

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 156

Issued by the Minister for Resources and Energy

Energy Efficiency Opportunities Act 2006

Energy Efficiency Opportunities Amendment Regulations 2011 (No. 2)

The *Energy Efficiency Opportunities Act 2006* (the Act) establishes the Energy Efficiency Opportunities (EEO) program. The Act requires large energy using businesses to conduct assessments of their energy use to identify energy efficiency opportunities, and to publicly report on the outcomes of those assessments. The energy use threshold for corporations required to register for the EEO program is 0.5 Petajoules over a financial year.

Section 41 of the Act provides that regulations may be made prescribing matters that are required or permitted by the Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

These Amendment Regulations amend the *Energy Efficiency Opportunities Regulations 2006*.

Details of the Regulations are set out in Attachment A.

The Regulations reflect the outcomes of a consultative process with industry stakeholders about their needs for flexibility and simplification, to provide clearer requirements for certain companies and to better reflect the intent behind the legislation in clear, concise terms.

A public consultation process was initiated in January 2011, through a discussion paper that was publicised in both the Australian newspaper and the Australian Financial Review, the Australian Government consultation portal (business.gov.au), the Department of Resources, Energy and Tourism website and through direct email notification of over 1,000 stakeholders.

The Government's objective for the review was refine, clarify but maintain the integrity of the current program requirements. The consultation was therefore based on experience from the administration of the program, liaison and consultation with program participants and areas of common misinterpretation revealed through compliance activities.

All stakeholders who had made a submission were offered a further opportunity to provide additional comment in late March 2011 in focus groups. The amendments to regulations were drawn from these consultations.

These Regulations commence following registration of the Federal Register of Legislative Instruments.

Details of the *Energy Efficiency Opportunities Amendment Regulations 2011 (No. 2)*

Regulation 1 – Name of Regulations

Regulation 1 provides that the title of the Regulations is the *Energy Efficiency Opportunities Amendment Regulations 2011 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 provides for the Regulations to commence on the day following registration.

Regulation 3 – Amendment of *Energy Efficiency Opportunities Regulations 2006*

Regulation 3 provides that Schedule 1 amends the *Energy Efficiency Opportunities Regulations 2006* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] Regulation 1.3, definition of *baseline energy*

Item [1] replaces the definition of *baseline energy* set out in regulation 1.3 in the Principal Regulations. The change provides a new clarified definition of *baseline energy*, and also introduces definitions for the terms *assessment cycle* and *baseline year*. These new and amended definitions assist participating companies to be clear about their responsibilities moving into a second and subsequent program assessment cycles.

Item [2] Regulation 1.3, definition of *energy-mass balance*

Item [2] amends regulation 1.3 of the Principal Regulations by introducing definitions of *facility* and *financial control*. The inclusion of these definitions are required to apply these concepts to the whole of the Regulations, and not just regulation 1.4 where the definitions currently sit. These definitions replace the definition of energy-mass balance, which is to be moved to schedule 7.

Item [3] Regulation 1.3, after definition of *GJ*

Item [3] amends regulation 1.3 of the Principal Regulations by introducing a definition of *indicator*. The new definition clarifies the definition and the requirement for consistent indicators within Assessment Plans and Secretary reports.

Item [4] Regulation 1.3, after definition of *key activity*

Item [4] amends regulation 1.3 of the Principal Regulations by introducing a definition of *operational control*. The inclusion of this definition is required to apply the concepts to the whole of the Regulations, and not just regulation 1.4 where the definition currently sits.

Item [5] Regulations 1.4

Item [5] replaces regulation 1.4 in the Principal Regulations with new regulations 1.4 to 1.4C to clarify when an entity is the user of energy, and conditions under which the user can be varied. This change simplifies the existing provision, and introduce a new variation to the provisions for deciding the user of energy. This variation allows two entities to decide who is reasonable and appropriate to assess the energy use at a facility, and transfer the use of energy to a second entity under the EEO program without variation of their NGERs responsibilities.

Item [6] Regulation 1.6, heading

Item [6] replaces the title of regulation 1.6 in the Principal Regulations to clarify that the regulation concerns accuracy and energy use calculation rules under the EEO Program.

Item [7] Subregulation 1.6 (1A)

Item [7] amends Subregulation 1.6 (1A) in the Principal Regulations to introduce a heading to clarify that the Subregulation details when an entity is taken to have satisfied calculation requirements. This change is consistent with regulation 1.6.

Item [8] Subregulation 1.6 (1A)

Item [8] amends Subregulation 1.6 (1A) to correct an incorrect reference to a subregulation in the Principal Regulations.

Item [9] Paragraph 3.1 (2) (c)

Item [9] amends regulation 3.1 in the Principal Regulations by changing punctuation to allow for a deletion in item [10], following.

Item [10] Paragraph 3.1 (2) (d)

Item [10] amends regulation 3.1 in the Principal Regulations to remove Paragraph 3.1 (2) (d) which details the requirement to provide a statement to the Secretary. This statement is connected to the transfer of assessment obligations covered in regulation 1.4 and has better legal affect within regulation 1.4. This provision has been included in changes to regulation 1.4 (item [5]) and is no longer necessary in regulation 3.1.

Item [11] Subregulation 4.1 (1) (e), excluding the note

Item [11] amends regulation 4.1 in the Principal Regulations by omitting items that the Department considers not necessary, for appropriate administration and therefore has no requirement to collect from participants.

Item [12] Regulation 5.3

Item [12] replaces regulation 5.3 in the Principal Regulations to introduce an alternative higher allowable amount of energy for exclusion in certain situations to introduce additional flexibility for high energy using sites.

The alternative amount is restricted to the exclusion of energy that is not part of core operations, for example ancillary uses such as canteens and bathrooms and is capped at the lower of 2% of site energy use or 0.1PJ. The delegate of the Secretary is required to approve the use of this variation.

The entire regulation has been redrafted for clarity of language.

Item [13] Regulation 5.5, 5.6 and 5.7

Item [13] replaces regulation 5.5 in the Principal Regulations with new regulations 5.5 to 5.7 to clarify what a participating corporation must provide to the Secretary to vary an approved assessment plan in a more clear, simple manner.

Regulation 5.6 allows for a corporation to vary the percentage of energy use that must be assessed within a cycle.

The change introduces flexibility where changes to the corporation's energy profile mean that assessing the correct percentage of baseline energy is no longer possible, due to, for example divestitures in the group. In the variation, the use of the flexibility is at the discretion of the delegate of the Secretary. The entire regulation has been redrafted for clarity of language.

Item [13] also introduces a new regulation 5.7. Regulation 6.1 in the Principal Regulations currently details requirements of corporations to carry out energy efficiency opportunities assessments. In order to clarify the language used within this regulation to apply the regulation to all assessment cycles, and give parts of this regulation its proper legal affect, it was recommended to move part of the regulation to Part 5 where it was more appropriate to locate. This has moved the necessary provisions to Part 5 and introduced an alternative provision, that instead of requiring a complete assessment of at least one group member, business unit or key activity within the first 2 years, a corporation is now able to opt to assess 40% of its energy use in the first 2 years.

Item [14] Subregulations 6.1(3) to (7)

Item [14] amends regulation 6.1 in the Principal Regulations to omit the subregulations moved by item [13] to regulation 5.7.

Item [15] Regulation 7.1

Item [15] amends regulation 7.1 in the Principal Regulations to clarify language in order to apply the regulation to all assessment cycles.

Item [16] Regulation 7.2

Item [16] amends regulation 7.2 in the Principal Regulations to correct an incorrect reference.

Item [17] Regulation 7.2

Item [17] amends Subregulation 7.2 (2) in the Principal Regulations to include the information that should be reported in a subsequent assessment cycle prior to a new assessment plan being in place.

Item [18] Regulations 7.4 to 7.5

Item [18] amends regulations 7.4 and 7.5 in the Principal Regulations.

The amendment to regulation 7.4 streamlines the two current deadlines for making public reports available to the later of these dates only, for both ease of administration and to clarify existing language.

The amendment to regulation 7.5 removes the mandatory information prescribed when making a voluntary summary report. It is unnecessary for the Department to prescribe information for a voluntary report.

Item [19] Regulation 7.6

Item [19] amends regulation 7.6 in the Principal Regulations to clarify language in order to apply the regulation to all assessment cycles and simplify the existing language.

Item [20] Subparagraph 7.7 (1) (e) (v)

Item [20] amends regulation 7.7 in the Principal Regulations to clarify language in order to apply the subparagraph to all assessment cycles.

Item [21] Paragraph 7.7 (1) (f)

Item [21] amends regulation 7.7 in the Principal Regulations to clarify language in order to apply the regulation to all assessment cycles and simplify the existing language.

Item [22] Subregulations 7.9 (2) and (3)

Item [22] amends regulation 7.9 in the Principal Regulations to streamline the two current deadlines for making Secretary's reports available to the later of these dates only, for both ease of administration and to clarify existing language.

Item [23] Schedule 2, item 2

Item [23] amends Schedule 2 of the Principal Regulations to simplify the language used and provide more clarity.

Item [24] Schedule 2, items 4, to 8

Item [24] amends Schedule 2 of the Principal Regulations to remove items included in an application to register that are also collected in the Assessment Plan. As these items are used by the Department only once collected in the Assessment Plan, it is not necessary for correct administration to collect this information twice. Item [24] also renumbers the remaining items.

Item [25] Schedule 3, item 101

Item [25] amends Schedule 3, item 101 of the Principal Regulations to clarify language in order to apply the item to all assessment cycles.

Item [26] Schedule 3, item 201

Item [26] amends Schedule 3, item 201 of the Principal Regulations to clarify language and take into account the introduction of a new definition of indicator (item [3]).

Item [27] Schedule 3, item 202

Item [27] amends Schedule 3, item 202 of the Principal Regulations to clarify language and introduce a further 12 months in which a corporation can select a baseline year, on approval of the Secretary. This will extend the period from 36 to 48 months. The change introduces additional flexibility to allow the corporation to select a more indicative baseline period of energy use to measure energy assessment coverage against.

Item [28] Schedule 3, item 203

Item [28] amends Schedule 3, item 203 of the Principal Regulations to ensure that this provision applies to all assessment cycles.

Item [29] Schedule 3, paragraph 203 (1) (c)

Item [29] amends Schedule 3, paragraph 203 (1) (c) of the Principal Regulations to ensure that this provision applies to all assessment cycles.

Item [30] Schedule 3, paragraph 204 (1) (a)

Item [30] amends Schedule 3, paragraph 204 (1) (a) of the Principal Regulations to ensure that this provision applies to all assessment cycles.

Item [310] Schedule 3, item 303, note

Item [31] amends the note to Schedule 3, item 303 of the Principal Regulations. The note to this item currently refers to a regulation that has been moved. This change amends the reference to this regulation, and in doing so simplifies the existing language.

Item [32] Schedule 3, paragraph 401 (a)

Item [32] amends Paragraph 401 (a) of Schedule 3 of the Principal Regulations as a result of the changes made by item [18]. As Item [18] amends public reporting dates to include only one date, the declaration of reporting dates for administrative purposes is unnecessary. This change removes the collection of this information

Item [33] Schedule 3, subparagraph 401 (d) (ii)

Item [33] amends Paragraph 401 (d) (ii) of Schedule 3 of the Principal Regulations as a result of the changes made by item [22]. item [22] seeks to amend Secretary reporting dates to include only one date, which means the declaration of reporting dates for administrative purposes is unnecessary. Item [32] amends punctuation to allow for item [34] to delete unnecessary requirements.

Item [34] Schedule 3, paragraph 401 (e)

Item [34] amends Paragraph 401 (e) of Schedule 3 of the Principal Regulations as a result of the changes made by item [22]. As item [22] seeks to amend Secretary reporting dates to include only one date, the declaration of reporting dates for administrative purposes is unnecessary. Item [34] removes the collection of this information.

Item [35] Schedule 4, item 1, subparagraph (a) (v)

Item [35] amends subparagraph (a) (v) of item 1 of Schedule 4 of the Principal Regulations to clarify language in order to apply the item to all assessment cycles.

Item [36] Schedule 4, item 3

Item [36] amends Schedule 4, item 3 of the Principal Regulations to include data points currently located in Schedule 6. Schedule 6 is omitted in item [39].

Item [37] Schedule 4, item 7

Item [37] amends Schedule 4, item 7 of the Principal Regulations to provide more guidance about how to report significant opportunities, and what information could be provided to make material for publication. It clarifies the intention that significant opportunities be provided for each assessment.

Item [38] Schedule 4, item 10, note 2, paragraph (b)

Item [38] amends Schedule 4, item 10, note 2, paragraph (b) of the Principal Regulations to clarify language in order to take into account the introduction of a new definition of indicator (item [3]).

Item [39] Schedules 6 and 7

Item [39] amends Schedules 6 and 7 in the Principal Regulations

Schedule 6 of the Principal Regulations is a form of statement that can be used to provide data required under Schedule 4. To introduce flexibility for participants to present data meaningfully, item [39] omits the schedule and introduce the data in schedule 4 (see item [36]).

Schedule 7 of the Principal Regulations is the Assessment Framework with which all participating corporations must comply. Item [39] amends the framework to provide extra clarity on requirements for participants.

Item [39] introduces new definitions of *energy efficiency opportunity*, *idea*, *energy performance* and *whole of business evaluation*, and correctly position the definition of *energy-mass balance* within the schedule for clarity.

These new and amended definitions assist participating companies to be clear about their responsibilities in complying with the Assessment Framework.