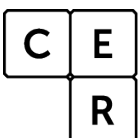
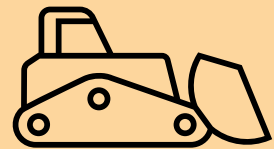
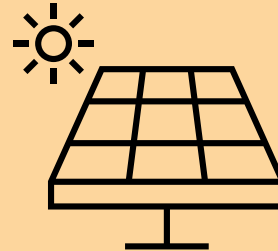
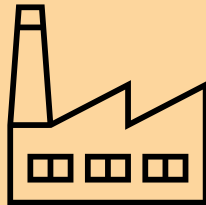
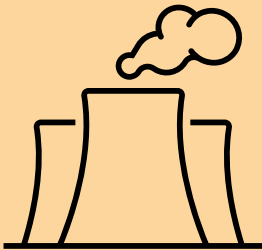


Defining a facility for National Greenhouse and Energy Reporting

July 2022





Contents

Disclaimer	3
Introduction	4
How are 'activity' and 'series of activities' defined?	5
Grouping activities or series of activities together	5
Does the activity or series of activities produce greenhouse gas emission or produce or consume energy? 6	6
Does the activity or series of activities form an undertaking or enterprise and meet the requirements of the regulations?	6
Activities that occur at a single site (regulation 2.16).....	7
Interconnected activities at a single site (regulation 2.16(1)).....	7
Grouping together separate activities (regulation 2.16(2))	8
Definition of 'single site'	9
Overall control.....	9
Overall control where there is a third party manager	9
Listed activities (regulations 2.17 and 2.18).....	9
Grouping a listed activity with activities that occur at a different site (regulation 2.17)	10
Grouping a listed activity with activities that occur at a number of different sites (regulation 2.18).....	10
Transport sector activities (regulation 2.19)	11
Principal activity attributable to specified industry sectors.....	11
When will the activity be attributable to a single State or Territory?.....	12
Electricity, gas, water, sewerage, or telecommunications activities (regulation 2.20).....	13
Do all the activities of this nature have to be defined as the one facility?	13
Splitting by geographical location	13
Splitting by activity	14
How are the activities or series of activities attributed to a single industry sector? (Regulation 2.22)	14
Declaration of a facility by the Clean Energy Regulator	15
Contractor and Sub-Contractor activities	16
Conclusion	16
More information	16



Disclaimer

This guideline has been developed by the Clean Energy Regulator (the agency) to assist entities to comply with their reporting obligations under the [National Greenhouse and Energy Reporting Act 2007](#)¹ (NGER Act) and associated legislation.

This guideline only applies to the 2021–22 NGER reporting year and should be read in conjunction with the NGER Act, [National Greenhouse and Energy Regulations 2008](#)² (NGER Regulations), and [National Greenhouse and Energy Reporting \(Measurement\) Determination 2008](#)³ (NGER Measurement Determination), as in force for this reporting period. These laws and their interpretation are subject to change, which may affect the accuracy of the information contained in the guideline.

The guidance provided in this document is not exhaustive, nor does it consider all circumstances applicable to all entities. This guidance is not intended to comprehensively deal with its subject area, and it is not a substitute for independent legal advice. Although entities are not bound to follow the guidance provided in this document, they must ensure they meet their obligations under the [National Greenhouse and Energy Reporting \(NGER\) scheme](#)⁴ at all times. The agency encourages all users of this guidance to seek independent legal advice before taking any action or decision based on this guidance.

The agency and the Australian Government will not be liable for any loss or damage from any cause (including negligence) whether arising directly, incidentally, or as consequential loss, out of or in connection with, any use of this guideline or reliance on it, for any purpose.

If an entity chooses to meet their obligations under the NGER scheme in a manner that is inconsistent with the guidance provided in this document, the agency, or an independent auditor, may require the entity to demonstrate that they are compliant with requirements of the NGER Act, NGER Regulations, and/or the NGER Measurement Determination. Entities are responsible for determining their obligations under the law and for applying the law to their individual circumstances.

¹ <https://www.legislation.gov.au/Series/C2007A00175>

² <https://www.legislation.gov.au/Series/F2008L0223>

³ <https://www.legislation.gov.au/Series/F2008L02309>

⁴ <http://www.cleanenergyregulator.gov.au/NGER/Pages/default.aspx>



Introduction

Correctly identifying a facility is central to assessing obligations under the [National Greenhouse and Energy Reporting Act 2007](#) (NGER Act). Applying the definition of a facility to a corporation's particular circumstances will require the examination of a number of parts of both the NGER Act and the [National Greenhouse and Energy Reporting Regulations 2008](#) (NGER Regulations).

The definition of a facility can be found in section 9 of the NGER Act.

A facility is an activity or a series of activities (including ancillary activities) that:

- involves the production of greenhouse gas emissions, the production of energy or the consumption of energy
- forms a single undertaking or enterprise and meet the requirements of the regulations, and
- is attributable to a single industry sector.

The definition of facility does not include an activity, or series of activities, in the exclusive economic zone, except to the extent that it is an oil or gas extraction activity or a series of oil or gas extraction activities.

For the purposes of the NGER legislation, the exclusive economic zone incorporates the area extending up to 200 nautical miles from Australia's coastline in accordance with the Seas and Submerged Lands Act 1973.

Under section 54 of the NGER Act, the Clean Energy Regulator (CER) may declare an activity or series of activities that involve the production of greenhouse gas emissions, the production of energy or the consumption of energy to be a facility.

What constitutes a facility for the purposes of the NGER legislation is necessarily broad. The NGER Act and Regulations are intended to cover several varied and complex situations. They are designed to provide corporations with a degree of flexibility in applying the definition of a facility to their own specific circumstances.

Division 2.4 of the NGER Regulations looks at different circumstances in which an activity or activities will 'form a single undertaking or enterprise' for the purposes of section 9 of the NGER Act. Many of the regulations contained in Division 2.4 allow for activities falling within the one sector (and any ancillary activities) to be linked such that they should be treated as a single facility. In many cases the facility's boundaries will affect a controlling corporation's registering and reporting obligations.

The grouping together of activities makes it more likely that a facility will exceed the thresholds for individual facilities in section 13 of the NGER Act. However, once a corporate threshold has been reached, all of a group's facilities will be reported on, regardless of whether the individual facilities reach facility thresholds.

This guidance addresses each of the elements of the definition of facility in turn:

- section 2 addresses the definition of 'activity' and 'series of activities'
- section 3 examines whether the activities produce greenhouse gas emissions or produce or consume energy
- section 4 sets out the circumstances in which an activity or series of activities will form a single undertaking or enterprise, and
- section 5 explains how to attribute the activity or series of activities that make up a single undertaking or enterprise, to a single industry sector.



How are 'activity' and 'series of activities' defined?

The terms 'activity', 'series of activities' and 'ancillary activities' are not defined in the NGER legislation. Taking the ordinary meaning of these terms as defined in the Macquarie Dictionary:

- an activity is a specific deed, action, or function
- a series of activities is a number of deeds, actions or functions that occur in succession or in a particular order, and
- an ancillary activity is an accessory or a helping thing.

When determining the boundaries of a facility, corporations should apply these concepts (activity and a series of activities).

A facility is not necessarily limited to a physical place or thing. For example, there could be numerous facilities within a single commercial building, or a single facility could be made up of numerous commercial buildings. The boundaries of a facility will vary depending on the activity or series of activities that take place within the commercial building(s), and the group member(s) with overall control of these activities.

Grouping activities or series of activities together

When determining whether an activity or series of activities should be grouped together, there are a range of factors that a corporation should consider. Corporations should consider the information in this section when attempting to define any type of facility under the NGER legislation.

For example:

- co-location/interconnection of activities
- operational/processing interdependence in the activities
- production of similar products/services from the activities
- shared personnel for the activities
- shared customers, suppliers, and competitors for the products/outcomes of the activities
- combined immediate management (i.e. non-central office – these are dealt with as 'listed' activities), and/or
- shared production/operational facilities for the activities.

Given the intended flexibility contained within the definition of facility under section 9 of the NGER Act, and the definition of 'forming part of a single undertaking or enterprise' under the NGER Regulations, there is no exhaustive list of factors, nor should the existence of any one factor be treated as conclusive. It is up to the corporation to properly assess all factors for and against grouping together activities or series of activities to form part of a single undertaking or enterprise.

Corporations choosing to define an activity or series of activities as several facilities must be able to provide reasons as to why the activities or series of activities should be treated as distinct from each other. Corporations must keep records of these decisions and the reasons for them.

Corporations taking this approach should be cognisant of the intent of the NGER legislation and should note that attempts to group activities such that no facility reaches a facility threshold could be viewed as an attempt to avoid registration and reporting obligations under the NGER legislation.



Does the activity or series of activities produce greenhouse gas emission or produce or consume energy?

To be considered a facility, an activity or series of activities must either produce greenhouse gas emissions or produce or consume energy.

Greenhouse gas emissions:	<p>In relation to a facility, refers to the release of greenhouse gases into the atmosphere. This covers direct releases of greenhouse gases (scope 1 emissions) and certain indirect releases of greenhouse gases (scope 2 emissions) (see regulation 2.23).</p> <p>Refer to section 7 of the NGER Act and Part 2, Division 2.2 of the NGER Regulations for further information on which greenhouse gases must be reported under the NGER legislation.</p>
Energy production:	<p>In relation to a facility, refers to the extraction, capture or the manufacture of energy from one form to another for final consumption by or from the operation of the facility or for use other than in the operation of the facility.</p>
Energy consumption:	<p>In relation to a facility, means the use or disposal of energy from the operation of the facility including own-use and losses in extraction, production, and transmission.</p>

Energy consumption and production are defined in regulation 2.23. For further information on the energy commodities covered by the NGER legislation, refer to Schedule 1 of the NGER Regulations. The Supplementary Guidance: Energy Production and Consumption is available on the [NGER page of the CER website](#).

Does the activity or series of activities form an undertaking or enterprise and meet the requirements of the regulations?

The NGER Regulations (Part 2, Division 2.4) set out the different circumstances in which an activity or series of activities will form part of a single undertaking or enterprise for the purposes of the NGER Act. The circumstances listed by the NGER Regulations are:

- occur at a single site (regulation 2.16)
- are listed activities (regulation 2.17 or 2.18) that can be attributed to the activities that occur at the main site
- are transport sector activities (regulation 2.19), and
- are electricity, gas, water, sewerage, or telecommunications activities (regulation 2.20).

For each of these circumstances, corporations will also need to consider specific conditions to determine if the activities form part of a single undertaking or enterprise. These conditions are discussed in sections 4.2 – 4.5 of this document.



Activities that occur at a single site (regulation 2.16)

Sections 4.2.1 and 4.2.2 set out the ways in which the activities or series of activities occurring at a single site can be considered to form a single undertaking or enterprise. Corporations will need to consider regulation 2.16 in relation to all the activities or series of activities that occur at a single site.

Sub regulation 2.16(1) allows corporations to group interdependent or connected activities or series of activities together, regardless of the products or services produced and who has overall control of the activities. Activities grouped under sub regulation 2.16(1) form the primary production process.

Sub regulation 2.16(2) allows corporations to group an independent activity or series of activities, with the activities in the primary production process, provided the secondary activities or series of activities produce a product or service for the primary production process and the activities are under the overall control of the same corporation.

In order to apply regulation 2.16 to their particular circumstances, corporations should consider how the activities or series of activities occurring at a single site interact.

Interconnected activities at a single site (regulation 2.16(1))

This sub regulation provides for the grouping together of activities that have some degree of interconnectivity, even though the activities may produce a range of different products or services.

Operations occurring at a single site may involve a number of different activities. An activity or series of activities that together produce one or more products or services, will form part of a single undertaking or enterprise if the activities occur at a single site. These activities are considered the primary production process.

Corporations should be aware that the activities of the primary production process are not required to be under the overall control of the same corporation in order to be considered part of a single undertaking or enterprise if no other production process(es) are attributed to the primary production process. The term 'other production process' is defined in regulation 2.16(2) of the NGER Regulations.

All the products or services of the activities making up the primary production process are not required to be wholly consumed by the primary production process.

Box 1: Example of defining interconnected activities at a single site under sub regulation 2.16(1)

A wine products manufacturing process occurring at a single site consists of:

- a primary productive activity, wine products manufacturing, and
- other activities (including ancillary activities) such as grape growing, transport and administrative activities.

Together these activities make up the primary production process.

In the case of the grape growing, the grapes are also sold as a secondary product to the market.

There is no other production process(es) attributed to the primary production process.



As all of these activities form part of the primary production process (wine products manufacturing) and occur at a single site, under sub regulation 2.16(1) they will form part of a single undertaking or enterprise regardless of who has overall control of the activities.

Grouping together separate activities (regulation 2.16(2))

This sub regulation provides for the grouping together of activities that are completely separate from the activities forming the primary production process, provided that the products or services from the secondary production process are used in the primary production process.

In many cases, there may also be other separate activities or series of activities occurring at the same site, that is, an activity or series of activities operating independently of the primary production process on the same site. This would be considered the other production process.

A primary production process and other production process(es) that occur on a single site will form part of a single undertaking or enterprise if:

- all activities are under the overall control of the same corporation, and
- the other production process(es) produce or consume one or more other products for the primary production process (which are not solely used in the primary production process).

Activities that form an entirely separate production process, and that are under the overall control of a separate corporation would not form part of a single undertaking or enterprise, despite occurring at a single site.

Similarly, where the other production process does not produce or consume a product for the primary production process, the activities will not form part of the same undertaking or enterprise, even if all activities are under the overall control of the same corporation and occur at a single site.

Box 2: Example of grouping together separate activities at a single site under subregulation 2.16(2)

It is determined that Corporation X has overall control of all the activities in the primary production process (wine products manufacturing) occurring at a single site. Corporation X also has overall control of olive growing activities that take place at the same site.

The olive growing activities produce olives, some of which are used in the primary production process to produce wine marinated olives. The olives grown in the olive growing process are not solely used in the primary production process.

Therefore the olive growing is considered an other production process under section 2.16(2) of the NGER Act.

The activities of the primary production process (wine products manufacturing) and the other production process (olive growing) are considered to form part of a single undertaking or enterprise under 2.16(2) of the NGER Regulations.



Definition of 'single site'

Regulation 1.03 defines a single site as a single physical area which can include a series of geographical locations in close proximity to one another.

The term 'close proximity' is not defined in the NGER legislation. Close proximity for the purpose of determining if an activity or series of activities should be considered to occur at a single site will be dependent on the context in which the activities occur. For example, what is considered 'close proximity' in an urban setting will not necessarily be the same as in a non-urban setting.

When determining if an activity or series of activities occur in close proximity and subsequently a single site, corporations will need to consider factors such as other activities in the area and the location of the sites in question.

Overall control

Regulation 2.14 defines the concept of 'overall control':

1. A corporation has overall control in relation to an activity or series of activities (including ancillary activities) if the corporation has the authority to introduce and implement any or all of the following for the activity or series of activities:
 - » operating policies
 - » health and safety policies
 - » environmental policies.
2. If more than one corporation could satisfy sub regulation (1) at any one time, then the corporation that has the greatest authority to introduce and implement the policies mentioned in paragraphs (1) (a) and (c) is taken, for the purposes of these Regulations, to have overall control in relation to the activity or series of activities (including ancillary activities).

It is important to note that the concept of 'overall control' is used when defining facility boundaries. 'Operational control' is the concept used when determining the corporate group with NGER obligations for the facility. For further information, refer to the NGER guidance material available on the [NGER page of the CER website](#).

Overall control where there is a third party manager

Where a third party is contracted to manage or operate a facility on behalf of the owner, it is expected that the authority to introduce policies will be shared between the owner and the manager or operator according to conditions specified in the contract between the parties. The greatest authority to introduce policies is, therefore, dependent on the contractual relationship between the parties. In some circumstances, the greatest authority will rest with the facility manager as the corporation with day-to-day on-site managerial responsibility. This is, however, balanced against the ability to introduce operating and environmental policies, which may rest with the owner.

Listed activities (regulations 2.17 and 2.18)

Once a corporation has determined that an activity or series of activities form part of a single undertaking or enterprise under sub regulation 2.16(1) or 2.16(2), a corporation is able to group certain off-site activities that support an activity that occurs at the main site. Listed activities may be grouped with activities occurring at the main site regardless of the fact that the activities take place on different sites.

Grouping a listed activity with activities that occur at a different site is optional. A corporation that chooses not to group listed activities with the activities occurring at the main site would then need to consider how the listed activities would be grouped to form a facility/facilities in their own right.



These activities are called listed activities and are listed in regulation 1.03 as outlined in Box 3.

Box 3: Listed activities (regulation 1.03)

A listed activity means an activity of one of the following kinds:

- record keeping
- communication
- purchasing materials or equipment
- managing the employment, training and payment of employees
- storage (including warehousing) of materials or equipment
- transport of persons or goods of a kind not covered by regulation 2.19
- sales promotion
- cleaning and maintaining buildings and other structures
- maintenance of equipment
- security and surveillance.

(regulation 1.03)

Grouping a listed activity with activities that occur at a different site (regulation 2.17)

For a corporation to group one or more of the listed activities with activities that occur on the main site:

- the listed activity and the other activities (the main site activities) must occur at different sites
- all activities must occur within the same State or Territory, and
- all activities must be under the overall control of the same corporation that has overall control of the activities occurring at the main site.

Corporations that choose to group listed activities with activities that occur at a different site must then identify the main site activity to which the listed activity is ancillary, and make a record of this decision.

A listed activity that has been identified as being ancillary to an activity that occurs at the main site will form part of the same single undertaking or enterprise as the main site activity/activities.

Grouping a listed activity with activities that occur at a number of different sites (regulation 2.18)

In some circumstances a particular listed activity may be ancillary to an activity that occurs at several different main sites. As with linking a listed activity to a single site:

- the listed activity must occur at a different site from each of the main site activities
- all activities must occur within the same State or Territory, and
- all activities must be under the overall control of the same corporation.

Corporations can choose to group the listed activity by identifying it as being ancillary to:



1. an activity at one of the other sites:
 - » the corporation must record this decision, and
 - » the listed activity will form part of the same single undertaking or enterprise as the activities at the other identified site.
2. an activity from each of the other sites:
 - » corporation must record this decision
 - » corporation must record the proportion of the listed activity to be attributed to each of the other site activities, and
 - » the listed activity will form part of the same single undertakings or enterprises as the activities at the other sites in the proportions identified by the corporation.
3. none of the activities at any of the other sites:
 - » the corporation must record this decision, and
 - » a listed activity that that has been identified as not being ancillary to an activity that occurs on any of the other sites will be taken to be part of its own single undertaking or enterprise (and be dealt with as separate from the single undertakings or enterprises at all the other sites).

Transport sector activities (regulation 2.19)

The NGER legislation recognises that in some cases the 'single site' requirement is not practical.

For example, any transport activities, will be non-stationary in nature, and therefore, it is difficult to attribute these activities to a 'single site'. As a result, there is a separate regulation that deals with transport sector activities.

Regulation 2.19 states that an activity and any activities that are ancillary to it will form part of the same single undertaking or enterprise provided that:

- the principal activity in the series is attributable to one of the industry sectors specified in regulation 2.19 (see table 1.2)
- the activity is attributable to a single State or Territory, and
- the activity and its ancillary activities are under the overall control of the same corporation.

Principal activity attributable to specified industry sectors

For transport sector activities, 'principal activity' is defined as the activity in a series of activities that:

- results in the production of a product or service that is produced for sale on the market; and
- produces the most value for the series out of any activity in the series.

See sub regulation 2.19(4) for the definition of principal activity for transport sector activities.

The principal activity must be attributable to one of the industry sectors in Table 1.



Table 1: Transport industry sectors (regulation 2.19)

Sector	ANZSIC code
Air and space transport	490
Postal and courier pick-up and delivery services	510
Rail freight transport	471
Rail passenger transport	472
Road freight transport	461
Road passenger transport	462
Scenic and sightseeing transport	501
Waste collection services	291
Water freight transport	481
Water passenger transport	482

When will the activity be attributable to a single State or Territory?

The principal activity is attributable to the State or Territory in which the fuel for the activity is purchased. This remains the same, even where the fuel is consumed in a different State or Territory from where it was purchased. Ancillary activities for transport sector activities must also be attributed to transport facilities within the same State or Territory. For the purposes of transport sector activities, listed activities (regulation 2.17 and 2.18) do not apply as there is no 'separate site' in facilities of this nature. This means that all ancillary activities occurring within the same State or Territory for transport sector activities will form part of the same single undertaking or enterprise as the transport sector activities.

Box 4: Example of attributing transport sector activities to a single state or territory

A corporation conducts trucking activities across the NSW and Victoria boarder. All fuel for these trucking activities is purchased in NSW. Based on the location of fuel purchases, these trucking activities would be attributed to NSW despite being consumed in both NSW and Victoria. The corporation also undertakes recordkeeping and maintenance activities for the trucking activities within NSW. These ancillary activities would also be attributed to the facility as they support the transport activity and occur in the same state.



Electricity, gas, water, sewerage, or telecommunications activities (regulation 2.20)

As with transport activities, activities involving the supply/transmission of certain products, such as gas and water, cannot easily fall within the 'single site' definition as these activities generally involve networks or pipelines that cover large distances.

To this end, regulation 2.20 states that an activity (and any activities that are ancillary to it) will form part of a single undertaking or enterprise provided that:

- the activity is in one of the industry sectors specified in regulation 2.20 (see Table 2), and
- the activity and its ancillary activities are under the overall control of the same corporation.

As with transport sector activities, listed activities (regulation 2.17 and 2.18) do not apply as there is no 'single site' in facilities of this nature.

Unlike transport facilities, network and pipeline facilities may cross State or Territory boundaries and still be considered the one facility.

Table 2: Network and pipeline industry sectors (regulation 2.20)

Industry	ANZSIC code
Electricity transmission	262
Electricity distribution	263
Gas supply	270
Water supply, sewerage and drainage services	281
Telecommunications services	580

Do all the activities of this nature have to be defined as the one facility?

There are two ways in which corporations might be able to define electricity, gas, water, sewerage, or telecommunications activities as several smaller facilities; by geographical location or by activity. In both cases, corporations would need to demonstrate the reasons as to why it is appropriate to treat the activities in this manner. Corporations taking this approach must be cognisant of the intent of the NGER legislation and should note that attempts to group activities such that no facility reaches a facility threshold could be viewed as an attempt to avoid registration and reporting obligations under the NGER legislation.

Splitting by geographical location

In certain circumstances corporations may choose to split activities or series of activities of this nature according to geographic location.

For example, where four sewerage plants, located in four separate towns (two in Victoria and two in New South Wales), are under the overall control of the same corporation, they could all be considered the one facility as they all involve the same 'activity' or 'series of activities'.



In order to define each system in each town as a separate series of activities / undertaking or enterprise (i.e. have four facilities instead of one large one), the corporation would need to demonstrate that the activity or series of activities undertaken in each town are separate.

Splitting by activity

Sub regulation 2.20(2) lists the relevant industry sectors, including, at paragraph (d), 'water supply, drainage and sewerage'. The fact that these activities can all occur in a logical succession or sequence, favours the activities being treated as a single series for the purposes of the NGER legislation. A corporation that is involved in one or more of these services, and that wishes to define each of these services separately, for example, its water supply activities as being separate from its sewerage and/or drainage activities, must be able to provide reasons as to why each of its activities (i.e. water supply, sewerage and drainage) should be treated as a distinct series of activities.

As stated in section 2.2 of this document, when examining a series of activities, there will be a range of factors that a corporation should consider before deciding to split a series of activities into separate series.

For example:

- co-location/interconnection of activities (noting that regulation 2.20 acknowledges that networks/pipelines can cover large distances and still be included in the one facility)
- operational/processing interdependence in the activities
- production of similar products/services from the activities
- shared personnel for the activities
- shared customers, suppliers, and competitors for the products/outcomes of the activities
- combined immediate management (i.e. non-central office – these are dealt with as 'listed' activities), or
- shared production/operational facilities for the activities.

Given the intended flexibility contained within the definition of facility under section 9 of the NGER Act and the definition of 'forming part of a single undertaking or enterprise' under regulation 2.20, there is no exhaustive list of factors, nor should the existence of any one factor be treated as conclusive. It is up to the corporation to properly assess all factors for and against defining facilities in this way.

How are the activities or series of activities attributed to a single industry sector? (Regulation 2.22)

Having defined the activity or series of activities that form a single undertaking or enterprise, corporations then need to attribute the activity or series of activities to a single industry sector. This is done using the principal activity. For the purposes of attributing activities to an industry sector the activities themselves do not necessarily need to belong to the industry sector to be considered part of the facility. The NGER Regulations (regulation 2.22) tell corporations how to attribute an activity or series of activities to a single industry sector in accordance with the principal activity.

To determine which industry sector to attribute the activities to, corporations must consider the following:

- Where only one activity has been identified as being part of a single undertaking or enterprise, the corporation should select the relevant two or three digit Australian and New Zealand Standard Industrial Classification (ANZSIC) code from those listed in Schedule 2 of the NGER Regulations.
- Where a number of activities have been identified as being part of a single undertaking or enterprise, the corporation must decide which of these activities is the principal activity;



- » The principal activity is the activity that;
 - » results in the creation of a product or service for sale on the market; and
 - » produces the greatest value of all the activities in the series
- » All activities identified as being part of the single undertaking or enterprise should be attributed to the same ANZSIC industry classification as the principal activity.
- Where there is a principal activity in a series of activities that form part of a single undertaking or enterprise and:
 - » the single undertaking or enterprise involves construction of infrastructure for the purpose of another activity being undertaken in the future (the future activity) as part of that single undertaking or enterprise; and
 - » the principal activity and the future activity are under the overall control of one corporation, then all of the activities forming part of the single undertaking or enterprise are attributable to the same industry sector as the future activity.

When determining the industry sector of an activity, registered corporations should refer to the industry classifications and codes listed in the 2006 ANZSIC. ANZSIC codes are a widely accepted system for classifying industry activities. Four 'levels' are used:

- divisions (each division is assigned a letter)
- subdivisions (each subdivision is assigned a two digit number)
- groups (each subdivision is assigned a three digit number), and
- classes (each class is assigned a four digit number).

A division is the broadest description of an activity; a class is the most detailed description. Corporations should refer to Schedule 2 of the NGER Regulations to determine the appropriate industry sector for each facility.

For the purposes of the NGER legislation, the industry sector is generally matched to an ANZSIC group (three digit level), although a few industry sectors are set at the ANZSIC subdivision (two digit) level.

Table 3: ANZSIC classification: an example

Division	Subdivision	Group	Class
Manufacturing	Transport and equipment manufacturing	Motor vehicle and motor vehicle part manufacturing	Other motor vehicle parts manufacturing
C	23	231	2319

Declaration of a facility by the Clean Energy Regulator

Corporations may still have difficulty applying the definition of a facility in the NGER legislation to their own circumstances. If there is any uncertainty or disagreement about the definition of a facility, corporations are encouraged to seek legal advice. Corporations should record all decisions and the reasons for them when defining the boundaries of a facility.

Under section 54 of the NGER Act, the CER may declare an activity or series of activities a facility, either on the initiative of the CER or on application by a controlling corporation. While the CER must consider the definition of facility as listed at subsection 9(1)(a) of the NGER Act, the CER is not bound by these factors



when making a declaration. A declaration of a facility by the CER will override the factors listed in section 9 of the NGER Act.

All reasonable efforts to apply the definition in the NGER Act and NGER Regulations to a corporation's circumstances should be made prior to any application for a declaration of a facility.

Further information about the process of applying for a declaration of a facility is available on the [NGER page of the CER website](#).

Contractor and Sub-Contractor activities

Corporations are required to report energy and emissions from facilities under the operational control of group members, including information relating to the activities of contractors and sub-contractors.

When determining who should report emissions and energy data associated with the activities of contractors and sub-contractors, the concepts of overall control and operational control will need to be carefully examined with respect to each activity and facility.

For further information on reporting contractor's and sub-contractor activities, refer to [NGER guidance material](#) on contractors and sub-contractors.

Conclusion

Correctly defining facilities is important to assessing obligations under the NGER Act. Registered corporations are required to report all greenhouse gas emissions, energy production and energy consumption from facilities under the operational control of the registered corporation or a member of its group. Corporations with operational control over facilities that meet any of the section 13 thresholds will be required to register and provide an annual report to the CER.

Corporations can use the following checklist to help determine whether an activity or series of activities form a facility under the NGER legislation

- ✓ One: Have I identified the relevant activity, or series of activities (including ancillary activities)?
- ✓ Two: Does the activity or series of activities produce greenhouse gas emissions or produce or consume energy?
- ✓ Three: Do the activities form a single undertaking or enterprise and meet the requirements of the regulations?
 - › Do the activities take place at a single site (including listed activities)
 - › Are the activities in the transport sector?
 - › Do the activities fall into one of the specified the electricity, gas, water supply, sewerage or telecommunication industry sectors?
- ✓ Four: Have I attributed the activities to a single industry sector?

More information

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