

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 160

Issued by the Authority of the Minister for Industry, Tourism and Resources

Energy Efficiency Opportunities Act 2006

Energy Efficiency Opportunities Regulations 2006

The *Energy Efficiency Opportunities Act 2006* (the Act) establishes the Energy Efficiency Opportunities program. The Act requires energy efficiency opportunities assessments and public reporting of outcomes by large energy using businesses, as announced by the Australian Government in the energy white paper in June 2004.

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

The Regulations provide necessary details that will allow effective compliance with and administration of the Act.

The Act also specifies particular matters for which regulations may be made and these are set out at Attachment A. The Regulations specify details of requirements in these areas.

The Regulations reflect the outcomes of comprehensive consultation with business and other stakeholders between November 2004 and May 2006, to design a program to improve energy efficiency, greenhouse emissions and economic efficiency while not imposing an unnecessarily heavy compliance burden on business. Open consultation workshops were held in late 2004 and again in late 2005, with nearly 500 participants. 25 companies participated in trials of various elements of the regulatory requirements to help to develop the most practical and effective approaches. Draft regulations were published for public comment in April-May 2006, attracting over 5,500 hits on the consultation web pages.

Details of the Regulations are set out in Attachment B.

The Regulations commence on the day after they are registered.

ATTACHMENT A

Particular matters specified by the *Energy Efficiency Opportunities Act 2006* for which regulations may be made

Paragraphs 7(2)(b) and 8(4)(b) of the Act allow regulations to be made excluding from the coverage of the Act certain classes of corporations in the electricity generation and electricity and gas distribution sectors.

Subsections 8(5), 8(6) and 8(7) of the Act allow regulations to be made to establish rules under which participants in a joint venture or partners in a partnership may make, and revoke, nominations for one of their number to be a responsible entity under the Act.

Paragraphs 9(5)(b) and 9(5)(c) of the Act allow regulations to be made to specify information that must be included in an application to register under the Act, and to specify the form of that application.

Subsection 10(3) of the Act allows regulations to be made to define the meaning of the energy used by an entity for the purposes of the Act.

Paragraphs 11(4)(a) and 11(4)(b) of the Act allow regulations to be made to specify information that must be included in an application for exemption from registration under the Act, and to specify the form of that application.

Paragraph 12(4)(b) of the Act allows regulations to be made to specify information that is required to be entered on the Register of Corporations for the Energy Efficiency Opportunities Scheme.

Paragraphs 14(2)(a) and 14(2)(b) of the Act allow regulations to be made to specify information that must be included in an application to deregister under the Act, and to specify the form of that application.

Subsection 18(3) of the Act allows regulations to be made to specify the form that an assessment plan, which sets out how registered corporations plan to undertake the required assessments of energy efficiency opportunities, must take.

Paragraph 18(8)(a) of the Act allows regulations to be made to set out requirements for proposals in the assessment plan for actions to undertake assessments of energy efficiency opportunities and deadlines for those actions, and proposals to use flexible public reporting arrangements.

Paragraph 18(8)(b) of the Act allows regulations to require particular information in the assessment plan.

Subsection 20(2) of the Act allows regulations to be made to specify requirements for carrying out assessments of energy efficiency opportunities.

Subsections 22(2), 22(3) and 22(4) of the Act allow regulations to be made to specify the period covered by public reports and their contents and form.

Subsection 22(5) of the Act allows regulations to be made to specify the time and manner of making public reports available to the public.

Subsections 23(2) and 23(3) of the Act allow regulations to be made to specify the period covered by reports to the Secretary and the contents of reports to the Secretary.

Subsections 23(4) and 23(5) of the Act allow regulations to be made to specify the form of reports to the Secretary and to specify the time and manner of submitting public reports to the Secretary.

Subsection 26(1) of the Act allows regulations to be made to specify the form of the identity card that must be issued to an authorised officer by the Secretary.

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

Energy Efficiency Opportunities Regulations 2006

Details of the Regulations are as follows:

Part 1 - Preliminary

Regulation 1.1 – Name of Regulations

Regulation 1.1 provides that the name of the Regulations is the *Energy Efficiency Opportunities Regulations 2006*.

Regulation 1.2 – Commencement

Regulation 1.2 provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 1.3 - Definitions

Regulation 1.3 defines a number of terms used in the Regulations.

Regulation 1.4 - The user of energy

Regulation 1.4 defines who is responsible for energy use – that is, the user of energy. In general, the entity that purchases or produces energy will be considered to be the entity that uses the energy for the purposes of the Regulations, whether it consumes the energy itself or it allows its consumption by another party who does not purchase it. This approach is intended to ensure that responsibility under the program lies with the entity that has the greatest financial incentive to improve the efficiency of the relevant energy use.

As an example, where contractors are using energy sources that are provided without cost by the corporation that engages them, the energy is considered to be used by the engaging corporation.

The rules also have the effect that where there are landlord/tenant relationships, the party that directly purchases the energy that is used in a building may be liable to register, undertake assessments and report under the program, if their energy use is more than the 0.5 petajoule energy use threshold.

Regulation 1.5 - Energy use threshold – meaning of energy used

Regulation 1.5 defines how the energy use threshold in the *Energy Efficiency Opportunities Act 2006* (the Act) is to be applied to entities. The Act provides that the controlling corporation of a corporate group that uses greater than 0.5 petajoules of energy in a financial year is required to register details of its group with the Secretary of the Department of Industry, Tourism and Resources. It requires that energy use is to be calculated by reference to certain kinds of energy used by an entity and by reference to energy used by an entity that is derived from certain energy sources. The relevant kinds of energy and energy sources are listed at Part 1 of Schedule 1, which provides a complete list of energy and energy sources to be included in calculating energy use.

Paragraph 1.5(4)(a) refers readers to certain kinds of energy and energy sources, the exceptions to the general rule listed at Part 2 of Schedule 2, that are not to be included in calculating the energy use of an entity. Paragraph 1.5(4)(b) provides that where an energy source is transformed into energy that the relevant entity then uses, it is only the latter use of energy that counts: the energy involved is not to be double counted.

Subregulation 1.5(5) provides a reference for the energy conversion factors that are to be used when calculating the energy content of energy sources, namely those listed in the publication *Energy in Australia 2005*, which contains a range of industry accepted energy conversion factors published by the Australian Bureau of Agricultural and Resource Economics (ABARE). This publication is available from ABARE at GPO Box 1563, Canberra ACT 2601, or its website at www.abareconomics.com, or from the Department of Industry, Tourism and Resources at GPO Box 9839, Canberra ACT 2601, or its website at www.industry.gov.au.

Subregulation 1.5(6) provide arrangements to allow corporations that wish to use a more accurate industry accepted conversion factor to do so, provided the entity explains the conversion factor used in a public report and a report to the Secretary under the Act. Approval by the Secretary is required under subregulation 1.5(7).

Subregulations 1.5(7) and 1.5(8) provide arrangements to allow corporations to use an alternative method to describe the use of energy by an entity, provided the corporation sets out the alternative method in a public report and a report to the Secretary under the Act, and the Secretary approves the method in writing. An approval by the Secretary would be included in the Secretary's approval of an assessment plan or variation to an assessment plan.

Regulation 1.6 – Energy use threshold – working out use for a group

Subregulation 1.6(1) provides a table outlining the levels of accuracy required for data collected and analysed under the legislation, and how reporting requirements relate to these. Differing levels of accuracy are required for energy use information at the time of submitting an assessment plan, at the time of undertaking an energy efficiency opportunities assessment, and in preparing a public report or report to the Secretary. This recognises that information about energy use may be poor for some companies at the start of the program, but will require them to improve their data as they progress through the program stages. Accuracy requirements also apply to the estimates of costs and benefits used to evaluate the energy efficiency opportunities that are identified. Stipulating accuracy requirements is intended to help to ensure the rigour of the program, while the accuracy levels required are intended to be consistent with the standards applied to investment opportunities normally regarded as core business opportunities.

Subregulation 1.6(2) provides that where the membership of a group changes during a reporting period, the energy use for the group is taken to be the total of energy used by all members of the group that are members on the last day of the period. This is intended to acknowledge that changes to the membership of corporate groups are common, and the controlling corporation should not have obligations in regard to entities which it no longer controls. Nonetheless, controlling corporations may wish to report the energy use of entities that are no longer members of their group voluntarily, as it may provide a more complete picture of their Energy Efficiency Opportunities activities during the relevant reporting period.

Regulation 1.7 – Controlling corporation to ensure regulations are fulfilled

Regulation 1.7 provides that, even though the Regulations provide a great deal of practical flexibility by allowing various entities within a controlling corporation's group to perform such required tasks as preparing assessment plans, undertaking assessments or reporting, the controlling corporation is still the entity that is legally responsible under the legislation for the performance of these obligations.

Part 2 - Definitions relating to groups

Regulation 2.1 – Controlling corporation - general

Regulation 2.1 provides, pursuant to paragraph 7(2)(b) of the Act, that a three year exemption, ending on 30 June 2009, may apply to controlling corporations whose main business is electricity generation, or electricity or natural gas transmission or distribution. The regulation further provides that, in order to be eligible for this exemption, the corporation's energy use from other activities must not exceed 05.PJ in a year, and that the rest of its group also meets these requirements. The exemption is intended to allow a review to be undertaken of how energy efficiency may most effectively be improved in these sectors.

Regulation 2.2 – Group and members of a group - general

Regulation 2.2 similarly provides, pursuant to paragraph 8(4)(b) of the Act, that a three year exemption, ending on 30 June 2009, may apply to subsidiaries of controlling , provided those subsidiaries' main business is in electricity generation, or electricity or natural gas transmission or distribution. It also encompasses joint ventures or partnerships where a group member is the responsible entity. The proposed regulation would further provide that, in order to be eligible for this exemption, the corporation's energy use from other activities must not exceed 05.PJ in a year, and that each of its subsidiaries satisfies these requirements as well. The exemption is intended to allow a review to be undertaken of how energy efficiency may most effectively be improved in these sectors.

It is intended that this provision may operate to exclude part of a group involved in these activities, while the rest of the group, involved in other activities, may remain subject to the legislation.

Regulation 2.3 – Responsible entity – rules for making a nomination

Regulation 2.3 provides rules for making nominations of responsible entities for joint ventures and partnerships. It provides requirements for the form and content of the nomination.

Regulation 2.4 – Group and members of a group – revocation of nomination by responsible entity

Regulation 2.4 provides rules for a responsible entity to revoke its nomination, including requirements for giving notice to the other parties or partners of its intention to revoke its nomination at least 28 days before giving the Secretary a notice revoking its nomination. The requirement to give notice of this intention is intended to allow participants or partners time to resolve any matters between them and the responsible entity, and time to organise a replacement responsible entity.

Regulation 2.5 – Group and members of a group – revocation of nomination otherwise than by responsible entity

Regulation 2.5 provides for the automatic revocation of the nomination of a responsible entity if it is no longer capable of fulfilling its responsibilities as the responsible entity.

Subregulations 2.5(3) and (4) provide for the revocation of the nomination of a responsible entity where a new responsible entity is nominated in accordance with the requirements of regulation 2.3 and the existing responsible entity consents.

Subregulation 2.5(5) provides that all the participants and parties (other than the existing responsible entity) may agree to revoke a nomination without nominating a replacement responsible entity, in which case they would all become responsible for the relevant partnership or joint venture under the legislation.

Part 3 - Corporations required to register**Regulation 3.1 – Obligation to apply to register – content of application**

Regulation 3.1 provides that the information required to be included in an application for registration is set out in Schedule 1 to the Regulations. The contents of Schedule 1 are discussed later in this Explanatory Statement.

Regulation 3.2 – Obligation to apply to register – form of application

Regulation 3.2 provides that the form of the application to register must be in either hard copy or electronic form, and defines the means by which it may be delivered to the Secretary, providing an address. It provides that an electronic application must be in a format approved by the Secretary.

The regulation provides that there are to be specific signatories, as registration is a significant step for a corporation which will make it subject to other obligations under the program.

Regulation 3.3 – Exemption from registration on application by corporation – content of application

Regulation 3.3 sets out the required content for an application for exemption from registration under section 11 of the Act, and specifies who must sign it. The application must include a statement that energy use is unlikely to continue to be over the 0.5 petajoule threshold in the financial year after the trigger year, and provide information to support this. Under sections 9 and 10 of the Act, the trigger year is a financial year in which a group uses over 0.5 petajoules of energy and thus 'triggers' the obligation to register. The first possible trigger year for the program is the financial year ending 30 June 2006.

Regulation 3.4 – Exemption from registration on application by corporation – form of application

Regulation 3.4 provides that the form of the application for exemption from registration must be in either hard copy or electronic form, and defines the means by which it may be delivered to the Secretary, providing an address. It provides that an electronic application must be in a format approved by the Secretary.

Part 4 - Registration

Regulation 4.1 – The Register – matters to be entered on Register

Regulation 4.1 specifies matters that are to be entered onto the Register. The information requirements are aimed at ensuring that participation and compliance with the legislation can be effectively monitored and encouraged, principally by being able to identify the controlling corporation and its corporate group.

Controlling corporations need to consider which group members are likely to be assessed, as it is only for these members that registration information will be required. This is intended to avoid the burden of providing this information for group members that have little or no energy use. The regulation also provides that registration information for group members may be provided for key activities, where energy use across the group is more sensibly described in this way rather than by identifying group members.

A note to the regulation provides that a subset of the registration information will be published on a website controlled by the Department of Industry, Tourism and Resources. However, energy use information provided at registration that can be used to identify the energy use of a group, group member or other entity within a group would not be published without the agreement of the relevant entity.

The regulation requires that if information recorded on the Register changes, the controlling corporation must advise of the change within 3 months after the end of the financial year in which the change occurred.

Regulation 4.2 – Corporation may apply for deregistration – content of application

Regulation 4.2 defines the required content for an application for deregistration under section 14 of the Act, and specifies who must sign it. The application must include a statement that the energy use of the registered corporation's group is unlikely to be over the 0.5 petajoule threshold for the next three years, and that information must be provided to support this.

Regulation 4.3 – Corporation may apply for deregistration – form of application

Regulation 4.3 provides that the form of the application for deregistration must be in either hard copy or electronic form, and defines the means by which it may be delivered to the Secretary. It provides that an electronic application must be in a format approved by the Secretary.

Part 5 - Assessment Plan

Regulation 5.1 – Requirements for an assessment plan – form of plan

Regulation 5.1 defines the required form of the assessment plan. Subregulations 5.1(1) and 5.1(2) allow for the controlling corporation to either prepare a single assessment plan that covers the whole of the group, or for separate plans covering parts of the group to be prepared by appropriate group members as agents of the controlling corporation (these separate plans are to be read together to cover the whole of the group).

Subregulations 5.1(3) and 5.1(4) provide that the form of the assessment plan must be in either hard copy or electronic form, and define the means by which it may be delivered to the Secretary, providing an address.

Subregulation 5.1(5) provides that an assessment plan submitted electronically must be in a format approved by the Secretary.

Subregulation 5.1(6) reinforces that where separate plans covering parts of the group are prepared by other group members, the controlling corporation remains responsible under the legislation.

Subregulation 5.1(6) further provides that if separate assessment plans are to be submitted to cover parts of a group, the controlling corporation will not have satisfied the requirement to submit an assessment plan until all the separate plans have been submitted.

Regulation 5.2 – Requirements for an assessment plan – content of plan

Regulation 5.2 provides that the requirements for the content of the assessment plan are set out in Schedule 3 to the Regulations. The regulation provides that the assessment plan or the combined separate assessment plans for the group must relate to the whole of the corporate group.

Regulation 5.3 – Identifying parts of the group that must be planned to be assessed

Regulation 5.3 defines how parts of the group are required to be covered by the assessment plan. This provision sets out coverage rules that specify the proportion of energy use of the group as a whole that must be planned to be assessed in the assessment plan, and similarly what parts of the group must be assessed.

The regulation provides that at least 80% of the energy use of a group will be required to be planned to be assessed in the first 5 years of the program, and at least 90% in subsequent 5 year assessment cycles. Additionally, if parts of the group prepare separate assessment plans, then these coverage requirements will apply to each part of the group covered by a separate assessment plan as well as to the group as a whole.

Regulation 5.3 further requires that all sites operated by a member of a group at which energy use is greater than 0.5 petajoules must be planned to be assessed. In recognition of the practical difficulty of achieving complete coverage of every possible amount of energy use, the regulation provides that up to 0.01 petajoules of energy use at a site may be omitted from coverage by an assessment.

Regulation 5.4 – Aggregation of information

Regulation 5.4 makes clear that where assessment plans are submitted as separate plans covering parts of the group, while the controlling corporation would be responsible for the correctness and completeness of the information in the assessment plans submitted to the Secretary, the controlling corporation would not be responsible for errors that might arise in the course of aggregation of separate assessment plans by the Secretary.

Part 6 - Energy efficiency opportunities assessments

Regulation 6.1 – Requirement to carry out energy efficiency opportunities assessments

Subregulations 6.1(1) and 6.1(2) provide that corporations must carry out energy efficiency opportunities assessments, or arrange for their assessments to be carried out, by applying the detailed requirements in the assessment framework at Schedule 7 to the Regulations.

Stipulating that they may arrange for assessments to be carried out is intended to make clear that corporations may engage third party expertise.

Subregulation 6.1(3) requires that all controlling corporations and each member of a group, or each business unit, or each key activity, that is planned to be assessed are obliged to complete, or arrange for the completion of, at least one assessment within 24 months of the end of the trigger year (for the first trigger year this would be by 30 June 2008). It is intended that this would be an assessment for a site or another discrete part, rather than needing to cover a whole group member, or the whole group in one assessment.

Subregulation 6.1(4) provides that corporations may apply to the Secretary for an extension of time for the requirement in subregulation 6.1(3).

Subregulation 6.1(5) provides that such an application under 6.1(4) must be in an assessment plan, or in a variation to an assessment plan.

Subregulation 6.1(6) provides the factors that the Secretary may consider in deciding whether to grant an extension of time to comply with the requirement in subregulation 6.1(3).

Subregulation 6.1(7) provides that certain assessments that were started up to 2 years prior to the end of the trigger year may be counted as assessments under the legislation, if they comply with the requirements for energy efficiency opportunities assessments. This is intended to allow corporations that have undertaken assessments under other government energy efficiency programs, such as the NSW Government's Energy Savings Action Plans scheme, or who are otherwise proactively seeking out energy efficiency opportunities, to be recognised for assessments that are adequately comprehensive.

Part 7 - Reporting about energy efficiency opportunities assessments

Part 7, Division 1 - Reporting to the public

Regulation 7.1 – Period to which report relates

Regulation 7.1 defines the periods that public reports are to cover. It provides that the first public report would generally cover the period from the day after the end of the trigger year until the completion of the first assessment (required to be completed within two years of the end of the trigger year). However, where a corporation is including an assessment or assessments that it started prior to the end of the trigger year, its reporting period will start on the date of commencement of the earliest of those assessments.

Regulation 7.1 provides that corporations may also extend the end date of the period, in order to report events or activities that have occurred after the date that they finished their first assessment, but despite this the end date must still be before the date the report is due.

Regulation 7.1 provides that after the first report, subsequent reports cover subsequent annual periods.

Regulation 7.2 – Information in report

Regulation 7.2 provides that the information to be contained in the public reports is set out at Schedule 4 to the Regulations.

Regulation 7.3 – Form of report

Regulation 7.3 defines the form of the report to the public. The reports are to be written in English and be in a legible font.

Regulation 7.4 – Time of making report available

Regulation 7.4 sets out deadlines by which public reports are to be published. The first public report must be published by the earlier of 15 months after the completion of the first five elements of the group's first assessment, and 30 months after the end of the trigger year. The elements of the Assessment Framework are set out at Schedule 7 to the Regulations.

Regulation 7.5 – Manner of making report available

Regulation 7.5 sets out how the public report is to be published. It is to be published in a manner that is readily available and accessible to the public. Corporations are encouraged to use existing public reporting mechanisms, such as annual reports or sustainability reports, as such reports are already readily available to shareholders and the general public, and their use would minimise additional reporting costs for business.

Regulation 7.5 also provides other options for publishing these reports, such as an abbreviated report in a corporation's annual report, with the full report accessible elsewhere, such as in another publication or on its own website. Those corporations that are members of the Australian Government's Greenhouse Challenge Plus programme may use the Greenhouse Challenge Plus website to publish the complete public report.

The regulation also sets out the minimum requirements for information to be included in such an abbreviated report.

Part 7, Division 2 - Reporting to the Secretary

Regulation 7.6 – Period to which report relates

Regulation 7.6 defines the periods that reports to the Secretary are to cover. Firstly, there is to be an interim report to the Secretary that covers the same period as the initial public report. There is then to be a second report that covers the five years starting at the end of the trigger year – ie the whole of the five year assessment cycle. Both of these reports would also cover earlier assessments where corporations are reporting these.

Subsequently, for each assessment cycle after the first, there would be an initial report to the Secretary covering the 2 years after the beginning of the cycle, which covers a period starting on the fifth anniversary of the trigger year (and every fifth anniversary thereafter) and ending 24 months later, and then a second report, covering the whole assessment cycle, after the end of the five year cycle.

Regulation 7.7 – Information in report

Regulation 7.7 sets out the information that reports to the Secretary are to contain. This information is intended to be used for verification of compliance and to enable effective evaluation of the efficiency and effectiveness of the legislation.

Regulation 7.7 requires that the report to the Secretary will contain additional information to that published in public reports, providing more details about the assessments undertaken and opportunities identified, including information about net financial benefits.

Information provided in reports to the Secretary will not be published in a form that would identify a corporation, unless prior agreement is given. It is intended that aggregated information that would not enable identification of individual entities may be published, for example in reports of the evaluation of the program.

Regulation 7.8 – Form of report

Regulation 7.8 defines the form that reports to the Secretary are to take. The reports must be in writing and in English, and must be in either Microsoft Word, Microsoft Excel, or such other electronic format that the Secretary authorises. This ability for the Secretary to authorise other forms would enable use of an online reporting system to be authorised when it is developed.

Regulation 7.9 – Time of giving report

Regulation 7.9 requires that the first report to the Secretary must be lodged by the time that the first report to the public is published. Second and subsequent reports are to be lodged within six months after the end of the period that they cover.

Regulation 7.10 – Manner of giving report

Regulation 7.10 requires that the report to the Secretary may either be delivered in hard copy to the address of the Department of Industry, Tourism and Resources, or in an electronic format approved by the Secretary.

Part 8 – Powers of inspection**Regulation 8.1 – Identity cards**

Under section 26 of the Act, authorised officers who have inspection powers under the legislation will be required to carry and present identity cards that are to be issued by the Secretary. Regulation 8.1 requires that these identity cards must have the form set out at Schedule 5 to the Regulations.

Part 9 – Miscellaneous

Division 1 – Verification of compliance with the Energy Efficiency Opportunities Program

Regulation 9.1 – Verification of compliance

Regulation 9.1 requires that records of compliance with the legislation must be retained for seven years and that these must be made available for inspection by authorised inspectors.

The note to regulation 9.1 describes the verification processes to be pursued under the legislation as being aimed at encouraging willing compliance.

Schedule 1 – Energy use

Schedule 1 provides details of requirements for determining energy used under the legislation.

Schedule 1, Part 1 – Energy and Energy Sources

Part 1 Schedule 1 sets out lists of the types of energy and energy sources that are included in ‘energy used’ as mentioned in regulation 1.5.

Clauses 100, 101 and 102 are entitled ‘Energy’ as the sources listed in those clauses are used to do work without being transformed into a useful type of energy.

The clauses entitled ‘Energy sources’ list materials that generally undergo a conversion process, such as by being combusted or oxidised, to produce energy that is then used. These are clauses 103 to 125.

Conversion factors, identified under subregulations 1.5(5) or 1.5(6), are to be used by corporations to calculate the energy output of these energy sources when they are converted to useful energy.

Schedule 1, Part 2 – Energy that is not treated as energy used by an entity

Part 2 of Schedule 1 sets out a number of situations where certain energy or sources of energy should not count towards the energy use of the group. These are situations where otherwise ambiguity could exist about whether to count some materials as energy.

Clause 201 provides that energy or energy sources that are sold, and not used by the relevant entity are not to be included in energy use.

Clause 202 provides that energy or energy sources that are either purchased or produced, and are then stored and not used by the relevant entity are not to be included in energy use. If the stored energy or energy source were to be used in a later period, then its use would be counted in that later period.

Clause 203 provides that potential sources of useful energy that are disposed of solely as waste do not need to be counted as energy use. This might occur where such an energy source is produced as a by-product, and cannot either be economically used for energy by the corporation which produces it, or profitably sold.

Clause 204 provides that material that is potentially a source of energy but is used by a corporation for another purpose is not treated as energy. However, where such use also provides useful energy, the entire energy content of the material is to be counted as energy if the energy component cannot be distinguished.

Substances used as reductants in endothermic processes (ie processes that absorb heat) are not to be counted as energy.

Schedule 2 – Application to register – content of application

Schedule 2 provides the content of the application to register under the legislation, and is referred to by regulation 3.1.

Clause 1 sets out the information required to identify the controlling corporation.

Clause 2 requires a statement that the group met the 0.5 petajoule energy use threshold in the trigger year. As the Secretary is required under the Act to register corporations that have met this test, he or she will need this assurance.

Clause 3 provides that in the registration process, in addition to information about the controlling corporation, information is to be provided about group members that the controlling corporation reasonably considers likely to be assessed. The controlling corporation may identify which members this may encompass, and is not obliged to identify the same members when it later prepares its assessment plan. Registration information is not required for members of the group that the controlling corporation reasonably considers would not be likely to be assessed. In reasonably identifying members likely to be assessed, the controlling corporation should have regard to the coverage rules in regulation 5.3. The clause also provides that this information may be provided for key activities, where energy use across the group is more sensibly described in this way rather than by identifying group members.

Clause 4 requires the provision of a graphical representation of the group's corporate structure, limited to the parts of the group that are likely to be assessed.

Clause 5 and clause 6 provide that when applying to register, the controlling corporation is required to include a list of the group members which it considers may be likely to prepare a separate plan covering part of the group, and identify the parts of the group each of these plans might cover. Identifying these group members at this stage would not create any obligation for these group members to prepare these particular separate plans, and it would not rule out group members that were not identified at registration from later preparing a separate assessment plan.

Clause 7 requires that a responsible person (acceptable persons are listed) must declare that the information in the application is correct to the best of his or her knowledge.

Clause 8 provides that corporations may provide updated registration contact or corporate structure information at any time.

Schedule 3 – Content of assessment plan

Schedule 3 sets out the content of the assessment plan, pursuant to regulation 5.2. The plan requires information in four areas:

- Corporate structure;
- Current energy use and savings data;
- An assessment schedule; and
- A reporting schedule.

Schedule 3 is divided into parts that reflect these areas of subject matter.

The assessment plan is intended to be referred to in non-legislative guidelines as the "Assessment and Reporting Schedule", as it contains plans both for undertaking energy efficiency opportunities assessments and subsequent reporting.

Schedule 3, Part 1 – Corporate structure

Clause 101 requires that the assessment plan must identify which year was the trigger year for the controlling corporation. The timing for assessment and reporting obligations that are to be planned in the assessment plan are based on the trigger year, and so it is important to identify this year in the plan.

Clauses 102 and 103 require the provision of identifying and contact details for the controlling corporation and for each of the entities that are planned to be assessed. The clause also provides that this information may be provided for business units or key activities, where energy use across the group is more sensibly described in this way rather than by identifying group members.

Under clause 104 a declaration is required that the information in the assessment plan is correct and complies with the relevant requirements, to the best of the knowledge of the officer signing on behalf of the corporation.

Clauses 105 and 108 require that where the assessment plan is a separate assessment plan submitted by a group member that covers part of the group, it must contain a statement that points this out and identifies the part of the group to which it applies. Clause 105 sets out some differences to the general requirements in this situation.

Clause 106 provides that where regulation 2.2 applies to exclude one or more members of the controlling corporation's group from the coverage of the legislation, the assessment plan must describe the effects of this, by identifying the excluded members and their energy use in the trigger year.

Clause 107 requires a graphical representation of the group's corporate structure, including all members of the group that are intended to be assessed, sites for which the annual energy use exceeds 0.5 petajoules, and which members are preparing separate assessment plans. Outcomes of nominations of responsible entities for partnerships and joint ventures are also to be provided.

Schedule 3, Part 2 – Current energy use and savings data

Clause 201 requires that corporations identify total energy use as well as energy use classified by source, and the amount of energy use as an indicator per unit of production or service. It is intended that corporations would choose their own indicator, using some measure that is meaningful for their own business.

Clause 202 requires that corporations must state the accuracy with which they have identified their energy use under clause 201.

Clause 202 also provides that the corporation has flexibility in identifying a 12 month period for which to identify their energy use. This could commence up to 12 months prior to the start of the trigger year. This ability to select an earlier start date will allow corporations that were undertaking assessments up to 12 months prior to the beginning of the trigger year to identify a starting energy use against which they could identify the savings from their assessments. The ability to use a later 12 month period will allow corporations that need to put in place energy use monitoring or measurement systems, in order to identify their energy use with adequate accuracy, the time to do so.

Clauses 203 and 204 require that corporations describe opportunities that were identified prior to the preparation of the assessment plan. Distinguishing opportunities that have already been recognised will assist with identifying new opportunities found through assessments under the legislation.

Schedule 3, Part 3 – Assessment Schedule

The Assessment Schedule component described in Part 3 of Schedule 3 requires corporations to set out their plans for how they intend to carry out assessments of their group (or the relevant parts) in order to satisfy the requirements of the legislation.

Clause 301 requires that corporations identify the entities in their group.

Clause 302 requires that corporations must state which of the entities in the group are planned to be assessed.

Clause 303 requires that a schedule must be provided that shows the planned timing of undertaking these assessments.

Clause 304 requires that corporations identify where representative assessments are planned, and provide information to show that using representative assessments would maintain accuracy and comprehensiveness. Representative assessments are a mechanism whereby a corporation can for example assess representative sites and extrapolate the results across other sites that are substantially similar. This is intended to avoid unnecessarily repetitious assessment of substantially the same processes and opportunities.

Clause 305 requires that the assessment schedule include a summary stating how assessments are to be carried out to meet the requirements of the Assessment Framework, how existing practices are to be used, and what additional activities are to be undertaken. If the corporation preparing the assessment plan proposes to achieve a level of accuracy in measuring energy use of worse than $\pm 5\%$, then this statement must also contain such a proposal with supporting information.

Schedule 3, Part 4 – Reporting Schedule

Clause 401 requires that proposals for public reporting be explained, including any proposals to use the flexibility in public reporting available under sections 22A or 22B of the Act. Such proposals will require approval as part of the assessment plan before they can be exercised. It also requires that if the controlling corporation intends that the group member submitting the separate assessment plan should also report to the public separately, as provided under section 22A of the Act, the plan must state that the relevant part or entity produces its own annual financial reports or otherwise produces reports, and publishes these if it is a public company. It is intended that the ability to report as a part of a group would be available to those entities

or parts of groups that already report in their own right, so that they may streamline their reporting.

Clause 402 sets out the way that a corporation may make a proposal to report in energy bandwidths, as provided in Schedule 4 clause 2, where it considers that reporting actual energy use would be unreasonable in terms of the corporation's commercial interests. It provides guidance to the sorts of factors that might be taken into consideration by the Secretary in deciding whether to approve the proposal.

Clause 403 provides that where the assessment plan is a separate assessment plan submitted by a group member or members that covers part of the group, the plan must state this and describe those group members.

The notes at the end of this Part inform corporations of a number of factors that they should consider in preparing their assessment plans. They need to apply the coverage rule explained in Part 5, as a basic measure to prepare an adequate plan (while this is not the only condition, they would be required to satisfy it).

The notes also explain that while the legislation places obligations on the controlling corporation to ensure that assessment and reporting obligations are carried out, in practice it may satisfy these obligations by having other members of the group carry out the assessments and report for parts of the group (subject to approval of proposals to do so). Nothing in the Regulations is intended to restrict or discourage corporations from engaging assistance from any external parties, such as contractors, to provide additional expertise in undertaking assessments.

As further guidance, the notes suggest that corporations should analyse how their existing practices align with the requirements of the assessment framework, to help them to plan what additional things they may need to do when undertaking assessments.

Schedule 4 – Information in reports to the public about energy efficiency opportunities assessments

Schedule 4 sets out information that is required in reports to the public about energy efficiency opportunities assessments. The reports are intended to provide useful information to the public and to the markets while protecting the reasonable commercial interests of the participating corporations.

Required information includes summaries of assessments to show the parts of the group that have been assessed, energy use of entities, key activities and business units assessed, and aggregated energy savings data broken down by payback and the stage of development of opportunities.

Clause 1 requires information identifying the parts and proportion of energy use of the group that have been assessed.

Clause 2 requires the total energy use covered by all assessments to be reported. It requires this as an actual total, or in bandwidths that cover a range of energy use in accordance with the table in the clause. Corporations may seek approval in an assessment plan to report their energy use in these bandwidths when they consider that disclosure of their actual energy use information may be commercially harmful. The table in clause 2 provides rules to calculate, for various levels of actual energy use, what reporting range may be used. Reporting entities may identify the row of the table that corresponds to the relevant actual energy use, by

identifying into which range specified in the first two columns of the table their actual energy use falls. They can then calculate the range of energy use which they can report, using the rules in the third column of that row of the table. The actual energy use does not have to be at the centre of the bandwidth, but must be within it.

Clauses 3 and 4 require that energy savings amounts and numbers of opportunities are to be reported in a number of categories that reflect the decision making stage that the business has reached. However, it should be noted that opportunities for which cost and benefit data has been evaluated to an accuracy of $\pm 30\%$ or better should be reported in the 'under investigation' category.

Clauses 5 and 6 require that statements must be made regarding the accuracy of the reported information.

Under clause 7, reports will also be required to include examples of significant opportunities that have been identified. At least three examples are to be provided, unless fewer than three opportunities were identified in the assessment, in which case all the identified opportunities would have to be described.

Clause 8 requires reports to include a statement declaring that the information included in them is correct and in accordance with the requirements of the legislation.

Clause 9 requires that the period to which the report relates must be stated in the report.

Under clause 10, reports are also to provide cumulative information that updates previous reports, where there have been previous reports.

Schedule 5 – Identity Cards

Schedule 5, pursuant to regulation 8.1, describes the information that is to be displayed on identity cards for authorised officers under the Act, and shows a sample format that would meet these requirements.

Schedule 6 – Form of Statement

Schedule 6 provides the form to be used in reporting opportunities under regulation 7.2. It provides that energy savings from opportunities are to be reported broken down into two ranges of payback, from zero up to less than two years, and from two to four years. In each of these categories, there is to be a further breakdown into categories of opportunities that are:

- Identified;
- Under investigation;
- To be implemented;
- Implementation commenced;
- Implemented; and
- Not to be implemented.

The table also provides two categories where additional information may be provided voluntarily (see regulation 7.2):

- Previously identified, not yet implemented (pre-assessment cycle); and
- Energy efficiency savings implemented (from 2000 to the beginning of the assessment cycle).

Schedule 7 – The Assessment Framework

Pursuant to Regulation 6.1, Schedule 7 presents the Assessment Framework, which sets out the required components and standards for undertaking the assessments of energy efficiency opportunities that are required under section 20 of the Act.

The central component of the Energy Efficiency Opportunities program is the comprehensive and rigorous assessment of energy use across a controlling corporation and its group members, to identify cost effective energy savings and efficiency opportunities with up to a four year payback.

The controlling corporation must ensure that the key requirements of the Assessment Framework are met.

Evidence that corporations must keep to demonstrate that they have met the key requirements for verification purposes is also set out, and examples outlined. The Assessment Framework builds on the Australian/New Zealand Energy Audit Standard (3598:2000), and draws on a wide range of professional experience and extensive industry consultation.

The Assessment Framework is made up of six key elements:

1. Leadership support for the assessment and the improvement of energy use;
2. The involvement of a range of skilled, experienced and influential people during the assessment process;
3. Information and data that is comprehensive and appropriately and accurately measured and analysed;
4. A process to identify, investigate and evaluate energy efficiency opportunities with paybacks of four years or less;
5. Business decision making and planning for opportunities that are to be implemented or investigated further; and
6. 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:

- An Intent – an explanation of the key element’s aim;
- Key requirements – the specific actions and outputs a controlling corporation must meet in order to demonstrate that it has satisfied the intent of each key element; and
- Evidence –evidence that a corporation must keep for verification purposes to demonstrate that it has met the key requirements for each key element across all liable entities and sites.

To satisfy the proposed assessment obligations, the key requirements would have to be met for each of the key elements.