



Australian Government
Department of Resources
Energy and Tourism

Industry Guidelines

Energy Efficiency
Opportunities

August 2011

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Acknowledgement

These guidelines were developed in consultation with large energy using businesses and industry representatives, while taking into account advice from energy, legal, finance and communication professionals. The involvement of everyone who contributed to the development of the guidelines is acknowledged with thanks.

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GLOSSARY

Assessment cycle	The EEO program operates over five year periods known as assessment cycles. A participant's first assessment cycle commences the day after the end of the trigger year. For corporations that commenced an assessment cycle in July 2006, the second assessment cycle will commence on 1 July 2011.
Assessment Framework	The prescribed requirements and standards for undertaking assessments under the EEO program (see Schedule 7 of the EEO Regulations and Chapter 5.4 in these guidelines).
Assessment plan	A document in which a controlling corporation provides baseline energy data and sets out its plans to assess and report on the opportunities for improving the energy efficiency of its corporate group during the assessment cycle. (Previously referred to by the program as an Assessment and Reporting Schedule or ARS).
Baseline energy or Baseline energy use	Annual energy use by the corporate group in the baseline year, as provided in its Assessment Plan in accordance with the EEO Regulations (see item 201(1)(a) of Sch 3). Used to gauge whether a corporation has planned to assess the required percentage of the group's baseline energy use (80% in the first cycle and 90% in subsequent cycles).
Baseline year	The continuous twelve month period for which a participant provides current energy use information for the assessment cycle. Participants nominate the baseline year that applies for each cycle, in accordance with the rules set out at 4.3.2 of these guidelines (and see Schedule 3, item 202 of the EEO Regulations).
Business unit	An organisational part of the business. A business unit may be a group member (or associated group members, including parts of group members) that is responsible for a significant function within the overall business and has a significant degree of autonomy and responsibility. Business units should be grouped at an appropriate level to allow meaningful comparison of key energy use and savings statistics, and will vary depending on the particular structure of the business.

Constitutional corporation	Foreign corporations and trading or financial corporations formed within the limits of the Commonwealth of Australia (defined in section 51(xx) of the <i>Commonwealth of Australia Constitution Act 1901</i>).
Controlling corporation	A constitutional corporation that has no holding company incorporated in Australia and which is not excluded from being a controlling corporation by subsection 7(2) of the EEO Act. This exclusion relates to the energy transmission and distribution sectors – see 2.2.4 in these guidelines.
Corporate group	The controlling corporation, its subsidiaries (if any) and joint ventures or partnerships for which it is responsible for the purposes of compliance with the EEO Act. See 2.2 in these guidelines.
(The) Department	The Australian Government Department of Resources, Energy and Tourism or the Department that is responsible for the administration of the EEO Act.
EEO Act	<i>Energy Efficiencies Opportunities Act 2006</i> .
EEO Program	See Energy Efficiency Opportunities program.
EEO Regulations	Energy Efficiency Opportunities Regulations 2006.
Energy and material flows	The use, transformation or loss of energy across a site's processes, systems and equipment such as pipes and ducts, including the energy transferred by a flow of materials that is either the caused by, or the result of, these energy flows.
Energy Efficiency Opportunities program (EEO program)	The program established by the EEO Act and EEO Regulations.
Energy Efficiency Opportunity or Opportunity	A potential change to a system, process, activity, technology or piece of equipment that may result in improvements in energy performance with a payback period of 4 years or less. <i>Note: Energy efficiency opportunities do not include potential changes that would be in breach of relevant legal obligations that relate to the system, process, activity, technology or piece of equipment, including (but not limited to) building regulations and occupational health and safety requirements.</i>

Energy-mass balance

A method of accounting for both the materials and energy entering and leaving a site or fleet and its processes, systems or equipment, and the energy and materials flows, energy conversions and energy use within the site or fleet and its processes, systems or equipment.

An energy-mass balance should provide a thorough understanding of:

- the material flows and energy use through a site or fleet, its conversion processes within a system, and identification of conversions that are essential and efficient
- the identification of energy waste and energy efficiency opportunities.

To enable an appropriate coverage, an energy-mass balance should cover, to an accuracy of $\pm 5\%$, at least 80% of a site's energy use and all processes that use at least 0.1 PJ of energy per year.

There is scope for error margins wider than $\pm 5\%$ for some flows or items of equipment at a site, provided the overall assessment data accuracy requirement is met. Wider error margins will typically apply for those energy and material flows that cannot be accurately measured and therefore may require engineering calculations or estimates. For example, data on the heat released from furnaces, grinding mills and boilers might have higher error margins. Accuracy requirements should not be seen as a disincentive to detailed investigation of processes in the energy-mass balance or similar technique.

Individual guides for preparing energy-mass balances for the Commercial, Transport, Mining and Resource Processing sectors have been produced by the Department.

Energy performance

Measurable results related to energy efficiency, use and consumption, in a form that enables comparisons against a corporation's energy policy, objectives, targets and other energy performance requirements.

Energy use threshold

Use of more than 0.5 PJ of energy in a financial year. See 2.2 in these guidelines.

Facility	<p>Facility is defined in section 9 of the NGER Act. An activity or series of activities (including ancillary activities) forms a ‘facility’ when the activities:</p> <ul style="list-style-type: none"> • involve the production of greenhouse gas emissions, the production of energy or the consumption of energy, and • are attributable to a single industry sector, and • form a single undertaking or enterprise, and • meet the requirements of the NGER Regulations (this may include activities at a single site, or an identified set of listed activities at different sites), or • are declared by the Greenhouse and Energy Data Officer to be a facility under section 54.
Financial control	<p>For EEO purposes, financial control has the meaning prescribed in section 22R of the NGER Act.</p>
Government (e.g. ‘the government’ and ‘to government’)	<p>The Australian Government.</p>
Holding company	<p>A corporation of which another corporation is a subsidiary.</p>
Idea	<p>An idea for a potential change to a system, process, activity, technology or piece of equipment that:</p> <ul style="list-style-type: none"> • is intended to improve energy performance, and • has not yet undergone technical or whole of business evaluation.
Indicator	<p>A measure of the energy use of a controlling corporation’s group, or a part of a controlling corporation’s group, that is expressed by reference to a unit of production or service that is reasonably relevant to an industry, its energy use, or both.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • GJ per tonne of product produced • GJ per square metre of floor space • litres per kilometre travelled. <p><i>Note: It is intended that, if a particular indicator is used in providing data about baseline energy use in an assessment plan, corporations should also use the indicator when carrying out assessments and providing energy use data in reports to the Secretary. This will allow meaningful comparisons to be made between baseline indicators provided in the assessment plan and the indicators provided during later reporting milestones in the course of the assessment cycle.</i></p>

Industry Support Officer	An officer of the Department appointed to assist industry participants in meeting their EEO program obligations.
Investment quality information	Information that allows decision makers at relevant levels of the business to make informed decisions about opportunities identified in energy efficiency assessments. Many businesses have specific requirements for the accuracy of the information presented to decision makers for different expenditure levels.
Joint ventures and partnerships rule	Requirement for all parties to include joint ventures or partnerships in their corporate group unless the joint venturers or partners nominate a responsible party. Joint venturers and partners are encouraged to nominate one party to be responsible for the joint venture or partnership in accordance with the EEO Regulations (see 2.2.1 and Appendix 1 to these guidelines). An incorporated joint venture may constitute a controlling corporation in its own right.
Key activities	<p>A key activity in relation to a group member or members means a function that relates to a distinct product or service and is designated as significant by the controlling corporation. Examples of products or services that might comprise a key activity in specific sectors include:</p> <ul style="list-style-type: none"> • aluminium – bauxite mining, alumina refining, aluminium smelting, semi-fabrication • banking – office space, banking outlets, data centres • coal mining – open cut mining, underground mining • retail – supermarkets, department stores, service stations, office space • transport – vehicle fleet, trucking fleet, storage/maintenance/ office space. <p>Key activities should be grouped at an appropriate level to allow meaningful comparison of key energy use and savings statistics, and will vary depending on the particular structure of the business.</p>
Metering	<p>Metering and monitoring for the purposes of conducting assessments – see Key Element 4 of the Assessment Framework in 5.4 of these guidelines.</p> <p>The guiding principle for determining the level of data required is that the data should enable meaningful analysis of energy use of significant systems and items of equipment, calculation of energy efficiency indicators by activity when combined with other relevant data (e.g. production rates, transport task data), and accurate identification, evaluation and tracking of energy efficiency opportunities over time.</p>

Net financial benefits	Equals the net savings (ongoing costs and benefits) over the first four years of an opportunity's implementation, less initial investment and assessment costs.
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007.</i>
NGER Regulations	National Greenhouse and Energy Reporting Regulations 2008.
NGER System (National Greenhouse and Energy Reporting System)	The national framework for corporations to report greenhouse gas emissions and energy consumption and production, established by the NGER Act and the NGER Regulations.
Operational control	<p>An entity is considered to have operational control over a facility if the entity has authority to introduce and implement operating, health and safety and/or environmental policies. Only one entity can have operational control over a facility at a particular time.</p> <p>The EEO program uses the definition of operational control in section 11 of the NGER Act to facilitate streamlined reporting.</p>
Operational management	The management involved in the day to day operation and oversight of a site or discrete business activity (including energy use). Typically this includes site managers or facility managers.
Opportunity	See 'Energy efficiency opportunity'.
Payback period	$\text{Payback period (in yrs)} = \frac{\text{Initial investment (ie capital cost of implementation)}}{\text{Net annual savings for the first four years after the initial investment (not including the initial investment costs)}}$ <p>Includes both energy and non-energy quantifiable costs and benefits. No discounting of future costs and benefits is done when calculating a simple payback period.</p>

Projected energy savings	<p>Estimation of potential energy savings. This can be done using different methods. For example:</p> <ul style="list-style-type: none"> • if the change has already been implemented at another similar site, the savings may have been metered and documented • engineering calculations or modelling of the savings may be carried out using metered data • a trial or pilot may be implemented, metered and measured • information may be provided by equipment suppliers and designers (this information should be validated).
Registration	<p>The process by which controlling corporations notify the Department that they are required to participate in the EEO program, and the process by which the Department registers such corporations as EEO participants under the EEO Act. The process is governed by the EEO Act and EEO Regulations. See Chapter 3 in these guidelines.</p>
Secretary	<p>Secretary of the Department of Resources, Energy and Tourism.</p>
Senior management	<p>A management position or positions with direct reporting and accountability to an Australian-based CEO or equivalent.</p>
Significant opportunity	<p>Any potential change or modification to a system, an activity or equipment that the corporation reasonably considers could result in a material reduction in a site, fleet or process's energy use, a material improvement in energy efficiency of a site, fleet or process, or generate materially significant financial savings for a site or business, and that was identified as part of an Energy Efficiency Opportunities assessment.</p>
Site	<p>A physical location (or a series of physical locations in close proximity to one another) on which a business activity or a number of business activities are carried out by one or more members of the corporate group.</p>

Subsidiary	<p>Defined in Section 46 of the <i>Corporations Act 2001</i>. A body corporate is a subsidiary of another body corporate if the other body:</p> <ul style="list-style-type: none"> • controls the composition of the first body's board • is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body • holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital), or • the first body is a subsidiary of a subsidiary of the other body. <p><i>Note: If these rules are satisfied by two or more bodies corporate, see Part 2 of the EEO Act to determine which is the controlling corporation.</i></p>
Trigger year	<p>The first financial year in which the controlling corporation exceeds the 0.5 PJ energy use threshold. The controlling corporation must register for the EEO program within 9 months after the end of the trigger year (i.e. by 31 March in the following year), unless an exemption applies.</p>
Whole-of-business evaluation	<p>Financial evaluation of an energy efficiency opportunity based on all relevant quantifiable business costs and benefits, including:</p> <ul style="list-style-type: none"> • direct energy-related costs and savings • other quantifiable financial costs and benefits, for example: <ul style="list-style-type: none"> • capital costs or avoided capital investment • reductions or increases in costs of maintenance, waste disposal, water usage or occupational health and safety • changes in productivity, the quality of outputs or the quantity of outputs. <p><i>Note: A whole-of-business evaluation is used to determine net costs and benefits so as to calculate payback periods for energy efficiency ideas and opportunities</i></p>

ABBREVIATIONS

ANZSIC	Australian New Zealand Standard Industry Classification
ARS	Assessment and Reporting Schedule (“assessment plan”)
DECCW	NSW Department of Energy, Climate Change and Water (see OEH)
EEO	Energy Efficiency Opportunities
EPA VIC	Environment Protection Authority Victoria
EREP	Environment and Resource Efficiency Plans, administered by EPA Victoria
ESAP	NSW Energy Savings Action Plans, administered by OEH
GICS	Global Industry Classification Standard
NGER System	National Greenhouse and Energy Reporting System
OEH	NSW Office of Environment and Heritage (previously DECCW)
OSCAR	Online System for Comprehensive Activity Reporting
RTC	Reporting Transfer Certificate

Energy Units

Name	Symbol	Multiple
Joule	J	10^0
Megajoule	MJ	10^6
Gigajoule	GJ	10^9
Terajoule	TJ	10^{12}
Petajoule	PJ	10^{15}

Chapter 1

INTRODUCTION

In this section

- Overview of the EEO Program
- Nature and Purpose of the Guidelines
- The five steps of the Energy Efficiency Opportunities Program
- Summary of the program cycle

1.1 OVERVIEW

The Australian Government's Energy Efficiency Opportunities (EEO) program encourages large energy-using businesses to increase their energy efficiency by improving the identification, evaluation and implementation of worthwhile energy savings opportunities. Energy efficiency can deliver significant financial and social benefits and is the most cost effective way to reduce greenhouse gas emissions.

Participation in the program is mandatory for corporations that, individually or as part of a corporate group, use more than 0.5 PJ of energy per year. There is a temporary exemption for companies in the energy distribution and transmission sector.

The threshold of 0.5 PJ of energy per year is approximately equivalent to:

- 139,000 megawatt hours of electricity;
- 9000 tonnes of LNG or 10,000 tonnes of LPG;
- 13 megalitres of diesel; or
- spending of approximately \$11-17 million on electricity, \$1.5-2.5 million on gas or \$16-18 million on diesel (depending on prices).

The program applies to over 310 corporations from the manufacturing, mining, resource processing, electricity generation, transport and commercial sectors. These corporations use approximately 57% of Australia's total energy use.

Participants in the program are required to assess their energy use and report publicly on the results of the assessment and the business response. Decisions on energy efficiency opportunities remain at the discretion of the business.

The program's Assessment Framework takes a whole of business approach to assessing energy use and energy savings opportunities. The framework requires corporations to consider the many factors influencing energy use, including leadership, management and policy; the accuracy and quality of data and analysis; the skills and perspectives of a wide range of people; decision making; and communicating outcomes. Participants are expected to meet minimum requirements in each of these areas.

Corporations must report publicly on the results of their energy efficiency assessments and the opportunities that exist for projects with a financial payback of up to four years. The focus is on the energy savings opportunities identified in the assessment and the business response to those opportunities.

The EEO program is designed to accommodate a wide range of business circumstances and systems, making it possible to integrate the EEO program into normal business processes. Many participants have found the Assessment Framework to be an effective tool for improving their energy efficiency.

The program's requirements are set out in the *Energy Efficiency Opportunities Act 2006* (EEO Act) and *Energy Efficiency Opportunities Regulations 2006* (EEO Regulations).

1.2 NATURE AND PURPOSE OF THESE GUIDELINES

The guidelines are designed to provide businesses and their advisers with a plain English guide to what participating corporations need to do to meet the requirements of the program.

These guidelines do not replace or modify any of the requirements in the EEO Act or the EEO Regulations. They are necessarily general in nature and do not take into account individual circumstances. Participants should seek appropriate professional advice about their legal obligations under the legislative scheme, and read the important notice on page 2 of these guidelines. General advice involving understanding and application of the EEO program requirements can be obtained from the nominated Industry Support Officers within the Department.

Throughout these guidelines the words 'must' and 'required' are used to describe mandatory actions, which must be carried out to satisfy the requirements of the legislation.

The words 'should' and 'may' refer to actions that are voluntary. These are actions that are good practice and will help companies to get the most benefits from the program.

1.3 THE FIVE STEPS OF ENERGY EFFICIENCY OPPORTUNITIES

This section summarises the five steps that corporations participating in the EEO program must follow. Following chapters provide more details on each of the steps.

The five steps of the EEO program are:



All steps in this process are subject to verification by the Department of Resources, Energy and Tourism (see Chapter 7 of these guidelines).

Step 1

DETERMINE PARTICIPATION

If a corporation's corporate group uses more than 0.5 PJ of energy in a financial year, it must participate in the Energy Efficiency Opportunities (EEO) program (unless a relevant exemption applies). Instructions for determining which businesses are considered part of the corporation's corporate group under this legislation are provided in 'Corporate grouping rules' in Chapter 2. Exemption information is provided in 2.2.2 and Appendix 2 to these guidelines.

Responsibility for participating in the EEO program rests with 'controlling corporations'. A controlling corporation is a constitutional corporation that does not have a holding company incorporated in Australia. It may be a single corporation, have subsidiaries and/or have a foreign holding company.

Special provisions apply for corporations that use more than 0.5 PJ in one year but expect to use less than 0.5 PJ in future years. See 3.4 of these guidelines for more information.

The 'user' of energy in a controlling corporation's corporate group is determined by the general principle of operational control (which has the same meaning as in section 11 of the NGER Act), subject to the 'energy transfer rules'. The energy transfer rules detail the requirements for assigning responsibility for particular energy to another corporate group. Chapter 2 provides more information about the general energy use rules and the energy transfer rules. The hypothetical examples in Appendix 3 provide guidance on how to apply these rules, including how to consider energy use by particular parties such as contractors and tenants.

With the exception of the energy transfer rules, participation rules for EEO are streamlined with those for the National Greenhouse and Energy Reporting System (NGER System).

STEP 2

REGISTER WITH THE DEPARTMENT OF RESOURCES, ENERGY AND TOURISM

Registering with the Department is an essential step. A registration application must be submitted within nine months following the end of the financial year in which the energy use of a corporate group exceeds 0.5 PJ. That year is referred to as the trigger year.

The Chief Executive Officer (or an authorised representative) of the controlling corporation must apply to register in relation to all energy used by the entities within the corporate group. Chapter 3 provides more information on registering for the EEO program.

A corporation that is already registered does not need to re-register for the second and subsequent cycles.

STEP 3 **PREPARE AND SUBMIT AN ASSESSMENT PLAN**

After registering, corporations must prepare an assessment plan. This must be submitted to the Department within 18 months following the end of the trigger year.

It covers a five-year assessment cycle and comprises:

- an outline of corporate structure and related information
- current (baseline) energy use and savings data
- an assessment schedule – outlining how and when the corporation intends to conduct assessments
- a reporting schedule – outlining how, where, and when the corporation intends to report to the Department and to the public.

See Chapter 4 for information on the requirements for preparing and submitting an assessment plan.

STEP 4 **CONDUCT ASSESSMENTS**

The central component of the EEO program is the assessment of a participant's energy use to identify cost effective opportunities for improving energy efficiency with up to a four year payback. The controlling corporation must ensure that within the first two years of the assessment cycle:

- each member of the corporate group scheduled to conduct assessments completes its first assessment for at least one site, key activity or business unit, or
- 40% of the group's energy use is assessed.

The controlling corporation must also ensure that at least 80% of its total baseline energy use is assessed (including all sites that use more than 0.5 PJ per year) within the first assessment cycle, and assess or re-assess at least 90% in the second and subsequent cycles (except in exceptional circumstances, see section 4.6 of these guidelines).

To ensure assessments are rigorous and comprehensive, participants must meet the minimum standard detailed in the Assessment Framework. The six key elements of the Assessment Framework are:

- leadership support for the assessment and the improvement of energy use
- the involvement of a range of skilled and experienced people, and people with a direct and indirect influence on energy use, during the assessment process
- information and data that is appropriately, comprehensively and accurately measured and analysed

- a process to identify, investigate and evaluate energy efficiency opportunities with paybacks of four years or less
- business decision making and planning for opportunities that are to be implemented or investigated further
- communicating the outcomes of the assessment and the business response to senior management, the board and personnel involved.

See Chapter 5 of these guidelines for information on conducting an assessment under the EEO program.

STEP 5

REPORT ON ASSESSMENT OUTCOMES AND BUSINESS RESPONSES

Public reporting is an essential part of the EEO program. Participants must publicly report the outcomes of their first assessment or assessments, including their business response, within 30 months (2.5 years) after the end of the trigger year. They must then publish updates of further assessments and business responses every 12 months throughout the first and all subsequent assessment cycles.

Participants must ensure that public reports are readily available to investors, shareholders, other key stakeholders and interested members of the public. This is typically done by including them in existing public reports, such as annual, sustainability, financial or similar reports.

Important aims of public reporting are to:

- encourage senior managers and boards of large energy-using corporations to give careful consideration to energy use and energy efficiency opportunities
- provide meaningful information to the market about energy efficiency opportunities identified in assessments, and the participant's business response
- provide an avenue for participants to demonstrate the responsible and efficient use of energy
- provide a measure of program effectiveness.

Participants must also report to the Department on the outcomes and the business response to the assessments within the first 30 months (2.5 years) of each assessment cycle, and again 3 years later (six months after the end of each assessment cycle). Chapter 6 provides more information on reporting.

Supporting compliance and effective participation

The Department's compliance and verification strategy aims to ensure that:

- all corporations that meet the energy use threshold participate in the program
- assessments by participants meet the intent and key requirements of the Assessment Framework
- the results reported by participants are correct.

The program aims to encourage cooperative learning, and improvements in conducting effective assessments and publicly reporting on outcomes. The program will continue to provide compliance support and advice in a cooperative way. However, more stringent mechanisms are available under the legislation, however, to ensure participation in all steps of the program by those corporations which are required to do so.

Formal verifications commenced in early 2010 to ensure companies are complying with the requirements of the legislation.

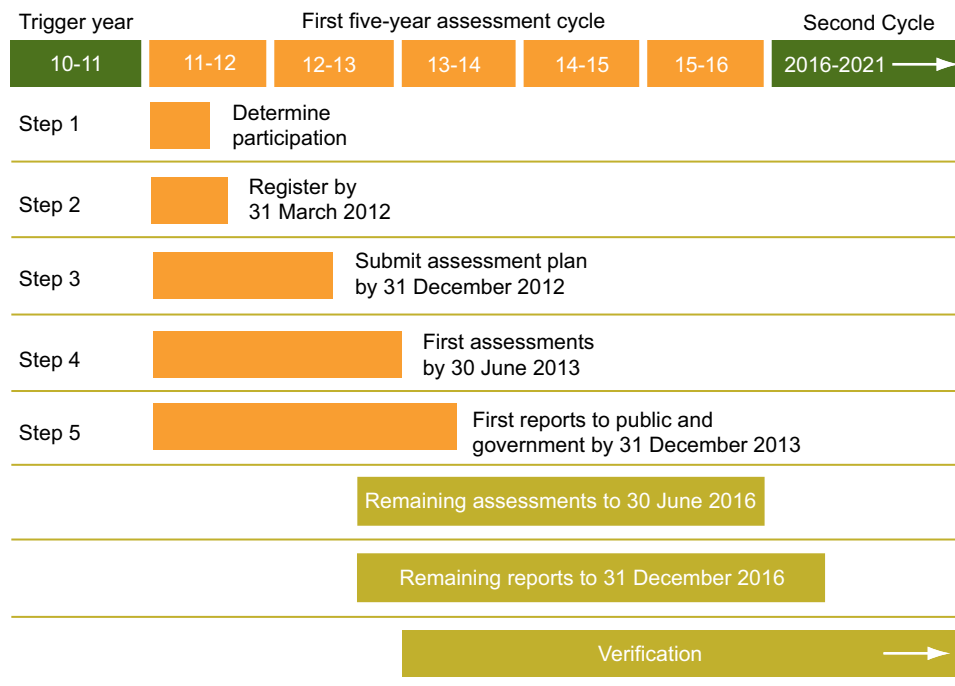
See Chapter 7 of these guidelines for information on compliance and verification, and Chapter 8 for information on EEO program support for participants.

Protecting corporate information and reviewing decisions

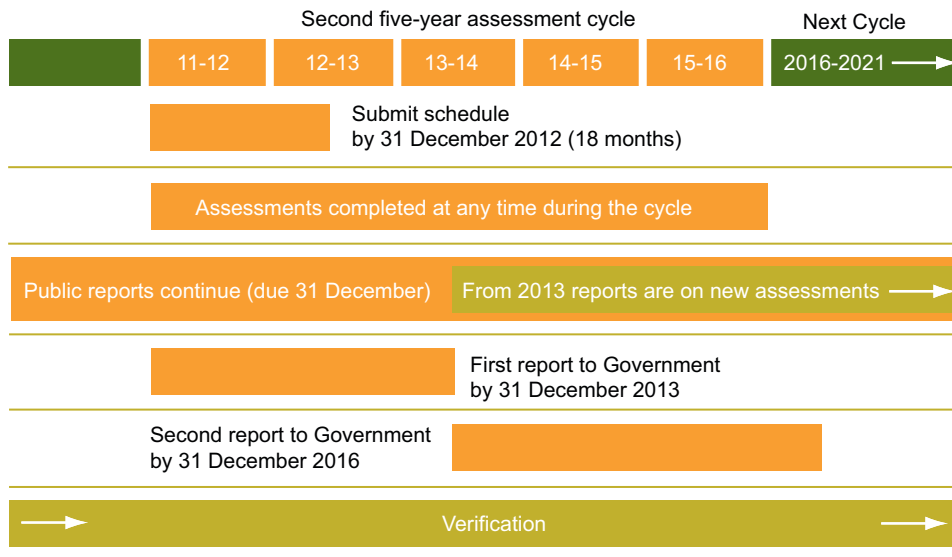
Chapters 9 and 10 of these guidelines provide information on protecting corporate information and options for seeking review of Departmental decisions.

1.4 SUMMARY OF THE PROGRAM CYCLE

Figure 1 shows the timeline for companies entering their first EEO assessment cycle, assuming a trigger year of 2010/2011



EEO participants with a 2005/2006 trigger year will enter their second program cycle on 1 July 2011. Figure 2 shows the timeline for this cycle.



Chapter 2

DETERMINING PARTICIPATION

In this section:

- Overview of rules for EEO participation
- Corporate grouping rules
- Energy use rules
- Responsibility for compliance

2.1 OVERVIEW

The controlling corporation for a corporate group must register as an EEO participant if the energy use of the controlling corporation is greater than 0.5PJ in a financial year. This chapter sets out the principles that must be applied in determining whether the 0.5PJ energy use threshold has been met. These are:

- *corporate grouping rules* (in 2.2), which identify which organisations make up a corporate group
- *energy use rules* (in 2.3), which identify the specific energy use that is attributed to each member of a corporate group.

In addition, the energy transfer rules (in 2.3.2) set out the circumstances in which a corporation may transfer responsibility for particular energy use to another entity for the purposes of the EEO program, and how to apply for a transfer.

2.2 CORPORATE GROUPING RULES

To establish whether a corporation is required to participate in the EEO program it is necessary to:

- identify the controlling corporation
- determine which subsidiaries, joint ventures and partnerships are included within the controlling corporation's corporate group.

A controlling corporation is a constitutional corporation that does not have a holding company incorporated in Australia. Controlling corporations may be a single corporation, have subsidiaries and/or have a foreign holding company.

A corporate group consists of the controlling corporation, subsidiaries of the controlling corporation and, in some cases, joint ventures or partnerships in which the controlling corporation has an interest (see 2.2.1 below). The controlling corporation is responsible for the energy use of all members of the corporate group for the purposes of EEO compliance.

2.2.1 Joint ventures and partnerships

The corporate group includes any joint venture or partnership, of which a member of the group is a participant, where:

- the group member has been nominated as the entity responsible for the joint venture or partnership; or
- no entity has been nominated as being responsible for the joint venture or partnership (that is, the joint venture or partnership has failed to nominate a responsible organisation).

If joint venturers or partners fail to nominate a responsible entity, the joint venture or partnership will be added to the individual responsibilities of each of the participants. It is expected that joint ventures and partnerships will nominate a responsible entity as the most efficient means of fulfilling legislative obligations. The rules applying to the nomination process can be found in Appendix 1 to these guidelines.

The entity carrying out a project that is conducted as a joint venture or partnership may actually undertake the steps involved in the EEO Program, but ultimate legal responsibility continues to rest with that entity's controlling corporation (or the controlling corporation of each of the parties or partners if a single controlling corporation has not been nominated).

Incorporated joint ventures

Incorporated joint ventures may qualify as controlling corporations in their own right if they meet the definition of 'controlling corporation' (see glossary definition for 'controlling corporation').

The NGER Supplementary Guidelines – Joint Ventures, published in January 2010, provide useful guidance on the treatment of incorporated joint ventures for the purposes of the NGER System. This publication should also guide the treatment of incorporated joint ventures under the EEO program. The Supplementary Guidelines are available from the NGER website at <http://www.climatechange.gov.au/reporting>.

2.2.2 Energy use in trust situations

In a situation in which an entity is a trustee of a trust on behalf of which the trustee may be considered to be using energy, the trustee is responsible for that energy use under the EEO program, not the trust or the beneficiaries of the trust.

2.2.3 Transitional provisions

The EEO Regulations were amended in 2008 to more closely align the EEO program with the NGER System definitions of operational control, facility, and consumption of energy (these are explained in 2.3.1). Companies that commenced assessments and reporting prior to 1 July 2008 can choose to make use of transitional provisions in Part 10 of the Regulations for the purposes of assessing and reporting on their energy consumption for the first cycle. Please contact the Department if this applies to you and you need further information about those provisions.

2.2.4 Exemption relating to the energy transmission and distribution sectors

A temporary exemption from participation in the EEO program applies to controlling corporations (or their subsidiaries) whose main business is the transmission and/or distribution of natural gas or electricity. However, the general rules for energy use and participation apply in relation to other activities of those corporations (for example, coal mining). This energy supply sector exemption applies until 30 June 2013. Further details of this exemption are provided in Appendix 2 to these guidelines.

NEW CHANGES TO THE REGULATIONS

From 1 July 2011 electricity generators no longer exempt

Corporations should note that from 1 July 2011 electricity generation activities will no longer be excluded from the EEO program. Only corporations whose main business is the transmission and/or the distribution of natural gas or electricity, and whose total energy use for other activities does not exceed 0.5 PJ in a year will be exempt. See Appendix 2 to these Guidelines for further information.

Examples of the application of the corporate grouping rules are set out in Appendix 3 to these guidelines.

2.3 THE ENERGY USE RULES

NEW CHANGES TO THE REGULATIONS

Energy user

Recent amendments to the EEO Regulations have simplified the definition of energy user, which no longer makes reference to particular sources of energy.

2.3.1 Responsibility for energy use

Under the EEO program, the general rule for allocating responsibility for energy use is that an entity is the user of energy if it has operational control over a *facility* in which the energy is *consumed*.

The concepts of 'operational control', 'facility' and 'energy consumption' are the same as those used for the NGER System. This means that the energy user under the EEO program will usually be the same as the energy user under the NGER System. (However, the energy user may vary if an energy transfer rule is applied – see 2.3.2 below.)

Operational control

An entity is considered to have operational control over a facility if the entity has authority to introduce and implement any or all of the operating, health and safety or environmental policies. Only one corporation can have operational control of a facility at any time. If there is uncertainty about which corporation has operational control over a facility, the corporation deemed to have operational control will be the one with the greatest authority to introduce and implement operating and environmental policies. Comprehensive guidance on determining which entity has operational control of a facility can be found in the *National Greenhouse and Energy Reporting Technical Guidelines* available from the NGER website at www.climatechange.gov.au/publications/greenhouse-report/nger-technical-guidelines.aspx.

Facility

A facility is an activity, or a series of activities, that generates greenhouse gas emissions or produces or consumes energy, forms part of a single undertaking or enterprise, and is attributable to a single industry sector, or is declared by the Greenhouse Energy and Data Officer to be a facility (section 9 of the NGER Act).

Energy consumption

Energy consumption refers to the use or disposal of energy from the operation of a facility, including own-use and losses in extraction, production or transmission (defined in Regulation 2.23 of the NGER Regulations).

2.3.2 Energy transfer rules

In some cases, energy use responsibility can be transferred from the corporation that has operational control of the energy to another entity.

Where a RTC has been issued

If a reporting transfer certificate (RTC) has been issued to a corporation under subsection 22L(2) of the NGER Act, they can ask the Department to be treated as the user of the energy identified in the certificate. This can be done in an application for EEO registration, or (if already a registered participant) through a variation of an assessment plan. The corporation must provide the Secretary with the following information and documents:

- a certified copy of the RTC
- evidence that the corporation transferring the obligation to assess and report the energy use has agreed to the transfer
- evidence that the corporation assuming the obligation to assess and report the energy use has agreed to the transfer.

If the RTC ceases to be in effect in accordance with the NGER Act, Entity B (the transferee) ceases to be the user of energy at that time and Entity A (the transferor) becomes the user of energy again.

Where no RTC has been issued

NEW CHANGES TO THE REGULATIONS

Energy responsibility transfer without a reporting transfer certificate

An entity (Entity A) may now apply to the Secretary to be treated as the user of certain energy which another entity (Entity B) would otherwise be the user of for the purposes of the EEO legislation, even though no RTC has been issued under the NGER Act. The non-RTC transfer is only available where Entity A has financial control over the facility.

The effect of a transfer is that the energy used at a facility over which Entity B has operational control is attributed to Entity A. Entity A then becomes the user of the energy consumed at that facility and Entity A's controlling corporation is responsible for assessing and reporting on that energy under the EEO program. See regulations 1.4B and 1.4C of the EEO Regulations.

If an entity that has financial but not operational control over a facility wishes to be treated as the user of the facility's energy for the purposes of the EEO program but not the NGER System, it can apply for a non-RTC transfer.

In order for energy use to be transferred without a RTC, the following criteria must be satisfied:

- the transferee must be a registered corporation, a member of a registered corporation's group or must become required to register upon transfer of the energy use responsibility (because it will meet the energy use threshold of 0.5 PJ in a year)
- the transferee must have financial control over the facility. 'Financial control' has the same meaning as in the NGER Act
- the transferor's controlling corporation has agreed to the transfer (or, if the transferor is a controlling corporation, the transferor has agreed).

Registered transferee corporations may make a request for transfer as part of the submission of their assessment plan, or the submission of a variation to an approved assessment plan. The request must be received no later than 18 months before the end of the transferee's current assessment cycle. Non-registered transferee corporations must include the transfer request with their registration application (see regulation 1.4C(3) of the EEO Regulations).

Either party to a transfer agreement may terminate the agreement at any time, by notifying the Department in writing. The termination takes effect when the Department receives the notification, and the operational control test is reinstated in relation to that energy use.

2.3.3 Energy sources used to calculate energy use

This section explains the types of energy that must be included in energy use calculations, and indicates which entity is responsible for energy use.

The energy sources used to calculate energy use for the EEO program are now the same as those that apply under the NGER System. To calculate energy use for the purposes of determining whether the corporate group is required to participate in EEO, as well as conducting assessments for the EEO program, corporations must include the energy and energy sources listed in Schedule 1 of the NGER Regulations. These are available from the NGER website at www.climatechange.gov.au/reporting.

A calculator to assist in determining energy use in terajoules is available on the internet at www.climatechange.gov.au/government/initiatives/oscar.aspx.

2.3.4 Energy source exceptions

There are some energy sources that do not need to be counted towards the corporate group's energy use for the purposes of the EEO program. These are prescribed in regulation 1.5(4) of the EEO Regulations. (Different rules apply under the NGER System.)

Double counting – Energy sources that are used by an entity to produce energy that is then used by the same entity do not need to be counted. This means that if an energy source is used to generate an alternative energy source on site then only the consumption of the alternative energy source should be counted towards the energy use of the entity. For example, diesel combusted in the onsite generation of electricity is not counted, but the electricity is counted when it is consumed.

Storage – Energy sources that are stored do not have to be included in the total energy use calculation until consumed. This applies both to energy that was produced and stored by the entity, and energy that was purchased and stored by the entity.

Waste – Materials that are a potential energy source but are instead disposed of as waste do not have to be counted as energy use. An example is waste gas that is vented or flared.

Alternative purposes – Materials that are potential energy sources but are instead used for alternative purposes do not have to be counted as energy. Examples of potential energy sources used for alternative purposes include:

- gas or liquid hydrocarbons used as chemical feedstock in plastics manufacturer
- LPG used as a propellant in aerosols
- ethanol used in consumer goods or lubricants
- base oils used in lubricants
- other energy sources used as a reductant in an endothermic reaction.

However, where potential energy sources are used both for an alternative purpose and to produce energy, and the amount used as energy cannot be differentiated from the amount used as for the alternative purpose, then the entire amount must be included as energy.

Sold energy or energy sources – Energy or energy sources that are sold by the entity do not have to be counted. For example, electricity or steam produced at a site but exported from the site to a purchaser would not be counted.

2.3.5 Purchaser and user split

If an entity purchases energy or an energy source and provides it to another organisation to use, then the organisation with operational control of the facility at which the energy or energy source is used (at the time it is used) is the responsible entity. See the examples of the application of the energy use rules in Appendix 3 to these guidelines.

2.3.6 Energy conversion factors

Energy conversion factors determine the energy content of particular energy sources. The conversion factors that should be used for EEO purposes are the energy content factors mentioned in the National Greenhouse and Energy Reporting (Measurement) Determination 2008, available from the NGER website at www.climatechange.gov.au/reporting.

Corporations may still use alternative conversion factors or processes where they can show that their use will improve the accuracy of energy data, and that the relevant factor or approach is accepted by industry. In its public reports, the responsible entity must state whether the conversion factors they used were factors prescribed under the NGER System, other factors accepted by the industry, or a combination of both. In its report to the Department, the responsible entity must also state the energy conversion factors actually used.

2.3.7 Energy use and the energy threshold

Once it is clear what energy use the corporate group is responsible for, it is able to determine whether the combined energy use of the corporate group exceeded 0.5 PJ in the most recent financial year. If it did, that financial year becomes the 'trigger year' for the corporate group, and the controlling corporation is required to register for the EEO program.

Examples of the application of the energy use rules can be found in Appendix 3 to these guidelines.

2.4 RESPONSIBILITY FOR COMPLIANCE

2.4.1 Determining participation and applying for registration

Controlling corporations are responsible for:

- determining which subsidiaries and related corporations are members of the corporate group
- applying for registration.

2.4.2 Submitting assessment plans

Controlling corporations are responsible for the submission of assessment plans that cover all members of a group. They may authorise subsidiaries, including joint venturers and partners, to submit separate individual assessment plans. However, controlling corporations are still ultimately responsible for compliance with the assessment plan requirements. Compliance with the requirement to submit an assessment plan is not met until all the separate assessment plans that address the whole of the controlling corporation's group have been submitted.

2.4.3 Conducting assessments

Controlling corporations are responsible for ensuring assessments are undertaken in accordance with the Assessment Framework. The key elements of the Assessment Framework may be met at the most appropriate level in the corporation (e.g. corporate, business unit or site). For example, a manufacturing or mining company with many large energy using sites would be likely to set and communicate assessment objectives and include relevant staff from the corporate and site level. Analysis of energy use across the production process may be best undertaken at site level. Alternatively, in a multi-site operation like a retailer with many outlets, those involved in data analysis and identification of opportunities might include corporate facilities managers, refrigeration managers, facility designers, suppliers, and a representative group of store managers and shop floor staff.

2.4.4 Producing and publishing reports

Controlling corporations are responsible for producing reports for the public and for the Department. They may, however, apply in the assessment plan to authorise their subsidiaries to produce reports covering particular parts of the group's assessment. Controlling corporations must ensure that the public reporting requirements are met by any subsidiaries submitting separate reports.

Table 1 shows how the steps of the EEO program apply to different levels of a business.

Table 1: How the steps of the EEO program apply to different levels of a business

	Legally responsible	May be authorised to produce schedule and reports	Registration	Assessment and Reporting Schedule	Assessment Framework Key Elements						Reporting
					1 Leadership	2 People	3 Data & analysis	4 Identification of opportunities	5 Decision making	6 Communicating outcomes	
Controlling corporation											
Subsidiary Joint venture Partnership											
Business unit Division											
Site Key activity											

Must be involved

Should be involved

Chapter 3

REGISTERING FOR THE PROGRAM

In this section:

- Overview of registration
- Timing of registration
- Information to be provided
- Exemption from registration
- Publication of registration information
- Changes to registration information
- How to apply for deregistration
- Submitting registration and deregistration information

3.1 OVERVIEW

The intent of registration is to:

- provide the Department with a list of participating corporations, and the structures of their corporate groups
- enable the Department to communicate with participants about the program
- create a public register of participants in the program.

3.2 TIMING OF REGISTRATION

The closing date for registration is nine months following the end of the trigger year (the year a corporate group exceeds 0.5 PJ in energy use). For example, if a corporation's trigger year was 2010–2011, the controlling corporation must apply for registration by 31 March 2012.

The Department aims to respond to applications within two months of receipt.

3.3 INFORMATION TO BE PROVIDED AT REGISTRATION

Applications for registration must include the following information:

- A statement that identifies the trigger year and says that the group used more than 0.5 PJ of energy in the trigger year
- Controlling corporation details including
 - the controlling corporation's name
 - trading names (if any)
 - GICS and ANZSIC codes
 - Australian Business Number (ABN)
 - address of head office
 - contact person's details (full name, position, telephone number, email address and postal address).

- The corporation's details should be the same as those which are provided for NGER System registration, although the contact person may be different
- Names of all group members that are likely to be assessed using the coverage rule (applied to the corporate group as at 30 June in the baseline year). Section 4.3.3 of these guidelines provides more information on the coverage rule. Group member details must also be provided, including:
 - the group member's name
 - trading names (if any)
 - its ABN, or if it does not have an ABN, the address of the head office
 - estimated annual energy use
 - the relevant GICS/ANZSIC code.

This requirement may be satisfied by grouping information by group member or kinds of activity. It may be useful for complex commercial entities to group energy use by kinds of activity under the controlling corporation (e.g. by office space, data centres or retail outlets) rather than by group member

- The outcome of any nomination process for related joint ventures or partnerships (if known at this time). If a corporation is not in a position to do this at registration, it may submit these with the assessment plan
- A declaration that the information in the application is true and correct. The declaration must be signed by the Chief Executive Officer or an authorised representative of the controlling corporation
- If the corporation wishes to be treated as the user of energy over which it does not have operational control, it may do so in its registration application if the requirements for a RTC transfer or non-RTC transfer are met. Section 2.3.2 in these guidelines sets out those criteria and the information and documents that must be included with a transfer request.

3.4 EXEMPTION FROM REGISTRATION

The Department may agree to an exemption from the EEO program for corporations experiencing fluctuations that temporarily take energy use above 0.5 PJ in one year, with use likely to be lower than the threshold in the following year.

If energy use in the trigger year was over 0.5 PJ but this was not representative of its usual energy consumption, a controlling corporation may apply to the Department for an exemption. The application must be signed by the chair of the board of directors, the Chief Executive Officer, managing director or an equivalent officer (or authorised representative). The application must include:

- a statement that the controlling corporation is unlikely to exceed the 0.5 PJ threshold in the following year
- adequate evidence supporting its claim. Examples of adequate evidence may include evidence of the group's energy use for the trigger year and the preceding 2 years, and detailed explanations of circumstances that will affect future energy use, such as changes to the corporate group structure, commercial developments such as the cessation of a contract, or a change in production capacity due to plant closures

- a declaration by the signing officer that the information included in the application, is, to the best of the officer's knowledge, correct and in accordance with the EEO Act and EEO Regulations.

The application for an exemption must be made within six months following the end of the trigger year. The Department aims to advise applicants of its decision within two months of receiving an application for exemption. If there is no written notification from the Department after 60 days of receipt of the application, the corporation is entitled to assume that the exemption has been granted.

3.5 PUBLICATION OF REGISTRATION INFORMATION

Some information provided in applications for registration will be published on the EEO website. The published registration information will include the names of registered controlling corporations, the names of their subsidiaries and joint ventures that are likely to be assessed. Over time, information about the corporation's compliance with the EEO program, including the program milestones that the corporation has reached and where to find the participant's public reports will also be published. Individual group, company or entity energy use information provided at registration will not be placed on the public register unless the controlling corporation or entity providing the information has given consent for publication.

3.6 CHANGES TO REGISTRATION INFORMATION

Participants must advise the Department about any changes in their registration information as soon as is practicable, and no later than three months after the end of each financial year. Participants may choose to provide updates to the Department at any time about their registration information. Updates should be provided in a statement signed by the CEO (or an authorised representative) of the controlling corporation.

Corporations may also provide updated details as part of the assessment plan process. See 4.6 of these guidelines for more information.

3.7 HOW TO APPLY FOR DEREGISTRATION

Participants may apply to the Department for deregistration from the EEO program. Applications may be made at any time and must contain a statement that the corporate group is not likely to exceed the 0.5 PJ threshold in the current financial year and the following two financial years. The participant must also supply sufficient information to allow the Department to be satisfied that this statement is accurate. Examples of sufficient information may include evidence of the group's energy use for the trigger year and the preceding two years, detailed explanations of circumstances such as changes to the corporate group structure, commercial developments such as the cessation of a contract, or a change in production capacity due to plant closures.

The application must be signed by the chair of the board of directors, the Chief Executive Officer, managing director or an equivalent officer (or authorised representative) and include a declaration of the signing officer that the information included in the application, is, to the best of the officer's knowledge, correct and in accordance with the EEO Act and EEO Regulations.

Corporate changes that result in a registered corporation no longer being a controlling corporation under the EEO Act may also be a basis for deregistration.

Where a corporation applies for deregistration because of a change in energy use due to a RTC or non-RTC transfer of energy, the application must include any details relevant (see 3.3).

A deregistration application template is available for download at www.energyefficiencyopportunities.gov.au

The Department aims to advise applicants of its decision within two months of receiving an application for deregistration.

3.8 SUBMITTING REGISTRATION AND DEREGISTRATION INFORMATION

To assist participants, an electronic form for submitting registration information is available at www.energyefficiencyopportunities.gov.au.

Registration information must be submitted in hard copy or in an electronic format that is approved by the Department, to:

Manager
Energy Efficiency Opportunities
Energy and Environment Division
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Or email to:

energyefficiencyopportunities@ret.gov.au

The Department will confirm registration in writing. At this time the Department will also provide the name and contact details of the corporation's allocated Industry Support Officer for the program and a package of resource materials.

Chapter 4

PREPARING AN ASSESSMENT PLAN

In this section:

- Overview of assessment plans
- Timing for submission
- Contents of an assessment plan
- Submission of an assessment plan

4.1 OVERVIEW

Following registration for the EEO program, the next step is the preparation of an assessment plan. This allows participants to plan how and when they intend to conduct assessments and report to the public and the Department in line with the legislative requirements. It will also provide information that will be used by the Department to administer, evaluate and improve the program. Each assessment plan covers a five-year assessment cycle and includes:

- the corporate structure
- current quantitative energy use and savings data
- an assessment schedule, outlining how and when the organisation intends to conduct assessments
- information about how the corporation plans to meet each of the key elements of the EEO Assessment Framework
- a reporting schedule, outlining how, where, and when the organisation intends to report publicly and to the Department.

Details of the information that must be included are set out at 4.3 below. The controlling corporation can choose to submit a single assessment plan, covering the whole corporate group, or a number of assessment plans that each covers a specified part of the group and which, when put together, cover the whole group. See 'Submitting assessment plans' at 2.4.2 in these guidelines.

To assist participants, an electronic template for developing an assessment plan is available at www.energyefficiencyopportunities.gov.au. Examples of transport and mining assessment plans are also available on the website.

4.2 TIMING FOR SUBMISSION

Participants in the EEO program must submit an assessment plan within 18 months of the start of an assessment cycle. For example, if a participant's assessment cycle commences on 1 July 2011, it must submit the assessment plan by 31 December 2012. However, the Department strongly recommends that assessment plans be submitted well before the compliance deadline to enable timely approval. The Department also encourages participants to submit draft assessment plans to their nominated Industry Support Officer for feedback, well before the submission deadline.

Each controlling corporation is responsible for ensuring that assessment plans for itself and its group members are submitted to the Department for approval every assessment cycle.

A controlling corporation that has applied for registration, but is not yet registered, may still submit an assessment plan.

4.3 CONTENTS OF AN ASSESSMENT PLAN

4.3.1 Corporate structure

Participants must provide the following details about the controlling corporation and all group members (in accordance with the corporate grouping and energy use rules set out in Chapter 2 of these guidelines). Some of this information confirms data provided at registration, while other information is provided for the first time in the assessment plan.

In the assessment plan submitted by the controlling corporation:

- the baseline year for the controlling corporation (see 4.3.2 below)
- the controlling corporation's name, trading name (if any), ABN, relevant GICS/ANZSIC code, address of head office, and name, position and contact details (telephone number, email address and postal address) of the contact person
- the outcome of any nomination process for related joint ventures or partnerships
- names of group members, if any, that have been authorised by the controlling corporation to produce and submit a separate assessment plan, and those group members' addresses or ABN, relationship to the controlling corporation, and relevant GICS/ANZSIC code
- the names of each group member, key activity, business unit or site that will be assessed, using the coverage rule (applied to the corporate group as at 30 June in the baseline year). Information must also include group member details such as the address or ABN, the relationship to the controlling corporation, annual energy use and relevant GICS/ANZSIC code
- a diagram of the controlling corporation's structure showing:
 - group members that are going to submit separate assessment plans and those covered by the controlling corporation's assessment plan
 - the links between the controlling corporation and members of the group (including joint ventures and partnerships) and sites over 0.5 PJ that will be assessed
- a brief summary of members of the group (or parts of group members) that must not be assessed
- a statement with the name, position and signature of the responsible officer, nominated by the participant, that the assessment plan is in accordance with the requirements of the EEO Act and EEO Regulations.

In any separate assessment plan submitted by a member of the controlling corporation's group:

- the name of the group member that has been authorised by the controlling corporation to produce and submit the separate assessment plan, and group member details such as the address or ABN, the relationship to the controlling corporation, and relevant GICS/ANZSIC code
- the contact details of the group member, including name, position and contact details (telephone number, email address and postal address) of the contact person
- a statement with the name, position and signature of the responsible officer, nominated by the participant, that the assessment plan is in accordance with the requirements of the EEO Act and EEO Regulations.

Subsidiaries, joint ventures or partnerships that carry out activities mainly in electricity and gas transmission and/or electricity and gas distribution may not have to be assessed or included in the total energy use calculation. However, where other activities such as coal mining are carried out by the subsidiaries (or joint ventures or partnerships) and exceed 0.5 PJ, these activities may need to be included. The boundaries of the energy supply sector exemption are outlined in Appendix 2 to these guidelines. Corporations are required to indicate how they have applied this exemption in their assessment plan.

NEW CHANGES TO THE REGULATIONS

Definitions relating to groups – electricity generators no longer exempt

Corporations should note that recent amendments to the regulations have changed the stationary energy sector exemption rules. Electricity generation activities are no longer exempt from the EEO program. Only corporations whose main business is the transmission and/or the distribution of natural gas or electricity, and whose total energy use for ancillary activities (activities other than energy transmission and/or distribution) does not exceed 0.5 PJ in a year are exempt. See Appendix 2 to these guidelines for further information.

4.3.2 Current energy use and savings data

Participants must provide information on current energy use and energy savings projects, as detailed below.

Baseline energy

Energy use information should be provided for the corporation's nominated baseline year. This can be any continuous twelve month period commencing 24 months before the beginning of the assessment cycle, and ending 12 months into the assessment cycle. For example, if the trigger year is 2010–2011, the baseline year for the first assessment cycle could be any twelve month period between 1 July 2009 and 30 June 2012. The 12 months chosen by the controlling corporation must also be a period:

- a. that is reasonably representative of the normal annual energy use of the controlling corporation's group; and
- b. that has ended before the time when the controlling corporation submits its assessment plan; and
- c. for which energy use data is able to be identified and supplied by the controlling corporation at an appropriate level of disaggregation to allow meaningful comparison of key energy use and energy efficiency statistics.

If an indicative baseline year cannot be selected from the 36 month period above, a corporate now has the option to select a baseline year from a 48 month period.

NEW CHANGES TO THE REGULATIONS

Flexibility in selecting the baseline period

If the corporation does not believe that any 12 months during the existing 36 month period meets these criteria, it may apply to use an earlier 12 month period, extending up to 36 months before commencement of the assessment cycle to a total of 48 months. In this case, the corporation must include in the assessment plan an explanation of why it is appropriate for that period to be the corporation's baseline year, along with any other information that would explain why that period is reasonably representative of the normal annual energy use of the controlling corporation's group.

Annual energy use

Participants must provide the following information for the group as a whole and disaggregated by members of the group, business units, sites or key activities:

Annual energy use (for the baseline year)

- as a total
- by energy type
- as an indicator.

NEW CHANGES TO THE REGULATIONS

Definition of an 'indicator'

An indicator is a measure of the energy use of a controlling corporation's group, or a part of a controlling corporation's group, that is expressed by reference to a unit of production or service that is reasonably relevant to an industry, its energy use, or both.

Examples include:

- GJ per tonne of product produced
- GJ per square metre of floor space
- litres per kilometre travelled.

Note: The same indicator used in the assessment plan should be used for energy use data in government reports – see 6.3.

Disaggregation by members of the group, key activity, site or business unit should be at an appropriate level to allow meaningful comparison of key energy use and savings statistics, and will vary depending on the particular business activity and corporate structure.

Current energy use for the members of the corporate group covered by the assessment plan must be provided with the best available accuracy. For the first assessment cycle this will ideally be within $\pm 10\%$. It is expected that participants entering their second assessment cycle will have achieved $\pm 5\%$ energy use data accuracy in their assessment plan. Participants must indicate the error margin of their energy use data.

Except in certain circumstances, the indicators used in the assessment plan must also be used for assessments and in public and government reports for that assessment cycle (see 6.2.3). If changes have occurred within the business that means that the same indicator cannot meaningfully be used, a new indicator can be chosen. This should be noted in the government report along with the reasons for the change.

Existing energy efficiency projects

In the assessment plan, participants must provide information on energy efficiency projects that have already been identified and that will be implemented during the assessment cycle. This information must include:

- the number of energy efficiency projects
- the total estimated net energy savings per year
- the total estimated net financial benefits (savings–costs) per year.

The estimated energy and financial savings should be calculated based on the energy use and production levels in the baseline year and also based on forecast production levels in the final year of the assessment cycle.

This information should be broken down by energy type and by the same business unit or activity used to present energy use information. It should exclude extraneous factors such as changes in production.

Optional information

The information mentioned in the above paragraphs is required under the EEO legislation. Where available, participants may also choose to include the following information in their first assessment plan:

- forecast energy use (for total energy and as an indicator by energy type) to the end of the cycle
- a forecast of the impact of energy savings from existing energy efficiency projects and other factors that are likely to lead to a reduction or increase in energy use
- energy use in 2000 as a total and as an indicator by energy type
- an estimate of energy use and financial savings achieved from 2000 to the end of the trigger year, along with any details of the projects that led to these savings.

Participants are under no obligation to provide this information. However, if provided, this information will enable the Department to measure and report on the effectiveness of industry action under EEO requirements and recognise prior action by industry in this area.

4.3.3 Assessment schedule

This part of the assessment plan sets out the corporation's plan for carrying out its assessments during the cycle. The plan must outline:

- details of the business operations and sites to be assessed
- the proposed timing and methodology of assessments.

The assessments must be designed to meet the requirements of the legislation, including the coverage rule, prescribed timeframes and the Assessment Framework.

Coverage rule

The controlling corporation must ensure that its planned assessments will meet the program's requirements for coverage of energy use as detailed below. To do this, it needs to apply the coverage rule. Participants must show in the assessment plan how the coverage rule has been applied, including which sites will be assessed and which will not.

The coverage rule is made up of the following requirements:

1. *The coverage percentage*

The assessment plan must plan to assess at least 80% of the corporate group's energy use (based on baseline energy use) in the first assessment cycle, and 90% in subsequent assessment cycles.

Where a separate assessment plan is provided by a group member, the assessments will need to cover 80% of baseline energy use (90% in subsequent cycles) of the part of the group covered by that separate assessment plan.

Exception: The coverage percentage can be varied in exceptional cases – see variation of coverage percentage below.

2. *Specific site coverage*

The following sites must be fully assessed:

- all sites that use over 0.5 PJ in the baseline year
- all sites that have been built or acquired by a group member up to 18 months before the end of the assessment cycle and that use over 0.5 PJ during a financial year. For newly built sites, the assessment may be an assessment undertaken during the design phase of the construction of the site.

Assessment of all sites captured by these principles may omit a maximum of 0.01 PJ from the assessment.

Exception: A larger amount may be omitted if the 'non-integral energy exception' applies – see below.

NEW CHANGES TO THE REGULATIONS

Variation of percentage of baseline energy to be assessed

Changes to the EEO Regulations allow corporations to apply through the assessment plan to alter the percentage of the baseline energy they propose to assess in certain circumstances. These circumstances are outlined below.

Variation of coverage percentage

The impact of changes to the corporate structure (ie through divestment or purchase, or a combination) has left some participants unable to complete their required assessment coverage, particularly where energy using businesses or activities have been divested and there is no longer the energy use level indicated in the baseline.

If a controlling corporation believes the prescribed coverage percentage is not reasonable or appropriate in the circumstances of its corporate group, it may propose a different coverage percentage for that assessment cycle in a variation to the assessment plan. In doing so it must also provide:

- an explanation of why it is not reasonable or appropriate in the circumstances of the group to use the prescribed percentage
- an explanation of the proposed percentage and why it is reasonable and appropriate
- any other information or documents relating to the proposed percentage.

Examples of the kind of documents and information that may support a corporation's application include:

- information about the divestiture of a group member, site, business unit or key activity, and any assessments that have already been undertaken in relation to the divested member, site, unit or activity
- information about the acquisition of a new group member, site, business unit or key activity
- information about operational requirements (including health and safety requirements) that prevent the assessment of a particular part of a group
- information about an assessment that has already been undertaken by the controlling corporation during the assessment cycle that is consistent with the Assessment Framework requirements.

The Secretary does not have to accept the proposed percentage and will consider the evidence provided to determine if the proposed percentage is reasonable.

The non-integral energy exception

NEW CHANGES TO THE REGULATIONS

Non-integral energy exception

The rules now allow for the exclusion of up to the lesser of 0.1 PJ of 'non-integral energy', or 2% of site energy use from sites over 0.5PJ that must be fully assessed. This exception is intended to cover energy use for the purposes of minor, ancillary processes, systems or activities - those that are not integral to the main business activity carried out at the site. The details of the exception are outlined below.

In certain circumstances, a greater amount of energy than 0.01 PJ may be omitted from the assessment of a site.

Where a controlling corporation reasonably believes that the estimated cost of assessing the amount of energy used at the site that is not used for core process is likely to be greater than the savings that would be derived from opportunities identified in an assessment, they may apply to the Department through their assessment plan to omit from the assessment the lowest of the following 3 options:

- the amount of non-integral energy used at the site
- 2% of the amount of energy used at the site
- 0.1 PJ of energy.

The rationale for any exclusions and information explaining how the corporation reached its decision must be included in the assessment plan relating to the relevant part of the controlling corporation's group.

Examples of non-integral energy usage include the operation of lights, information and communication technology or heating, ventilation and air conditioning systems in the on-site office of a mining or manufacturing site.

A controlling corporation that does not make use of this exception may still exclude up to 0.01 PJ of energy from a site assessment without application.

Representative assessments

Participants may seek approval to conduct an assessment of a sample of sites, technologies or processes that use less than 0.5 PJ where they can show that this would be reasonably representative of a larger population of sites, technologies or processes.

This type of assessment is termed a representative assessment. Examples include:

- assessing a sample of retail outlets that is representative of a larger population of outlets
- assessing a machine or technology that is used in an identical fashion at other sites or within a site.

The controlling corporation must indicate whether it intends to undertake a representative assessment. If the controlling corporation does intend to do so, it must indicate the entities or sites for which the representative assessment will be conducted. It must also provide information that shows that the manner of undertaking the representative assessment will not diminish the accuracy and comprehensiveness of the assessment.

For the purposes of the coverage rule, the energy of the entire part of the group covered by the representative assessment is counted, not just the sample. Further information regarding representative assessments is provided in Appendix 4 and in the EEO program's *Representative Assessment Guide*, available from www.energyefficiencyopportunities.gov.au.

In assessing an application for a representative assessment the Department will consider:

- the proposed method for undertaking the representative assessment, including the sites and equipment that will be used as the representative sample for the assessment and the population of which it would be representative
- the explanation of why the sample is indicative of the broader population
- the expected level of accuracy, and whether undertaking a representative assessment will diminish the rigor of the assessment
- how the results from the representative sample will be extrapolated to the wider population.

Planning how an assessment will be conducted

The conduct of assessments is the central component of the EEO program. Careful planning and preparation are fundamental to conducting assessments that are effective in identifying and evaluating significant cost effective opportunities to reduce energy use.

The first thing participants should do to plan an assessment is review the requirements for an effective assessment by reading and understanding the Assessment Framework (see Chapter 5 of these guidelines and the *Assessment Handbook* at www.energyefficiencyopportunities.gov.au). The Handbook provides a detailed guide on planning your assessments.

The next step is to:

- decide what kind of assessment is best – that is, what will be most effective and will deliver the results that matter to the organisation
- identify any other organisational objectives that the assessment might help to meet – for example, assessments of energy could also look for water and waste opportunities.

Participants should identify what they currently do or plan to do to identify, evaluate, implement and report on energy efficiency savings, and at what level in the corporation this occurs. They should then plan:

- which of these activities could be utilised to meet the requirements of the Assessment Framework
- which activities could be improved to meet corporate objectives
- what additional activities need to be undertaken and at what level in the corporation so that participants are able to meet the requirements of a rigorous and comprehensive assessment (in accordance with the Assessment Framework requirements) and identify significant cost effective opportunities for the organisation. For example, a participant may find it needs to improve data collection, metering and monitoring at some sites or processes if it is going to identify accurate energy use and savings opportunities.

By undertaking this planning process, participants should be able to design assessments that utilise and adapt existing business practices where appropriate and develop new approaches when needed, to meet the intent and requirements of each element of the Assessment Framework.

Participants must then provide a summary in their assessment plan that covers:

- how they intend to conduct their assessments and at what level (e.g. group member, key activity, division or site) within the corporation. If it is proposed to use representative assessments (see above in this section), these proposals must be identified and developed at this stage
- whether the controlling corporation believes it is likely to be able to measure energy use, for the purpose of meeting the requirements of the Assessment Framework, at a level of accuracy to within $\pm 5\%$. If the controlling corporation believes that it would be unreasonable to achieve a level of accuracy within $\pm 5\%$, it must state this belief, set out evidence explaining why it would be unreasonable, and propose an alternative level of accuracy
- how they intend to use existing energy assessment practices to support the assessment (e.g. OEH, ESAP or EPA VIC EREP)
- new activities that will need to be undertaken for existing practices to meet the requirements of the Assessment Framework.

This summary assists the Department to measure the effectiveness of the assessment planned and to develop appropriate materials and training to support participants. It also provides participants with an understanding of what will be required to conduct an effective assessment.

When assessments will be conducted

An assessment plan must include the proposed timeline for assessments, consistent with the following principles.

Participants must plan to complete, in the first two years of the cycle, one of the following two options:

- at least one assessment of energy efficiency opportunities for each member of the controlling corporation's group, business unit and/or key activity that will be assessed in the current cycle
- an assessment or assessments of opportunities covering at least 40% of the controlling corporation's baseline energy use.

NEW CHANGES TO THE REGULATIONS

Proposal for assessing opportunities for improving energy efficiency of controlling corporation's group

The inclusion of the option to assess opportunities for improving energy efficiency for 40% of the controlling corporation's energy use in the first two years of the assessment cycle (instead of one assessment per group member, business unit or key activity) has been included to give corporations greater flexibility. This change recognises that many corporations may wish to break down their operations into a large number of relevant parts for assessment purposes, and that to undertake assessments of all of them within the first 2 years would be an onerous requirement. It is therefore now open to a corporation to undertake full assessments of targeted parts of the group in order to meet the 40% threshold, and to assess the remainder of the group in the latter half of the assessment cycle. This option may also assist single facility corporate groups.

Extensions of time

Participants may apply to the Department for an extension of time for the completion of their assessments. An application must be made in the form of a variation to an assessment plan. In considering whether the grant of an extension of time is appropriate, the Secretary will have regard to:

- the reason for the extension
- the length of the extension
- the plans to complete the assessment or assessments within the extended time (which must be included in the application)
- the objectives of the EEO Act.

An extension of time may be warranted if there is a significant change to a site or business unit (for example if it is sold, expanded or downsized) during the assessment cycle.

In all cases, planned assessment timing should allow sufficient time to enable all participating entities to meet all the key elements of the Assessment Framework, including decision making, within the five year assessment cycle.

Starting assessments early

Some assessments conducted prior to the commencement of the first assessment cycle may satisfy the EEO assessment requirements.

Assessments that began up to two years before the beginning of the first assessment cycle may be included as EEO assessments if:

- the prior assessments meet the key requirements of the Assessment Framework
- the participant can undertake additional activities to ensure that the prior assessment meets the Assessment Framework requirements.

These assessments (including any additional activities) must be included in the 'assessment schedule' section of the assessment plan, and, as for any other EEO assessment, must be included in EEO reporting data. They may also be subject to verification and compliance by the Department (see Chapters 6 and 7 of these guidelines).

4.3.4 Reporting schedule

Participants must indicate in their assessment plan whether subsidiaries have been authorised to report separately (see 'Participation rules' in 2.4 of these guidelines).

A summary of the timing and content requirements of reports is provided below, and further detail is contained in Chapter 6 of these guidelines.

Reporting publicly

Participants must indicate in their assessment plan where reports will be published (see section 6.2 of these guidelines for information about publication requirements).

If participants intend to use decentralised reporting to the public (see 6.2.4 of these guidelines), they must indicate this and provide details of the other members of the group that are participating in decentralised reporting, and whether those other members prepare annual reports or other relevant reports.

If participants intend to report to the public through the manager of a joint venture, they must indicate this and provide details of the corporation that will prepare the report.

The Department provides a public reporting template and an assessment plan template on the EEO website at www.energyefficiencyopportunities.gov.au. The templates set out in detail what information is required and how it should be presented, but are not mandatory.

Proposed variations in the reporting of energy use data

There are options for varying the detail or accuracy of data provided in public reports:

a. Reporting in energy use bandwidths

Participants that believe that public reporting of actual energy use of assessed entities would jeopardise commercial interests may apply in the assessment plan for approval to report energy use in an energy bandwidth (see 6.2.5 of these guidelines). However, actual energy use must always be provided in the report to the Department.

b. Reporting at less than $\pm 5\%$ accuracy

Energy use data collected as part of the assessment must be accurate to within $\pm 5\%$. Participants who believe that they will be unable to reach $\pm 5\%$ accuracy for energy data, for example when using difficult to measure energy sources such as bagasse, must apply in their assessment plan to report less accurate energy data. Justification for the request must be provided.

4.4 SUBMISSION OF THE ASSESSMENT PLAN

The assessment plan must be submitted in hard copy or in an electronic format that is approved by the Department, to:

Manager
Energy Efficiency Opportunities
Energy and Environment Division
Department of Resources, Energy and Tourism
GPO Box 1564
CANBERRA ACT 2601

or by email to:

energyefficiencyopportunities@ret.gov.au.

4.5 APPROVAL OF AN ASSESSMENT PLAN

The Department will review each assessment plan to determine whether it substantially meets the legislative requirements as described above.

The Department will acknowledge receipt of participants' assessment plans. Each participant will also be notified when its assessment plan has been approved or if changes are necessary. Note that an approval of the assessment plan relates only to the assessment plan itself, and not to any subsequent action by the participant. Participants are still responsible for meeting the Assessment Framework and reporting requirements.

Where a member of a group other than the controlling corporation submits an assessment plan, conditional approval of only that part of the assessment plan may be given to enable early commencement of assessments. Final approval will not be given until all assessment plans of the corporate group are submitted, so that the aggregated assessment plan of the group as a whole may be considered for approval by the Department.

The Department aims to provide the result of its review of an assessment plan within two months of the assessment plan's receipt. In cases where group members submit separate assessment plans, the two month period will commence when all assessment plans from corporate group members have been received.

If a decision to either approve or refuse an assessment plan is not made within six months of receipt, participants are entitled to proceed on the basis that it has been approved.

Participants are encouraged to submit their assessment plan to the Department as early as possible to ensure timely approval. To this end the Department also encourages participants to submit early drafts to obtain guidance from their Industry Support Officer on their draft assessment plan.

4.5.1 Refusal to approve an assessment plan

If the Department is not satisfied that an assessment plan substantially meets the legislative requirements, then approval may be refused and the controlling corporation notified accordingly. The Department will then work with the participant to develop an assessment plan that is acceptable to both parties. Comments from participants will be invited and considered; however, under the legislation the Department ultimately has the power to impose an assessment plan if the corporation is unable to submit a satisfactory assessment plan.

4.6 VARIATIONS TO AN APPROVED ASSESSMENT PLAN

Participants may apply to vary their assessment plan if they wish to make significant changes. A proposed variation may be submitted at any time, including but not limited to when one or more of the following occurs:

- the controlling corporation disposes of or acquires business units or sites that use more than 0.5 PJ per year
- mergers or demergers result in a variation of the controlling corporation group's energy of more than 0.5 PJ per year
- there is an unforeseen significant change to the timing, location or accuracy of an assessment, or to reporting
- the corporation is seeking to add or remove energy use responsibility through the RTC process or an energy use transfer process (see section 3.3 for information requirements)
- due to exceptional circumstances, the corporation will not be able to assess the percentage of the baseline energy that was approved in the assessment plan, and needs to seek approval for a different percentage (see 4.3.3)
- the corporation needs to seek an extension of time for an assessment.

The submission and approval processes for variations are the same as for the original assessment plan.

Proposed variations are considered on the same basis as original assessment plans, so that the proposed varied assessment plan must be satisfactory when considered as a whole. Variation applications may be made at any time. The Department aims to provide a decision in writing on variation approval within two months of the application.

4.7 CONFIDENTIALITY OF INFORMATION

Information provided to the Department is used to administer, evaluate and improve the program and energy efficiency policy more broadly. Individual business information provided to the Department in the assessment plan is not released to the public. Aggregated sectoral data and information may be published to demonstrate the achievements of industry and the program. The Department publicly releases aggregated information using Australian Bureau of Statistics methodology to maintain confidentiality.

The confidentiality of information provided to the Department, including information in reports to the Department, is protected by the relevant provisions of the *Energy Efficiency Opportunities Act 2006*, the *Public Service Act 1999*, the Public Service Regulations, the *Privacy Act 1988* and the *Crimes Act 1914*, as well as common law.

More information about protecting confidential information is provided in Chapter 9 of these guidelines.

Chapter 5

CONDUCTING ASSESSMENTS

In this section:

- Overview of assessments
- When an assessment is complete
- The assessment framework

5.1 OVERVIEW

The central component of the EEO program is the conduct of rigorous and comprehensive assessments of energy use across a controlling corporation and its group members, to identify cost effective energy savings and energy efficiency opportunities with up to a four year payback. To ensure that assessments are rigorous and comprehensive, the corporation and responsible entities are legislatively required to meet the key requirements of the six elements of the Assessment Framework. These elements are prescribed in the EEO Regulations and set out below at 5.4. Corporations are also required to keep records demonstrating compliance with the legislative requirements (see regulation 9.1 of the EEO Regulations). These records are important and are a key reference point during verification.

The Assessment Framework was built on the Australian/New Zealand Energy Audit Standard (3598:2000), and draws on experience from businesses and extensive industry consultation.

The Assessment Framework is made up of six key elements:

- **leadership** support for the assessment and the improvement of energy use
- the involvement of a range of skilled and experienced **people**, and people with a direct and indirect influence on energy use during the assessment process
- **information and data** that is appropriately, comprehensively and accurately measured and analysed
- a process to **identify, investigate and evaluate energy efficiency opportunities** with paybacks of four years or less
- **business decision making** and planning for opportunities that are to be implemented or investigated further
- **communicating** the outcomes of the assessment and the investment decisions made regarding the opportunities identified and proposed business response, to senior management, the board and personnel involved.

Each key element contains:

- intent – an explanation of the key element's aim
- key requirements – the specific actions and outputs controlling corporations must meet in order to demonstrate that they have satisfied the intent of each key element
- evidence – corporations must keep evidence that they have met the key requirements for verification purposes. The Assessment Framework identifies the types of evidence that should be documented.

The Department has also added guidance to the Assessment Framework in this document to provide further clarity on some key requirements.

Before conducting assessments, it is essential that participants are clear about which key requirements will be met by the controlling corporation and which will be met by other parts of the business.

The *Assessment Handbook*, which was developed to help participants understand and meet the intent and key requirements of the Assessment Framework, is available at www.energyefficiencyopportunities.gov.au. The handbook describes how effective assessments can be conducted. It also includes proven approaches to the analysis and identification of cost effective energy efficiency opportunities.

The Assessment Framework is made up of six key elements that are considered to be fundamental to conducting effective assessments.



5.2 WHEN AN ASSESSMENT IS COMPLETE

In most cases the overall assessment of energy efficiency opportunities for a corporate group is likely to be undertaken as a series of smaller assessments, such as an assessment of an individual group member or key activity. These assessments are referred to as 'individual assessments' in this section.

An individual assessment is complete when the key requirements of all six key elements of the Assessment Framework have been met for that assessment (for example, for a site, business unit, key activity or group member assessment). The corporate group's overall assessment can be considered complete when at least 80% (in the first assessment cycle) or 90% (in subsequent assessment cycles) of the group's baseline energy use has been assessed (or if another percentage has been approved in the assessment plan, that percentage).

5.3 THE ASSESSMENT FRAMEWORK

The six key elements and the key requirements comprising the Assessment Framework are presented on the following pages.

All *key requirements* in the Assessment Framework are mandatory. The legislation requires that *evidence/supporting documentation* must be retained for 7 years for verification of compliance, and examples indicating the type of evidence that should be retained are provided.

Key element 1

Leadership

INTENT

- » Visible leadership and commitment from senior management provides clear direction and purpose to the assessment by:
 - » setting and communicating energy performance objectives
 - » ensuring that assessment objectives are aligned with business priorities.
- » Senior management support, motivate and value the efforts of staff and other stakeholders involved in the identification and implementation of energy efficiency opportunities.

No.	Key requirements	Evidence/ supporting documentation
1.1	<p>Senior management and operational management establish and communicate energy assessment and energy performance objectives to all personnel who are responsible for, or have an influence on, energy use and the energy assessment.</p>	<p>Evidence showing the existence and communication of energy assessment and energy performance objectives, e.g.:</p> <ul style="list-style-type: none"> • policy documents containing energy objectives approved by senior management (e.g. specific energy policies, environment policies) • strategic plans signed off by senior management that contain either energy performance or energy assessment objectives • assessment objectives signed off by senior or operational management • meeting minutes, emails, memos and presentations showing communication of objectives, including details of the recipients and senders.

Guidance

To ensure that energy assessment and energy performance objectives can be monitored and used to track achievement, they should be measurable goals, rather than aspirational goals and should be aligned with business goals. These objectives should be communicated to all relevant personnel, including contractors.

No.	Key requirements	Evidence/ supporting documentation
1.2	Resources (people, time and money) are made available to meet energy assessment and energy performance objectives.	Evidence that identifies the appropriate personnel, e.g.: <ul style="list-style-type: none">• an organisational chart (clearly identifying senior management and personnel responsible for energy use) Evidence showing allocation of people, time and money, e.g.: <ul style="list-style-type: none">• an internal plan with a budget detailing people, time and costs; and• budgets showing allocations and expenditures.

Key element 2

People

INTENT

- » Skilled and knowledgeable people, and people with direct and indirect influence on energy use, are involved in the assessment to effectively collect and analyse energy and process data, identify and evaluate energy efficiency opportunities, provide fresh perspectives and make the business case for identified energy efficiency opportunities.
- » Responsibilities and accountabilities are suitably allocated and team diversity is encouraged.

No.	Key requirements	Evidence/ supporting documentation
2.1	Personnel with appropriate skills and expertise are involved in the collection and analysis of energy and process data.	Evidence showing the involvement of appropriately skilled personnel in the analysis of data, e.g. a schedule of participant roles, skills and experience.
2.2	<p>The energy efficiency opportunity identification, evaluation and business case development process involves a broad cross-section of people, including:</p> <ul style="list-style-type: none"> a. people from various levels of the site or business unit who have a direct or indirect influence on energy use (e.g. site or fleet managers, operators, sub-contractors, tenants and people responsible for equipment procurement, maintenance, finance, marketing, production); and b. people from within the corporation (internal or external to the site) who can integrate energy productivity into business productivity objectives and assist with making a business case for identified opportunities (e.g. chief financial officer, business case analysts, business or process improvement managers and people responsible for procurement, corporate and operations management, public relations, strategic planning, operational excellence); and c. internal and external people with energy, technology and process expertise (e.g. suppliers of current and alternative equipment and technologies, systems modelling experts, engineers); and d. people external to the site who can provide alternative perspectives, question assumptions and practices, and encourage innovation (e.g. operators from other sites, corporate expert groups, internal or external engineering experts, academics, PhD students). 	<p>Evidence showing the involvement of people in the opportunity identification and evaluation process, e.g.:</p> <ul style="list-style-type: none"> • meeting minutes • emails • memos • presentations • an organisational map or list of those involved.

No.	Key requirements	Evidence/ supporting documentation
2.3	Clear roles, responsibilities and accountabilities are attributed to people involved in the assessment and the business response.	Evidence showing the allocation of roles and responsibilities for people involved in the assessment and the business response, e.g.: <ul style="list-style-type: none">• planning documents with roles and responsibilities outlined• a copy of action plans, project plans and budget proposals.

Guidance

KE 2.3 should include identifying who, at which level, will be accountable and responsible for internal sign-off that an assessment is completed according to requirements.

Key element 3

Information, data and analysis

INTENT

- » Sufficient data, in suitable forms, is used to quantify and understand energy use, identify and quantify energy saving opportunities, and track performance and outcomes (where actions are implemented).
- » Energy data is analysed from different perspectives to understand relationships between activity and consumption, and identify energy efficiency opportunities.

No.	Key requirements	Evidence/ supporting documentation
3.1	<p>Business contextual information that influences energy use and returns on energy efficiency investments is analysed for its impact on current and future energy use during the assessment, including:</p> <ul style="list-style-type: none"> a. the key business priorities and plans (e.g. relocation, expansion, site and equipment replacement, maintenance and shutdown schedules affecting investment timing and returns) b. the key site processes and activities that use energy c. other external factors affecting investment returns, if applicable (e.g. rising energy prices, interest rates). 	<p>Evidence showing that key background information has been collected and analysed for its impact on energy use, e.g.:</p> <ul style="list-style-type: none"> • a background paper • a series of reports or presentations summarising the analysis for consideration during the assessment.

Guidance

In looking at key business context, the company can determine where to allocate priority to areas of energy assessment by considering where the most energy is currently used, or expected to be used. It can also mean allocating a lower priority to areas that may be subject to shut down or replacement, or undertaking an assessment at the design stage for a new site, process or activity.

No.	Key requirements	Evidence/ supporting documentation
3.2	<p>Data collection processes are identified, documented and implemented to provide:</p> <ul style="list-style-type: none"> a. energy consumption and cost data for each energy source. Data should be entered at the frequency that bills and other records are received (typically monthly) for a total of 24 months. The accuracy of data must be within $\pm 5\%$. A less accurate level may be used only if it was approved as part of the assessment schedule b. energy consumption data for each of the key site processes, systems and activities c. production (or output or service) data for a total of 24 months. Data should be entered at the same frequency and timing as the energy consumption and cost data d. information about the impact of the operating profile of the site or fleet on energy use e. data on other process parameters that impact on energy use (e.g. ambient temperature, geology (mining) and production inputs f. information about the energy and material flows through the site or fleet and its processes, systems and equipment (e.g. using an energy-mass balance or similar technique appropriate to the type of activity g. information about measures being undertaken to ensure the accuracy and completeness of the energy data h. information about measures being undertaken to identify and resolve material data gaps and anomalies i information about assumptions used in the data collection process and their associated uncertainty. 	<p>A documented data collection process, including assumptions and uncertainties.</p> <p>Evidence of the implementation of the data collection process, e.g.:</p> <ul style="list-style-type: none"> • a data inventory that includes production, energy cost and energy consumption data based on billing data • an energy-mass balance or equivalent. • operating and production logs tracked against energy use. <p>Evidence showing the measures undertaken to improve the accuracy and completeness of data, and to reduce data gaps and uncertainties, e.g.:</p> <ul style="list-style-type: none"> • copies of action plans • project plans • budgets.

Guidance

Data collection processes should prioritise the major energy using systems and processes, and lead to a more detailed focus on systems and processes which are likely to yield opportunities. The data is collected on a range of levels, from a high level aggregation of the total energy use for each energy source, and the associated costs, to detailed analysis of how much energy is used by each process, system and activity, and extending to energy and material flows.

Information on any methodology or assumptions made during the collection of this data are to be recorded to ensure that any variations on accuracy of data, as well as any variations or data gaps can be clearly explained and supported. Keeping records also allows opportunities to be reviewed more easily as key parameters such as input prices and energy use change.

In 3.2(c), where a plant or service contract has not been in operation for 24 months, data should be collected for the longest period possible.

Data required to account for and analyse energy and material flows could include a combination of measurements and data from engineering tables. Data required may include, for example:

- For commercial buildings, energy inflows and outflows both purchased and ambient, where significant, including energy conversions and heat transfers such as thermal mass, solar gain and heat losses from boilers and pipes. Mass flows and related data such as air flows, humidities and temperatures affecting the heating, ventilation and air conditioning systems, hot water and steam flows, temperatures and pressures (where applicable), mass flows through pumps and condensers;
- For transport operations, data describing mass moved, such as unloaded vehicle mass, vehicle loading (by mass or volume as applicable), and other data and duty cycle characteristics that affect energy use when combined with mass (eg. distance travelled, velocities, gradients, braking and cornering frequency, drag coefficients). Some of this data may not be measured, but vehicle trials (such as in-service trials) can be used to investigate this data;
- In manufacturing and process industries, data relating to energy conversions, wastage and losses for sites, processes and systems, and items of equipment such as pipes and ducts (eg. temperatures, specific heats and conductivities of materials, surface areas, dimensions or distances); and
- Where applicable, data on mass flows (eg. fluid flows), mass movements and the mass and composition of materials where this affects or influences energy use (eg. flow rates, densities, temperature profiles, changes in elevation, velocity, viscosities); and

Data on the specific services and products that major energy using processes, systems and equipment deliver (eg. steam flow rates for boilers, illumination levels for lighting, freight mass, volume or distance travelled for freight). See also definitions of *energy and mass flow* and *energy-mass balance*.

No.	Key requirements	Evidence/ supporting documentation
3.3	<p>An energy analysis process to assist in the identification, quantification and evaluation of energy efficiency opportunities, using data from key requirement 3.2, is undertaken and documented, including:</p> <ul style="list-style-type: none"> a. energy use performance indicators, established at the appropriate level, with consideration of variations over time and major factors that affect energy performance b. application of a range of analysis methods to explore relationships between energy use and variables (e.g. output or climatic factors) that may influence energy use, using data collected at appropriate times (e.g. review of graphs and charts, regression analysis) c. a comparison of performance to actual and theoretical energy use benchmarks, at the relevant level (process, technology, activity or site) to identify and quantify opportunities <p><i>Note: theoretical benchmarking may include engineering calculations or simulations based on thermodynamic and heat transfer analysis, fluid mechanics or combustion analysis.</i></p> <ul style="list-style-type: none"> d. if appropriate, other detailed analysis, comparative techniques or experimental approaches (e.g. engineering, vehicle trials, pilot studies, logistical approaches, or thermographic imaging) is used to fully understand energy consumption e. analysis of the energy and material flows through the site or fleet, and the processes, systems and equipment at the site or of the fleet, to systematically quantify if energy is being used, wasted or lost, compared with the amount of energy required by the specific products and services that the energy use delivers (e.g. energy-mass balance or similar). 	<p>A documented energy analysis process.</p> <p>Evidence of the implementation of an energy analysis process, e.g.:</p> <ul style="list-style-type: none"> • a background paper • a series of reports or presentations summarising the analysis for consideration during the assessment.

Guidance

EEO requires that companies analyse the energy and material flows through their site, and/or fleets, processes, systems and equipment. For many processes, the best way of looking at energy and material flows is through an energy-mass balance (EMB).

An energy balance is a mathematical statement of the conservation of energy, and a systematic accounting for energy flows and transformations in a system, including energy flows embodied in materials. Mass flows carry enthalpy, kinetic and potential energies. A detailed EMB identifies the flow of materials and energy through a process, showing where energy is being used, wasted and lost. Rigorous EMBs can be used to identify opportunities to save energy by highlighting points in the system where energy use or materials usage are greater than expected or required. Large imbalances in energy or material flows can indicate data deficiencies or anomalies in system performance, such as leaks. It is recommended that an EMB cover 80% of the energy use at a site to enable coverage of all key energy using processes / activities.

See also definitions of *energy and mass flow* and *energy-mass balance*.

Key element 4

Opportunity identification and evaluation

INTENT

- » An effective process is undertaken to identify all potential cost-effective energy efficiency opportunities. The process is informed by accurate data and rigorous analysis undertaken in Key Element 3 and involves the relevant people identified in Key Element 2. This process is broad, open-minded and encourages innovation.
- » Ideas are filtered to identify a documented list of potential opportunities that can then be analysed to a level sufficient for informed evaluation with a payback period of 4 years or less.
- » A whole of business evaluation is undertaken to enable decision-makers to make informed business decisions about energy efficiency opportunities.

No.	Key requirements	Evidence/ supporting documentation
4.1	<p>A process to identify ideas is implemented and documented.</p> <p>The process should involve a review of the contextual information and data that is collected and analysed as part of Key Element 3 and include the appropriate people as stipulated in Key Element 2.</p> <p>The implemented process should result in a comprehensive list of ideas.</p>	<p>Evidence showing the implementation of a process to identify opportunities, e.g.:</p> <ul style="list-style-type: none"> • a comprehensive list of ideas to improve energy efficiency • a summary linking the process used to the personnel involved, the time period, and the level of the business at which it was carried out • meeting agendas or minutes involving the identification of opportunities, and a list of the people who attended • correspondence related to opportunity identification (e.g. emails) • external reports used to assist in the identification of opportunities (e.g. energy audit reports) • working papers or summaries of assumptions made implementing the process

No.	Key requirements	Evidence/ supporting documentation
4.2	<p>Ideas are examined to determine if they are feasible and have a potential payback of less than 4 years</p> <p>The examination process should result in the feasible ideas with a potential 4 year payback being categorised as either ‘for implementation’ or ‘for further investigation’. These are potential opportunities.</p> <p>Reasons why ideas will not be further investigated are documented.</p>	<p>Evidence showing the outcomes of a process, including:</p> <ul style="list-style-type: none"> a list of ideas for implementation or further investigation, including business criteria used to determine feasibility documentation of reasons for not further investigating ideas (if relevant).
<p>Guidance</p> <p>Ideas that clearly have immediate business benefits can be categorised ‘for implementation’ at this stage as detailed investigation to reach an accuracy of $\pm 30\%$ is not required to justify their case. These projects should be monitored post-implementation. Ideas that will not be further investigated should be categorised as ‘not to be implemented’.</p>		
4.3	<p>Detailed investigation is undertaken (including sub-metering or real time metering) to quantify the energy use, and energy and financial costs and savings of potential opportunities to an accuracy of within $\pm 30\%$.</p> <p>If $\pm 30\%$ cannot be achieved, providing an indication in 5.3 of how the accuracy level will be achieved, including further investigation and sub-metering.</p> <p>A whole-of-business evaluation (informed by the detailed investigation) is undertaken to quantify costs and benefits of each potential opportunity in order to calculate a payback period, to identify a list of opportunities with a payback of 4 years or less.</p> <p><i>Note: Where an opportunity will require approval for significant capital expenditure, the costs and benefits should be evaluated to within $\pm 10\%$, or to the level of accuracy required by the corporation’s existing capital expenditure process.</i></p>	<p>List of opportunities with energy costs and savings, financial costs and benefits documented, associated levels of accuracy and calculations for payback periods.</p> <p>Evidence of detailed investigation, showing the involvement of necessary people and the process used for determining accuracy, e.g.:</p> <ul style="list-style-type: none"> correspondence regarding investigations documentation including sub-metered data, quotations for equipment, calculations undertaken, assumptions, and advice provided by experts. <p>Evidence of further planned action to improve accuracy of potential opportunities in action plans, project plans and budget proposals (if relevant).</p> <p>Evidence of the use of appropriate evaluation methodologies for core business investment decision-making, e.g.:</p> <ul style="list-style-type: none"> documentation showing the calculations undertaken procedures describing standard evaluation methodologies.

Guidance

A detailed evaluation of energy savings and financial costs and financial benefits must be undertaken to $\pm 30\%$ level of accuracy (regulation 1.6). This may involve further technical investigation of the ideas, as well as metering and monitoring energy use of processes or activities to determine the potential energy savings and a corresponding estimate of financial costs and benefits.

Opportunities that have immediate business benefits (low costs and immediate paybacks), or for which the cost of achieving accuracy is greater than the benefit, may be implemented or scheduled for implementation without being evaluated to within $\pm 30\%$. If practicable, data on these opportunities should be monitored following implementation, to evaluate and report on savings. If a series of small opportunities has been identified, they can be grouped together to facilitate post-implementation performance monitoring and reporting.

Detailed investigation to reach an accuracy of $\pm 30\%$ is also not required for those ideas for which it can be shown that a payback period of 4 years or less is not possible, or those that prove to be infeasible for technical, safety or other genuine reasons. These should be documented and categorised as 'not to be implemented'.

The detailed investigation is used to inform a whole-of-business evaluation, to inform a full cost-benefit analysis to quantify benefits to business beyond the value of direct energy savings. These could include production efficiencies, reduced maintenance schedules, improvements to operational health and safety, staff comfort and engagement, improved reputational benefits, or changes in other factors that the company views as a business priority. This is used to calculate the payback period:

Payback period

$$\text{Payback period (in yrs)} = \frac{\text{Initial investment}}{\text{Net annual savings for the first four years after the initial investment}}$$

Payback includes both energy and non-energy costs and benefits. No discounting of future costs and benefits is done when calculating a simple payback period.

Note: Previously the detailed investigation and whole-of-business evaluation formed two separate key requirements.

Metering

The guiding principle for determining the level of data required is that the data should enable meaningful analysis of energy use of major systems and items of equipment, calculation of energy efficiency indicators by activity when combined with other relevant data (e.g. production rates, transport task data), and accurate identification, evaluation and tracking of energy efficiency opportunities over time. Participants should expect to spend up to 1.5% of the annual cost of the energy being monitored on metering and monitoring. For example, if a piece of equipment uses \$100,000 of energy each year, up to \$1,500 per annum should be allocated for gathering detailed data (including capital cost for metering and ongoing costs such as calibration).

Projecting energy savings

Estimation of potential energy savings can be done using different methods. For example:

- metered and documented savings from changes previously made at a similar site;
- engineering calculations or modelling of the savings may be carried out based on metered data;
- a trial or pilot may be implemented, metered and measured; or
- information may be provided by equipment suppliers and designers (this information should be validated).

No.	Key requirements	Evidence/ supporting documentation
4.4	<p>For all opportunities with a payback period of 4 years or less, recommendations, based on appropriate business criteria, are made to the decision-maker/s responsible for resource allocation and investment.</p> <p>Recommendations should include whether the opportunities should undergo further investigation, be implemented, or not be implemented.</p> <p>Reasons for not pursuing opportunities are documented.</p>	<p>A list of opportunities and associated recommendations, including criteria used to make recommendations.</p>

Guidance

Recommendations should include the business criteria and assumptions used to form the recommendation and categorise what is required for each opportunity. Recommendations should be made to the corporate or operational manager/s that have the level of delegation required to make a decision for the level of investment or resource allocation required to action the opportunity.

Any opportunities not for implementation should be comprehensively documented. Comprehensive documentation of the assumptions and analysis used to get to this decision will allow these opportunities to be reviewed and re-evaluated in future, when technical, environmental, business or financial changes may positively impact the outcome of the evaluation.

Key element 5

Decision making

INTENT

- » Management responsible for resource allocation for opportunities identified by the assessments make informed decisions on the assessment based on investment quality information.
- » Corporations develop clear lines of accountability, appropriate resources and timeframes for all energy efficiency opportunities that a corporation decides to implement or investigate further.
- » Mechanisms for reviewing, monitoring and reporting on outcomes are established to learn from experience and enable public reporting.

No.	Key requirements	Evidence/ supporting documentation
5.1	<p>Management responsible for decisions about investment and resource allocation is presented with key background information and the relevant outcomes of the assessment. Information presented to management includes:</p> <ol style="list-style-type: none"> a. total energy use and energy cost relative to variable operating costs and profit for the manager's area of responsibility b. energy savings identified for each opportunity c. the costs and benefits based on a whole of business evaluation, including a payback period for each opportunity d. the business recommendation for each opportunity e. recommendations to improve data and evaluation accuracy (if necessary). 	<p>Evidence showing presentation of required information to management, e.g.</p> <ul style="list-style-type: none"> • reports • presentations to management.
5.2	<p>Management responsible for decisions about investment and resource allocation decide the business response, including the opportunities that are to be implemented, to be further investigated (including improvements in data and evaluation accuracy), or not to be implemented.</p>	<p>Evidence showing decisions by management, e.g. reports to management which also record the decisions.</p>

Guidance

The decision maker should sign off on the completion of the assessment and ensure that all assessments are to be completed within the 5 year assessment cycle.

No.	Key requirements	Evidence/ supporting documentation
5.3	The appropriate decision-maker allocates timelines, resources and accountabilities for the business response to the assessment, covering all energy efficiency opportunities that the corporation decides to implement or investigate further (including improvements in data and evaluation accuracy). This includes processes for reviewing and monitoring to learn from experience and support public reporting.	Evidence of allocation of timelines, resources and accountabilities, e.g.: <ul style="list-style-type: none">• A copy of action plans• strategies• project plans• budget proposals• monitoring and feedback mechanisms.

Key element 6

Communicating outcomes

INTENT

- » Senior management and the members of the board are aware of the outcomes of the assessment in a strategic business context (including the corporation's risk management, corporate social responsibility and major investment decisions).
- » The board reviews and notes the public report in the context of relevant business information.
- » Recognition and awareness within the corporation of the benefits of improved energy efficiency and the outcomes achieved by the assessment, including recognition and awareness of people who contributed to its success.

No.	Key requirements	Evidence/ supporting documentation
6.1	<p>For each relevant business unit or key activity, the board and the senior officer responsible for signing the public report are presented with the public report and:</p> <ul style="list-style-type: none"> a. total energy use and energy cost, relative to variable operating costs and profit, and other relevant business information (e.g. projected future energy use) b. total energy savings identified, and the business's response relative to the energy performance objectives set out in Key Element 1 c. total whole of business costs and benefits of the opportunities identified, and the business's response d. recommendations for major investments e. all information that will be included in the public report when it is released. 	<p>Evidence of presentation to the board.</p>
6.2	<p>The board reviews and notes the information to be included in the public report.</p>	<p>Evidence of board review and noting, e.g.:</p> <ul style="list-style-type: none"> • meeting minutes • board agendas and reports • a statement by the signer of the public report.

No.	Key requirements	Evidence/ supporting documentation
6.3	A clear message about the outcomes of the assessments, in the context of the objectives set by the organisation's leadership, is to be communicated by senior management and operational management to relevant staff in the organisation.	<p>Evidence of the communication of the outcomes of assessments and progress against objectives, including who has provided the information and to whom the information has been provided, e.g.:</p> <ul style="list-style-type: none">• correspondence to relevant staff of documents containing the relevant information (e.g. emails about the sustainability report or other reports that may contain the information)• presentations of outcomes, including meeting invitees, attendees and presenters.

Chapter 6

REPORTING ON ASSESSMENTS AND BUSINESS RESPONSE

In this section:

- Overview of reporting requirements
- Public reports
- Reporting to the Department

6.1 OVERVIEW

A significant feature of the EEO program is the requirement for participants to report publicly on the outcomes of assessments, including their business responses to assessments.

The aims of public reporting are to:

- encourage senior managers and boards of large energy-using corporations to give careful consideration to energy use and energy efficiency opportunities
- provide meaningful information to the market about energy efficiency opportunities identified by participants, and the participants' business responses
- provide an avenue for participants to demonstrate the responsible and efficient use of energy.

For these reasons, reporting needs to occur where it will be readily accessible and easily available to the market and community (e.g. in annual financial, sustainability or environment reports, or on the corporate web site), and be published in a timely fashion so data is relevant and meaningful. The Department provides a public reporting template on the EEO website – www.energyefficiencyopportunities.gov.au – that sets out in detail what information is required. It is not compulsory to use the template and, as long as corporations report all the information required by the regulations, they can report in a format of their choice. The Department encourages corporations to use the template to assist in drafting the report and obtaining feedback from the Department, and to then integrate the contents in their annual, sustainability or other suitable report.

More detail about the requirements for public reporting is set out below at 6.2.

To ensure compliance with program requirements and measure the aggregate effectiveness of industry action under the program, participants are also required to report to the Department. This is known as the government report. This report provides more information on the outcomes of the assessments than is required for public reports. The Department also provides a government reporting template, available from the EEO website, which sets out in detail what information is required.

The Australian Government is committed to minimising the duplication of reporting requirements placed on industry. The Department has worked with the Department of Climate Change and Energy Efficiency to develop the EEO reporting module as part

of the Online System for Comprehensive Activity Reporting (OSCAR). This module streamlines reporting of common data items with the NGER System and provides an alternative to hard copy government reporting.

Details of the requirements for reporting to the Department and further information on the EEO module are set out below at 6.3.

6.2 REPORTING PUBLICLY

6.2.1 Public reporting overview

Participants must report publicly four times per assessment cycle. The first public report for each cycle must be publicly available no later than 31 December, 2.5 years into the cycle. Participants must then publish 3 updated versions of the report by 31 December in subsequent years (i.e. every 12 months here after).

Each report (and updated report) covers an identified 'reporting period'. The following sections set out the reporting periods for the first and subsequent assessment cycles, and the information that must be included in the reports.

6.2.2 Public reporting in the first assessment cycle

The first Public report in the first assessment cycle is based on the first two years of that cycle. This allows for the initial delay where an assessment plan is being prepared and assessments are yet to be completed. After the first public report, corporations then subsequently report publicly every 12 months on 31 December.

The first public reporting period

As a general rule, a participant's first reporting period is the first 2 years of its first assessment cycle.

This general rule can be varied in certain cases to include early assessments. If the participant's assessment plan includes assessments that commenced prior to the commencement of the assessment cycle, the first reporting period begins when the earliest of those assessments commenced, up to 2 years prior to the assessment cycle. The period will still end 2 years into the cycle.

When to publish the first public report

The first public report must be made available by 31 December — 30 months (2.5 years) after the commencement of the first assessment cycle. The time period is 1 year after the assessment plan due date (the assessment plan is due 18 months into the assessment cycle).

Subsequent reports in the first cycle

After the first reporting period, there are three subsequent reporting periods for the first cycle, and the reports must be published by 31 December each year. Paragraph 10 of schedule 4 of the regulations requires corporations to report cumulative information each year. This means the second public report will effectively cover the first three years of the assessment cycle, the third report the first four years and the fourth report the full five year cycle.

6.2.3 Public reporting in second and subsequent cycles

The first public report in the second and subsequent cycles is due by 31 December, 18 months after the start of that assessment cycle. This differs from the first cycle and means that participants make five public reports instead of four. It provides an opportunity for corporations to report on the completion of any outstanding evaluations of opportunities identified in the previous cycle.

6.2.4 Content of public reports

This section sets out the information that must be included in each report. Note that for each assessment cycle, reports should provide cumulative information relating to all activities during the cycle. That is, each new report within a cycle should replace any previous report(s) for that cycle, and should provide updated information about all assessment cycle activities to date. Further information is provided in 6.2.4.2 below.

Mandatory content

Each public report must state the reporting period it relates to, and include:

1. A description of how the corporation has carried out the actions in its approved assessment plan. This would typically include:
 - a summary of each assessment of energy efficiency opportunities of the corporation's group that has been undertaken during the cycle
 - how the evaluation of assessments from the previous reporting period have been progressed
 - what actions have been taken to fulfil the Key Elements of the Assessment Framework as detailed in Schedule 7 of the Regulations.
2. A statement of the energy use in the last 12 months for each entity or part of an entity covered by the assessments to which the report relates. Additionally that energy use must be expressed as a percentage of the total energy use of the corporate group.

This information gives the public an idea of the extent of assessments undertaken by the corporate group to date, expressed against current energy use. It also puts the identified savings into perspective against current energy use.
3. If the energy use data outlined in items 1 and 2 is not accurate to within $\pm 5\%$, a statement setting out the accuracy achieved and the reasons why accuracy to within $\pm 5\%$ was not achieved.

4. A statement of the amounts of energy savings (expressed in GJ) for each member, business unit or key activity that have been identified. The savings should be broken down by:
 - payback period using the categories of:
 - 0<2 years (mandatory)
 - 2–4 years (mandatory)
 - 4+ years (voluntary)
 - business response using the categories of:
 - identified
 - under investigation
 - to be implemented
 - implementation commenced
 - implemented
 - not to be implemented.
5. The number of opportunities for each category mentioned in item 4.
6. The level of accuracy achieved with respect to the amounts of energy savings identified in item 4, using the categories of:
 - $\leq \pm 30\%$
 - $> \pm 30\%$
7. Information about significant opportunities:
 - three examples of significant opportunities for improving energy efficiency that have been mentioned in the report (see item 3 above) for the part of the controlling corporation's group to which the report relates, or
 - one example of a significant opportunity for improving energy efficiency identified in the report for each group member, business unit or key activity to which the report relates (at least three are required)

A brief description of each opportunity in the example must be given.

For each example, the description may include any of the following:

- a description of the type of equipment involved, using commonly understood terminology
- energy use before the opportunity was implemented, expressed as total energy use, an indicator, or both
- energy saved by implementing the opportunity; and the effect of the saving on the indicators used to assess the opportunity, e.g. GJ/tonne produced, litres/km travelled etc
- the cost of implementing the opportunity and the amount of money saved
- the payback period (if any) for the opportunity, the net present value, or both

- the reduction in the volume of greenhouse gases achieved
- any opinions or comments expressed by the relevant business or industry about the implementation of the opportunity.

If fewer than three significant opportunities are identified, the report must include a description of all identified significant opportunities. If no significant opportunities were identified in the assessment, the report must include a statement to this effect.

8. A declaration by the chair of the board, CEO, Managing Director, or equivalent officer (for example the Vice Chancellor of a University) that the information included in the report is, to the best of his or her knowledge, correct and in accordance with the requirements of the EEO Act and EEO Regulations. This attestation can be included within the content of an EEO report or can be satisfied by the general attestation necessary for an entire annual or sustainability report.
9. Cumulative information from previous reports and the changes caused by any significant intervening events (as outlined in section 6.2.3.2 below).

NEW CHANGES TO THE REGULATIONS

Schedule 4, item 7

A change has been made to the regulations relating to reporting on significant opportunities, with the aim of increasing the meaningfulness of information included in the public reports. A report that covers only one group member, business unit or key activity must give three examples of significant opportunities identified in the assessment (unless fewer than 3 have been identified). However, a report that covers more than one group, business unit or key activity may provide one example of a significant opportunity identified in the assessment for each group member, business activity or key requirement to which the report relates, as long as the minimum of 3 examples in total is provided.

Description of status categories for reporting about opportunities

Required categories

Identified – all opportunities up to a four year payback identified during the course of the assessment. The value of opportunities identified by conducting representative assessments is the estimate of the opportunities as if they were implemented across the entire population represented by the sample.

Under investigation – this includes projects where a payback has been calculated (within 30% accuracy) and a decision has been made to investigate the opportunities further, but no commitment has been made to implement. Also includes projects for which a payback period cannot be calculated with at least 30% accuracy but that are still being pursued (by conducting further evaluation or research). For this latter group of projects, only the number of projects is required; estimates of the associated energy savings may be voluntarily included.

To be implemented – a decision has been made to implement opportunities, but implementation has not begun at the time of the report.

Implementation commenced – a decision has been made to implement, and opportunities are being implemented at the time of the report.

Implemented – opportunities implemented since the commencement of the Energy Efficiency Opportunities assessment cycle (e.g since 1 July 2011 for 2010-11 trigger year corporations).

Not to be implemented – a decision has been made not to implement these opportunities at the time of this report. A decision not to implement a project may be revisited by participants with changes reflected in subsequent reports.

Voluntary category

Previously identified not yet implemented (pre-assessment cycle) – identified prior to the beginning of the assessment cycle and intended to be implemented (i.e. the project has all the necessary approvals normally used in the corporation).

Cumulative reporting: changes to data over time

The Regulations require that the information contained in reports is cumulative throughout the cycle. Each report should capture and replace the previous report by containing an updated version of the same information, plus any new information from activities undertaken since the last report.

For example, changes to the data published in previous public reports caused by any of the following events, should be mentioned:

- additional opportunities identified due to further evaluation of previous assessment information
- progress in the business response to assessments
- refinements to original energy savings estimates due to improved accuracy, further investigation, implementation or metering
- changes to original energy savings estimates due to significant changes in production or the product mix
- Significant disposals and acquisitions of business units and/or sites
- Significant mergers and de-mergers
- Revised payback periods as a result of significant changes in energy costs
- Significant variations in energy use and energy savings resulting from these types of changes.

Additional voluntary information

The requirements outlined above are the minimum mandatory reporting requirements. Participants may choose to supply additional contextual information if they wish, for example:

- energy use and energy saved by energy type, as greenhouse gas emissions, as an indicator (e.g. energy use per product), or as an index
- energy savings achieved prior to participation in the program

- opportunities that were identified prior to each assessment
- opportunities with a greater than four year pay back and the business response
- changes in total energy use or energy use as an indicator, broken down to show the causes of the increase or decrease, e.g. change in product mix, increase or decrease in production
- energy use and energy efficiency opportunities presented in dollars
- other contextual information about the participant's energy use and management.

To assist participants publishing a report, a public reporting template is available at www.energyefficiencyopportunities.gov.au.

6.2.5 Decentralised reporting

Participants may choose to meet their obligations to report to the public through decentralised reporting. Decentralised reporting is where different members of the group (including the registered controlling corporation) report on the assessments that each member carried out. The reports must, when aggregated, collectively cover all the assessments proposed in the approved assessment plan. In order to use decentralised reporting, the following requirements must be met:

- participants must have indicated in their assessment plan their intention to use decentralised reporting (see 4.3.4 of these guidelines)
- the registered corporation must prepare a report that describes the way in which it carried out the actions it was responsible for in the assessment plan (if any)
- other members of the group must prepare reports describing the way they carried out the remaining actions in the assessment plan
- each report by the registered corporation or member of the group must individually meet the requirements set out above in 6.2.3 to the extent that they relate to the assessments carried out by the reporting entity.

6.2.6 Additional information about public reporting

Presenting energy use data

If publicly reporting energy use values would release sensitive information about the cost structure of the business and jeopardise commercial interests, participants can apply in the assessment plan (or a variation to their assessment plan) to report energy use in an energy bandwidth. When considering such requests, the Department may look at the participant's total percentage of energy use compared to operating costs and variable costs; how generic the use of energy is within the industry sector (including the types of energy used); and whether or not the total energy used by other companies in the sector will be or has been disclosed. The bandwidth can be up to one-fifth of the energy use value being reported, to a maximum of 5 PJ as outlined in item 2 of schedule 4 of the EEO regulations.

Accuracy of energy use and energy savings data

The EEO program requires that energy use data be accurate to a certain standard:

- estimating energy use in an assessment plan – the best available level of accuracy, ideally to within $\pm 10\%$
- undertaking an assessment – energy use data must be accurate to within $\pm 5\%$ unless another level of accuracy has been approved in the corporation's assessment plan
- evaluating opportunities – the financial cost and financial benefits and energy savings for each opportunity must be accurate to within $\pm 30\%$ (see Requirement 4.3 of the Assessment Framework), except for opportunities requiring further investigation and which cannot be evaluated to within $\pm 30\%$
- in a public report, or a report to the Department – data about the energy use of assessed parts of the group must achieve a level of accuracy to within $\pm 5\%$, unless another level of accuracy has been approved in the corporation's assessment plan. If this has not been achieved as per a participant's approved assessment plan, participants must state the reason why that level of accuracy has not been achieved, and the actual level of accuracy achieved.

The National Greenhouse and Energy (Measurement) Determination 2008 outlines methods and criteria for measurement of energy use, to be used for the purposes of the NGER System. These methods and criteria can also be used to satisfy the accuracy requirements of the EEO program. Corporations that use the methods and criteria outlined in the National Greenhouse and Energy (Measurement) Determination to measure energy use will be taken to have met the energy accuracy standards listed above. The Determination, including recent amendments incorporated in 2010, is available from www.climatechange.gov.au/reporting.

Changes to the group during the reporting period

If the membership of a corporate group changes during a reporting period, the report must represent the corporate group as it stands on the last day of the reporting period. However, participants may voluntarily include information on assessments of former members of the group and indicate that the former member has been divested.

6.2.7 Where to publish public reports

When deciding where to publish public reports, participants must ensure that reports will be readily available to investors, shareholders, other key stakeholders and interested members of the public. Normally this would be done by including the report in existing public reports, such as annual financial reports or other similar reports (for example sustainability or environment reports). If the corporation does not produce such reports in Australia, the public report for the EEO program must be published in another accessible form. For example, it could be published on the company website or using another medium that meets the intent of public reporting. If a participant does not wish to use its website, it is recommended they contact their Industry Support Officer to discuss other options.

Participants may provide the Department with a copy of their public report and details of where it has been published.

In some cases, space requirements in annual financial reports do not allow participants to meet the full reporting requirements. These participants may make a short statement in their annual financial report that summarises their participation in the EEO program and refers readers to a website or other approved medium for a complete public report.

6.3 REPORTING TO THE DEPARTMENT

6.3.1 Government reporting overview

In addition to annual public reports, participants are required to provide detailed but less frequent reports on their activities under the EEO program to the Department of Resources, Energy and Tourism. These reports help the Department to:

- monitor participants' compliance with the requirements of the program
- publish valuable information, such as aggregated data on industry actions and achievements
- to evaluate and improve program effectiveness and inform energy efficiency policy.

The level of detail required in these reports is greater than for public reports. This allows the Department to measure the impact of industry action under the program on energy demand, greenhouse gas emissions, business competitiveness and productivity. No individual business information that is provided in these reports, and that is not currently reported publicly, is released without the agreement of the participant. The Department publicly releases aggregated information using Australian Bureau of Statistics confidentiality methodology.

Further information about protecting confidential information is provided in Chapter 9.

6.3.2 Timing of reports to the Department

For each assessment cycle, participants must make two reports to the Department:

- a mid-cycle report, 30 months (2.5 years) into the cycle that covers the first two years of the cycle plus any early assessments that are included in the assessment plan (see 6.2.2(a) above in relation to early assessments)
- an end of cycle report, six months after the assessment cycle is complete (three years after the mid-cycle report).

Both the mid-cycle and end of cycle reports to the Department are due on 31 December in the required years.

It should be noted that the preparation of the report to the Department does not negate the requirement to prepare a public report and vice-versa.

Participants reporting through OSCAR under the NGER System may choose to report annually to government for both programs in order to streamline their reporting.

6.3.3 Content of reports to the Department

Information required in the report to the Department includes and aligns with publicly reported information but provides greater detail. Reports to the Department must include, at the appropriate level of disaggregation (e.g. group member, business unit, division, key activity or site):

- a copy of the public reports that were (or are to be) published during the period, or the information to be included in the public reports during the period
- a statement of where the public reports have been or will be published (e.g. annual report, website)
- energy use, by energy/fuel type (state conversion factors and improved accuracy achieved if National Greenhouse and Energy (Measurement) Determination 2008 methodologies are not used), of corporations, joint ventures, partnerships, business units, key activities and sites over 0.5 PJ
- annual energy use during the reporting period, expressed using the indicator adopted by the corporation in the assessment plan. Alternatively another indicator may be used, but if so the report must also set out the energy use for the baseline year expressed using the new indicator
- the cumulative outcomes of all assessments and business responses (i.e. opportunities under investigation, to be implemented, implementation commenced, implemented and not to be implemented), including:
 - energy savings by energy/fuel type
 - net financial benefits of opportunities identified
- a declaration by the responsible officer that the information included in the reports is, to the best of his or her knowledge, correct and in accordance with the requirements of the EEO Act and EEO Regulations.

Reporting gross energy production and consumption – streamlining EEO and NGER reporting

Reports to the Department for the EEO program are required to include the total energy use for each group member, business unit or key activity in the corporate group, and all sites for which the energy use in the trigger year was over 0.5 PJ. For EEO, the energy use reported is the 'net' energy use (see below).

The NGER System requires reporting of energy consumption and energy production data separately. That is, under the NGER System, corporations are required to report *gross* energy consumption and *gross* energy production, rather than net energy production and consumption. *Gross energy use* includes all energy used by an entity, including energy used to produce other energy that is used by the entity.

Net energy use, by contrast, does not count energy used by an entity to produce other energy, where that produced energy is also used by the entity. Under the EEO program, net energy use is used to determine:

- whether a group exceeds the energy use threshold
- the amount of energy use that is required to be assessed for the purposes of the EEO program
- the energy use that must be reported to the public.

For the purposes of reporting to the Department, corporations may choose to report gross energy use, in order to align energy use data reported to the Department with energy use data to be reported for the NGER System.

However, net energy use is still the appropriate method to use when determining energy use for EEO participation and compliance purposes (identified in the dot points above).

Voluntary information

Participants may voluntarily provide a breakdown of the net financial benefits of opportunities identified into projected costs and benefits. Costs and benefits could include:

- costs of assessments and metering to achieve accuracy
- direct energy savings and other quantifiable financial costs and benefits, for example avoided capital investment, OH&S costs and benefits, reduced maintenance, reduced or increased waste and water usage costs and improved productivity.

6.3.4 Submitting reports to the Department

Participants using OSCAR to report under the NGER System may choose to report to the Department through OSCAR (www.oscar.gov.au). For more information about reporting to the Department using OSCAR please phone the EEO Hotline on 1300 799 186.

Participants who choose not to report using OSCAR can submit a hard copy report to the Department. To assist participants, a reporting template for submitting a report to the Department is available at www.energyefficiencyopportunities.gov.au.

Hard copy submissions to the Department should be sent to:

Manager
Energy Efficiency Opportunities
Energy and Environment Division
Department of Resources, Energy and Tourism
GPO Box 1564
CANBERRA ACT 2601

Reports can also be sent by email to:

energyefficiencyopportunities@ret.gov.au.

Chapter 7

COMPLIANCE AND VERIFICATION

In this section:

- Overview of compliance and verification objectives
- Compliance and verification activities
- Triggers for escalating compliance and verification activities
- Voluntary external verification
- National greenhouse and energy reporting verification
- Record keeping
- More information

7.1 OVERVIEW

The Department's compliance and verification strategy aims to ensure that:

- corporations that use more than 0.5 PJ of energy per year participate in the program;
- assessments by participants meet the intent and key requirements of the six key elements of the Assessment Framework;
- corporations report as required (including submitting assessment plans and reports to the Department and publishing public reporting appropriately); and
- the results reported by participants are correct.

Verification is also important to support and build public trust in the achievements of industry under the program.

Where corporations are genuinely committed to the program, the approach for verification is to encourage cooperative learning and improvements in conducting effective assessments and publicly reporting on outcomes. More stringent mechanisms are available, however, to ensure participation in all steps of the program by corporations that are legally required to participate.

7.2 COMPLIANCE AND VERIFICATION ACTIVITIES

The Department undertakes a range of activities to support industry in undertaking the program and making sure minimum requirements are met. Compliance and verification activities for the majority of participants involve participant liaison, compliance checks of submitted documents such as assessment plans and reports, desktop verifications and full verifications including company visits. The Department expects to fully verify the majority of participating corporation within the first two assessment cycles.

7.2.1 Compliance checks and desktop verifications

Compliance checks

The Department checks the information provided by participants in applications for registration, in assessment plans, and in reports to the public and the Department. The Department encourages participants to submit draft assessment plans and reports prior to compliance deadlines to allow time for feedback to be provided and for corporations to address any deficiencies that may exist. This is particularly important for public reports. The Department may ask participating corporations to amend their published public reports if the legislative requirements have not been adequately met.

Desktop verifications

The Department conducts desktop verifications of approximately 100 corporations each year. Corporations will be asked to complete a 'Verification checklist and information request form' to provide information and evidence in support of their compliance with the program requirements. The Department will use this information to undertake a preliminary assessment of compliance against each of the key requirements of the Assessment Framework. The desktop verification process, coupled with a random selection process, will be used to select the corporations to participate in a full verification.

7.2.2 Full verification

It is intended that the majority of program participants will be subject to a full verification during the first two assessment cycles. A full verification involves authorised officers from the Department and an energy expert visiting a site and/or the corporate office of the participant for the purpose of verifying compliance with the legislation by understanding the way assessments have been conducted and documented. They also help the Department to learn about good practice from leading companies. During their visit the verification team will view documented and physical evidence of the assessment process, hold discussions with personnel involved in assessments and decision making, and review calculations and assumptions underlying energy use data and the opportunities identified, evaluated and reported.

Following the verification the Department will prepare a verification report, which will be sent to the corporation's CEO or equivalent. In consultation with the corporation, an action plan to address any areas identified as being non-compliant or at risk of future non-compliance will be developed. Corporations will be asked to report progress against their action plan to the Department.

The Department has published a *Verification Handbook* to provide more detailed information about verification processes. Hard copies are available by contacting the EEO Hotline on 1300 799 186, or emailing: energyefficiencyopportunities@ret.gov.au. Electronic copies are available for download at www.energyefficiencyopportunities.gov.au.

7.3 TRIGGERS FOR ESCALATING COMPLIANCE AND VERIFICATION ACTIVITIES

The Department may undertake compliance activities if its officers have a reasonable belief that a corporation has not met the legislative requirements. As a guide, preliminary indicators of potential non-compliance are likely to include:

- apparent failure to register corporations that individually or as a corporate group use more than 0.5 PJ of energy per year
- apparent failure of a registered corporation to meet any legislative requirements, and associated timelines particularly in relation to submitting assessment plans and/or reporting publicly and to government
- information provided in the public report or government report that is inconsistent with the assessment plan or other information available to the Department, where no reasonable explanation is provided in the report
- failure of a corporation to respond to communications by the Department requesting explanation or action
- the results of a verification visit suggest significant non-compliance
- reliable information from third parties strongly indicates that a controlling corporation (or member of its group) has consciously failed to meet a legislative requirement.

These situations would result, in the first instance, in communications from the Department requesting explanation and actions to rectify the situation as soon as possible. Support materials such as guides may be provided. A meeting or teleconference may be held to assist corporations to correct any discrepancies by providing more information on the program requirements.

If a corporation does not respond to communications from the Department during the compliance check or verification process, or refuses to cooperate, or the Department determines that more information is required, the Department may contact the corporations' CEO or equivalent, in writing, outlining issues relating to compliance and seeking the corporations' response to this issue.

The Department has authority under the EEO legislation to institute court proceedings at any stage to seek a declaration of non-compliance and a civil penalty order against the corporation. This is considered a last resort option and would be initiated only in the most serious cases of intentional non-compliance.

If the Department does institute court proceedings, the EEO Act provides that a court may impose civil penalties against a corporation if it is found to be non-compliant with any of the following civil penalty provisions:

- obligation of a controlling corporation to apply to register (subsection 9(1) of the EEO Act)
- obligation of a registered controlling corporation to submit an assessment plan every 5 years (subsection 15(5) of the EEO Act)
- obligation of a registered controlling corporation to carry out assessments according to the assessment plan and the requirements of the EEO Act and EEO Regulations (subsection 20(4) of the EEO Act)

- obligation to report to the public (subsection 22(1) of the EEO Act)
- obligation to report to the Department (subsection 23(1) of the EEO Act).

The Court may order a controlling corporation to pay the Australian Government a penalty of up to 1000 penalty units, which is currently at \$110 per unit (a maximum fine of \$110,000) per contravention.

7.4 VOLUNTARY EXTERNAL VERIFICATION

Some participants may choose to have their assessments and public reports voluntarily verified by a qualified third party for added credibility and to provide confidence internally that the program requirements are being met. The evidence requirements of the Assessment Framework can be used as a standard against which verification can be undertaken.

Commissioning a voluntary external verification will not excuse a corporation from Departmental verification. However, the Department may consider a verification report commissioned by the corporation as part of the evidence of compliance presented by the corporation.

7.5 NATIONAL GREENHOUSE AND ENERGY REPORTING VERIFICATION

Undertaking a greenhouse and energy data verification for the NGER System will also not excuse a corporation from Departmental verification for the EEO program. This is because the NGER System verification will be narrower in scope than the full set of EEO assessment requirements. However, the Department will consider an NGER System verification report as part of the evidence of EEO compliance presented by the corporation.

7.6 RECORD KEEPING

Participants in the EEO program are required to maintain adequate records for seven years to demonstrate that the corporation has met the program requirements. Records should include evidence gathered for the assessment plans, results of assessments, reports and any other documents prepared for, or used to participate in, the EEO program.

Examples of evidence of documents that could be used to demonstrate compliance are provided in the Assessment Framework (5.4 of these guidelines).

7.7 MORE INFORMATION

If an organisation has a concern or query regarding the implementation of compliance and verification activities, they are encouraged to contact their Industry Support Officer or the EEO telephone Hotline on 1300 799 186.

Chapter 8

SUPPORTING PARTICIPATION IN THE PROGRAM

In this section:

- Overview of program support
- Industry Support Officers
- Workshops, training and networking
- EEO website
- Program newsletter
- Recognition

8.1 OVERVIEW

The Department recognises the need to provide information, tools and learning opportunities such as training and seminars to support participants, and those assisting them, to meet the requirements of the program. The Department would also like to recognise the achievements of corporations that are leaders in energy efficiency.

In addition to the activities outlined below, the Department is working with other government agencies under the National Framework for Energy Efficiency and other initiatives to develop support measures and materials for businesses aiming to improve their energy efficiency.

8.2 INDUSTRY SUPPORT OFFICERS

Industry Support Officers from the Department can assist participants by providing advice on program requirements and answering questions on the program, and providing feedback on draft assessment plans and reports.

8.3 WORKSHOPS, TRAINING AND NETWORKING

The Department provides assistance to participants in the program by:

- holding workshops on the program. Workshops may be held in conjunction with industry associations and others to ensure that the content of the workshops is relevant to participants and energy services providers
- working with Australian and state government departments to encourage the development of skills and training for those involved in carrying out energy assessments to a standard that meets the requirements of the EEO program and other programs
- providing networking opportunities that enable those involved in assessments to explore problems and ideas that have arisen through the process of doing assessments.

8.4 WEBSITE

The program's website, www.energyefficiencyopportunities.gov.au, is continually enhanced. It includes:

- the EEO Act, the EEO Regulations and the industry guidelines
- presentations and information that can be used by participants to communicate the requirements of the program within their organisation and to relevant stakeholders
- web-based tools that support participation in the program
- support materials to demonstrate how parts of the program might be undertaken, including
 - how to prepare assessment plans
 - how to prepare for and conduct assessments, including examples of how different corporations have applied the key requirements
 - how to forecast and measure energy savings
 - reporting templates
- stand alone case studies that outline how companies have participated in the program
- links to other Australian and international energy efficiency programs.

8.5 PROGRAM NEWSLETTER

A regular program newsletter is sent to participants and other interested people. It highlights upcoming compliance deadlines, program events such as workshops, new materials, Frequently Asked Questions, and a range of other relevant information.

8.6 RECOGNITION

Participants with high quality assessment and reporting processes and outcomes may be recognised through case studies, profiles in other Departmental publications and invitations to present at workshops.

Chapter 9

PROTECTING CORPORATE INFORMATION

In this section:

- Confidentiality of information
- Disclosure of information

9.1 CONFIDENTIALITY OF INFORMATION

The confidentiality of information provided to the Department under this program is protected by relevant legislation including the EEO Act, the *Public Service Act 1999*, the Public Service Regulations, the *Privacy Act 1988* and the *Crimes Act 1914*, and the common law.

The Department has a number of measures in place to ensure that confidential information is protected. Measures include procedures and systems for the receipt, management and storage of confidential information and data (whether in electronic or hard copy form) and ongoing measures to check the integrity of systems and to ensure that procedures are being followed.

9.2 DISCLOSURE OF INFORMATION

Information provided to the Department is not released to the public in a manner that identifies the relevant corporation, except for information on the public register or where a company has provided prior written consent for the release of specific information. The information that is published on the public register is set out at 3.5 of these guidelines.

Aggregated information may be released by the Department; in such cases the released information is aggregated to a level that protects individual company information.

Information may be disclosed to contractors or consultants engaged by the Department for compliance and verification purposes. Confidentiality of this information continues to be protected by relevant legislation and the contractual relationship between the contractor or consultant and the Department.

The Department may release confidential information if it is required by law to do so. As noted above, the Department may also disclose information if it has obtained prior written consent to such disclosure.

Chapter 10

REVIEWING DECISIONS

In this section:

- Discussing decisions with the Department
- The Administrative Appeals Tribunal
- Judicial review of decisions
- The Ombudsman

10.1 DISCUSSING DECISIONS WITH THE DEPARTMENT

Departmental officers observe the Australian Public Service Values and Code of Conduct. The Department aims to provide a high standard of service to all its stakeholders as outlined in its Service Charter. In particular, it aims to provide clear, accurate advice and information; fair, unbiased treatment; and explanations of its decisions. It also aims to respond promptly to stakeholder enquiries and complaints.

The Secretary of the Department (or a delegate of the Secretary who is a Departmental officer) has the power to make a number of decisions under the EEO Act. If a Departmental officer has made a statutory decision that directly affects a corporation, the corporation may have rights to seek a review of that decision. As time limits generally apply to review rights, any complaints or concerns should be raised as soon as possible.

If a participant needs to clarify why a decision was made or has any concerns about a decision, it may find it helpful to discuss this with the officer who made that decision.

If a participant is unhappy with a decision made by the Department, it may be entitled to a statement of the reasons for that decision. It may also be entitled under the *Freedom of Information Act 1982* to obtain documents relating to how the decision was made. This information may help a corporation to decide whether or not to pursue a review of the decision. This Chapter provides very general information about rights to seek reviews of decisions. Participants should obtain appropriate professional advice about rights of review in any particular case.

10.2 THE ADMINISTRATIVE APPEALS TRIBUNAL

An application may be made to the Administrative Appeals Tribunal for review of some decisions made by the Department under the EEO program. The tribunal is an independent body that 'steps into the shoes' of the original decision maker in order to determine whether the correct or preferable decision was made in a particular case.

The tribunal may:

- confirm the decision
- vary the decision
- set the decision aside and replace it with the tribunal's own decision
- set the decision aside and send the matter back to the Department for reconsideration in accordance with the directions or recommendations of the tribunal.

Participants can obtain more information about tribunal review processes from the tribunal's website at <http://www.aat.gov.au>.

10.3 JUDICIAL REVIEW OF DECISIONS

Judicial review of decisions by a court may also be available. Judicial review does not involve a review of the merits of the decision. Rather, a court decides whether or not the decision was legally correct, including whether the decision was made within the power conferred by law, whether the decision-maker misapplied the law, and whether the decision-maker denied natural justice to a person whose rights, interests and legitimate expectations were adversely affected by the decision.

10.4 THE OMBUDSMAN

If a participant has a complaint about the way the Department has handled a matter, it may wish to raise this with an officer in the Department. It may also have a right to complain to the Commonwealth Ombudsman, who has power to investigate complaints against Australian Government officers. It is usually advisable to raise concerns with the Department before approaching the Ombudsman. Further information about Ombudsman processes is available from the Ombudsman website at www.ombudsman.gov.au.

Appendices

Please note: Any companies or activities used as examples in these appendices are for illustrative purposes only and are entirely fictitious. Any resemblance to past or present organisations or individuals is coincidental and unintended.

Appendix 1

NOMINATION RULES FOR PARTNERSHIPS AND JOINT VENTURES

In this section:

- The nomination process
- Revocation of the responsible entity

Corporations with an interest in either a joint venture or partnership are given the option to nominate one member of the joint venture or partnership to be the responsible entity for that joint venture or partnership. If a corporation is nominated as the responsible entity for a joint venture or partnership, then that joint venture or partnership is deemed to be a member of that corporation's group. The nominated entity should have the capacity and skills to conduct an assessment, including the ability to influence energy use.

If joint venturers or partners fail to nominate a responsible entity, the joint venture or partnership must be included as a member of each group to which the joint venturers or partners belong. It is expected that joint ventures and partnerships will nominate a responsible entity to minimise compliance costs. The operator of a project being conducted as a joint venture or partnership may actually undertake the work of the assessment and prepare the reports, but the controlling corporation for the nominated entity (or all parties or partners if a controlling corporation has not been nominated) will be ultimately legally responsible.

The intention behind the nomination rules is to provide joint venturers and partners with a practical incentive to put in place commercial arrangements whereby only one of the joint venturers or partners, or the controlling corporation of that entity, is required to participate in the EEO program.

The rules applying to the nomination process are prescribed in the EEO Regulations and set out below.

THE NOMINATION PROCESS

There is no rule about which entity in a partnership or joint venture should be nominated and the entities concerned can determine their own approach to this.

When the nominee has been determined, a nomination must be made to the Department. The nomination must take the form of a notice in either the application for registration or in the assessment plan. The nomination must:

- be in writing
- be signed for the joint venturer or partner that is nominated to be the responsible entity for the joint venture or partnership (responsible entity)
- include a statement to the effect that the responsible entity is nominated as the responsible entity for the joint venture or partnership for the purposes of participation in the EEO program

- include a statement that all other joint venturers or partners have been informed of the nomination
- provide the full name, registered address and ABN of the responsible entity
- provide the name and either the address or ABN of each joint venturer or partner
- provide the full name, address and ABN of the joint venture or partnership
- include a declaration by an employee signing for the nominee that the information included in the nomination is, to the best of the officer's knowledge, correct and in accordance with the requirements of the EEO Act and the EEO Regulations.

REVOCACTION OF THE RESPONSIBLE ENTITY

Automatic revocation

The nomination of a responsible entity is revoked by reason of, and on the day:

- the nominated responsible entity ceases to be a joint venturer or a partner
- a liquidator is appointed to the nominated responsible entity
- the nominated responsible entity is deregistered for any reason under the *Corporations Act 2001* (if the nominated responsible entity is established under that Act), or
- the nominated responsible entity ceases to be a body corporate entitled to conduct its affairs (if it is a body corporate established otherwise than under the *Corporations Act 2001*).

Replacement

If the joint venture or partnership wishes to replace the responsible entity, the new responsible entity should file a new nomination notice in accordance with the section on the nomination process above. The previously nominated responsible entity will also need to give its consent to the replacement. The previous nomination will be taken to be revoked on the day the Department receives the new nomination and evidence of the previous nominee's consent to the replacement, or the day the new nomination is expressed to take effect, whichever day is later.

Resignation

If the responsible entity wishes to resign its position as the nominated responsible entity, and there is no replacement nomination, that resignation will impose obligations under the EEO Act on each of the joint venturers or partners.

The resigning responsible entity must give notice to all other joint venturers or partners of its intention to resign in accordance with the requirements below, to enable the remaining joint venturers or partners time to resolve any issues and arrange for a replacement nominee.

A responsible entity may revoke its nomination as a responsible entity by:

1. Giving notice of its intention so to do to each joint venturer or partner, as the case may be, stating:
 - the responsible entity intends to revoke its nomination as a responsible entity for the joint venture or partnership concerned
 - the responsible entity will file with the Department a notice revoking its nomination as responsible entity on a day not less than 28 days after notice of intention has been given to each of the joint venturers or partners; and then
2. Giving notice of revocation of its nomination to the Department stating that the responsible entity:
 - notified each of the joint venturers or partners of its intention to revoke its nomination as a responsible entity not less than 28 days prior to the notice given to the Department
 - does not propose to withdraw the notion of intention, and revokes its nomination as the responsible entity for the joint venture or partnership.

If the responsible entity does not comply with the notice requirements set out in this section, any purported resignation is of no effect, and the responsible entity will remain responsible for EEO compliance for the joint venture or partnership.

Removal

The nomination of a responsible entity with the consent of all other joint venturers or partners will be revoked with effect from the day the Department receives the notice.

All of the joint venturers in a joint venture or partners in a partnership may by notice in writing signed for each of them, revoke the nomination of a responsible entity. A notice effecting such revocation must state that it is signed by each of the joint venturers in the joint venture or partners in the partnership (as the case may be) at the date that the notice is signed. That must be a date not more than 28 days before the day the notice is delivered to the Department.

Continuity

The Department is concerned to minimise, as far as is possible, the administrative burden on participants in the EEO program.

For this reason, a nomination will generally remain in force even if certain aspects of a joint venture or partnership change, e.g. changes in membership. Exceptions to this will be if the nominee is no longer a member of the joint venture or partnership or if the change is significant, i.e. the joint venture or partnership is no longer the same project in practical terms.

Consistent with this, where a responsible entity has been nominated in respect of a joint venture or partnership, that nomination remains effective in respect of each successive joint venture and partnership that:

- continues to operate the business that was operated by the joint venture or partnership, or
- uses the same ABN as the joint venture or partnership.

The above rule would apply notwithstanding changes in the identity of the joint venturers or partners and notwithstanding any adjustment of equity between the joint venturers or partners.

The partners or joint venturers can always choose to replace the nominated responsible entity, in accordance with the processes described above.

Appendix 2

EXEMPTION OF CERTAIN PARTS OF THE ENERGY SUPPLY SECTOR

In this section:

- Electricity generators covered by the EEO program
- Exemption for transmission and/or distribution of natural gas or electricity

ELECTRICITY GENERATORS COVERED BY THE EEO PROGRAM

Electricity generators are no longer exempt from the EEO Program. Following a 2009 election commitment, the Program was extended to electricity generators who trigger the 0.5PJ threshold from 1 July 2011. The electricity generation sector is now subject to the same program rules as all other participants and all areas of the Industry Guidelines now apply. The first trigger year for an electricity generator is 2010–2011.

NEW CHANGES TO THE REGULATIONS

Definitions relating to groups – electricity generators no longer exempt

Corporations should note that 2011 amendments to the Regulations have changed the stationary energy sector exemption rules. Electricity generation activities are no longer exempt from the EEO program. Only corporations whose main business is the transmission and/or the distribution of natural gas or electricity, and whose total energy use for ancillary activities (activities other than energy transmission and/or distribution) does not exceed 0.5 PJ in a year are exempt. The Government announced in July 2011 that this exemption is also to be removed.

TEMPORARY EXEMPTION FOR TRANSMISSION AND/OR DISTRIBUTION OF ELECTRICITY AND GAS

Currently, a corporation whose main business is the transmission and/or the distribution of natural gas or electricity is exempt from the EEO program until the end of June 2013, provided the energy use of its other activities that do not fall within transmission and/or distribution does not exceed 0.5 PJ. The Government announced under the 'Securing a Clean Energy Future' package on 10 July 2011 that the EEO program will be extended to the transmission and distribution sector.

The government will undertake a stakeholder consultation process and regulatory impact assessment during 2011/12 to investigate expansion of the program to the energy transmission and distribution sectors.

The exemption of transmission and/or distribution activities

The exemption applies equally to controlling corporations and subsidiary corporations whose main business is the transmission of natural gas or electricity, or the distribution of natural gas or electricity.

If a corporation uses greater than 0.5 PJ in activities other than the transmission and/or distribution of natural gas or electricity it is not exempt. However, it is not required to assess or report on its natural gas or electricity transmission or distribution activities.

Participants can voluntarily include their transmission and/or distribution assets if they wish, for example, if these activities are an integral part of their business.

The boundaries of the exemption are as follows:

At the time of publication a corporation is exempt from the program until the end of June 2013 if:

The corporation's main business is the transmission and/or the distribution of electricity and/or natural gas (if a corporation uses more than 0.5 PJ in activities other than transmission or distribution of natural gas or electricity, then it does not satisfy this requirement)

AND

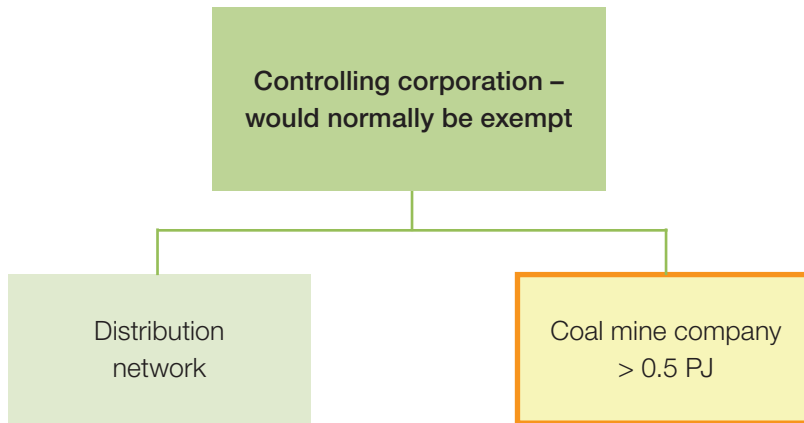
All its subsidiaries and joint ventures and partnerships for which it is the responsible entity satisfy the requirement above.

Controlling corporations that would themselves be exempt if not for the fact that they have one or more non-exempt subsidiaries/business units, key activities or sites, have program requirements confined to those non-exempt group members.

There are a number of variations on requirements for controlling corporations if some or all of the members of their group are exempt:

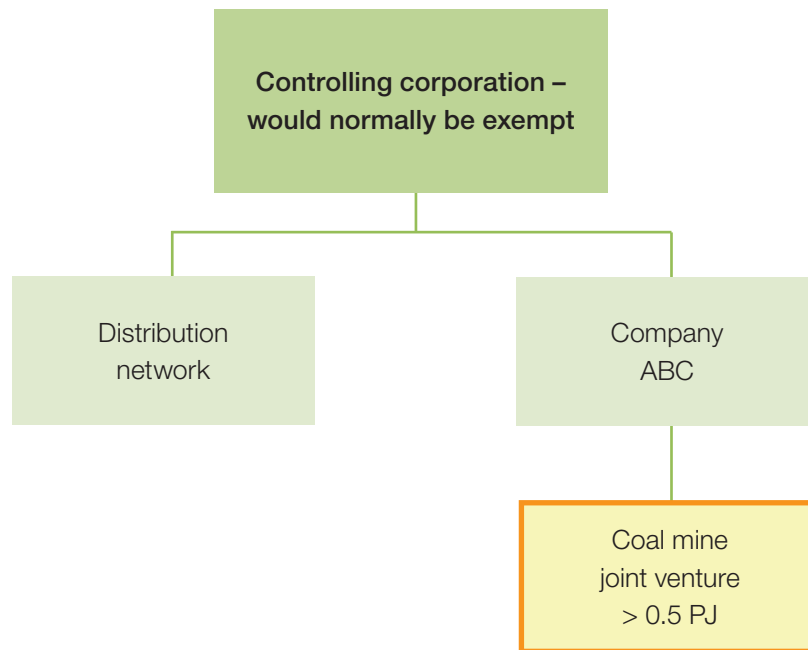
- If the controlling corporation and all subsidiaries are exempt: none of the entities has to undertake activities under the program.
- If the subsidiaries are all exempt but the controlling corporation is not: the controlling corporation is required to comply with the requirements of the EEO Act with respect to itself, but not with respect to its exempt subsidiaries. The controlling corporation must include the names of the exempt subsidiaries in its assessment plan but it does not have to take the exempt subsidiaries into account in preparing its assessment plan.
- If the controlling corporation would be exempt if not for the fact that one (or more) of its subsidiaries is not exempt: the controlling corporation must apply to become a registered corporation and is responsible for ensuring that an assessment plan is prepared for the controlling corporation's non-exempt subsidiaries. The controlling corporation must comply with the requirements of the Act with respect to its non-exempt subsidiaries. As an internal management matter, the controlling corporation may arrange for its obligations under the Act as a registered corporation to be fulfilled by one or more of its non-exempt subsidiaries.

See the following figure for an example.



Example of controlling corporation and subsidiaries

In some cases, a controlling corporation may be exempt but for the fact that one (or more) of its subsidiaries has an interest in a non-exempt unincorporated joint venture or partnership. This would occur, for example, if a controlling corporation and all of its subsidiaries would fall within the exemption but one subsidiary is a participant in a joint venture engaged in non-exempt activities where the energy use of the joint venture exceeds 0.5 PJ of energy per year. The following figure provides an example of this situation.



Example of controlling corporation, subsidiaries and a joint venture

In this case, the controlling corporation (or its subsidiary) that is the participant in the joint venture does not have to meet the requirements of the EEO program if another member of the joint venture has nominated to be the responsible entity for the joint venture. However, if no other participant has been nominated as the responsible entity for the joint venture, then the controlling corporation must meet the requirements of the program for the activities of the joint venture. This would apply equally to a corporation or a subsidiary of a corporation if it is a partner in a partnership.

Appendix 3

EXAMPLES OF APPLICATION OF RULES

In this section:

- Examples of application of controlling corporation rules
- Examples of application of corporate grouping rules
- Examples of application of rules for energy use responsibility

Note: Each example is independent of the others and no business is related to businesses in other examples.

EXAMPLES OF APPLICATION OF CONTROLLING CORPORATION RULES

See 2.2 of these guidelines for information about the rules.

Example 1: Sole corporation

Sole Pty Ltd is a construction company that is incorporated in Australia and operates from one site in Australia.

Sole Pty Ltd is a controlling corporation as it does not have any holding company.

Example 2: Subsidiary and holding corporations

Subsidiary Pty Ltd is a transport company that is incorporated in Australia and operates from three sites in Australia. It has an Australian holding company (Holding Pty Ltd), which controls the board of Subsidiary Pty Ltd but does not operate a significant business itself.

Subsidiary Pty Ltd is not a controlling corporation. However, Holding Pty Ltd is a controlling corporation.

Example 3: Listed corporation

Listed Limited is a company listed on the Australian Stock Exchange with 50 wholly owned subsidiaries (including 10 located overseas) and 10 partly owned subsidiaries. It operates a manufacturing business from 15 sites across Australia.

Listed Limited is a controlling corporation as it does not have a holding company.

Example 4: Foreign owned corporation

Retail Pty Ltd is a retail company that is incorporated in Australia and operates from 1,000 sites in Australia. It has an Australian holding company but its ultimate holding company is a company listed on the London Stock Exchange.

Retail Pty Ltd is not a controlling corporation. However, its Australian holding company is a controlling corporation because it does not have an Australian holding company.

EXAMPLES OF APPLICATION OF CORPORATE GROUPING RULES

See 2.2 of these guidelines for information about the rules.

Example 1: Sole corporation

Sole Pty Ltd is a construction company that is incorporated in Australia and operates from 15 sites in Australia.

Sole Pty Ltd is a controlling corporation as it does not have any holding company. Sole Pty Ltd does not have any subsidiaries. The group is simply Sole Pty Ltd.

Example 2: Subsidiary and holding corporations

Subsidiary Pty Ltd is a transport company that is incorporated in Australia and operates from three sites in Australia. It has an Australian holding company (Holding Pty Ltd), which holds all of the shares in Subsidiary Pty Ltd but does not operate a significant business itself.

Subsidiary Pty Ltd is not a controlling corporation. However, Holding Pty Ltd is a controlling corporation. The members of the group are Holding Pty Ltd and Subsidiary Pty Ltd.

Example 3: Corporation with wholly owned subsidiaries in Australia and overseas

Major Ltd is a major manufacturing company listed on the ASX with 50 wholly owned subsidiaries (including 10 located overseas). It operates a manufacturing business from 15 sites across Australia. Major Ltd does not have a holding company.

Major Ltd is a controlling corporation (as it does not have a holding company). Major Ltd and all of its subsidiaries are members of the group. This technically includes all overseas subsidiaries, however, only energy use in Australia is included when the energy use threshold is applied across the corporate group. This means that the energy use of its subsidiaries overseas is excluded.

Example 4: Listed corporation with wholly and partly owned subsidiaries in Australia and overseas

Listed Limited is a company listed on the Australian Stock Exchange with 50 wholly owned subsidiaries (including 10 located overseas) and 10 partly owned subsidiaries. It operates a manufacturing business from 15 sites across Australia.

Listed Limited is a controlling corporation as it does not have a holding corporation. The members of Listed Limited's group are:

- Listed Limited
- all of Listed Limited's wholly owned subsidiaries
- all of Listed Limited's partly owned subsidiaries of which Listed Limited (or a wholly owned subsidiary of Listed Limited) is the only holding company
- all of Listed Limited's partly owned subsidiaries which are controlled by a group member.

Any of Listed Limited's partly owned subsidiaries that are controlled by an entity that is not a group member are excluded from the group.

Listed Limited applies the energy use threshold rule across all its group members. Only energy use in Australia is included so the energy use of its subsidiaries overseas is excluded.

Example 5: Foreign owned corporation

Retail Pty Ltd is a retail company that is incorporated in Australia and operates from 10 sites in Australia. It has an Australian holding company, but its ultimate holding company is a company listed on the London Stock Exchange.

Retail Pty Ltd is not a controlling corporation. However, its Australian holding company (Australian Holding Pty Ltd) is a controlling corporation as its ultimate holding company is located in the United Kingdom. The members of the group are Australian Holding Pty Ltd and Retail Pty Ltd.

Example 6: Multi-national corporation

ABC Australia Pty Ltd is a manufacturing company that is incorporated in Australia and operates from three sites in Australia. Its subsidiaries include corporations incorporated in New Zealand and Singapore (ABC New Zealand Corporation and ABC Singapore Corporation). It has an Australian holding company (ABC Holding Pty Ltd), but its ultimate holding company is a company that is listed on the London Stock Exchange and operates a multi-national business.

ABC Australia Pty Ltd is not a controlling corporation. However, ABC Holding Pty Ltd is a controlling corporation (as it does not itself have an Australian holding corporation).

Included in the group are ABC Holding Pty Ltd (the controlling corporation), ABC Australia Pty Ltd, ABC New Zealand Corporation and ABC Singapore Corporation. However, ABC Holding Pty Ltd would only have to include energy use in Australia.

Note: Technically, ABC London could also be a controlling corporation because it is a company that does not have an Australian holding company. It does not have to register, however, because it has no Australian energy use and because ABC Holding will be a controlling corporation responsible for all of the corporate group's energy use in Australia.

Example 7: Joint venture (subsidiary's interest – nominated responsible entity)

Holding Pty Ltd has three wholly owned subsidiaries (Subsidiary 1 Pty Ltd, Subsidiary 2 Pty Ltd and Subsidiary 3 Pty Ltd). Subsidiary 1 Pty Ltd has the majority interest in an unincorporated mining joint venture with two other participants.

Subsidiary 1 Pty Ltd has agreed with the other participants in the joint venture that the joint venture's energy use are to be treated as part of Subsidiary 1 Pty Ltd's energy use, and have nominated Subsidiary 1 as the responsible entity in accordance with the nomination rules. This means that the joint venture becomes part of Subsidiary 1's group (in this case, Holding Pty Ltd's group) for EEO purposes.

However, all joint venture participants may agree and request that the joint venture operator (an unrelated company) conduct the energy efficiency opportunities assessment and report to the participants (including Subsidiary 1 Pty Ltd) on the results of the assessment of the joint venture.

Holding Pty Ltd is a controlling corporation as it does not have an Australian holding company.

The group is made up of Holding Pty Ltd, Subsidiary 1 Pty Ltd, Subsidiary 2 Pty Ltd, Subsidiary 3 Pty Ltd and the joint venture.

Example 8: Partnership (nominated responsible entity)

Partner Pty Ltd is a partner in a partnership with one other partner. Partner Pty Ltd holds 50% of the interest in the partnership and has agreed with its partner that the partnership's energy use is to be treated as part of Partner Pty Ltd's energy use for EEO purposes. A nomination has been made in accordance with the nomination rules.

Partner Pty Ltd is a controlling corporation as it does not have an Australian holding company. The group comprises Partner Pty Ltd and the partnership.

Example 9: Joint venture (overseas corporation participating in several joint ventures – no nominated responsible entities)

JV Corporation is a Japanese company. It has an Australian subsidiary (JV Australia Pty Ltd) which in turn has three subsidiaries (JV 1 Pty Ltd, JV 2 Pty Ltd and JV 3 Pty Ltd). JV 1 Pty Ltd, JV 2 Pty Ltd and JV 3 Pty Ltd each participates in three different unincorporated joint ventures based in Australia – an oil joint venture, a gas joint venture and a mining joint venture.

JV Australia Pty Ltd is a controlling corporation as it does not have an Australian holding company.

As no responsible entity has been nominated for each joint venture, each participant in each joint venture must include each joint venture's energy use in calculating the energy use of its own corporate group.

The group, therefore, includes JV Australia Pty Ltd, JV 1 Pty Ltd, JV 2 Pty Ltd, JV 3 Pty Ltd and each of the joint ventures.

Example 10: Partner (overseas participation in partnership – no nominated responsible entity)

Partner AG is a German company participating in a partnership with two other partners. The partnership conducts a business in Australia. Partner AG does not have any other interests in Australian businesses.

Partner AG is a controlling corporation as it does not have an Australian holding company.

Partner AG holds a 1/3 interest in the partnership. The partners have agreed to nominate Partner AG as the responsible entity for the partnership, and have complied with the nomination rules.

The group comprises Partner AG and the partnership. None of Partner AG's energy use outside Australia will count for the purposes of the EEO program.

EXAMPLES OF APPLICATION OF RULES FOR ENERGY USE RESPONSIBILITY

Note: The responsible party is strongly encouraged to involve the users of energy in identifying and helping to implement energy efficiency opportunities. Each business in these examples is already deemed to be a 'controlling corporation' i.e. not a subsidiary of a controlling corporation.

Example 1: Responsibility for energy use – mining contractor example

Golden Horizons Pty Ltd has employed a contractor, Mineral Extractors Pty Ltd, to undertake contract mining services at a mine site. Mineral Extractors Pty Ltd pays for all of the fuel that it uses in its operations, but Golden Horizons Pty Ltd retains control over the main operating and environmental policies at the site. Golden Horizons Pty Ltd has operational control over the site and is responsible for it under EEO.

Example 2: Responsibility for energy use – reporting transfer certificate – mining contractor example

Base Metals Ltd has employed a contractor, Cobalt Contractors Pty Ltd, to undertake contract mining services at a mine site. Cobalt Contractors Pty Ltd pays for all of the fuel that it uses in its operations, and retains control over the main operating and environmental policies at the site where their operations are carried out. Cobalt Contractors Pty Ltd and Base Metals Ltd agree that Base Metals Ltd, as the financial beneficiary from the sale of the product mined at the site, will take responsibility for all obligations under the NGER and EEO legislation. Base Metals Ltd receives a Reporting Transfer Certificate from the Department of Climate Change and Energy Efficiency and applies to the Department of Resources, Energy and Tourism to define energy use responsibility under the reporting transfer certificate. Upon approval Base Metals Ltd is responsible for assessing and reporting energy use at the site for both the NGER System and the EEO program.

Example 3: User of energy – reporting transfer certificate not issued – mining contractor example

Golden Horizons Pty Ltd has employed a contractor, Mineral Extractors Pty Ltd, to undertake contract mining services at a mine site. While Golden Horizons has operational control over the site and is thus the controlling corporation for the purposes of the EEO program, Mineral Extractors Pty Ltd pays for all of the fuel that it uses in its operations and has financial control over the operation of the site. No RTC has been issued under NGERs.

As part of the contractual arrangement between them, Mineral Extractors Pty Ltd has agreed to accept responsibility for carrying out and reporting on energy efficiency assessments at the site. Mineral Extractors Pty Ltd may thus request to be treated as the user of energy at the site. If Mineral Extractors Pty Ltd is already a registered EEO corporation or a member of a registered corporation's group, it could do this as part of the submission of an assessment plan, or as a variation to an assessment plan. If Mineral Extractors Pty Ltd is neither a registered corporation nor a member of a registered corporation's group, it must apply for the energy use transfer with its registration application. Upon acceptance of the energy use transfer request by the Secretary, Mineral Extractors Pty Ltd will become the user of the energy at the site for EEO purposes.

Should either Golden Horizons Pty Ltd or Mineral Extractors Pty Ltd notify the Secretary in writing that they no longer want Mineral Extractors Pty Ltd to be the user of energy at the site, Golden Horizons Pty Ltd will automatically become the user of energy at the site again upon receipt of the notification by the Secretary.

EXAMPLES OF APPLICATION OF RULES FOR ENERGY USED IN BUILDINGS

Note: The responsible party is strongly encouraged to involve the users of energy in identifying and helping to implement energy efficiency opportunities in buildings. Each business in these examples is already deemed to be a 'controlling corporation' i.e. not a subsidiary of a controlling corporation.

Example 1: Gross lease

Shopping Centre Operator Pty Ltd owns a shopping centre containing a number of separate tenancies, and certain common areas. It occupies part of the building itself, and leases all other lettable areas to various tenants, including Tenant Pty Ltd. Tenant Pty Ltd has a 'gross lease' with Shopping Centre Operator Pty Ltd for its space. It pays a flat sum for rent out of which Shopping Centre Operator Pty Ltd pays all expenses including the energy bills. Tenant Pty Ltd implements operating policies within the leased space.

Shopping Centre Operator Pty Ltd is responsible for the energy use in the areas it occupies itself and any common areas under its operational control. Tenant Pty Ltd has operational control of the energy used in its leased space.

Example 2: Net lease

Building Owner Pty Ltd owns a commercial office building containing a number of separate tenancies, and certain common areas. It does not occupy any part of the building itself, it leases all lettable areas to various tenants, including Tenant Pty Ltd. Tenant Pty Ltd has a 'net lease' with Building Owner for its space. Tenant Pty Ltd pays the energy bills itself. Building Owner pays for the energy used in the common areas.

Tenant Pty Ltd is responsible for the energy use within its space as it has operational control of the energy used in that space. Building Owner is responsible for the energy use in the common areas as it has operational control of those areas.

Example 3: Residential hotel building

Hotel Owner Pty Ltd owns and operates a residential hotel building. Energy is used for operation of the laundry in the hotel. Some items used in the operation of Hotel Owner Pty Ltd's business are laundered in the laundry in the hotel, while other items are laundered off-site by a laundry contractor.

Energy used for operation of the laundry in the hotel is energy used by Hotel Owner Pty Ltd.

Energy used for laundering items off site by a laundry contractor is not energy used by Hotel Owner Pty Ltd for EEO purposes.

Example 4: Trusts

Trustee Pty Ltd owns a commercial office building. Trustee Pty Ltd introduces and implements operating and environmental policies in the building. Trustee Pty Ltd is trustee of the Commercial Property Trust and holds the title subject to the trust. The beneficiaries of the Commercial Property Trust are passive investors.

Trustee Pty Ltd is responsible for the energy use in the operation of the building because it has operational control over the building in which the energy is used.

Appendix 4

REPRESENTATIVE ASSESSMENTS

In this section:

- Overview of representative assessments
- Planning and reporting a representative assessment
- Making a case for representative assessments

OVERVIEW OF REPRESENTATIVE ASSESSMENTS

Corporations may wish to conduct assessments of sample sites, fleets, technologies or processes that use less than 0.5 PJ and that can be shown to be reasonably representative of other sites, fleets, technologies or processes. For example, representative assessments could be used to assess:

- a sample of retail outlets that is representative of a larger number ('population') of outlets
- a sample of vehicles that is representative of a larger fleet of vehicles (road, rail, air or water)
- a machine or process that is used in an identical fashion at other sites or within a site (e.g. bakery equipment)
- a commercial building or sample of commercial buildings that is representative of a population of commercial buildings.

The program permits the use of representative assessments where this is the most cost effective use of resources. A representative assessment concentrates investigative effort on a sample that is representative of a larger population of sites, fleets, technologies or processes. The intention is that the opportunities identified in a representative sample can then be applied to other similar sites or activities without diminishing the rigour and comprehensiveness of the overall assessment process. Individual sites in a representative site population must be under 0.5 PJ, as sites of this size and larger must be assessed individually.

PLANNING AND REPORTING A REPRESENTATIVE ASSESSMENT

In their assessment plan participants must indicate where they wish to conduct representative assessments and demonstrate that their use of representative assessments will not diminish the rigour and comprehensiveness of the assessments. Typically, participants will need to show that:

- they have done the background work to identify a suitable sample
- the value of any opportunities found in the sample can be estimated for the entire population that the sample represents
- potential savings could be implemented across the population the sample represents.

Public reports must include the energy savings from the identified energy efficiency opportunities extrapolated for the total population (not just the sample).

Making the case for representative assessments

A case for representative assessments should be based around the six elements of the Assessment Framework. In particular it should address the following areas:

- People – ensure that representatives of people who directly or indirectly influence energy use are involved in the identification of opportunities. Ensure that the outcomes of assessments and progress against objectives is communicated by the relevant project manager to all staff who have an impact on energy use (e.g. staff at sites or involved in processes that are not directly assessed).
- Information, data and analysis – demonstrate that survey work has been undertaken involving the entire population, and that this indicates that the selected sites are representative of parts or all of the entire population it is representing. Actual energy use data must be collected and analysed at the representative level. Survey work of the entire population may include, as relevant:
 - total energy use;
 - energy types;
 - common sub processes and technologies used at the sites;
 - common existing energy management practices;
 - energy intensity;
 - age of the site and technology (including fit out);
 - number of customers serviced by the site;
 - size of the site;
 - geographic location and climate;
 - model names and number (e.g. transport); and
 - usage (e.g. on road or off road, 24 hour operation or 12 hour operation).
- Opportunity identification and evaluation – demonstrate that the likely costs and benefits of each opportunity can be estimated to a level of accuracy appropriate for ‘informed decision making’ across the entire population. Outline any processes used to refine the accuracy of estimated savings across the entire population.
- Decision making and action planning – ensure that the business case can be prepared to the level of rigour needed to support the participant’s decision making processes.
- Reporting – ensure that the value of savings identified by representative assessments, across the entire population, can be accurately reported for 0-2 and 2-4 year payback ranges.

Full guidance on conducting representative assessments is available in the *Representative Assessment Guide* on www.energyefficiencyopportunities.gov.au.

Please contact the Department if you require a hard copy of this guide.

Appendix 5

ACCURACY REQUIREMENTS OF THE EEO PROGRAM

There are a number of accuracy levels that are applicable to calculations, reporting and key requirements under the Program.

The table below sets out the accuracy levels that must be used in accordance with regulation 1.6:

For the purpose of ...	that shows data about...	the calculations...
preparing an assessment plan to be given to the Secretary under Part 5 of the Act	estimations of energy use	(a) should achieve the best available level of accuracy, ideally to within $\pm 10\%$; and (b) must show the margin of error used in the calculations
meeting a requirement of the Assessment Framework mentioned in regulation 6.1	energy use	must achieve a level of accuracy to within $\pm 5\%$, unless another level of accuracy has been approved in the group's assessment plan
meeting a requirement of the Assessment Framework mentioned in regulation 6.1	(a) financial costs and financial benefits of opportunities; and (b) energy savings of opportunities	must achieve a level of accuracy to within $\pm 30\%$
preparing a public report, or a report to the Secretary under Part 7 of the Act	energy use of assessed parts of the group	must achieve a level of accuracy to within $\pm 5\%$, unless another level of accuracy has been approved in the group's assessment plan Note If another level has been approved, the actual level achieved must be stated.
preparing a public report, or a report to the Secretary under Part 7 of the Act	(a) financial costs and financial benefits of opportunities; and (b) energy savings of opportunities	(a) must show the level of accuracy to which the data, or each range of data, has been calculated; and (b) must show the level at the level of aggregation required for the report

