

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT 2013 NO.176

Issued by the Minister for Resources and Energy

Energy Efficiency Opportunities Act 2006

Energy Efficiency Opportunities Amendment Regulation 2013 (No.1)

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

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

The *Energy Efficiency Opportunities Regulations 2006* (the Principal Regulations) provide details that allow effective compliance with and administration of the Act.

In July 2011 the Australian Government announced it would expand the Program to require the mandatory assessment of energy use at the design stage of new developments and expansion projects, following a recommendation from the Prime Minister's Task Group on Energy Efficiency.

The Government has completed extensive stakeholder consultation on the expansion comprising: face-to-face meetings; release of an options paper for comment by stakeholders; review of stakeholder submissions to the options paper; stakeholder forums; industry trials on design stage projects to test the proposed options and gather data for the Regulation Impact Statement; and release of an exposure draft of the regulation amendments.

The Regulation Impact Statement for the expansion of the Program to the design stage of new developments and expansion projects, informed by data from the trials, show the benefits substantially outweigh the costs. As a result, the Government has decided to proceed with the expansion.

Amendments to the *Energy Efficiency Opportunities Regulations 2006* were made in June 2012. These amendments oblige corporations to apply the Program to new developments and expansion projects from 1 July 2013.

The proposed Regulation would define how the Program applies to new development and expansion projects, including how corporations are required to assess and report on energy use at the design stage.

The explanatory statement for the Amendment Regulation has a Statement of Compatibility with Human Rights.

The Minute recommends that the Regulation be made in the form proposed.

Statement of Compatibility with Human Rights

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

Human rights implications

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

Conclusion

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

Financial Implications

There are no financial implications.

Date of Effect

The proposed section 2 provides for the instrument to commence the day after this regulation is registered on FRLI

Details of the *Energy Efficiency Opportunities Amendment Regulation 2013 (No.1)*

Section 1 – Name of Regulation

Section 1 provides that the title of the Regulation is the *Energy Efficiency Opportunities Amendment Regulation 2013 (No.1)*

Section 2 – Commencement

Section 2 provides for the instrument to commence the day after this regulation is registered on FRLI

Section 3 – Authority

Section 3 provides that this regulation is made under the *Energy Efficiency Opportunities Act 2006*.

Section 4 – Schedules

Schedule 1 – Amendments

Item [1] –Subregulation 1.3(1)

Item [1] defines the *design stage*.

Item [2] –Subregulation 1.3(1)

Item [2] defines *future energy*.

Item [3] – Subregulation 1.3(3)

Item [3] replaces the previous definition of an *expansion* and replaces it with a definition which excludes projects where existing systems and processes already meet the intent of the six Key Elements.

Item [4] – Subregulation 1.3(5)

Item [4] replaces the previous definition of a *new development* and replaces it with a definition which excludes projects where existing systems and processes already meet the intent of the six Key Elements.

Item [5] – Subregulation 1.4(1)

Item [5] allows corporations to transfer the liability of energy use of a new development or expansion project as well as existing assets.

Item [6] – After subregulation 1.4C

Item [6] stipulates the corporation or corporations which are responsible for future energy use.

Item [7] – Paragraph 1.5(2)(b)

Item [7] omits *future use of energy* and substitute *future energy use* to keep language consistent with the defined terms.

Item [8] – After regulation 1.5

Item [8] allows corporations to not assess energy use that is used by supporting services and infrastructure.

Item [9] – Regulation 5.2

Item [9] substitutes the previous requirements for the content of an assessment plan with new requirements, which include the content to be provided in an assessment plan relating to a new development or expansion project.

Item [10] – After subregulation 5.3(4)

Item [10] requires corporations to assess a site that is acquired 18 months before the end of the assessment cycle.

Item [11] – Subregulation 5.3(9)

Item [11] repeals the ability to optionally assess a new development over the energy use threshold.

Item [12] – After subregulation 5.6(3)

Item [12] allows corporations that are obligated to conduct an assessment of future energy use due to a new development or expansion project, to not assess existing assets that do not meet the energy threshold.

Item [13] – At the end of Part 5

Item [17] provides the timing for the submission of a variation of an assessment plan which covers a new development or expansion project.

Item [14] – Before regulation 6.1

Item [14] provides the requirements for undertaking an assessment for a new development or expansion project.

Item [15] – Regulation 6.1, heading

Item [15] states that regulation 6.1 only applied to parts of the business that do not relate to a new development or expansion project.

Item [16] – Subregulation 6.1(1)

Item [16] would provide that these requirements to undertake an assessment only applied to parts of the business that do not relate to a new development or expansion project.

Item [17] – After subregulation 7.1(1)

Item [17] provides the reporting period for a report to the secretary which covers a new development or expansion project.

Item [18] – Subregulation 7.2(1)

Item [18] provides that the information required in a secretary report under this subregulation would relate to parts of the business other than a new development or expansion project.

Item [19] – At the end of subregulation 7.2

Item [19] requires information set out in Schedule 4A to be provided in a report which relates to a new development or expansion project.

Item [20] – Regulation 7.4

Item [20] substitutes the timing for making a report public, to include reports on new developments and expansion projects.

Item [21] – After subregulation 7.6(1)

Item [21] provides the reporting period for a public report for a new development or expansion project.

Item [22] – After regulation 7.6

Item [22] inserts the information that must be provided in a report to the secretary for a new development or expansion project.

Item [23] – Regulation 7.7(heading)

Item [23] substitutes the heading for *Information in report* to provide that it applies to parts of the business that are not part of a new development or expansion project.

Item [24] – Subregulation 7.7(1)

Item [24] provides the timing for when a corporation is required to publically report.

Item [25] – After subregulation 7.9(1)

Item [25] provides the timing for when a corporation is required to submit a report to the secretary.

Item [26] – Subregulation 7.9(2)

Item [26] provides that the timing for submitting an assessment plan, no later than 30 months after the commencement of the first assessment plan, does not relate to a new development or expansion project.

Item [27] – Subregulation 7.9(2) (note)

Item [27] re-references the note so it only notes subregulations relating to reporting for parts of the business that are not a new development or expansion project.

Item [28] – Part 2 of Schedule 1 (note below heading)

Item [28] repeals and replaces the note which states that energy sources under subregulation 1.5 can be subtracted from total energy used.

Item [29] – After Schedule 2

Item [29] inserts a new Schedule 2A which sets out the contents of an assessment plan for a new development or expansion project.

Item [30] – Schedule 3 (heading)

Item [30] repeals and replaces the previous Schedule 3 heading, providing that Schedule 3 only applied to parts of the business that are not a new development or expansion project.

Item [31] – Schedule 4 (heading)

Item [31] repeals and replaces the previous Schedule 4 heading, providing that Schedule 4 only applied to parts of the business that are not a new development or expansion project.

Item [32] – After Schedule 4

Item [32] inserts a new Schedule 4A which sets out information to be provided in a public report for a new development or expansion project.

Item [33] – After Schedule 5

Item [33] inserts a new Schedule 6 which provides an assessment framework specific to a new development or expansion project.

Item [34] – Schedule 7 (heading)

Item [34] repeals and replaces the previous Schedule 7 heading, providing that this heading only applied to parts of the business that are not a new development or expansion project.