

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 312**

Issued by the Authority of the Minister for Resources and Energy

*Energy Efficiency Opportunities Act 2006*

*Energy Efficiency Opportunities Amendment Regulations 2009 (No. 2)*

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

Section 41 of the Act provides that 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 *Energy Efficiency Opportunities Regulations 2006* provide details that allow effective compliance with and administration of the Act.

The Regulations will allow corporations under EEO to streamline their responsibility for energy use with responsibility under a reporting transfer certificate issued under the National Greenhouse and Energy Reporting System (NGERS). Corporations will do this by applying to transfer the obligation for assessing and reporting energy use under EEO to another corporation. This is consistent with the objectives of the *National Greenhouse and Energy Reporting Act 2007* to reduce duplication of reporting requirements across state, territory and national programs.

The effect of the amendments is to allow corporations participating in the Energy Efficiency opportunities program to maintain streamlined obligations with NGERS. Corporations would not be obliged to do so.

Representatives of affected stakeholders were consulted in August 2009, and these supported amending the EEO Regulations to provide the flexibility to streamline with an NGERS reporting transfer certificate. All EEO stakeholders were advised of the amendments in early October 2009.

Details of the Regulations are set out in the Attachment.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Details of the *Energy Efficiency Opportunities Amendment Regulations 2009 (No. 2)*****Regulation 1 – Name of Regulations**

Regulation 1 provides that the name of the Regulations is the *Energy Efficiency Opportunities Amendment Regulations 2009 (No. 2)*.

**Regulation 2 – Commencement**

Regulation 2 provides that the Regulations commence on the day after they are registered.

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

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

**Schedule 1 – Amendments****Item [1] – Regulation 1.4, defining a user of energy in accordance with an RTC**

This item substitutes a new regulation 1.4 to renumber the existing clauses and introduce an exception to the existing method used to determine the "user of energy", which determines the entity that has an obligation to assess and report particular energy use. The replacement regulation 1.4 maintains that the user of energy is the entity that has operational control over the facility in which the energy is consumed or produced for consumption, however this existing basis is subject to an exception where the user of energy is the entity that has been granted a reporting transfer certificate (RTC) under section 22L of the *National Greenhouse and Energy Reporting Act 2007* and has requested the Secretary of the Department of Resources, Energy & Tourism to regard the entity as the user of energy to which the RTC relates.

Under an NGERS RTC arrangement, the transferor of the obligation to report energy use is the entity that has operational control over the facility and thus would ordinarily assume responsibility for reporting energy use under NGERS. The transferee of the obligation, that is the holder of the RTC, is the entity with financial control of the facility that has consented to being responsible for reporting energy consumption and production for the facility.

The introduction of RTC arrangements under NGERS could lead to different entities having legal responsibility for reporting the same energy use under the two different programs. This means that different companies will be required to collect and report two different sets of energy data, one for EEO and one for NGERS. This creates an undesirable regulatory burden for these companies, and fails to satisfy the objective of the NGER Act to streamline energy and greenhouse reporting requirements. The amendment is designed to allow corporations to streamline their reporting requirements, by attributing energy use consistently under both the EEO and NGERS programs.

The definitions of "consumption, of energy", "facility", "operational control" and "production, of energy" continue to have the same meaning as they have under the NGER Act.

**Item [2] – Regulation 3.1, renumbering**

This item creates subregulation 3.1(1), the content of which is the same as regulation 3.1 of the Principal Regulations. This is a renumbering intended to facilitate the addition of a new subregulation 3.1(2) by item [3] below.

**Item [3] – Regulation 3.1, content of application for registration when defining energy use in accordance with a reporting transfer certificate under NGERs**

This item inserts a new subregulation 3.1(2). The new subregulation sets out the information and documents that must be included with an application for registration for the EEO program that proposes to define energy use in accordance with an RTC that has been granted under NGERs. This information must be provided in addition to the usual registration application content requirements outlined in Schedule 2 to the Principal Regulations.

The information required in the application includes a certified copy of the NGERs RTC, as well as evidence that both parties (the corporation transferring the obligation and the corporation assuming the obligation for assessing and reporting energy use under EEO) have agreed to the transfer of the obligation.

**Item [4] – Regulation 4.2, renumbering**

This item creates subregulation 4.2(1), the content of which would be the same as regulation 3.1 of the Principal Regulations. This is a renumbering intended to facilitate the addition of a new subregulation 4.2(2) by item [5] below.

**Item [5] - Regulation 4.2, content of application for deregistration when defining energy use in accordance with a reporting transfer certificate under NGERs**

This item inserts a new subregulation 4.2(2). Similarly to the new subregulation 3.1(2), this new subregulation sets out the information and documents that must be included with an application for deregistration from the EEO program that proposes to define responsibility for energy use in accordance with an RTC that has been granted under NGERs. This information must be provided in addition to the usual deregistration application content requirements outlined in regulation 4.2 of the Principal Regulations.

The information required in the application includes a certified copy of the NGERs RTC, as well as evidence that both parties (the corporation transferring the obligation and the corporation assuming the obligation for assessing and reporting energy use under EEO) have agreed to the transfer of the obligation.

**Item [6] - Regulation 5.5, content of application for variation to an approved assessment plan when defining energy use in accordance with a reporting transfer certificate under NGERs**

This item inserts a new regulation 5.5. Similar to the new subregulation 3.1(2) and 4.2(1), this new regulation sets out the information and documents that must be included with an application for a variation to an approved assessment plan that proposes to define responsibility for energy use in accordance with an RTC that has been granted under NGERs.

Under section 15 of the EEO Act, all registered corporations are required to submit to the Secretary an assessment plan every five years, detailing how and when assessments of energy use will be conducted over the five year cycle. Under section 19 of the Act, a registered corporation may submit a variation to this assessment plan should there be a change in circumstances such as the acquisition or sale of a site, or a change in the timing of assessments. One such variation might also be a change in responsibility for energy use as a result of a transfer of responsibility for energy use in accordance with an RTC.

The information required in the application includes a certified copy of the NGERs RTC, as well as evidence that both parties (the corporation transferring the obligation and the corporation assuming the obligation for assessing and reporting energy use under EEO) have agreed to the transfer of the obligation.

**Item [7] – Paragraph 7.5(3)(e), amending an incorrect reference**

This item amends paragraph 7.5(3)(e) of the Principal Regulations which refers to item 4 of Schedule 3 to the Principal Regulations. Paragraph 7.5(3)(e) should instead refer to item 3 of Schedule 4.

**Item [8] – Part 9, after Division 1, termination of agreement to transfer obligation to assess and report energy use**

This item inserts a new Division 2 of Part 9. The new regulation 9.2 in Division 2 details the requirements for termination of an agreement to transfer an obligation to assess and report energy use. The new regulation provides that one or more of the parties to the agreement may apply to the Secretary for the agreement to be terminated, and requires the provision of evidence of consent from all parties to the termination.

The transfer of obligation will remain valid until and unless an application is made to the Secretary to cease it.

The Secretary is obliged to terminate a transfer if a valid application to cease it is received, and it is terminated on the day on which the Secretary approved the termination.

The Secretary is also obliged to notify each party of the termination as soon as practicable.