



Australian Government

Clean Energy Regulator

CLEAN  
ENERGY  
REGULATOR

# Compliance policy for education, monitoring and enforcement activities

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# 1. Introduction

The Clean Energy Regulator's purpose is to contribute to a reduction in Australia's net greenhouse gas emissions, including through the administration of market based mechanisms that incentivise reduction in emissions and the promotion of additional renewable electricity generation.

We operate for the public good in administering the:

- National Greenhouse and Energy Reporting scheme, under the [National Greenhouse and Energy Reporting Act 2007](#)
- Emissions Reduction Fund, under the [Carbon Credits \(Carbon Farming Initiative\) Act 2011](#)
- Renewable Energy Target, under the [Renewable Energy \(Electricity\) Act 2000](#), and
- Australian National Registry of Emissions Units, under the [Australian National Registry of Emissions Units Act 2011](#).

## 2. Objectives and guiding principles

This policy outlines our approach to particular aspects of compliance activities under the schemes we administer. High levels of compliance furthers the objectives set out in the legislation and underpins confidence in the primary carbon and renewable energy markets we operate.

Our approach includes helping scheme participants to understand how to comply with their obligations, educating those who want to do the right thing, and an overall approach to deter, detect and respond to non-compliance to ensure ongoing scheme integrity.

Under this approach, we ensure activities are undertaken in a manner which is:

- in accordance with the law
- effective, timely and proportionate
- fair and impartial, and
- within officers' authority.

We publish annual [compliance priorities](#) to increase the transparency and accountability of our activities to scheme participants, stakeholders, and the public. These identify specific areas of focus and targeted activities to address potential non-compliance which pose a high risk to scheme objectives. This work complements the risk-based approach to managing compliance in each scheme.

### 2.1. Responsibilities of scheme participants

Responsibility for complying with relevant requirements under the schemes administered by the Clean Energy Regulator rests with the person or organisation to whom the legislation, policy, guidance or contract applies. Scheme participants have exhibited high levels of compliance with the schemes administered by the Regulator and we expect this to continue.

Participants often have obligations to meet other Commonwealth, state and territory laws and we work with other relevant regulators to facilitate compliance with these other obligations.

## 2.2. The Clean Energy Regulator's responsibilities

To further the legislative objectives of reducing carbon emissions and increasing the use of clean energy, the Clean Energy Regulator is responsible for:

- explaining how schemes work and what participants can do to comply with scheme requirements
- monitoring compliance
- facilitating and enforcing compliance with each scheme
- collecting, analysing, providing and publishing information and data, and
- accrediting auditors and inspectors for the schemes we administer.

In support of these responsibilities, we are also committed to partnering with other regulators, agencies, law enforcement and industry bodies.

## 3. An intelligence-led risk-based approach to compliance

The Clean Energy Regulator monitors the ability and willingness of existing and intending scheme participants to meet their obligations, as well as their operating environment. This information informs our compliance strategy and decisions.

Where a suspected compliance issue exists, we will begin by gathering and analysing relevant facts to identify the cause, decide the likelihood that a contravention has occurred (or may occur), the degree of seriousness, and likely consequences.

To assist in determining the appropriate response, we use an intelligence-led risk-based approach that considers the behaviours and motivations of scheme participants:

- **Scheme participants who actively engage with us** — participants who maintain regular contact with us, provide all requested information and are quick to take corrective action when required. These participants are generally least likely to contravene their obligations.
- **Scheme participants experiencing difficulty meeting their obligations or who make honest mistakes** — participants who engage early to advise us of their challenges or discovery of an anomaly in information provided, and seek our guidance on how to self-correct. These participants will be supported to return to compliance.
- **Scheme participants who are unwilling to meet their obligations** — participants who regularly or intentionally provide incomplete or inaccurate information, ignore statutory timelines for routine tasks, who do not reply promptly to our efforts to engage them, fail to take steps to resolve their non-compliant behaviour, or who are not genuine in their efforts to meet their obligations. These participants are more likely to experience stronger compliance action.
  - » The degree of compliance action in this latter category will depend on the intent or seriousness of the degree of non-compliance, and the impact of the non-compliance on the objectives of the schemes as explained in Figure 1.

Figure 1 provides an overview of our compliance approach in light of the motivations and behaviours of the scheme participant. We prioritise stopping and preventing harm.

**Figure 1: The Clean Energy Regulator response continuum to non-compliance issues**

Participant’s attitude to compliance			
<p><b>Voluntary compliance</b></p> <ul style="list-style-type: none"> <li>• Informed self-assessment.</li> <li>• Management is compliance oriented.</li> </ul>	<p><b>Accidental non-compliance</b></p> <ul style="list-style-type: none"> <li>• Not yet compliant.</li> <li>• Attempting compliance (e.g. developing internal control systems to ensure compliance).</li> <li>• Impact is low.</li> <li>• Non-systemic.</li> </ul>	<p><b>Opportunistic non-compliance</b></p> <ul style="list-style-type: none"> <li>• Resistance to compliance.</li> <li>• Lack of indication of intention to comply (e.g. no indication of systems in place to ensure compliance).</li> <li>• Habitual lapses into non-compliance.</li> </ul>	<p><b>Intentional non-compliance</b></p> <ul style="list-style-type: none"> <li>• Deliberate non-compliance.</li> <li>• Criminal intent or fraud.</li> <li>• Other illegal activity.</li> </ul>
<i>“Committed to doing the right thing”</i>	<i>“Trying to do the right thing, but not always succeeding”</i>	<i>“Do not want to comply, but will if made to”</i>	<i>“Decision to be non-compliant”</i>
The Clean Energy Regulator’s response			
<p><b>Help and support</b></p> <ul style="list-style-type: none"> <li>• Make ongoing compliance easy (e.g., through releasing guidelines, hosting discussion forums).</li> <li>• Use proactive outreach to better understand capabilities to comply.</li> </ul>	<p><b>Inform and advise</b></p> <ul style="list-style-type: none"> <li>• Provide targeted guidance to participants.</li> <li>• Provide feedback on adequacy of systems to ensure compliance.</li> </ul>	<p><b>Correct behaviour</b></p> <ul style="list-style-type: none"> <li>• Respond to detected non-compliance according to the severity (e.g. accepting enforceable undertakings, infringement notices, and temporary suspensions).</li> <li>• Publish information on enforcement activities.</li> </ul>	<p><b>Enforce</b></p> <ul style="list-style-type: none"> <li>• Revoke, deregister, suspend, initiate investigations, pursue civil action or refer any relevant cases for criminal prosecution.</li> <li>• Publish information on enforcement activities.</li> </ul>

## 4. Regulator interaction with scheme participants

In most cases the Clean Energy Regulator will engage scheme participants, to provide advice and support to help them to understand their obligations and entitlements.

There will be occasions when we will engage with a scheme participant to manage compliance issues and will openly and directly discuss concerns with the participant to seek the necessary information or action to help finalise our enquiries. We will close enquiries as soon as possible to minimise costs to the participant if our concerns are adequately addressed through the additional information provided, or action taken by the participant.

### 4.1. Education

The Clean Energy Regulator recognises that engagement, education and outreach are vital to ensure scheme participants are equipped with the knowledge to meet their obligations and avoid inadvertent non-compliance. We recognise that prevention of non-compliance is always preferable to taking action after non-compliance has occurred. To help drive a preventative approach we:

- co-design and collaborate with scheme participants and stakeholders on the development of guidance and guidelines to provide clarity on compliance expectations
- publish further information resources such as factsheets, booklets, brochures, newsletters, calculators and online resources
- invite scheme participants to raise concerns and join workshops and discussion forums, and
- incorporate feedback to enhance our systems and processes, where appropriate.

### 4.2. Monitoring

The Clean Energy Regulator collects a large volume of data through our business operations (e.g., from applications, reports and submissions we receive, information from third parties, and from open data and other intelligence sources including geospatial). We use this data to assist us to monitor compliance through the following activities:

- comparing reports from scheme participants to third party data (e.g. regarding electricity generation, greenhouse gas emissions or abatement).
- identifying behavioural trends within and across the schemes, and
- detecting possible contraventions and deciding whether enforcement action is required.

Where there is suspected non-compliance, we use intelligence and data analysis when possible to determine the intent of the behaviour. We will then take appropriate compliance actions that may include:

- exercising coercive information-gathering powers
- conducting inspections and audits, and
- executing monitoring warrants.

We monitor any breaches of laws administered by other agencies, which could affect the fit and proper person requirements for participating in the voluntary schemes we administer. If we obtain information that indicates possible breaches of these laws, we may bring such matters to the participant's attention (for example, allegations of fraudulent behaviour or potential scams affecting other regulators). In this event, we

may ask the participant to show cause as to why the participant believes they remain a fit and proper person to participate in the scheme before taking a decision on the participant's status.

### 4.3. Enforcement

This policy sits within the context of the broader Australian Government law enforcement policy. It should therefore be read in conjunction with other relevant instruments and documents, including the Prosecution Policy of the Commonwealth, Commonwealth Fraud Control Framework and Resource Management Guide No. 201: Preventing, Detecting and Dealing with Fraud.

The Clean Energy Regulator takes enforcement action in the first instance to stop the harm from continuing, and when required, to disrupt illegitimate business models and remove illegitimate participants and where appropriate take further enforcement actions. Enforcement action is likely to result when:

- there are reasonable grounds to suspect that a serious civil contravention or criminal offence, including fraud, is occurring
- the client has not demonstrated sufficient willingness to return to compliance
- there are repeated or habitual relapses into non-compliance, and
- conduct that appears to involve deliberate or intentional non-compliance has been displayed.

Matters the Clean Energy Regulator considers when deciding whether to commence an investigation may include:

- whether the allegation involved repeated non-compliance, or the scheme participant has a history of non-compliant behaviour
- whether the alleged activity or behaviour is organised in nature
- the impact the alleged activity or behaviour may have on Clean Energy Regulator objectives, including the harm and/or loss to the Commonwealth, and
- whether the alleged activity involve the interests of other Commonwealth, state or territory agencies.

A range of options are available to the Clean Energy Regulator to respond to harmful behaviour. These include:

- undertaking corrective action for serious or continuing contraventions (including accepting enforceable undertakings, exercising suspension and revocation powers)
- pursuing court action for breaches of civil penalty provisions
- applying penalties in certain circumstances (e.g., for failure to pay shortfall charges under the *Renewable Energy (Electricity) Act 2000* or issuing infringement notices under the *National Greenhouse and Energy Reporting Act 2007*)
- referring suspected contraventions or suspected fraudulent/dishonest behaviour to other law enforcement agencies or regulatory bodies for investigation and/or potential prosecution, and
- pursuing criminal sanctions for scheme participants found to have breached offence provisions contained in laws administered by the Clean Energy Regulator, or engaged in dishonest or fraudulent conduct in connection with schemes established by those laws.

These enforcement tools enable us to utilise the most appropriate mix of deterrent, protective and remedial sanctions in light of the circumstances and each particular case. In doing so, we exercise discretion to direct resources to matters that protect the integrity and improve the outcomes of the schemes we administer.

A list of compliance and enforcement options available to us can be found at Attachment A of this policy.

## 5. Publication of contraventions

In some cases, the Clean Energy Regulator is legally obliged to publish information (e.g. the acceptance of enforceable undertaking under the *Renewable Energy (Electricity) Act 2000* and *Carbon Credits (Carbon Farming Initiative) Act 2011*). Our policy is to publish all enforceable undertakings. We will publish such information as soon as practicable after it becomes available.

We will also publish the commencement and outcomes of any court action, the issuance of infringement notices, and other types of enforcement action. This information will be published as soon as practicable — however, in some circumstances, such as an ongoing investigation, we will use discretion on the timing of any publication.

## 6. Policy review

The Clean Energy Regulator is committed to administering the climate change laws in a transparent, ethical and accountable manner. As part of this, we regularly review the content and implementation of this policy to ensure all relevant operational experience and legislative amendments are incorporated.

Where amendments to this policy are required, the updated policy can be found on [our website](#).

## 7. Further information

Any queries regarding obligations and entitlements under the schemes administered by the Clean Energy Regulator can be directed to [enquiries@cleanenergyregulator.gov.au](mailto:enquiries@cleanenergyregulator.gov.au) or 1300 553 542.

Any suggestions about our compliance approach can also be provided at the above email address.

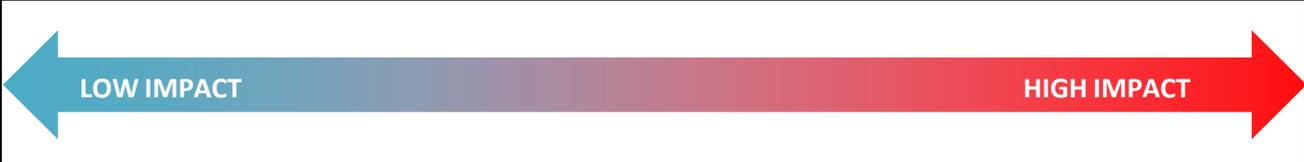
Allegations of potential fraudulent activities or non-compliance can be reported to [fraud@cleanenergyregulator.gov.au](mailto:fraud@cleanenergyregulator.gov.au) or via the phone number above.

## Attachment A: Compliance and enforcement tools available to the Clean Energy Regulator

A risk-based approach to compliance comes from an understanding that regulators cannot detect and respond to every contravention, and must instead encourage intrinsic compliance. We will prioritise stopping or preventing harms, taking into account the impacts of the non-compliance and the objectives of the scheme.

After carefully considering each case, we will decide which of the regulatory options is best suited to the circumstances of the case and what is able to be achieved within the Regulator’s resource constraints and strategic priorities, taking into account scheme integrity and the broader public interest.

**Figure 2: Compliance and enforcement tools**



Education	Monitoring	Enforcement
<i>Help and support, inform and advise</i>	<i>Correct behaviour</i>	<i>Punish misconduct</i>
<ul style="list-style-type: none"> <li>• Publish information, policies and guidance.</li> <li>• Provide user friendly systems that support self-service and self-selection.</li> <li>• Engage scheme participants.</li> <li>• Rectification of registries.</li> <li>• Targeted education.</li> </ul>	<ul style="list-style-type: none"> <li>• Fieldwork and site visits.</li> <li>• Audits.</li> <li>• Information gathering.</li> <li>• Inspections.</li> <li>• Monitoring warrants.</li> </ul>	<ul style="list-style-type: none"> <li>• Authorised disclosure.</li> <li>• Imposition of conditions on Registry account.</li> <li>• Refusal to give effect to a transfer instruction.</li> <li>• Infringement notice.</li> <li>• Enforceable undertakings.</li> <li>• Suspension of registry account.</li> <li>• Suspension of registration.</li> <li>• Revocation of registration.</li> <li>• Unilateral closure of a registry account.</li> <li>• Relinquishment of Australian carbon credit units (ACCUs).</li> </ul>



		<ul style="list-style-type: none"><li>• <a href="#"><u>Carbon maintenance obligation.</u></a></li><li>• Injunction.</li><li>• Debt recovery and action under the <i>Corporations Act 2001</i>.</li><li>• Civil penalty proceedings.</li><li>• Criminal investigation and prosecution.</li></ul>
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