwservice::0::

Sections 180–184 of the Corporations Act 2001 (Cth) set the fundamental requirements for directors of companies: to act in good faith in the best interests of the corporation, and for a proper purpose, to exercise care and diligence, and to act without abuse of their position.

The High Court of Australia in the case of *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL* (1968) 121 CLR 483; 42 ALJR 123; BC6800800, observed that:

> Directors in whom are vested the right and the duty of deciding where the company's interests lie and how they are to be served may be concerned with a wide range of practical considerations, and their judgment, if exercised in good faith and not for irrelevant purposes, is not open to review in the courts . . . (at 493).

However, the Canadian Supreme Court suggested in the case of *People's Department Stores Inc v Wise* (2004) 49 BLR (3d) 165; 4 CBR (5th) 215; 244 DLR (4th) 564; [2004] 3 SCR 461 that:

> . . . in determining whether [directors] are acting with a view to the best interests of a corporation it may be legitimate, given all the circumstances of a given case, for the board of directors to consider, inter alia, the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment (at [42]).

Notes

41 Karen Bubna-Litic, "Climate Change and Corporate Social Responsibility: The Intersection of Corporate and Environmental Law" (2007) 24(4) *EPLJ* 253 at 253.

[270,325]

Sections 299 and 299A of the Corporations Act 2001 (Cth) set out key information that companies and directors must include in the annual report to shareholders (and hence indirectly, to stakeholders).

Reporting must include non-financial risks such as environmental issues and environmental concerns that may impact on a company's performance or strategies.

Section 299(1)(f) provides that a directors' report must include information about a company's environmental performance in regard to environmental regulations where the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a state or territory.

Section 299A requires listed companies to include in their directors' reports any information that their shareholders would reasonably require to make an informed assessment about the company's performance, including its operations, financial outcomes and future strategies and potential future performance.

[270,350]

Reporting under the Corporations Act 2001 (Cth) may cover matters that might be dealt with by an expansive voluntary "Corporate Social Responsibility" report, but there is no legal requirement to so do. The latest (2006) CAMAC report[42] concluded that, "while required to act in the interests of shareholders generally, directors are not precluded from having regard to effects on other groups or social or environmental considerations that may bear on their ongoing interests". The CAMAC report recommended no change to the Corporations Act 2001 (Cth).

Notes

42 Corporations and Markets Advisory Committee, "*The Social Responsibility of Corporations*" (December 2006), available at <www.camac.gov.au.

 © LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **14** Date: **21/9/2012** Time: **12:1:35**
bwpageid:: 14::
bwservice::0::

ASX LISTING RULES DISCLOSURES

[270,375]

For listed companies, Australian Stock Exchange (ASX) Listing Rule[43] 4.10.17 parallels the minimum requirement to include a review of operations and activities in the annual report. Continuous ASX announcements and annual disclosure of material environmental information is required where there is a connection between environmental performance and financial performance, for example, reflected in a material expense for the acquisition of eligible emissions units or liability for unit shortfall charge.

ASX Listing Rules Guidance Note 10 (explaining the disclosure requirements under Listing Rule 4.10.17) suggests:

> . . . to meet information needs of its shareholders, . . . and an increasing array of other stakeholders ("users"), a company should explain its past performance and provide information which will increase understanding of its future directions.
>
> This will be facilitated by providing useful financial and non-financial information and analysis. . . . A contemporary Review should contain an analysis of industry wide and company specific financial and non-financial information that is relevant to an assessment of the company's performance and prospects.

Principles 3 and 7 of the "Corporate Governance Principles and Recommendations" (2nd ed, 2007) of the ASX Corporate Governance Council also promote the disclosure of environmental matters. The Council describes corporate governance as:

> . . . the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, are held to account. Corporate governance influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised.

Principle 3 requires integrity, from the board to senior management and those who can influence a company's strategy and financial performance. The integrity principle enshrines responsible and ethical decision-making which takes into account not only legal obligations but also the interests of stakeholders.

Principle 7 deals with the recognition and management of risk. It assigns responsibilities for managing "material business risk" to directors collectively at the board level:

> The board should require management to design and implement the risk management and internal control system to manage the company's material business risks and report to it on whether those risks are being managed effectively. . . . A company should consider all material business risks. These risks may include but are not limited to: operational, environmental, sustainability, compliance, strategic, ethical conduct, reputation or brand, technological, product or service quality, human capital, financial reporting and market-related risks.

Notes

43 Available on <www.asx.com.

Voluntary environmental reporting

[270,400]

Corporate Social Responsibility (CSR) describes the voluntary acts of behaviour and disclosure by a company or entity of its activities within the community over and above strict legal obligations.

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **15** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 15::
bwservice::0::

Standards Australia defines CSR as:

> . . . a mechanism for entities to voluntarily integrate social and environmental concerns into their operations and their interaction with their stakeholders, which are over and above the entities legal responsibilities. . .[44]

CSR has also been defined as:

> The management of stakeholder concern for responsible and irresponsible acts related to environmental, ethical and social phenomena in a way that creates corporate benefit.[45]

Generally, CSR embraces a company acting “sustainably”. The concept of sustainable development first emerged from the 1987 report of the World Commission on Environment and Development titled *Our Common Future*. “Sustainable development” can be defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.[46]

CSR reporting by companies in Australia and internationally is increasing. However, CSR reporting by Australian companies is proportionally low compared to international standards.[47]

KPMG noted in the “KPMG International Survey of Corporate Social Responsibility Reporting 2011”[48] that 95 per cent of the G250[49] engaged in CSR reporting in 2011, up 14 per cent from the “KPMG International Survey of Corporate Social Responsibility Reporting 2008” and compared to 35 per cent engaged in CSR reporting in 1999.

In Australia, 57 per cent of Australia’s largest companies surveyed by KPMG engaged in CSR reporting.

One of the difficulties underlying clarity and comparability of CSR reporting is that there exist numerous CSR reporting mechanisms, with no standard guideline set yet either in Australia or internationally. Some popular “standards” are:

- UN Global Compact[50] — an initiative of the UN designed to encourage companies to adopt 10 principles for CSR — for the environment specifically, the principles include the company supporting a precautionary approach to environmental challenges, undertaking initiatives to promote greater environmental responsibility and encouraging the development and transfer of environmentally friendly technologies;
- Global Reporting Initiative (GRI)[51] — international guidelines for assessing and reporting on sustainability including reporting on environmental, social and economic factors against various indicators;
- AccountAbility 1000[52] — an international accounting standard for independently verifying social and ethical accounting, auditing and reporting by companies. Australian companies such as Westpac, BHP Billiton and NAB have used AA1000;
- AS 8003-2003[53] — an Australian standard, similar to AA1000, it is a voluntary standard designed to provide guidance on how Australian companies report on their CSR activities and implement a CSR program; and
- Australian Corporate Responsibility Index[54] — CRI is a voluntary system that allows Australia’s top 250 companies to assess its CSR performance — it is intended as a management tool and evaluates business strategies and their implementation and management of CSR.

A criticism pointed at voluntary reporting is that it is descriptive, not quantitative, and often unverified.

Commentators have argued that it is commercially irresponsible for a company to reduce returns to shareholders in consideration for social or environmental concerns.[55] The “corporate governance debate” about the use of CSR reporting highlights

 © LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **16** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 16::
bwservice::0::

"competing" demands placed on company boards: to increase shareholder profits whilst also obeying their legal obligations, including any legal responsibility not to harm the community and other stakeholders' interests.

Yet concerns for the environment, for climate change impacts and for emissions of GHG may well be crucial for the long-term profits of a company because "the risks related to climate change include: reduced profit margins; higher operating costs due to increased costs of energy; and loss of reputation".[56]

Despite the polarised views, embracing the "green economy" is much cited as a catalyst for increased business opportunities. As individuals become more aware of the need to protect the environment and modify their behaviours to adapt to reduce their GHG emissions, they could place more importance on corporate and product impacts and accordingly seek out more environmentally friendly and sustainable consumables. Corporations that become carbon neutral and/or produce clean technologies and products can market this to their advantage under the National Carbon Offset Standard.

Australia's National Carbon Offset Standard is discussed in [270,550] and guidance released by the Australian Competition and Consumer Commission in relation to false carbon claims by businesses is discussed in [270,425].

Notes

44 Standards Australia, AS 8003-2003 "Corporate Governance — Corporate Social Responsibility" (2003).

45 TI Vaaland, M Heide & K Grønhaug, "Corporate social responsibility: Investigating theory and research in the marketing context" (2008) 42 *European Journal of Marketing* 927–953. See also I Maignan, OC Ferrell & L Ferrell, "A stakeholder model for implementing social responsibility in marketing" (2005) 39 *European Journal of Marketing* 956–977.

46 Gro Bruntland et al, *Our Common Future*, Oxford University Press, Oxford, 1987, p 44.

47 Baker & McKenzie, "Corporate Responsibility: A Guide for Australian Directors" available at <www.bakernet.com.

48 KPMG, "KPMG International Survey of Corporate Social Responsibility Reporting 2011" (KPMG, 2011).

49 The G250 are representative of companies from the Fortune Global 500 List (2010). KPMG surveyed companies operating in financial services, insurance, securities, consumer markets (trade and retail), oil and gas, electronics and computers, communications and media, automotive and utilities. 208 of the 250 were publicly traded enterprises.

50 Available at <www.unglobalcompact.org.

51 Available at <www.globalreporting.org.

52 Available at <www.accountability21.net/aa1000/default.asp.

53 Available at <www.standards.com.au.

54 Available at <www.corporate-responsibility.com.au.

55 For example, Milton Friedman, *Capitalism and Freedom*, University of Chicago Press, Chicago, 1962; "The Social Responsibility of Business is to Increase its Profits", *The New York Times Magazine*, 13 September 1970.

56 Karen Bubna-Litic, "Climate Change and Corporate Social Responsibility: The Intersection of Corporate and Environmental Law" (2007) 24(4) *EPLJ* 253.

Carbon claims

[270,425]

Section 18(1) of the Australian Consumer Law (ACL)[57] provides that: "a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive".

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **17** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 17::
bwservice::0::

Businesses are not permitted to make false or misleading statements about the quality, composition or standard of a product, or to make claims that cannot be substantiated on a reasonable basis, for example, that a price increase is wholly attributable to the carbon pricing mechanism.

The Australian Competition and Consumer Commission (ACCC) monitors business and enforces the ACL. The powers of the ACCC include:

- requiring a business to provide documents that respond to a substantiation notice;
- issuing infringement notices where it considers a claim is false or misleading ($6600 for a corporation or $66 000 for a listed corporation);
- taking legal action against a business for breaches of the ACL; and
- seeking court-imposed penalties breaches or injunctions to stop a business from making certain claims.

The maximum penalty for misleading or deceptive conduct is punitive fines of up to $1,100,000 (for a corporation) and $220,000 (for individuals).[58]

The ACCC provides guidance to business and consumers in relation to:

- making claims of carbon neutrality: visit <http://www.accc.gov.au/content/index.phtml/itemId/833354
- making carbon price claims: visit <http://www.accc.gov.au/content/index.phtml/tag/carbon/fromItemId/ACCC.

Notes

57 Competition and Consumer Act 2010 (Cth) Sch 2.

58 Australian Consumer Law s 151.

CARBON NEUTRALITY

[270,450]

To be “carbon neutral” means that the net greenhouse gas emissions associated with a product or an organisation’s activities are equal to zero, achieved consistently with the Australian National Carbon Offset Standard (NCOS). NCOS is discussed in [270,550].

Since GHG emissions commonly arise in the production of a product or during the lifecycle of an organisation’s activities or event, the necessary starting point is the quantification of the scope 1, scope 2 and/or scope 3 emissions controlled or influenced by the organisation (which in turn requires a determination of organisational boundaries). The carbon footprint of an organisation, product or event is to be calculated in accordance with GHG Protocol[59] principles:[60]

- Relevance: the GHG inventory of an organisation, or the carbon life cycle assessment of a product or event appropriately reflects the GHG emissions attributed to that organisation or product or event;
- Completeness: all GHG emissions sources and activities within the defined boundary of the organisation, product or event are accounted for and reported and all exclusions are disclosed and justified;
- Consistency: consistent methodologies allow for meaningful comparisons of GHG emissions over time;
- Transparency: GHG information should be compiled, analysed and documented clearly and coherently so that auditors may evaluate its credibility, relevant assumptions and the calculation methodologies and data sources used; and
- Accuracy: the quantification of GHG emissions is unbiased (not systematically over or under actual emissions) and that uncertainties are reduced as far as practicable.

 © LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **18** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 18::
bwservice::0::

Carbon neutrality is achieved by:

- direct reduction of quantified GHG emissions; and/or
- the acquisition of acceptable carbon "offset units" (offset credits) equal to the amount (or residual amount) of GHG emissions to be neutralised.[61]

A deceptive or misleading representation that a business or product or event is carbon neutral breaches the Australian Consumer Law and may be penalised by the ACCC.

If carbon neutrality is inappropriately used as a marketing tool, it is referred to as "green washing".[62] Green washing is the promotion of a product or service of an environmental neutral nature, often in response to environmental concerns, as a marketing opportunity, using vague terms that do not have substantiated backing.[63]

The ACCC's role[64] in preserving consumer confidence in environmental claims has been actioned through enforceable undertakings and litigation, such as in the case of *Australian Competition and Consumer Commission (ACCC) v GM Holden Ltd (ACN 006 893 232)*.[65] In July 2007 Saab released advertisements including statements such as: "Grrrrrreen," "Every Saab is green" and "Carbon emissions [are] neutral across the entire Saab range".[66] The advertisements also claimed to offset carbon dioxide emissions by planting 17 native trees per car sold.[67] The ACCC alleged that these statements misled consumers to believe that the new Saab cars would be carbon neutral across their entire life or possessed special environmental features.[68] These representations were false because only the emissions for the first year (after a car was purchased) were offset by Saab's tree planting projects.[69] The Federal Court of Australia ordered GM Holden Ltd to pay the ACCC's costs, approved enforceable undertakings to refrain from publishing future advertisements with carbon neutral claims and plant 12,500 trees which would actually offset the carbon dioxide emissions.

Notes

59 World Business Council for Sustainable Development and the World Resources Institute, GHG Protocol 2004.

60 These principles are also consistent with those outlined under the NGER Act and other relevant Australian and international standards, including the AS ISO 14064 and ISO 14040 series.

61 W Visser, D Matten, M Pohl and N Tolhurst, *The A to Z of Corporate Social Responsibility:The Complete Reference of Concepts, Codes and Organisations*, John Wiley & Sons, London, 2007; see also, Australian Government, National Carbon Offset Standard, ver 2, 1 March 2012, discussed in [270,550].

62 Public Interest Advocacy Centre Ltd, Mark Byrne and Hugh O'Neill, Submission to Australian Competition and Consumer Commission, *Sifting through greenwash: Submission to ACCC Issues Paper on the Trade Practices Act and carbon offset claims*, 19 February 2008, 1.

63 Sera Blair, *Watch out for Greenwash* (1 July 2011) Green Times: Your Online Green Journal and Directory <http://www.greentimes.com.au/climate-change/watch-out-for-greenwash.html. By way of example, see also Australian Competition and Consumer Commission, "Goodyear Tyres apologises, offers compensation for unsubstantiated environmental claims" (ACCC, Press Release MR 181/08, 26 June 2008).

64 Australian Competition and Consumer Commission, "Avoiding unfair business practices: A guide for businesses and legal practitioners" (Discussion Paper to the ACL, Australian Consumer Law, 2010) 8. <http://www.consumerlaw.gov.au/content/the_acl/downloads/business_practices_guide.pdf.

65 *Australian Competition and Consumer Commission (ACCC) v GM Holden Ltd (ACN 006 893 232)* [2008] FCA 1428; BC200808135.

66 Ibid at [1].

67 Ibid at [1].

68 Ibid at [7].

69 Ibid.

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **19** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 19::
bwservice::0::

PRICE INCREASES

[270,475]

Liable entities under the Clean Energy Act 2011 (Cth) will, in the normal course of business, attempt to recover from their customers the cost (or opportunity cost) to the liable entities of acquiring eligible emissions units for surrender to the regulator.

The Clean Energy Act 2011 (Cth) does not prohibit or control the pass-through of the carbon price.

Unless prices are regulated, generally businesses are allowed to increase their prices. However, when it is claimed that price rises are linked to the carbon price, the ACL requires that business must not mislead.

As part of the Clean Energy Future package the ACCC has received funding from the Commonwealth government of $12.8 million over 4 years to

> . . . give the highest priority to:
> - investigating and taking action against any business that makes false or misleading representations about the impact of the carbon price on the price they charge consumers;
> - educating businesses on their obligations to not make false or misleading statements to consumers about the impact of the carbon price on the price they charge consumers;
> - raising awareness amongst consumers by informing them that businesses are prohibited from making false statements about the impact of putting a price on pollution.[70]

The ACCC has established a "carbon hotline" for the receiving of complaints and enquiries in relation to carbon claims. The telephone number is 1300 303 609.

Between 1 July 2012 and 24 July 2012, the ACCC Infocentre, the carbon hotline and web portal received over 1260 carbon price related complaints and enquiries. In the first 10 days after 1 July, the rate of contact averaged 65 per day, thereafter dropping to 45 per day. In the same period, the ACCC handled over 900 complaints and enquiries per day across all matters within its jurisdiction.[71]

GFC Berwick Pty Ltd, trading as Genesis Fitness Club (Berwick) paid the ACCC's first infringement notice of $6,600 in relation to carbon price claims made about the cost of gym membership fees.[72] In April 2012, GFC Berwick Pty Ltd sent a letter to 2,122 of its members promoting a "rate freeze" offer, which offered members a range of lengthy contract extensions at current or reduced membership rates, and represented to members that by taking up this offer they could avoid a fee increase of 9–15 per cent due to the carbon price. The ACCC formed the view that GFC Berwick Pty Ltd did not have a reasonable basis for claiming the carbon price would increase the cost of gym memberships by 9–15 per cent. As part of the resolution of this matter, the CEO of the Genesis Division of Belgravia Health & Leisure Group Pty Ltd, the company which manages the franchise network, wrote to all affected members of GFC Berwick offering them the opportunity to withdraw from the contract extensions at no cost.

Notes

70 Prime Minister, Deputy Prime Minister and Treasurer, Parliamentary Secretary to the Treasurer, "New funding for ACCC to crack down on misleading carbon price claims" (Press Release, 13 July 2011).

71 Australian Competition and Consumer Commission, "ACCC carbon price complaint data shows decline" (ACCC, News Release NR 156/12, 26 July 2012).

72 Australian Competition and Consumer Commission, "Fitness club pays ACCC's first infringement notice for carbon claim" (ACCC, News Release NR 160/12, 1 August 2012).

 © LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **20** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 20::
bwservice::0::

PRICE GOUGING

[270,500]

Price gouging refers to sellers charging prices that are much higher than is considered reasonable or fair or if carbon claims were not made.[73]

Price gouging is a false and misleading practice when the price insinuates a quality or cost that the product does not have, for example, a price increase wholly on account of a carbon price, or an extra quality that similar products might not have, for example, carbon neutrality.[74]

The ACCC's focus[75] on carbon claims includes price gouging where consumers are led to believe that they are paying the appropriate price for the product. By way of example, the ACCC in July 2012 accepted a court enforceable undertaking from South Australian refrigeration contractor Equipserve Solutions Pty Ltd, relating to statements made by Equipserve Solutions Pty Ltd in an email to its customers which attributed the entire amount of an increase in the price of a refrigerant gas to the carbon price, when that was not the case.[76]

Notes

73 Ben Lieberman, "Is anti-gouging anti-consumer?", *Washington Times* (Washington DC), 27 June 2006, p 18.

74 Australian Competition and Consumer Commission, *Misleading Pricing* (2011) <http://www.accc.gov.au/content/index.phtml/itemId/815334.

75 Some commentators suggest that the ACCC is under-resourced for responding to over-priced carbon neutral products and carbon price claims: see Frank Zumbo, *We need Carbon Watch to stop price gouging* (20 July 2011) The Punch: Australia's best conversation: available at <http://www.thepunch.com.au/articles/we-need-carbonwatch-to-stop-price-gouging/.

76 Australian Competition and Consumer Commission, "ACCC accepts undertaking from refrigeration contractor for misleading carbon price claims" (ACCC, News Release NR 153/12, 25 July 2012).

ECO-LABELLING

[270,525]

As environmental awareness has increased, so too has the development of standards designed to test claims of greenhouse gas emissions reduction and carbon content in products and services.[77]

NCOS is an Australian government standard designed to ensure that consumers have confidence in the carbon neutral products they purchase and in the voluntary carbon offset market.

The government has registered a certification trade mark which can be used under licence to market products, events and entities as carbon neutral in compliance with the NCOS where they are certified under the NCOS Carbon Neutral Program.

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **21** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 21::
bwservice::0::

NCOS is discussed in [270,550].

Notes

77 *Environmental Labelling Fact Sheet* (2008) Confederation of Paper Industries <http://www.paper.org.uk/information/factsheets/environmental_labelling.pdf.

National Carbon Offset Standard

[270,550]

The National Carbon Offset Standard (NCOS)[78] is available at: <http://www.climatechange.gov.au/~/media/government/initiatives/ncos/NationalCarbonOffsetStandard-V2-PDF.pdf.

NCOS aims to ensure the integrity of voluntary action to reduce GHG emissions by setting the criteria for eligible carbon offset units and the achievement of carbon neutrality:

> [NCOS] provides guidance to businesses who wish to make their organisation carbon neutral or develop carbon neutral products in a way that achieves emissions reductions that are beyond those achieved under domestic mitigation policies and Australia's national emissions reduction targets.[79]

NCOS deals with the following:

- the principles and requirements for calculating the carbon footprint of a product, organisation or event;
- the types of carbon offset units that constitute genuine, additional emissions reductions;
- requirements for reporting the carbon footprint, measures taken to reduce GHG emissions and the amount reduced, the GHG emissions offset, and the type of carbon offset credits purchased and cancelled; and
- requirements for auditing carbon footprint calculations and carbon neutrality claims.

Eligible offset units cancelled to achieve carbon neutrality under NCOS must be in addition to any eligible emissions units surrendered to meet a liability under the Clean Energy Act 2011 (Cth).

Notes

78 NCOS replaces the Greenhouse Friendly™ initiative that operated (from 2001–2010) for companies who desired to be carbon neutral: *Greenhouse Friendly* (Department of Climate Change and Energy Efficiency, 15 July 2011). <http://www.climatechange.gov.au/government/initiatives/greenhouse-friendly.aspx.

79 Australian Government, National Carbon Offset Standard, ver 2, 1 March 2012, 1.

CARBON OFFSET UNITS

[270,575]

In order for voluntary carbon offset units to be eligible for use under NCOS they (and the voluntary projects giving rise to them) must meet the following criteria:

- Additionality: emissions abatement or sequestration must be additional to "business as usual" emissions and additional to Australia's international

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **22** Date: **21/9/2012** Time: **12:1:36**
bwpageid:: 22::
bwservice::0::

emissions targets. In essence this means that the reduction in emissions would not have occurred without the voluntary project;

- Permanence: when emissions are taken out of the atmosphere and stored by sequestration projects, they must not be re-released back into the atmosphere (otherwise the reduction in emissions will no longer be additional). Generally an emissions reduction is considered permanent if it is guaranteed for at least 100 years. This will impose ongoing obligations running with lands that have hosted sequestration projects;
- Demonstrated avoidance of leakage: leakage occurs where an emissions reduction activity causes emissions to rise outside of the boundaries of the project, thus neutralising the benefit of reducing emissions by the particular project. An offset project must not cause material increases in emissions elsewhere which nullify or reduce the abatement that would otherwise result under the project;
- Measurable and verifiable: measurement and monitoring systems must be consistent over time, must enable abatement estimates to be audited and must be complied with in carrying out a project. Methodologies set out in detail the technical requirements for measurement of emissions reductions for particular kinds of projects and the ability to quantify and verify emissions reductions through technical measurement processes (which are different for each different project type);
- Conservative: as far as is possible, conservative assumptions, numerical values and procedures consistent with the peer reviewed science in relation to carbon offsetting should be used to ensure that abatement and other claims are not over-estimated and should be built into the technical mechanisms and formulae used in methodologies;
- Internationally consistent: estimation and accounting methods must be consistent with the approved standards;
- Independently audited: GHG emissions reductions generated by offset projects must be audited by an independent, qualified third party; and
- Registered: carbon offset units must be listed and tracked in a publicly transparent registry.

NCOS accepts all of the eligible carbon offset units set out in Table 270,575-1.

Table 270,575-1 — Eligible carbon offset units
• Australian Carbon Credit Units (ACCUs) issued by the Australian government under the Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)
• all credits issued under the former Greenhouse Friendly Program
• carbon units issued under the Clean Energy Act 2011 (Cth) from 1 July 2015
• Certified Emissions Reductions (CERs) from Clean Development Mechanism (CDM) projects (other than long term (lCERs) and temporary (tCERs) CERs from nuclear projects, the destruction of trifluoromethane, the destruction of nitrous oxide from adipic acid plants or from large-scale hydro-electric projects not consistent with criteria adopted by the European Union)
• Emission Reduction Units (ERUs) from Joint Implementation (JI) projects (subject to the same exceptions that apply to CERs)
• Removal Units (RMUs) issued by a Kyoto Protocol country on the basis of land use, land-use change and forestry activities under arts 3.3 or 3.4 of the Kyoto Protocol
• voluntary emissions reductions (VERs) issued by the Gold Standard

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **23** Date: **21/9/2012** Time: **12:1:37**
bwpageid:: 23::
bwservice::0::

- verified carbon units (VCUs) issued by the Verified Carbon Standard.

Additionally, NCOS will accept any other international units the Australian government accepts for compliance under the carbon price mechanism. However, NCOS will not accept CERs, ERUs and RMUs that the Australian government has said cannot be used for compliance with the carbon price mechanism.

NCOS PROCESSES

[270,600]

Businesses who claim to be carbon neutral based on the cancellation of eligible carbon offset units should:

- develop an Emission Management Plan (EMP);
- be transparent about their carbon neutrality and report publically; and
- undergo an independent audit.

Emission Management Plan

[270,625]

NCOS dictates that persons and organisations who wish to achieve carbon neutrality must prepare an Emission Management Plan (EMP).

An EMP is the documentary evidence of an entity's steps to achieving carbon neutrality. An EMP must identify:

- the greenhouse gas emissions attributable to the activities of an organisation (or specified part of an organisation), product or event within the initial reporting period;
- an emissions reduction strategy including the emissions reduction measures to be undertaken and quantity of emissions to be reduced over a specified timeframe;
- the equivalent quantity of carbon offsets required to offset the remaining emissions attributed to the product or organisation for each reporting period; and
- how any changes in the greenhouse gas emissions attributable to the product, organisation or event will be identified and recorded.[80]

Notes

80 Australian Government, National Carbon Offset Standard, ver 2, 1 March 2012, 18.

Calculation of carbon footprint

[270,650]

The EMP includes an inventory of the amount of GHG emissions that are released from the relevant activity, product or event.

NCOS dictates that an organisation may use either the greenhouse gas inventory method or the Life Cycle Assessment (LCA) method to calculate its carbon footprint[81] or the carbon footprint of an event, but the LCA method must be used to calculate the carbon footprint of a product.

Approved methodologies recognised by NCOS are:

- the National Greenhouse and Energy Reporting Act 2007 (Cth) and its regulations and determinations;

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **24** Date: **21/9/2012** Time: **12:1:37**
bwpageid:: 24::
bwservice::0::

- the GHG Protocol; and
- (AS) ISO 14064, ISO 14064 and ISO 14065 series.

The approach selected must be used consistently. As a guide, the choice of method(s) to be used for the National Greenhouse and Energy Reporting (Measurement) Determination 2008 (Cth) (NGER Measurement Determination) generally applies for four years.

The GHG emissions inventory report contains the components set out in Table 270,650-1.

Table 270,650-1 — Components of a GHG inventory report[82]
• the organisation boundary
• greenhouse gas emissions sources associated with the organisation boundary
• greenhouse gas emissions factors and calculation methodology
• activity and emissions data collected
• assumptions used
• all exclusions and their justification
• a base year and details of the organisation's base year re-calculation policy
• final calculated greenhouse gas emissions attributable to the organisation boundary

Notes

81 Australian Government, National Carbon Offset Standard, ver 2, 1 March 2012, 7.

82 Australian Government, National Carbon Offset Standard, ver 2, 1 March 2012, 8.

Boundary

[270,675]

The boundary of an entity may be the whole organisation or only a part of the organisation, such as a business unit, facility, sub-facility or activity. However, all relevant stages of the life cycle of a product are included in the LCA system boundary. Any decision to exclude life cycle stages, processes, inputs or outputs must be clearly stated, and the reasons for and implications of their exclusion justified.

Emissions to be included for an event are those that are under control or influence of the organiser or are owned or shared by the organiser and occur as a consequence of the event (associated emissions), where it is possible to reasonably estimate these emissions and where they are of high stakeholder interest.

Emissions coverage

[270,700]

All direct emissions (Scope 1) and indirect emissions from the use of electricity, heating, cooling or steam (Scope 2) attributable to sources within the chosen boundary must be calculated.

NCOS does not mandate the inclusion of indirect (Scope 3) emissions associated with those portions of the organisation's value chain that fall within the defined boundary, but does require the entity to consider their calculation and inclusion where practicable.

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **25** Date: **21/9/2012** Time: **12:1:37**
bwpageid:: 25::
bwservice::0::

Calculation methods

[270,725]

The method(s) under the NGER Measurement Determination for calculating Scope 1 and Scope 2 emissions must be followed.

Guidance on calculating other emissions is provided in the National Greenhouse Account Factors, and the GHG Protocol.

Base year

[270,750]

The base year must be set by an entity to allow for emissions to be accurately compared over time.

Cancelling carbon offset units

[270,775]

The EMP includes an emissions reduction strategy, which includes the methods which will be taken to record and measure the quantity of emission reductions and the entity's strategy for purchasing and cancelling eligible carbon offset units in a registry, to offset any remaining GHG emissions.

Reporting

[270,800]

A periodic report must be made publicly available on an entity's website to communicate progress on emissions reduction activities and carbon offsetting.

The report should address:

- the total carbon footprint of the activities of the entity, product(s) sold or event(s) in the reporting period;
- any actions taken to reduce total greenhouse gas emissions before offsetting;
- a statement on the emissions reduction activities undertaken in accordance with the emissions reduction strategy and the resulting quantity of emissions reduced; and
- records to prove that sufficient eligible carbon offset units have been acquired including details of the quantity and type of carbon offset units purchased and the register in which they have been cancelled.

The reporting requirement in the EMP links with a requirement for data quality control and verification.

Audit

[270,825]

Audits are required at least once every two years to support a claim that an entity or product is carbon neutral.[83]

© LexisNexis

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **26** Date: **21/9/2012** Time: **12:1:37**
bwpageid:: 26::
bwservice::0::

An independent audit validates the accuracy and completeness of carbon footprint calculations and claims of carbon neutrality. The audits help ensure consumer confidence in carbon neutral claims and emissions offsets.

NCOS accepts as suitably qualified auditors individuals or bodies that are registered under the NGER audit framework (see [110,175]) or are accredited to the international standard ISO 14065:2007 (or recognised international standards based on ISO 14040).

The auditor must provide an independent assurance statement confirming the adequacy of emissions methodologies and whether the carbon footprint calculations are presented reasonably and fairly in accordance with the requirements of NCOS.

In carrying out the audit, the audit team leader must apply applicable audit standards. These are:

- ASAE 3000 Assurance Engagements other than Audits or Reviews of Historical Financial Information; or
- ISO 14064-3:2006 Greenhouse gas specification with guidance for the validation and verification of greenhouse gas assertions.

An audit carried out in accordance with the National Greenhouse and Energy Reporting (Audit) Determination 2009 (Cth) should also be acceptable.

The results of the audit should be made available to the public.

Notes

83 Australian Government, National Carbon Offset Standard, ver 2, 1 March 2012, 20.

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **27** Date: **21/9/2012** Time: **12:1:37**
bwpageid:: 27::
bwservice::0::

Job: specialist/cela/allvols/serv_0/chapter13_299333
Page: **28** Date: **21/9/2012** Time: **12:1:37**
bwpageid:: 28::
bwservice::0::