



Australian Government
Clean Energy Regulator

CLEAN
ENERGY
REGULATOR

Compliance Priorities 2017

Focusing our approach, maturing our capability



Overview

We expect our clients to comply with both the spirit and letter of the law. We have a large suite of audit, monitoring and enforcement powers to identify and address non-compliance and fraud.

As outlined in our [Compliance, Education and Enforcement Policy](#), we aim to make it easier for our clients to comply with their regulatory obligations and work in partnership with the agency to optimise voluntary compliance. We look to strike a balance between protecting the public interest and reducing the regulatory burden on business.

This plan outlines our compliance focus areas for 2017 and our approach to regulation.

For the first time in 2017, we have published our specific areas of focus. We will target activities in those areas of potential non-compliance that pose a high risk to the agency. In addition to our day-to-day compliance activities, this approach aims to increase voluntary compliance with our schemes and meet our [agency objectives](#).

Using data analytics to detect non-compliance				
Emissions Reduction Fund	National Greenhouse and Energy Reporting scheme	Safeguard Mechanism	Small-scale Renewable Energy Scheme (SRES)	Large-scale Renewable Energy Scheme (LRET)
Integrity of client declarations and ability to meet contractual obligations	Enhance data integrity Auditor compliance with standards	Scrutinise integrity of initial baselines	Enhanced monitoring of integrity of claims for small scale renewable energy certificates	Increased scrutiny of annual acquittal of LGC liability Increased scrutiny of data provided

By publishing our compliance priorities, we are increasing our transparency and accountability to our clients and the public. By sharing this information, we hope that we can increase levels of voluntary compliance and identify areas for improvement.

To demonstrate the effectiveness of this approach, we will monitor the progress of our focus areas and report on outcomes in our annual report and future compliance plans.

Our approach to regulation

In accordance with better regulatory practice, our approach to regulation starts from the premise that responsibility for complying with scheme obligations rests with the individual person or organisation to which the legislation applies.

To optimise compliance, we apply the agency's [Compliance, Education and Enforcement Policy](#) which is consistent with the risk-based approach to regulation as outlined in the Australian National Audit Office better practice guide [Administering Regulation: Achieving the Right Balance](#). This is an important feature of our approach to delivering good regulatory performance under the [Regulatory Performance Framework](#).

We work in close partnership with other government, non-government and law enforcement agencies and share information and intelligence as appropriate. We refer relevant matters to these agencies, where necessary, to draw on their specialised skills and legislative responsibilities. This enables us to:

- detect intentional non-compliance
- play a valuable role in detecting unintended or accidental non-compliance, and
- efficiently and effectively bring matters to resolution.

When sharing information or data matching, we comply with both the spirit and letter of the law, including privacy and information protection legislation.

While all suspected or potential contraventions are carefully considered, we exercise discretion in determining appropriate responses. Initially, a preliminary examination and analysis of the relevant facts is conducted to confirm whether a contravention has occurred or may occur, to gauge the degree of seriousness and assess the likely consequences. To assist in determining the appropriate response, we employ a risk-based approach that considers participant behaviour and motivation.

Monitoring, audit and assessment

Well-established and proven processes are in place to protect against potential fraud and non-compliance across all our schemes. These processes include a series of stringent checks to ensure large and small-scale technology certificates and Australian carbon credit units are properly created.

We exercise monitoring and enforcement powers independently in the public interest and monitor compliance under each scheme by:

- assessing submitted reports and audits
- analysing reported data to identify and monitor trends, anomalies and behaviours
- maintaining a robust audit framework
- conducting or commissioning audits and site visits to verify submitted information, and
- conducting random and targeted inspections.

We also conduct fit and proper person¹ checks of participants in our various schemes, including Renewable Energy Certificate agents and liable entities, Emissions Reduction Fund participants and holders of accounts in the Australian National Registry of Emissions Units.

¹ While each scheme is different, fit and proper person assessments generally consider a person's past compliance with the law, whether they are insolvent, and whether they have the necessary skills, competency, business practices and good character that would reasonably be expected of a participant in our schemes.

Focus areas

Agency wide

Using data analytics to detect non-compliance

- Reported data by clients participating in multiple schemes is analysed to detect anomalies, and potential non-compliance or fraud.

We now have a wealth of data available provided by our clients. Verification and assessment of data plays a key role in our compliance activities. This includes quality assuring the data we receive and ensuring a level playing field for participants in our schemes.

Our monitoring and compliance efforts in 2017 will concentrate on comparing data reported across schemes. This will expand our ability to ensure scheme participants are complying with their obligations, and help us to identify high-risk entities or triggers for potential non-compliance or fraud.

We utilise advanced data analytical techniques to uncover patterns and anomalies in reported data, and correct any errors such as under or over reporting. This sophisticated statistical and network analysis helps us to identify high-risk behaviours or relationships, enabling effective targeting of compliance activities.

Sometimes, data analytics findings will simply help us to understand the operation of a scheme as a whole and identify any components that require greater priority. It also helps us to identify opportunities for enhancing efficiency and informs the content of targeted communications, education and monitoring activities.

In addition, we work with a network of regulatory partners across Commonwealth and State/Territory levels and exchange information under legislative provisions to support our complementary regulatory responsibilities. For example, we share and coordinate data with external agencies such as the Australian Energy Market Operator, the Australian Securities and Investments Commission and State-based energy efficiency scheme regulators to help us identify anomalies in the data that is provided to us. This provides us with information to support the administration of our schemes and monitor compliance.

In 2017, we will seek access to a wider range of information from our regulatory partners across Australia, including state energy efficiency data. We will also investigate opportunities to share data in line with the Office of Australian Information Commissioner Guidelines and relevant legislation. This will enhance our ability to detect potential non-compliance.

Emissions Reduction Fund

Integrity of client declarations and ability to meet contractual obligations

- Client declarations of eligible interest holder consents and legal right for Emissions Reduction Fund projects are true and correct.
- Matching data to ensure no double crediting, and in addition, ensure boundaries of carbon estimation areas match data.
- Conditions precedent in Emissions Reduction Fund carbon abatement contracts and project start dates are met and deliveries made as per contract schedules.

The Emissions Reduction Fund relies on voluntary participation, and abatement will be achieved through high levels of participation across the economy. To enhance the Emissions Reduction Fund's capacity to achieve carbon abatement, participants and the public need to have confidence in the integrity and strength of our scheme administration.

There are now more than 600 projects registered to participate in the Emissions Reduction Fund. Project applications are assessed to ensure they meet eligibility requirements and project participants must demonstrate they meet fit and proper person requirements before they are able to participate.

For integrity of the scheme, we will focus on:

- Identifying cases that require deeper assessment of eligibility requirements (i.e. regulatory additionality, eligibility of interest holder consent, newness, government programmes, legal right, area-based eligible interest holder consent etc.). We will also re-assess matters where credible information is provided to us that indicates false or misleading statements have been made or material information has been withheld.
- Confirming and validating that projects are not already claiming credits under another Emissions Reduction Fund project or other Government programmes (*Government programme requirement*).
- Ensuring the amount of Australian carbon credit units matches abatement or sequestration by using data analytics and Geographic Information Systems to match data and check anomalies during claim for credits.
- Initiating potential re-audits when we find anomalies during cross-scheme data matching.

With now more than \$2.1 billion dollars' in contracts awarded, our focus will be on ensuring a high level of voluntary compliance with all our contractors. To do this we will:

- Pro-actively engage with contractors to ensure the correct amount of Australian carbon credit units are delivered over the term of the contract.
- Monitor and review variations to the delivery of Australian Carbon Credit units over the term of the contract to ensure they are sought in a timely and appropriate manner.
- Ensure conditions precedent are being met to allow contracts to commence.

National Greenhouse and Energy Reporting Scheme

Enhance data integrity

- Energy production and consumption is accurately categorised and reported.
- Measurement and reporting of emissions from flaring is accurate.
- Reporting of facility locations is accurate.

The integrity of the information and data collected under the National Greenhouse and Energy Reporting scheme is critical. It informs government policy, assists Commonwealth, state and territory government programmes and activities and helps to meet Australia's international reporting obligations.

The scheme has high levels of compliance with reporting deadlines, so the focus will be around detecting instances of incorrect or non-compliant reporting from controlling corporations. We will:

- expand our audit program, and
- use a range of information to identify anomalies and reporting errors, and address these through individual and targeted compliance campaigns.

These activities will be supported by online and face-to-face support for reporters about the requirements and obligations.

Registered Greenhouse and Energy Auditors

Auditor compliance with standards

- Registered greenhouse and energy auditors meet requirements to maintain ongoing registration, including required professional competencies and requirements to avoid and declare conflicts of interest.
- Audits meet legislative requirements, including those regarding quality control, risk assessment, quality and accessibility of documentation and working papers, and presentation of audit findings.

As registered greenhouse and energy auditors have an essential role in ensuring the integrity of data reported under the various schemes, monitoring of their performance will be enhanced in 2017.

An auditor inspection program that was trialled in 2015-16 is now a regular feature of the agency's monitoring of auditors. We will build our inspection capability and continue to take action against those auditors who are found not to comply with legislative requirements.

Safeguard mechanism

Scrutinise the integrity of initial baselines

- Integrity of production, emissions and emissions intensity forecasts used in calculated baseline determinations checked where actual covered emissions are over or under the baseline by more than 10 per cent.
- Proportion of safeguard facilities included in the agency's annual audit programme and in audit samples used in the auditor inspection program.

The compliance focus in the first year of the Safeguard Mechanism will be to ensure baseline determinations are evidence-based and reasonably reflect each facility's business-as-usual emissions in accordance with safeguard legislation.

In 2017, there will be two types of emissions baseline determinations: reported baselines based on data already reported under the National Greenhouse and Energy Reporting scheme, and calculated baselines based on audited production and emissions intensity forecasts. Other types of baselines (production-adjusted baselines and benchmark baselines) do not apply in 2017.

The agency has legislative powers to remake a baseline determination that has incorrectly calculated the baseline emissions number for a facility, or where information provided to the agency in connection with making the baseline determination was false or misleading in a material way.

Renewable Energy Target

Small-scale Renewable Energy Scheme

Enhanced monitoring of integrity of claims for small scale renewable energy certificates

- REC agents meet fit and proper test
- Claims are accurate and the components of small generation units meet eligibility requirements.
- Install dates monitored to detect false or misleading information, particularly during a change of deeming period.

The Small-scale Renewable Energy Scheme creates a financial incentive for individuals and small businesses to install eligible small-scale renewable energy systems. The combination of financial incentives and a high volume scheme can result in fraud and non-compliance.

To continue our strong emphasis on maintaining the integrity of the scheme, this year we will focus on:

- The integrity of serial numbers claimed to be Clean Energy Council approved panels.
- Matching data with regulatory partners (and other agencies) and applying enhanced data analytics capability to strengthen detection of fraud and non-compliance.
- Monitoring the fit and proper person status of existing Renewable Energy Certificate (REC) agents and exit any from the scheme with unacceptable compliance records.
- Naming parties that demonstrate unscrupulous business practices that could result in fraud or non-compliance.
- Increasing the information provided to consumer protection and electrical safety agencies for further action as appropriate.

Additional monitoring for correct installation dates after the decline of the 'deeming period' for Small-scale Technology Certificates commenced on 1 January 2017. In addition to continuing to prosecute for cases of serious Commonwealth fraud, we will have an increased focus on using our full suite of powers (including civil proceedings) with respect to breaches of the law.

Large-scale Renewable Energy Target

Increased scrutiny of annual acquittal of Large-scale generation certificate (LGC) liability

- Increased use of analytics to monitor liable entity preparedness to surrender LGCs; and follow up contact as necessary.
- Increased compliance audits, and cross checks with other regulators, where liable entities choose shortfall instead of acquittal with certificates.

The vast majority of liable entities, that are typically electricity retailers, continue to support the objectives of the *Renewable Energy (Electricity) Act 2000* (the Act) and the clear agreement to the revised 2020 target, by complying with their obligations to surrender certificates to acquit their liability.

A shortfall charge is imposed under the Act on those who fail to surrender sufficient certificates. We view the intentional failure to surrender certificates as a failure to comply with the spirit of the law and an undermining of the objectives of the scheme. Payment of the shortfall charge does not incentivise additional renewable electricity generation; nor does it contribute to achieving the 2020 target.

We will pursue unpaid shortfall charges and any associated interest as a debt, particularly where an entity has attempted to obtain a competitive advantage by incurring a charge. We will collaborate with other Regulators where we believe entities in shortfall are showing signs of financial stress or may have failed to meet other legal obligations.

There is evidence of strong consumer preference for renewable energy. As progress continues towards the 2020 target, consumers may show greater interest in where their retailer's source electricity and their commitment to renewable energy; and make informed choices about who they purchase from. We will ensure that consumers have relevant information by publishing the name of each entity that has a large-scale generation shortfall, and the amount of such shortfall.²

The agency will use a range of analytics and information to monitor the preparedness of liable entities to comply in the lead up to the legislative surrender deadline for LGCs. This includes active communication and questioning of liable entities, with follow-up engagement where we believe a liable entity may not intend to acquit its liability by surrendering certificates.

Liable entities are reminded that on or before 14 February 2017 they must:

- lodge their energy acquisition statement, **and**
- surrender certificates through the REC registry, **or**
- where a decision has been made to pay a shortfall charge to acquit all or part of the liability, lodge the shortfall statement **and** ensure that the shortfall charge payment has been received into the Commonwealth's bank account.

There are serious consequences for entities that fail to meet these obligations, including significant additional financial penalty charges and interest charges. Failure to lodge statements on time is also a criminal offence that may attract criminal penalties. Where a debt is incurred, the Regulator will pursue that debt in accordance with the law, up to and including applications to wind up companies in appropriate cases. We strongly recommend liable entities seek professional, independent advice on their specific

² Publication is specifically authorised by section 134 of the Act.

circumstances if they do not understand the requirements or believe that they may have difficulty fulfilling their obligations.

Increased scrutiny of data provided

- Increased third party data validation checks of data supplied to the agency to support LGC applications.
- Enhanced monitoring of relevant electricity acquisitions.

To ensure the integrity of the creation of LGCs, the agency will increase the amount of data that is matched with data held by our partner agencies, including the Australian Energy Market Operator.

The agency will also increase our data matching capabilities to ensure relevant acquisitions of electricity from embedded generators and remote networks and small size photovoltaic systems are correctly reported.