

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 108

Issued by the Minister for Resources and Energy

Energy Efficiency Opportunities Act 2006

Energy Efficiency Opportunities Amendment Regulation 2012 (No. 1)

The *Energy Efficiency Opportunities Act 2006* (the Act) establishes the Energy Efficiency Opportunities (EEO) Program (the Program). The Act requires businesses using large amounts of energy 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 Program is 0.5 Petajoules over a financial year.

Section 41 of the Act provides that the Governor-General may make regulations 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.

This Amendment Regulation amends the *Energy Efficiency Opportunities Regulations 2006* (the Principle Regulations) and is set out in Attachment A.

The Australian Government is expanding the Program to include electricity and gas transmission and distribution businesses (networks businesses) and major new development and expansion projects (major new developments). The Government has completed a comprehensive stakeholder consultation process comprising of face-to-face meetings, release of options papers for comment by stakeholders, and stakeholder forums.

This Amendment Regulation provides the basic structural elements for the expansion of the EEO Program to networks businesses and major new developments. It also confirms participation of these sectors from 1 July 2013, following further industry consultation and trials on best practice application of the Program's Assessment Framework with each sector. An additional Amendment Regulation will then be brought forward, prior to 1 July 2013, to implement these frameworks.

In addition to the networks and new developments expansion amendments, this Amendment Regulation has the following three changes, to commence 1 July 2012.

The first is an amendment to align definitions in the Principle Regulations with definitional changes in the *Clean Energy Act 2011*, which have introduced inconsistencies between the Program and the National Greenhouse and Energy Reporting scheme (NGERs).

The second amendment excludes low utilisation electricity peaking generation units from a corporation's energy assessment where they are used infrequently and where they make up less than half of a corporation's energy use. This amendment addresses concerns raised during consultation with the generation Sector.

Finally, there is an amendment that clarifies the circumstances in which corporations can apply to the Delegate to amend their assessment liability, due to financial hardship or lack of feasibility.

Statement of Compatibility with Human Rights

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

This Regulation does not engage any of the applicable rights or freedoms.

Conclusion

This Regulation is compatible with human rights as they do not raise any human rights issues.

Financial Implications

There are no financial implications.

Date of Effect

Schedule 1 of this Regulation will commence upon registration. Schedule 2 of this Regulation will commence on 1 July 2013.

Details of the *Energy Efficiency Opportunities Amendment Regulation 2012 (No. 1)*

Section 1 – Name of Regulation

Regulation 1 provides that the title of the Regulation is the *Energy Efficiency Opportunities Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

Regulation 2 provides for Schedule 1 of the Regulation to commence upon registration and Schedule 2 of the Regulation to commence on 1 July 2013.

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

Regulation 3 provides that Schedules 1 and 2 amend the *Energy Efficiency Opportunities Regulations 2006* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] Regulation 1.3 – *capacity factor*

Item [1] amends regulation 1.3 of the Principal Regulations by introducing a definition for capacity factor.

Along with item [5] this amendment is required to help define those electricity generators that may be omitted from an assessment under subregulation 5.3(8) (Item [19]). It is a measure of the actual operation of an electricity generation unit relative to that unit's maximum capacity.

Item [2] Regulation 1.3 – *liability transfer certificate*

Item [2] amends regulation 1.3 of the Principal Regulation by introducing a definition of a liability transfer certificate. These certificates are issued under the *Clean Energy Act 2011*. This definition is required to facilitate reporting streamlining of obligations under these Regulations with reporting obligations under the National Greenhouse and Reporting scheme.

Item [3] Regulation 1.3 – *operational control*

Item [3] amends regulation 1.3 of the Principal Regulations by amending the definition of 'operational control'. This definition relies on subregulation 1.3A for its substantive meaning. See item [6].

Operational control refers to the person who has the greatest ability to implement or introduce operating, health and safety and environmental policies.

Item [4] Regulation 1.3 – reporting transfer certificate

Item [4] amends regulation 1.3 of the Principal Regulation by introducing a definition for reporting transfer certificate. These certificates are issued under the *National Greenhouse and Energy Reporting Act 2007* and are defined in Section 5. This definition is required to facilitate the streamlining of reporting obligations under these Regulations with reporting obligations under the *National Greenhouse and Energy Reporting Act 2007*.

Item [5] Regulation 1.3 – service factor

Item [5] amends regulation 1.3 of the Principal Regulations by introducing a definition for ‘service factor’.

Service factor a measure of the hours operated by an electricity generation unit relative to the total hours available for operation. Along with item [1] this amendment is required to help define those electricity generators that may be omitted from an assessment under subregulation 5.3(8) (Item [19]).

Item [6] Regulation 1.3A – operational control

Item [6] inserts regulation 1.3A into the Principal Regulations and provides the substantive definition of operational control (referred from Item 3). This definition, discussed above, is required to maintain the existing definition as section 7 of the *National Greenhouse and Energy Reporting Act 2007* (which was previously referenced) has been amended.

Item [7] Regulation 1.4A – heading

Item [7] substitutes a new heading that includes a reference to liability transfer certificates (see item [2]).

Item [8] Subregulation 1.4A(1) – insertion of liability transfer certificate

In addition to the existing reference to a reporting transfer certificate, Item [8] inserts a reference to a liability transfer certificate (see item [2]). Item [8] also removes the existing reference to the *National Greenhouse and Reporting Act 2007* as this is now addressed in the definition in item [4].

Item [9] Subregulation 1.4A(4)

Item [9] removes the specific reference to a reporting transfer certificate and the *National Greenhouse and Reporting Act 2007* to facilitate the inclusion of the additional reference to a liability transfer certificate as described in item [8] above.

Item [10] Regulation 1.4B – heading

Item [10] substitutes a new heading that includes a reference to liability transfer certificates (see item [2]).

Item [11] Paragraph 1.4B(1)(b) – insertion of *liability transfer certificate*

In addition to the existing reference to a reporting transfer certificate, Item [9] inserts a reference to a *liability transfer certificate* (see item [2]). Item [11] also removes the existing reference to the *National Greenhouse and Reporting Act 2007* as this is now addressed in the definition in item [4].

Item [12] Regulation 1.4C – heading

Item [12] substitutes a new heading that includes a reference to liability transfer certificates (see item [2]).

Item [13] Paragraph 1.4C(1)(b) – insertion of *liability transfer certificate*

In addition to the existing reference to a reporting transfer certificate, Item [13] inserts a reference to a *liability transfer certificate* (see item [2]). Item [13] also removes the existing reference to the *National Greenhouse and Reporting Act 2007* as this is now addressed in the definition in item [4].

Item [14] After Subregulation 2.3(2) – joint venture nomination note

Item [14] inserts a note under 2.3(2) recommending that controlling corporations nominate the same entity under subregulation 2.3 as they nominate under the *National Greenhouse and Reporting Regulations 2008*. This will facilitate the streamlining of reporting obligations between the Energy Efficiency Opportunities program and the National Energy and Reporting scheme.

Item [15] Subregulation 3.1(2) – insertion of *liability transfer certificate*

In addition to the existing references to a reporting transfer certificate, Item [15] inserts references to a liability transfer certificate (see item [2]). Item [15] also removes the existing reference to the *National Greenhouse and Reporting Act 2007* as this is now addressed in the definition in item [4].

Item [16] Paragraphs 3.1(2) (a), (b) and (c) – insertion of certificate

Item [16] removes the existing references to reporting transfer certificates and instead refers only to certificates. This amendment accommodates the additional reference to a liability transfer certificate provided by item [15] above.

Item [17] Subregulation 4.2(2) – insertion of *liability transfer certificate*

In addition to the existing references to a reporting transfer certificate, Item [17] inserts a reference to a *liability transfer certificate* (see item [2]). Item [17] also removes the existing reference to the *National Greenhouse and Reporting Act 2007* as this is now addressed in the definition in item [4].

Item [18] Paragraphs 4.2(2) (a), (b) and (c) – insertion of certificate

Item [18] removes the existing references to reporting transfer certificates and instead refers only to certificates. This amendment accommodates the additional reference to a liability transfer certificate provided by item [17] above.

Item [19] Subregulation 5.3(8) – omission of certain electricity generation units

Item [19] inserts a new 5.3(8) that allows controlling corporations to omit from its assessment plan any electricity generating unit that meets the various thresholds in 5.3(8)(a), (b), (c) and 5.3(8A).

The intent is to allow controlling corporations to not assess electricity generation units that operate only during peak demand periods.

Item [20] Regulation 5.5 - heading

Item [20] substitutes a new heading that includes a reference to liability transfer certificates (see item [2]).

Item [21] Paragraph 5.5(1)(b) – insertion of *liability transfer certificate*

In addition to the existing reference to a reporting transfer certificate, Item [21] inserts a reference to a ‘liability transfer certificate’ (see item [2]). Item [21] also removes the existing reference to the *National Greenhouse and Reporting Act 2007* as this is now addressed in the definition in item [4].

Item [22] Subregulation 5.5(2)

Item [22] removes the existing references to reporting transfer certificates and instead refers only to certificates. This amendment accommodates the additional reference to a liability transfer certificate provided by item [21] above.

Item [23] Paragraph 5.6(3)(c), after example 4

Item [23] amends the notes under 5.6(3)(c) for two purposes:

- i) Note 5 states that financial hardship on the part of the controlling corporation may be accepted as a reason for reducing the percentage of energy assessed by the controlling corporation.
- ii) Note 6 confirms that if one or more electricity generating units is omitted from an assessment plan under subregulation 5.3(8) and reduces the controlling corporations assessable energy use below the percentage required by subregulation 5.3(2) and (3) then the controlling corporation should apply to reduce this percentage under subregulation 5.6

Item [24] Paragraph 5.7(2)(a) – assessment timeframe

Item [24] corrects a previous amendment and confirms that each *and* between regulation 5.7(2)(a) (i), (ii) and (iii) should be an *or*.

Item [25] Paragraph 9.2(1)(a) – insertion of *liability transfer certificate*

In addition to the existing reference to a reporting transfer certificate, Item [25] inserts a reference to a ‘liability transfer certificate’ (see item [2]). Item [25] also removes the existing reference to the *National Greenhouse and Reporting Act 2007* as this is now addressed in the definition in item [4].

Schedule 2 – Amendments

Item [1] Regulation 1.3

Insert (1) and an introduction at the beginning of regulation 1.3 to restate the existing content of regulation 1.3 as subregulation 1.3(1). This is required to allow for the creation of subregulations 1.3(2), (3) and (4) which are inserted as part of these amendments.

Item [2] Regulation 1.3 – *commercial operation*

Item [2] amends regulation 1.3 of the Principal Regulations by introducing a definition for *commercial operation*. This definition relies on subregulation 1.3(2) for its substantive meaning, which is essentially when the operation of a new development or expansion has been optimised. See also item [9].

This amendment is required to help define the time at which an expansion of an existing facility or a new development has been completed.

Item [3] Regulation 1.3 - *expansion*

Item [3] amends regulation 1.3 of the Principal Regulations by introducing a definition of expansion. This definition relies on subregulation 1.3(4) for its substantive meaning. See item [9].

Expansion refers to the situation where an existing facility is to be enlarged and additional energy will be required when the project has commenced commercial operation.

Item [4] Regulation 1.3 - *future energy use*

Item [4] amends regulation 1.3 of the Principal Regulations by introducing a definition of future energy use. This is the energy that a new development or expansion will use, on average, calculated on an annual basis, after commercial operation has commenced. This definition is required to permit the extension of the EEO Program to new developments and expansions. Previously the EEO Program applied only to existing facilities with a known energy use.

Item [5] Regulation 1.3(1)- *multiple new developments or expansions*

Item [5] amends regulation 1.3 of the Principal Regulations by introducing a definition of *multiple new developments or expansions*. This definition is required where the proposal is to develop more than one new facility or expand more than one facility, or embark on a combination of new developments and expansions at the one time. New regulation 5.3A deals with the calculation of energy use in such situations.

Item [6] Regulation 1.3(1) – *network losses*

Item [6] amends regulation 1.3 of the Principal Regulations by introducing a definition of network losses. This definition is required for the amendment in item [10].

Item [7] Regulation 1.3(1) - *new development*

Item [7] amends regulation 1.3 of the Principal Regulations by introducing a definition of *new development*. This definition relies on subregulation 1.3(5) for its substantive meaning. See item [9].

A new development involves a project to construct a new facility or facilities and additional energy will be required when the project has commenced commercial operation.

Item [8] Regulation 1.3(1) - *project*

Item [8] amends regulation 1.3 of the Principal Regulations by introducing a definition of project. A project, for the purposes of the Principal Regulations, is a set of activities involving the construction of new facilities or expansion of existing facilities.

Item [9] Regulation 1.3 – insertion of subregulations 1.3(2), (3) and (4)

Item [9] inserts subregulations 1.3(2), (3), (4) and (5) into the Principal Regulations and details the definitions of commercial operation, new development, expansion and network losses. These definitions, discussed above, will facilitate the extension of the EEO Program to new developments, expansions and networks in the ways already described.

Item [10] Subregulation 1.5(2) - *energy used*

Item [10] amends subregulation 1.5(2) for two purposes:

- i) Paragraph 1.5(2)(a) has been amended to clarify that energy losses that result from the transmission and distribution of electricity and gas should be considered as energy use.
- ii) Paragraph 1.5(2)(b) has been inserted to provide that the future energy use from new developments and expansions that meet the threshold requirements set out in subregulations 5.3A(2) and (3) should be considered as energy use. This subregulation is intended to require controlling corporations that are not currently required to register for the EEO Program, but which have significant new developments, to register for the Program as the future energy use of these projects will contribute towards the 0.5 PJ registration threshold set out in subsection 10(3) of the Act.

Item [11] Regulation 5.3A – Assessment of new developments and expansions

Item [11] inserts new regulation 5.3A that sets out principles relating to the assessment plans for new developments and expansions. It requires registered controlling corporations to assess new developments and expansions that meet the threshold requirements (set out in subregulations 5.3A(2) and (4)).

Subregulations 5.3A(3), (6) and (7) explicitly state that if the new developments and/or expansions no longer meet the threshold requirements, then the controlling corporation is no longer required to assess those new developments and/or expansions.