



Australian Government
Clean Energy Regulator



**Australian
Competition
Consumer
Commission**



MEMORANDUM OF UNDERSTANDING

Between

The Clean Energy Regulator

And

The Australian Competition and Consumer Commission

And

The Australian Energy Regulator

1. BACKGROUND

- 1.1. This Memorandum of Understanding (MoU) sets out a framework for co-operation between the Clean Energy Regulator (CER), the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) (the agencies) to facilitate liaison, co-operation, collaboration, assistance and the exchange of intelligence and information between the agencies in accordance with the relevant statutory provisions.
- 1.2. In addition to matters covered by this MoU, the CER and the ACCC/AER acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral or multilateral and include the sharing of information, intelligence and any other matters as agreed by the agencies.

2. PURPOSE

- 2.1. The purpose of this MoU is to set out the arrangements agreed between the CER and the ACCC/AER to facilitate liaison, co-operation, collaboration, assistance and the exchange of intelligence and information between the agencies in accordance with the relevant statutory provisions.
- 2.2. The MoU is a statement of principles to guide the relationship between the CER and the ACCC/AER.
- 2.3. The CER and the ACCC/AER recognise the need for collaboration and cooperation between the agencies to discharge their respective functions and agree to assist each other in the exchange of information, the referral of matters and to co-operate on compliance, education and enforcement activities within the framework of this MoU as required.
- 2.4. The agencies will, in the spirit of cooperation afford such assistance to each other as is practicable taking into consideration the level of resources and priorities in each agency.
- 2.5. When a matter is not dealt with explicitly in this MoU, it is expected that the CER and the ACCC/AER will discuss the matter and resolve it quickly in accordance with paragraph 6 of this MoU.
- 2.6. The agencies do not intend this MoU to create legally binding obligations between them.
- 2.7. There are no funding arrangements or costs associated with this MoU.
- 2.8. Nothing in this MoU affects the exercise of functions or responsibilities of the CER, the ACCC or the AER.

3. CER

- 3.1. The CER is established under the *Clean Energy Regulator Act 2011* and is charged with administering a range of climate change laws to encourage the use of clean energy; encourage the generation of electricity from renewable sources; provide for the reporting and dissemination of information related to greenhouse gas emissions, energy

consumption and energy production of corporations; provide for projects to remove carbon dioxide from the atmosphere and projects to avoid emissions of greenhouse gases; and provide for the Australian National Registry of Emissions Units.

- 3.2. The CER is responsible for the administration and enforcement of legislation outlined in Schedule A (CER legislation).

4. ACCC

- 4.1. The ACCC's responsibilities include but are not limited to the promotion of competition and fair trading, the provision of consumer protection and the regulation of national infrastructure services. The role of the ACCC is to facilitate and encourage compliance with the laws for which it has administrative responsibility, to take appropriate action in response to contraventions of those laws, to adjudicate on competition and access issues and to educate the community in relation to such matters.
- 4.2. The ACCC is responsible for the administration and enforcement of the *Competition and Consumer Act 2010* and other relevant legislation outlined in Schedule A (ACCC legislation).
- 4.3. In accordance with its responsibilities under the *Competition and Consumer Act 2010*, the ACCC has been directed by the Treasurer to make it a priority to undertake compliance and enforcement activity associated with carbon price representations.

5. AER

- 5.1. The AER is Australia's national energy market regulator and an independent statutory authority established under the *Competition and Consumer Act 2010*. The AER is funded by the Commonwealth, with staff, resources and facilities, provided from the ACCC. The AER is responsible for monitoring and ensuring compliance with the national energy laws outlined in Schedule A (AER legislation).

6. LIAISON

- 6.1. The agencies agree that there will be regular liaison meetings between the agencies as follows:
- 6.1.1. meetings at General Manager level (or higher) twice yearly, or otherwise as agreed between the agencies;
- 6.1.2. meetings at an officer level as required between the agencies to provide information on issues which may be of interest to each agency.
- 6.2. Each agency will appoint liaison contact officers for the purpose of liaison, communication and exchange of information between the agencies under this MoU. The list of liaison contact officers is at Schedule B and is also to be used as a contact point to discuss any matter that is not dealt with explicitly in this MoU. Each agency may change its liaison contact officers as necessary, and will provide the other agency or agencies with an amended list.
- 6.3. The agencies agree that, where appropriate, they will consult with each other in relation to arrangements for joint publications and joint contact with stakeholder groups.

7. INFORMATION & INTELLIGENCE SHARING

- 7.1. Each agency is subject to statutory and common law obligations of secrecy and/or confidentiality, which govern the disclosure and use of confidential or protected information.
- 7.2. Recognising that the proactive sharing of information and intelligence is necessary for each agency to discharge their respective functions, the CER and the ACCC/AER agree to share and exchange information. The parties agree they will only share and exchange information as permitted by common law and the relevant statutory provisions under which each operates.
- 7.3. Information may be provided by one agency in compliance with a request from the applicant agency with endeavours made to provide the requested information to the other agency in a timely manner.
- 7.4. The CER acknowledges that information it provides to one agency may be shared between the AER and ACCC as provided by the *Competition and Consumer Act 2010*. As set out in the ACCC/AER's Information Policy, if the ACCC/AER has obtained information in the course of a matter which is relevant to another matter, the ACCC/AER will, in general, use that information in the context of the other matter subject to any specific legal requirement to the contrary.
- 7.5. The CER and ACCC/AER recognise that in the course of an agency carrying out its functions and exercising its powers, it may come into possession of information which would, if provided to the relevant agency be likely to assist that other agency in administering or enforcing the particular laws for which that agency is responsible.
- 7.6. Each agency agrees, subject to statutory obligations, to endeavour to notify the relevant agency in a timely manner of the existence of any information of a kind referred to in paragraph 7.5, notwithstanding that it may not have received a request from the other agency for such information.
- 7.7. If information provided pursuant to this MoU becomes the subject of a subpoena, freedom of information request, or other legal demand for access, the recipient agency will seek not to disclose any confidential or protected information unless it has notified the agency which has provided the confidential or protected information (the notified agency) to enable it to take such action as it thinks appropriate. The recipient agency will endeavour to consider any concerns raised by the notified agency prior to disclosing any or all of the information.
- 7.8. Each agency acknowledges that disclosure of confidential information may be required, authorised or permitted by law.

8. AREAS OF COLLABORATION

- 8.1. The agencies recognise that areas of collaboration and the sharing and exchanging of information may include, but are not limited to:
 - 8.1.1. mutual assistance to monitor/enforce compliance with the CER, the AER and the ACCC legislation, including information on potential breaches of legislation administered by the respective agency, or of entities of interest to the agencies;

- 8.1.2. intelligence and information sharing in relation to:
 - 8.1.2.1. enforcement, compliance and education activities;
 - 8.1.2.2. developments in energy markets;
 - 8.1.2.3. scam-related activity; and
 - 8.1.2.4. misrepresentations;
 - 8.1.3. agreements, arrangements and/or understandings between competitors in a market which appear to involve:
 - 8.1.3.1. price fixing;
 - 8.1.3.2. sharing/allocation of markets;
 - 8.1.3.3. bid or tender rigging; and
 - 8.1.4. unfair, unconscionable and/or unilateral conduct which significantly damages/impacts businesses.
- 8.2. Referral of third-party allegations of non compliance or fraud, and sharing of information and intelligence, relevant to entities within the purview of ACCC, AER and CER legislation.

9. DISPUTE RESOLUTION

- 9.1. Where there is conflict or disagreement between the agencies over any issue relating to or covered by this MoU, the agencies will seek to resolve the issue by negotiation between the General Manager, Regulatory Division of the CER, the General Manager, ACT & National Projects, Enforcement Operations of the ACCC and/or the General Manager, Wholesale Markets Branch of the AER.

10. VARIATION

- 10.1. This MoU may be varied at any time with the mutual written consent of each agency.
- 10.2. All variations to the MoU are to be recorded in the Change Control Register in Schedule C.

11. REVIEW AND TERMINATION OF THIS MOU




- 11.1. This MoU will be reviewed within three (3) years of the date of signing.
- 11.2. This MoU will remain in force unless terminated by the agencies.
- 11.3. Any agency may terminate this MoU by giving 30 days written notice to the other agencies. The termination will take effect on the expiry of 30 days after the notice is given unless otherwise agreed by the agencies.
- 11.4. This MoU shall take effect on and from the date when it becomes signed by all of following persons:

11.4.1. the Chair of the CER;

11.4.2. the Chairman of the ACCC; and

11.4.3. the Chair of the AER.

SIGNATURES

Signed for and on behalf of the Clean Energy Regulator:	Signed for and on behalf of the Australian Competition and Consumer Commission:	Signed for and on behalf of the Australian Energy Regulator:
		
Chloe Munro	Rod Sims	Andrew Reeves
Chair	Chairman	Chair
Date of signature: 21/08/12	Date of signature: 8/8/12	Date of signature: 14/8/12

ATTACHMENTS

Schedule A: Schedule of legislation

Schedule B: Liaison contact officers

Schedule C: Change Control Register

SCHEDULE A

SCHEDULE OF LEGISLATION

Clean Energy Regulator

- *Clean Energy Act 2011*
- *Clean Energy Regulator Act 2011*
- *Clean Energy (Consequential Amendments) Act 2011*
- *Clean Energy (International Unit Surrender Charge) Act 2011*
- *Clean Energy (Unit Issue Charge – Auctions) Act 2011*
- *Clean Energy (Unit Issue Charge – Fixed Charge) Act 2011*
- *Clean Energy (Unit Shortfall Charge – General) Act 2011*
- *Clean Energy (Charges – Customs) Act 2011*
- *Clean Energy (Charges – Excise) Act 2011*
- *National Greenhouse and Energy Reporting Act 2007*
- *Australian National Registry of Emissions Unit Act 2011*
- *Renewable Energy (Electricity) Act 2000*
- *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*
- *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*
- *Carbon Credits (Carbon Farming Initiative) Act 2011*
- Subordinate legislation to the above Acts

Australian Competition and Consumer Commission

- *Competition and Consumer Act 2010*
- *Competition and Consumer Regulations 2010*
- *Airports Act 1996*
- *Australian Postal Corporation Act 1989*
- *Broadcasting Services Act 1992*
- *Copyright Act 1968*
- *National Broadband Network Companies Act 2011*
- *Radiocommunications Act 1992*

- *Telecommunications (Consumer Protection and Service Standards) Act 1999*
- *Telecommunications Act 1997*
- *Trade Marks Act 1995*
- *Water Act 2007*
- *Water Charge (Termination Fees) Rules 2009*
- *Water Market Rules 2009*
- *Water Charge (Infrastructure) Rules 2010*
- *Water Charge (Planning and Management Information) Rules 2010*
- *Wheat Export Marketing Act 2008*

Australian Energy Regulator

- *National Electricity Law*
- *National Electricity Rules*
- *National Electricity Regulations*
- *National Gas Law*
- *National Gas Rules*
- *National Gas Regulations*
- *National Energy Retail Law*
- *National Energy Retail Rules*
- *National Energy Retail Regulations*

SCHEDULE B

LIAISON CONTACT OFFICERS UNDER PARAGRAPH 6

Information will be exchanged between authorised liaison contact officers of the CER and the ACCC/AER.

In accordance with paragraph 6 of this MoU, the following is a schedule of the CER and the ACCC/ AER liaison contact officers that are authorised to exchange information.

CER

Name and Position	Contact
Tas Sakellaris, General Manager, Regulatory Strategy and Intelligence Branch, Regulatory Division	02 6159 3179
Vaidehi Sargeant, Manager, Regulatory Capability Enhancement Section, Regulatory Strategy and Intelligence Branch, Regulatory Division	02 6159 3325
Dean Smeulders, Acting Manager, Intelligence and Analysis Sections Regulatory Strategy and Intelligence Branch, Regulatory Division	02 6159 3708
Media contact: Manager, Communications	02 6159 3356

ACCC

Name and Position	Contact
Brenton Philp, General Manager Enforcement Operations – ACT & National Projects (Carbon Project Executive)	02 6243 1220
Tanya Farrell, Director Enforcement Operations – ACT & National Projects (Carbon Project Director)	02 6243 1268
Keith Gunton, Director – Intelligence Information, Intelligence & Policy Liaison	02 6243 1164
Duncan Harrod, Assistant Director Strategic Communications	02 6243 1108

AER

Position	Contact
Tom Leuner, General Manager Wholesale Markets Branch	03 9290 1890

SCHEDULE C

CHANGE CONTROL REGISTER

Version	Date	Revisions made	Areas affected
1.0			
2.0			