



Australian Government
Clean Energy Regulator

NATIONAL GREENHOUSE AND ENERGY REPORTING

Supplementary guideline

Acquisitions, disposals and mergers:
treatment of change in ownership of
a group member



This document outlines how corporations' (NGER) obligations are calculated when a group member has changed ownership part way through the reporting year.

Calculating obligations under the NGER legislation

Under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), a controlling corporation's obligations are based on whether it, or members of its corporate group, met one of the thresholds set out in section 13.

There are two categories of section 13 thresholds: facility thresholds and corporate thresholds.

Facility thresholds

A controlling corporation will meet a facility threshold if the operations of a facility that is under the operational control of one of its group members;

- emits 25 kilotonnes or more of greenhouse gas emissions (in carbon dioxide equivalent)
- consumes 100 terajoules or more of energy, or
- produces 100 terajoules or more of energy.

Corporate thresholds

The corporate thresholds were lowered gradually over the first three years of the operation of the NGER legislation.

For the 2010–11 reporting year onwards, a controlling corporation will meet a corporate threshold if in total, the operations of all the facilities under the operational control of all of its group members:

- emit 50 kilotonnes or more of greenhouse gas emissions (in carbon dioxide equivalent)
- consume 200 terajoules or more of energy, or
- produce 200 terajoules or more of energy.

If any of the section 13 thresholds are met, the controlling corporation has an obligation to apply to the Clean Energy Regulator (CER) to be registered on the National Greenhouse and Energy Register.

Once registered, a controlling corporation is required to provide annual reports on the activities of the members of its corporate group.

Change of ownership in a group member

What is a group member?

Group members are defined at section 8 of the NGER Act. A group member can be any of the following:

- controlling corporation
- subsidiary of a controlling corporation
- joint venture, or
- partnership.

This document deals with a change in ownership of a group member, other than a controlling corporation. For more information on what to do where there has been a change in ownership of a controlling corporation, please see the NGER Supplementary Guidelines—Treatment of Change in Controlling Corporation, available on the NGER page of the CER website

(<http://www.cleanenergyregulator.gov.au/National-Greenhouse-and-Energy-Reporting/Fact-sheets-FAQs-and-guidelines/Pages/default.aspx>).

When do part year thresholds apply?

Subsection 13(2) of the NGER Act provides for the facility level threshold to be adjusted on a pro rata basis, if a group member has operational control over a facility for part of the year.

Subsection 19(3) states that where a group member had operational control over a facility for part of the year, the controlling corporation's report should only cover the period of the year that the group member had operational control.

Subsections 13(2) and 19(3) only apply where a group member has operational control of a facility for part of a reporting year.

Examples of this include where:

- a facility commences operations partway through a reporting year
- a facility is sold part way through a reporting year, and operational control also passes to the new owner/another group member, and
- operational control of a facility has been defined as swapping between group members throughout a reporting year.

Operational control is the concept used to tie a facility to a group member, and therefore, ultimately to the controlling corporation of the group member with operational control over the facility. One of the reasons the notion of 'operational control' was chosen over 'financial control', is that the entity with operational control is generally in a better position to collect the required NGER data.

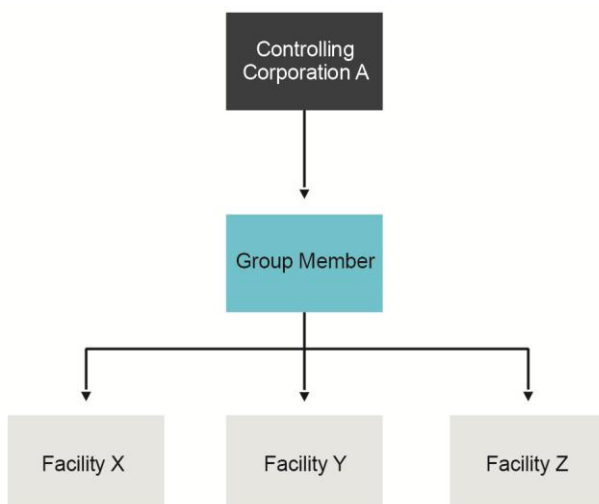
This is why part year reporting applies only where operational control of a facility changes from one group member to another. Part year reporting is appropriate in these circumstances as there are two (possibly more) group members that have operational control over a facility at different times throughout a reporting year. In these circumstances, the NGER Act only requires a controlling corporation to report on the activities of its group members' facilities, for the period of time those group members had operational control over the facilities, and therefore were in a position to collect and retain the required data.

Part year reporting does not apply where ownership of a group member changes. It also doesn't apply where there is a change in ownership of a corporate group. In these circumstances, the acquirer is acquiring the group member—the entity that has operational control over the facility. It is expected that the required NGER data will pass with the group member, to the acquiring corporation.

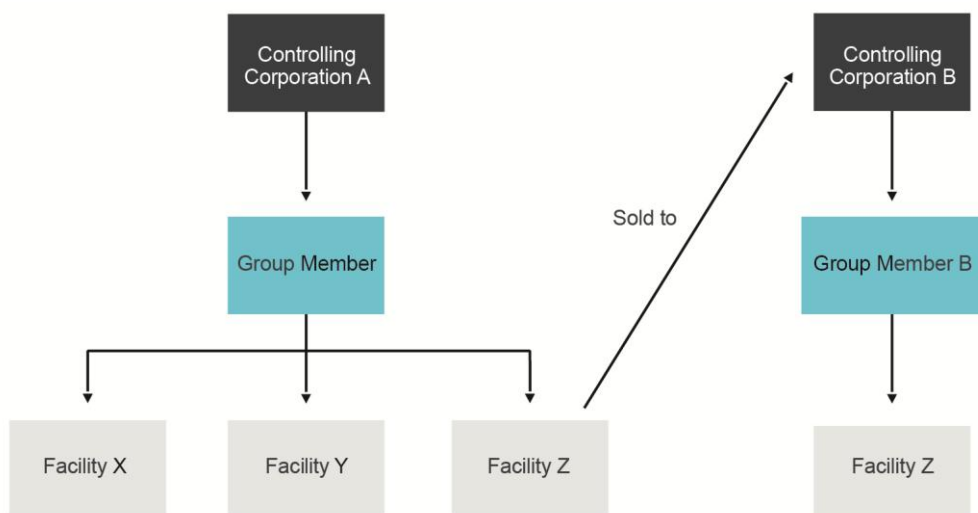
As discussed above, an example of a change in operational control might be where a facility is sold part way through a reporting year, and operational control also passes to the new owner.

For example:

From 1 July 2010 to 31 December 2010 Facilities X, Y and Z were owned by, and under the operational control of, Group Member A.



On 1 January 2011, Controlling Corporation A sold Facility Z to Group Member B. Group Member B, had operational control over Facility Z from 1 January onwards.



Operational control of Facility Z has changed partway through the reporting year, from Group Member A, to Group Member B (s 13(2) and s 19(3) apply).

Change of ownership of a group member—no change in operational control of a facility

A controlling corporation's NGER obligations are calculated by looking at all facilities under the operational control of a controlling corporation, and under the operational control of members of the controlling corporation's corporate group.

Subsections 13(2) and 19(3) do NOT apply where a group member changes ownership but operational control remains with the same group member.

For example, a facility is owned by Group Member A. Group Member A can also be defined as having operational control over the facility:

- If Group Member A, together with its assets (i.e. the facility) are sold to a new corporate group, and Group Member A continues to have operational control over the facility, subsection 13(2) and 19(3) will not apply.

Another example is where a facility is under the operational control of Group Member B, but is owned by Group Member C (these group members belong to different corporate groups);

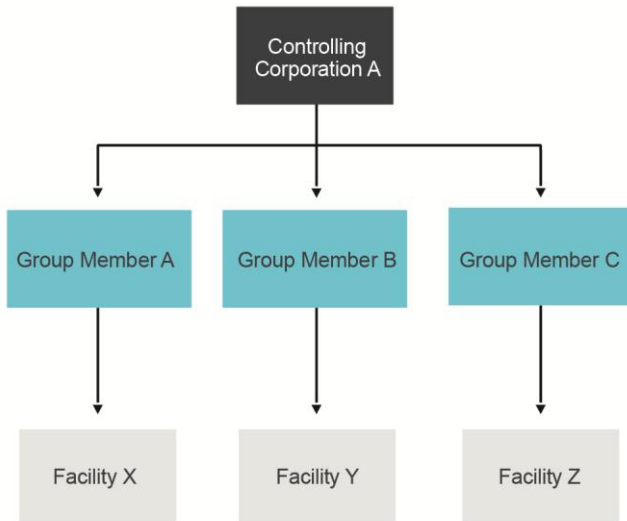
- If Group Member C sells the facility, but Group Member B continues to have operational control over the facility, s 13(2) and s 19(3) will not apply.

It is important to differentiate between situations where operational control over a facility changes and situations where operational control over a facility does not change, but ownership of the group member does.

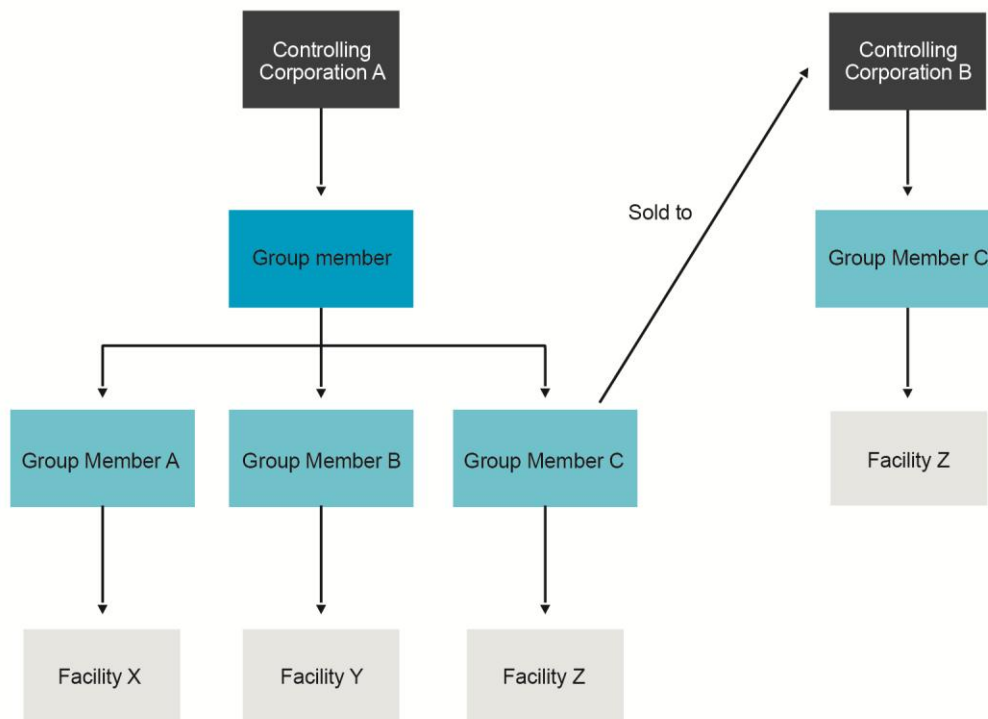
The following information relates to situations where ownership of group member changes, but operational control remains with that group member (s 13(2) and s 19(3) **do not** apply).

For example:

From 1 July 2010 to 31 December 2010 Facilities X, Y and Z were owned by, and under the operational control of, members of Controlling Corporation A's corporate group.



On 1 January 2011, Controlling Corporation A sold its subsidiary, Group Member C, and its assets, including facility Z, to Controlling Corporation B. Group Member C continues to have operational control over Facility Z.



While ownership of Group Member C has changed, operational control of Facility Z has not (ss13(2) and 19(3) do NOT apply).

Who registers and reports where ownership of a group member changes, but operational control does not?

Registration obligations

The activities of facilities under the operational control of a group member go towards that group member's controlling corporation's threshold calculations.

The obligation to register arises at the point in time that a controlling corporation's group reaches a section 13 threshold, and does not fall away, even if the corporation subsequently divests ownership of that group member.

Reporting obligations

A registered corporation's NGER Report must contain information in relation to the facilities under the operational control of it or its group members as at 30 June (including group members that have been wound up or liquidated while part of the registered corporations group).

This means that the controlling corporation that owns the group member at the end of a reporting year would provide a 'full year' report on that group member's activities.

The controlling corporation that previously owned the group member would not include the group member's activities in its report. This is because section 19 requires a report on facilities under the operational control of the corporation and entities that are members of the corporation's group—not members that were part of its corporate group.

Deregistration—change in ownership of a group member, where operational control passes with the group member

The sale of a group member may mean that, at the end of the financial year, the corporation that previously owned the group member(s) will no longer trigger any section 13 thresholds. A registered controlling corporation may apply to the Clean Energy Regulator (CER) to be deregistered when it is in a position to demonstrate that it:

- will not reach a section 13 threshold for that reporting year, and for the next two reporting years, and
- does not hold a reporting transfer certificate.

Provided that the controlling corporation has submitted its application **before 30 June** of the relevant reporting year, and has been deregistered **before 31 October** following the relevant reporting year, no report would be required, and the corporation would no longer have any NGER obligations.

If the controlling corporation has not been removed from the register, or submitted an application for deregistration before the 30 June, a below threshold report will be required.

Any application received from a registered controlling corporation, after 30 June, will be treated as an application for deregistration for the next reporting period.

For example: Controlling Corporation A (a registered corporation) sells all of its group members to Controlling Corporation B on 1 January 2011. Controlling Corporation A does not intend to acquire any more group members (or facilities) over the next two reporting years, and as such, will not trigger any section 13 thresholds for the next two financial years.

Controlling Corporation A could apply to the CER for deregistration, on the basis that as at 30 June 2011, it will have no group members to report on, and therefore will not meet any of the section 13 thresholds, and is not likely to meet thresholds for the next two financial years. If Controlling Corporation A applies for deregistration before 30 June 2011, and is deregistered before 31 October 2011, it will not have to submit a below threshold report for the 2010–11 reporting year, and will have no further NGER obligations.

If Controlling Corporation A applies for deregistration after 30 June 2011, the deregistration application will be in relation to the 2011–12 reporting year. This means that Controlling Corporation A will not be deregistered prior to 31 October 2011, and will have to submit a below threshold report for the 2010–11 reporting year.

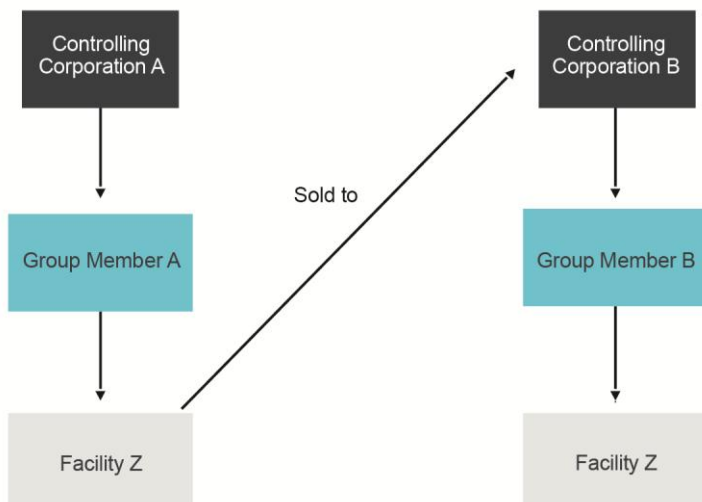
In summary, the:

- **Acquiring Controlling Corporation** is required to provide a report in relation to the full year's activities of all members of its group as at 30 June (including group members that have been wound up or liquidated while part of the registered corporations group); and the
- **Controlling Corporation that previously owned the group member** would either:
 - » Provide a report on the activities of any facilities that are under the operational control of its group members as at 30 June; or
 - » If the sale of the group member meant no thresholds were reached:
 - › apply to deregister (provided it has been deregistered prior to the reporting deadline, it would not be required to submit a report); or
 - › supply a below threshold report (on the basis that at the end of the reporting year, its group members did not reach a threshold).

Who registers and reports when part year reporting applies?

As previously discussed, part year reporting applies where operational control of the facility has passed from one group member to another. Responsibility for reporting on the part year activities will rest with the controlling corporations that own the relevant group members as at 30 June (including group members that have been wound up or liquidated while part of the registered corporations group).

For example, from 1 July 2010 to 31 December 2010, Facility Z was owned by, and under the operational control of, Group Member A. On 1 January 2011, Controlling Corporation A sold Facility Z to Group Member B. Group Member B, had operational control over Facility Z from 1 January onwards.



Controlling Corporation A would assess its reporting obligations by using the pro rata threshold in subsection 13(2). If a threshold was met, Controlling Corporation A would still be required to report on the activities of Facility Z for the first part of the reporting year. Controlling Corporation B would report on Facility Z's activities for the second part.

As Controlling Corporation A still has reporting obligations, it would not be eligible for deregistration for the 2010 11 reporting year.

However, if on 1 February 2011, Group Member A was sold to Controlling Corporation C, Controlling Corporation A could apply for deregistration on the basis that it would not have any group members on 30 June, and therefore would not reach any of the section 13 thresholds.

Controlling Corporation C would be required to report in relation to Facility Z's activities for the part of the year it was under the operational control of Group Member A, as Group Member A would be a member of Controlling Corporation C's group as at 30 June.

What happens if the newly acquired group member has insufficient or poor data?

Where a group member provides an acquiring corporation with insufficient or poor quality data, the acquiring controlling corporation is encouraged to contact the CER immediately to discuss its particular circumstances.

The CER's compliance approach is about encouraging corporations to voluntarily comply, and dealing with contraventions appropriately. In determining appropriate responses to non-compliance, the CER will use a risk based approach that takes into account corporations' behaviours and motivations. Consideration will be given both to the statutory requirements, for example the requirements to register, report and keep records, as well as to corporations' progress on the underpinning systems and processes, such as the application of methodologies and collation of data.

It is expected that the target controlling corporation will cooperate with the acquiring corporation, and make the necessary data available. Corporations should be mindful that in the event the required data is not passed on, section 71 of the NGER Act provides for the relevant data to be provided to the CER. Failure to do so could result in civil penalties.

Change in ownership of a controlling corporation

For information on the treatment of a change in ownership of a controlling corporation, where there is a new controlling corporation for the purposes of the NGER Act (e.g. a takeover, merger or restructure), please see the NGER Supplementary Guidelines—Treatment of Change of Controlling Corporation, available on the [NGER page of the CER website](#).

The following table gives further examples of which entities should report in different circumstances.

	Controlling Corporation A	Controlling Corporation B	Controlling Corporation C
<p>Controlling Corporation B acquires some of Controlling Corporation A's group members. The group members retain operational control.</p> <p>Controlling Corporation A's remaining group members as at 30 June mean that it still meets a section 13 threshold.</p>	<p>Reports for remaining group members (other than those sold to Controlling Corporation B)</p>	<p>Reports on group members as at 30 June (i.e. including the activities of group members acquired from Controlling Corporation A, for full year)</p>	<p>N/A</p>
<p>Controlling Corporation B acquires some of Controlling Corporation A's group members. The group members retain operational control.</p> <p>Controlling Corporation A's remaining group members as at 30 June do not meet a section 13 threshold.</p>	<p>Below threshold report/deregisters (need to apply before 30 June)</p>	<p>Reports on group members as at 30 June (i.e. including the activities of group members acquired from Controlling Corporation A, for full year)</p>	<p>N/A</p>
<p>Controlling Corporation B acquires a facility only, from Controlling Corporation A (and operational control passes from original owner, to new owner)</p>	<p>Reports for the part of year it had operational control over the facility</p>	<p>Reports for the part of year it had operational control over the facility</p>	<p>N/A</p>

<p>Controlling Corporation B acquires a group member (and the group member's facility) from Controlling Corporation A.</p> <p>The group member had operational control over its facility for part of the year, Controlling Corporation C had operational control for other part</p>	<p>Does not report on activities of GM at all</p>	<p>Reports for the facility for full year, other than the part of the year facility was under the operational control of Controlling Corporation C</p>	<p>Reports for part of the year it had operational control of facility</p>
<p>Operational control of a facility changes from one group member, to another group member, within Controlling Corporation B's group</p>	<p>N/A</p>	<p>Reports for full year—part year reporting under each group member</p>	

Further information

Email: reporting@cleanenergyregulator.gov.au

Phone: 1300 553 542 within Australia

Web: www.cleanenergyregulator.gov.au

The information in this supplementary guideline is provided as guidance only. Controlling corporations are responsible for applying the NGER legislation to their particular circumstances and organisational structure. This guideline is not a substitute for independent professional advice.