



Australian Government

Attorney-General's Department

National Security
Law and Policy Division

Telecommunications (Interception and Access) Act 1979

FORM 1 – Request to become an Enforcement Agency

Issued: January 2011

Action officer name and title	[REDACTED] Manager, Regulatory Intelligence and Analysis Section
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Full name of requesting agency
Clean Energy Regulator
Name and title of head of requesting agency
Chloe Munro, Chair and Chief Executive Officer
The specific management offices and/or positions to be authorised
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Legislation establishing the powers of the requesting agency
<i>Clean Energy Regulator Act 2011</i>
Legislation administered by the requesting agency that imposes a pecuniary penalty or protects the public revenue
<p>(a) Please outline <i>how</i> your agency administers the legislation, i.e. specify what gives your agency the authority to administer the particular laws, and</p> <p>(b) Please include the specific section numbers and other particulars administered by your agency, e.g. the penalties imposed by the provisions or why the legislation relates to the protection of the public revenue.</p>
<p>(a) The Clean Energy Regulator (the Regulator) commenced operations on 2 April 2012. It is a statutory authority established under the <i>Clean Energy Regulator Act 2011</i> that administers the carbon pricing mechanism, the National Greenhouse and Energy Reporting Scheme, the Renewable Energy Target, the Carbon Farming Initiative (CFI) and the Australian National Registry of Emissions Units (Registry).</p> <p>The Regulator has the following functions defined under s12 of the <i>Clean Energy Regulator Act 2011</i>:</p> <p>(a) such functions as are conferred on the Regulator by a climate change law;</p>

- (b) such functions as are conferred on the Regulator by any other law of the Commonwealth;
- (c) to do anything incidental to or conducive to the performance of any of the above functions.

The Regulator administers legislation, listed in Attachment A, that:

- encourages the use of clean energy,
- encourages the generation of electricity from renewable sources,
- provides for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations,
- provides for projects to remove carbon dioxide from the atmosphere and projects to avoid emissions of greenhouse gases, and
- provides for the Registry.

The *Renewable Energy (Electricity) Act 2000* was formerly administered by the Office of the Renewable Energy Regulator (ORER), whose responsibilities were transferred to the CER by the *Clean Energy Regulator Act 2011* on 2 April 2012. ORER was previously considered an enforcement agency under the TIA Act and relied on the use of telecommunications information to administer the *Renewable Energy (Electricity) Act 2000*, undertake investigations and has used such information as evidence in a criminal prosecution of an offence under this Act.

In addition to the administration of the *Renewable Energy (Electricity) Act 2000*, the Regulator will issue, and oversight transactions in, tradeable emissions units with a value of over \$25 billion during the first three years of operation. The Registry will be used to issue, record legal title over, and track the transfer of these units.

- (b) The laws administered by the Clean Energy Regulator carrying a range of enforcement powers, ranging from administrative penalties to criminal sanctions for dishonest or fraudulent behaviour:

- administrative and late payment penalties
- relinquishment orders
- enforceable undertakings
- infringement notices
- civil penalties
- criminal penalties

Specific section numbers relating to offences imposing a pecuniary penalty or a criminal sanction are provided in Attachment B.

Additionally, the carbon price mechanism is designed to raise revenue through placing a liability on the carbon emissions of certain entities covered by the legislation. The provisions and offences within the *Clean Energy Act 2011* serve to protect the public revenue. The Regulator may seek to authorise the disclosure of telecommunications data to protect the public revenue in accordance with this legislation.

Please detail how telecommunications data will be of assistance to the requesting agency

For example, please provide examples of why your agency seeks access to telecommunications data and how it will be

used to enforce a criminal law, a law imposing a pecuniary penalty or protect the public revenue.

In the event of an alleged, potential and apparent breach of climate change law that carries a criminal or pecuniary penalty, telecommunications data may be sought to substantiate the breach, or for the purposes of collecting evidence to prove or disprove the offence. Examples of how telecommunication information will be applied to CER legislation include:

- Section 24B of the *Renewable Energy (Electricity) Act 2000* provides a pecuniary penalty when false information pertaining to the installation of solar water heaters or small generation units is supplied to another person and this causes the creation of small-scale technology certificates under the Renewable Energy Target. If it was suspected that an entity had provided false information through a telephone system (e.g. by fax or the internet) for the purpose of improperly creating small-scale technology certificates, telecommunications data, such as subscriber details or call charge records, may be sought to identify the source of this false information and obtain evidence to prove the commission of this offence.
- Section 23 of the *Australian National Register of Emissions Units Act 2011* provides that it is an offence to make an entry in the Registry, or cause an entry to be made in the Registry, knowing that the entry is false. This offence, punishable by imprisonment for 7 years or 2,000 penalty units, or both, includes hacking into the registry and moving Australian carbon credit units from account to account, or making entries for non-existent units (including counterfeit units). Telecommunications data may be sought by the CER to obtain information pertaining to the source of false instructions, assist in identifying the entity involved and obtain evidence to prove the commission of this offence.
- Section 273(1)-(3) of the *Clean Energy Act 2011* provides that it is an offence to enter into a scheme to avoid an existing liability to pay a unit shortfall charge. This offence is punishable by imprisonment for 10 years or 10,000 penalty units, or both. Such an offence is likely to involve a number of persons or organisations. Telecommunications data, such as call charge records, may be sought by the CER to obtain information pertaining to communication that had been exchanged between the parties concerned, to progress investigative lines of inquiry and obtain evidence to prove the commission of this offence.

Attachment A – Clean Energy Regulator legislation

Clean Energy Regulator Act 2011

Clean Energy Act 2011

Clean Energy (Charges—Excise) Act 2011

Clean Energy (Charges—Customs) 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 (International Unit Surrender Charge) Act 2011

Carbon Credits (Carbon Farming Initiative) Act 2011

National Greenhouse and Energy Reporting Act 2007

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

Australian National Registry of Emissions Units Act 2011

Attachment B – Primary Clean Energy Regulator legislation - provisions containing pecuniary penalties or criminal sanctions

Clean Energy Act 2011

Civil penalties and amounts

Clause	Description	Maximum Amount
47(1)	Notification of change of name or address of OTN holder	500 penalty units (currently \$55,000) for a corporation 100 penalty units (currently \$11,000) for any other person
63 (1)-(2)	Misuse of OTN	10,000 penalty units (currently \$1.1 million) for a corporation 2,000 penalty units (currently \$220,000) for any other person
66 (1), (2), (3), (4)	Notification of mandatory designated JVs	
71A	Notification of mandatory designated JVs	
151 (1)-(3)	Compliance with JCP reporting and record-keeping requirements	
218 (2), (4)	Notification of significant holding — controlling corporation of a group	
219 (2), (4)	Notification of significant holding — non-group entity	
221 (4), (5)	Regulator may obtain information and documents	
227 (2), (3)	Record-keeping requirements — general	
228 (2), (3)	Record-keeping requirements — quotation of OTN	
64 (1)-(4)	Quotation of bogus OTN	
248(1)	Civil penalties for executive officers of bodies corporate	2,000 penalty units (currently \$220,000) for an individual

Continuing civil penalties and amounts

Clause	Description	Maximum Daily Amount
47(1) and (2)	Notification of change of name or address of OTN holder	25 penalty units (currently \$2,750) for a corporation 5 penalty units (currently \$550) for any other person
66(1), (2),(3), (4)	Notification of a mandatory designated JV	500 penalty units (currently \$55,000) for a corporation 100 penalty units (currently \$11,000) for any other person
71A(1)	Notification of a declared designated JV	
151(1)	Compliance with JCP reporting and record-keeping requirements	
218(2)	Notification of significant holding — controlling corporation of a group – notice requirement	
219(2)	Notification of significant holding — non-group entity – notice requirement	
221(4)	Regulator may obtain information and documents – compliance with notice	1,000 penalty units (currently \$110,000) for a corporation 200 penalty units (currently \$22,000) for any other person

Offences and criminal sanctions

Clause	Description	Maximum Sanction
62	False or misleading declarations under clause 61(4)	Imprisonment for 12 months
231	Identity cards for inspector – failure to return	1 penalty unit (currently \$110)
235	Inspector may ask questions and seek production of documents – failure to comply	Imprisonment for 6 months or 30 penalty units (currently \$3,300), or both
244	Occupier to provide inspector with facilities and assistance	30 penalty units (currently \$3,300)
273(5), 274(5), 275(5) and 276(5)	Scheme to avoid liability to pay unit shortfall charge or administrative penalty – objective purpose	Imprisonment for 3 years or 850 penalty units (currently \$93,500) or both
273(1)-(3),	Scheme to avoid liability to pay unit shortfall charge or administrative penalty– intention, knowledge or belief	Imprisonment for 10 years or 10,000 penalty units (currently \$1.1 million) or both

Clause	Description	Maximum Sanction
274(1)- (3), 275(1)- (3), 276(1)- (3)		

Carbon Credits (Carbon Farming Initiative) Act 2011

Civil penalties and amounts

Clause	Description	Maximum Amount
76 (1,2 11)	Contravene requirements for first reporting period - Contraventions	<p>Body corporate: penalty must not exceed 10,000 penalty units for each contravention. Person other than a body corporate: penalty must not exceed 2,000 penalty units for each contravention.</p>
78 (2,3)	Notification requirement—ceasing to be the project proponent for an eligible offsets project otherwise than because of death - Notification/ Ancillary contraventions	
79 (2,3)	Notification requirement—death of the project proponent for an eligible offsets project - Notification/ Ancillary contraventions	
80 (2,3)	Notification requirement—methodology determinations - Notification/ Ancillary contraventions	
81 (2,3)	Notification requirement-- natural disturbances - Notification/Ancillary contraventions	
82 (2,3, 5)	Notification requirement—reversal of sequestration due to conduct of another person - Notification/Ancillary contraventions	
83 (2,3)	Notification requirement—project becomes inconsistent with a regional natural resource management plan - Notification/Ancillary contraventions	
84 (2,3)	Notification requirement—recognised offsets entities - Notification/Ancillary contraventions	
85 (5,6)	Regulations may impose notification requirements - Requirement/ Ancillary contraventions	
185 (4,5)	Administrator may obtain information or documents - Requirement: Compliance/Ancillary contraventions	
191 (2,3)	Record-keeping requirements—general - Requirements/Ancillary contraventions	
192 (3,4)	Record-keeping requirements—preparation of offsets report - Requirements/ Ancillary contraventions	
193 (2,3)	Record-keeping requirements—methodology determinations - Requirements/ Ancillary contraventions	
194 (2,3)	Project monitoring requirements—methodology determinations - Requirements/ Ancillary contraventions	
214 (4,5,6)	Compliance audits - Audit/ Ancillary contraventions	

Clause	Description	Maximum Amount
215 (3,4)	Other audits - Audit/Ancillary contraventions	
217 (1)	Civil penalties for executive officers of bodies corporate - Contravention of civil penalty provision	

Offences and criminal sanctions

Clause	Description	Maximum Sanction
270 (1)	Secrecy - Disclosure	Imprisonment for 2 years or 120 penalty units, or both.
276 (4)	Disclosure to certain persons and bodies - Secondary disclosure and use	
276 (7)	Disclosure to certain persons and bodies - Conditions	
277 (4)	Disclosure to certain financial bodies - Secondary disclosure and use	
277 (7)	Disclosure to certain financial bodies - Conditions	
282 (4)	Disclosure for purposes of law enforcement- protected Administrator information - Secondary disclosure and use	
282 (6)	Disclosure for purposes of law enforcement- protected Administrator information - Conditions	
283 (4)	Disclosure for purposes of law enforcement—protected DOIC information - Secondary disclosure and use	
283 (6)	Disclosure for purposes of law enforcement—protected DOIC information - Conditions	
234 (5)	Scheme to avoid existing liability to pay administrative penalty - Objective purpose	Imprisonment for 3 years or 850 penalty units, or both.
235 (5)	Scheme to avoid future liability to pay administrative penalty - Objective purpose	
234 (1)	Scheme to avoid existing liability to pay administrative penalty - Intention	Imprisonment for 7 years or 2,000 penalty units, or both.
234 (3)	Scheme to avoid existing liability to pay administrative penalty - Knowledge or belief	
235 (1)	Scheme to avoid future liability to pay administrative penalty - Intention	
235 (3)	Scheme to avoid future liability to pay administrative penalty - Knowledge or belief	

Australian National Registry of Emissions Units Act 2011

Civil penalties and amounts

Clause	Description	Maximum Amount
26 (1)	Use and disclosure of information obtained from the Registry - Use	For a body corporate, must not exceed 500 penalty units for each contravention: for a non-body corporate, must not exceed 100 penalty units for each contravention
26 (2)	Use and disclosure of information obtained from the Registry – Disclosure	
26 (5)	Use and disclosure of information obtained from the Registry - Ancillary contraventions	
27 (4)	Regulations about the Registry - Requirement	For a body corporate, must not exceed 10,000 penalty units for each contravention: for a non-body corporate, must not exceed 2,000 penalty units for each contravention.
27 (5)	Regulations about the Registry - Ancillary contraventions	

Offences and criminal sanctions

Clause	Description	Maximum Sanction
23	Making a false entry in the Registry - (blank)	Imprisonment for 7 years or 2,000 penalty units, or both.
24	Falsified documents - (blank)	Imprisonment for 12 months or 60 penalty units, or both.

National Greenhouse and Energy Reporting Act 2007

Civil penalties and amounts

Clause	Description	Maximum Amount
58 (2)	Identity cards	1 penalty unit
61 (3)	Authorised officer may request persons to answer questions	10 penalty units
69 (2)	Occupier to provide authorised officer with all facilities and assistance	10 penalty units
71 (3)	Power to request information	50 penalty units
71 (4)	Power to request information	60 penalty units.
73 (4)	External audits—compliance	250 penalty units
74 (2A)	External audits—other	250 penalty units
74 (3)	External audits—other	250 penalty units
21 (4)	Reports relating to greenhouse gas projects: reduction of greenhouse gas emissions and removals of greenhouse gases	1,000 penalty units
21A (2)	Reports relating to offsets of greenhouse gas emissions	1,000 penalty units
22 (1)	Records to be kept	1,000 penalty units
73 (5)	External audits—compliance	1,000 penalty units
12 (1)	Applying to register in relation to meeting a threshold	2,000 penalty units
19 (1)	Report to be given to Greenhouse and Energy Data Officer	2,000 penalty units
22 (2)	Records to be kept	For an individual—200 penalty units; or otherwise—1,000 penalty units.
20 (4)	Liability of other persons to provide certain information	For an individual—400 penalty units; or otherwise—2,000 penalty units.
47 (1)	Civil penalties for chief executive officers of corporations	(3) Under section 31, a Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order a corporation to pay for contravening the civil penalty provision mentioned in paragraph (1)

Offences and criminal sanctions

Clause	Description	Maximum Sanction
23 (1)	Secrecy	Imprisonment for 2 years.

Renewable Energy (Electricity) Act 2000

Civil penalties and amounts

Clause	Description	Maximum Amount
24 (1)	Improper creation of certificates—offences	1 penalty units.
24 (3)	Improper creation of certificates—offences	5 penalty units.
124	Offences related to warrants	10 penalty units.
125A (4)	Regulator may obtain information and documents	20 penalty units.
76 (1)	Offence (Recovery from a third party)	30 penalty units.
78	Offence (Recovery from liquidator)	30 penalty units.
82	Offence (receiver's obligation)	30 penalty units.
86	Offence (Recovery from agent winding up business for non-resident principal)	30 penalty units.
154 (1)	Failure to provide documents	30 penalty units.
160(7)	Records to be kept and preserved by registered persons, liable entities and holders of partial exemption certificates	30 penalty units
24A (1)	Improper creation of certificates—civil penalty	<p>The pecuniary penalty for a contravention by an individual of subsection 24A(1) must not be more than the greater of:</p> <ul style="list-style-type: none"> (a) 1 penalty unit for each renewable energy certificate to which the contravention relates, up to a maximum of 10,000 penalty units; and (b) 100 penalty units. <p>The pecuniary penalty for a contravention by a body corporate of subsection 24A(1) must not be more than the greater of:</p> <ul style="list-style-type: none"> (a) 5 penalty units for each renewable energy certificate to which the contravention relates, up to a maximum of 50,000 penalty units; and (b) 500 penalty units.
24A (2)	Improper creation of certificates—civil penalty - Ancillary contraventions	For a body corporate, not more than 500 penalty units: for an individual, not more than 100 penalty units

Clause	Description	Maximum Amount
24B (1)	False etc. information resulting in improper creation of certificates under Subdivision B or BA—civil penalty	
24B (2)	False etc. information resulting in improper creation of certificates under Subdivision B or BA—civil penalty - Ancillary contraventions	
154N (1)	Civil penalties for executive officers of bodies corporate	

The pecuniary penalty for a contravention, by an executive officer of a body corporate, of subsection 154N(1) must not be more than the maximum pecuniary penalty that could be imposed on the officer under this section if the officer had committed the contravention referred to in paragraph 154N(1)(a).

Offences and criminal sanctions

Clause	Description	Maximum Sanction
125E	False or misleading evidence	Imprisonment for 12 months.
127 (1)	Information may be recorded or divulged only for purposes of Act	Imprisonment for 2 years.
154 (3)	Failure to provide documents	Imprisonment for 6 months.