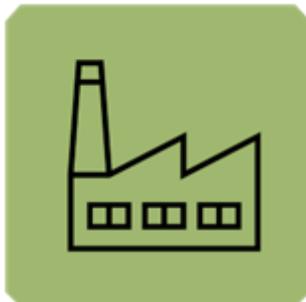




Transfer of reporting obligations under section 22X of the NGER Act

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Disclaimer

This guideline has been developed by the Clean Energy Regulator (CER) 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 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 CER encourages all users of this guidance to seek independent legal advice before taking any action or decision on the basis of this guidance.

The CER 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 CER, 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/C2007A00175/latest/text>

² <https://www.legislation.gov.au/F2008L02230/latest/text>

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

⁴ <https://cer.gov.au/schemes/national-greenhouse-and-energy-reporting-scheme>



Introduction

A controlling corporation registered under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) is required to submit a section 19 report each year it is registered. This report relates to the greenhouse gas emissions, energy production and energy consumption from facilities under either the operational control of:

- a controlling corporation
- members of its corporate group.

This document explains how reporting obligations for facilities can be transferred from a controlling corporation to the group member with operational control over those facilities.

22X agreements

A controlling corporation may choose to transfer its section 19 reporting obligations to group members within its corporate group⁵. If you are considering a 22X agreement, you must be aware of the following:

- The group member taking on reporting obligations must have operational control⁶ of the facilities that are the subject of the agreement.
- The group member taking on the 22X reporting requirements does not need to register under the NGER Act. However, the executive officer and NGER contact person need [Client Portal](#)⁷ accounts to submit a section 22X report in the Emissions and Energy Reporting System (EERS).
- When an agreement has been received by the CER, a separate workspace in EERS will be created for the group member to enter data and submit an annual section 22X report.
- Facilities subject to a 22X agreement will still count towards a controlling corporation's corporate totals and threshold assessment under section 13 of the NGER Act. The CER will connect the facilities reported under a section 22X agreement to the controlling corporation total once all reports have been submitted.
- The parties entering the agreement must notify us in writing, **by 30 June** of the financial year to which the agreement relates.
- There is no application form for this process, instead a signed copy of the agreement should be sent to reporting@cer.gov.au.
- Refer to [what information is required in a 22X agreement](#) for a checklist of information that should be included in a notification.

⁵ See section 22X of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act)

⁶ See Operational control guidelines for more information.

⁷ <https://cer.gov.au/online-systems#emissions-and-energy-reporting-system>



Ongoing requirements for controlling corporations

Controlling corporation has not transferred reporting for all its facilities

Where a controlling corporation has not transferred its reporting obligations for all its group members or facilities, **it is still required to submit a report** (section 19 report) to the CER by 31 October each year.

Any facilities that are not subject to a 22X agreement are required to be reported in the controlling corporation's section 19 report. This includes facilities acquired part-way through the reporting year as well as facilities that are under the operational control of the controlling corporation.

While the controlling corporation no longer has section 19 reporting requirements in relation to the facilities subject to the section 22X agreement, its section 19 report needs to include a list of all its group members and the facilities, including those that are subject to section 22X agreements.

Controlling corporation has transferred reporting obligations for all its facilities

If a controlling corporation has transferred **all** its reporting obligations under section 22X, **it is not required to submit a section 19 report** while the 22X agreements are in place. This can only be done if the controlling corporation does not have operational control of any facilities.

Controlling corporations must review their corporate structure (including facilities) every year to ensure any existing 22X agreements align with their corporate structure. Where an agreement no longer reflects the corporate structure, a new 22X agreement must be supplied **by 30 June**. Any outdated agreements should be revoked. If a facility needs to be added or removed from an existing 22X agreement, an updated agreement must be supplied to the CER as soon as possible.

Ongoing requirements for group members

A group member with a 22X agreement in place must submit a section 22X report to the CER by 31 October in relation to each year the agreement is in place. Like a section 19 report, the section 22X report contains information relating to the greenhouse gas emissions, energy production and energy consumption from the facility during the financial year.

The group member must provide a report for every facility specified in the agreement, including facilities that do not meet a threshold under section 13 of the NGER Act.

Reporting obligations under section 22X remain in place unless the CER is notified that the transfer of reporting obligations under 22X have ceased, and the controlling corporation resumes section 19 reporting obligations. The notification can be done in writing at any time prior to the reporting deadline of 31 October following the relevant financial year.



What information is required in a 22X agreement?

See table 1 for an example of how to present information for the persons affected by the 22X agreement. A separate table should be used for each controlling corporation that is transferring reporting obligations under the agreement.

Table 1: sample 22X agreement identifying details table

Controlling corporation	Group member	Facility	Relevant financial year(s)
Name and ABN of the controlling corporation.	Name and ABN of the group member. Note: if there are multiple group members in the controlling corporation's group, and parties wish to include multiple 22X agreements, add a new row for each group member and the relevant facilities.	Name of the facility which the group member has operational control of.	The financial year or years which the agreement relates, for example: » Current reporting period only » Current reporting period and continuing indefinitely » Current reporting period to another specified reporting period.

We also need the following details:

- The name and CER number of the group member's executive officer and NGER contact person.
 - » The executive officer and NGER contact person will need to create a [Client Portal⁸](#) account if they do not already have their own.
- Confirmation that the group member has operational control of the identified facility (for example, refer to the most recent NGER report).
- A statement signed by the executive officer that the group member agrees to the transfer of reporting requirements under section 22X, and that they understand they are required to provide a section 22X report for each financial year the 22X agreement is in place.
- A statement signed by the executive officer that the controlling corporation and the group member agree that the controlling corporation will cease to have section 19 reporting obligations in relation to the facilities that are subject to the section 22X agreement.
- Details of any circumstances in which the parties agree that the section 22X agreement will be revoked, for example:

⁸ <https://portal.cleanenergyregulator.gov.au/signup>



- » where the controlling corporation's group does not meet any of the thresholds specified in subsection 13(1) of the NGER Act
- » where the group member is no longer part of the controlling corporation's group (taking effect from 1 July of the relevant year).
- Acknowledgement that the 22X transfer means the group member is now responsible for any record keeping requirements and compliance related matters.

See [record keeping and compliance for greenhouse and energy reporting⁹](#) for further information.

Notifying the Clean Energy Regulator of a revocation

Written notification that an agreement has ceased must be received by the CER prior to the reporting deadline of 31 October following the relevant financial year.

Unless the 22X agreement specifies the circumstances under which the agreement will no longer have effect, the agreement continues to be in place even when circumstances change. For example:

- » where the controlling corporation's group does not meet any of the thresholds specified in subsection 13(1) of the NGER Act
- » where the group member is no longer part of the controlling corporation's group (taking effect from 1 July of the relevant year).

For further information regarding the revocation of a 22X agreement, [contact us¹⁰](#).

Non-compliance under the NGER Act

Failure to submit a compliant section 22X report by the due date is a contravention of the NGER Act and may attract a civil penalty. The same penalties may also apply to executive officers of the group member.

The NGER Act contains a range of possible responses for non-compliance including use of enforceable undertakings, publication of non-compliance on the CER's website and infringement notices.

Furthermore, section 19 of the Act outlines the offence for failing to provide a report to the CER. Section 19 of the Act is a civil penalty provision, while the provision of false or misleading information may also constitute criminal offences under the *Criminal Code Act 1995*.

See [record keeping and compliance for greenhouse and energy reporting¹¹](#) for further information.

⁹ <https://cer.gov.au/schemes/national-greenhouse-and-energy-reporting-scheme/record-keeping-and-compliance-greenhouse-and-energy-reporting>

¹⁰ <https://cer.gov.au/about-us/contact-us>

¹¹ <https://cer.gov.au/schemes/national-greenhouse-and-energy-reporting-scheme/record-keeping-and-compliance-greenhouse-and-energy-reporting>



More information

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