



Australian Government
Clean Energy Regulator



ASIC

Australian Securities & Investments Commission

MEMORANDUM OF UNDERSTANDING

Between

The Clean Energy Regulator

And

The Australian Securities and Investments Commission

1. BACKGROUND

- 1.1. The purpose of this Memorandum of Understanding (MoU) is to express the understanding between the Clean Energy Regulator (CER) and the Australian Securities and Investments Commission (ASIC) of the working relationship between the two agencies.
- 1.2. This MoU will guide collaboration, cooperation and mutual assistance in respect of the statutory functions of each agency. In addition to matters covered by this MoU, CER and ASIC acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral or multilateral and include information sharing, staff secondments, mutual training arrangements, joint task forces and service agreements.
- 1.3. This MoU is not intended to create legally binding obligations on either agency.
- 1.4. There are no funding arrangements or costs involved in this MoU.

2. PURPOSE

- 2.1. This MoU sets out the principles that underpin the relationship between CER and ASIC, and is to be applied with that aim in mind.
- 2.2. CER and ASIC will work together to pursue common interests and demonstrate their commitment to a whole of government approach to protecting and promoting confidence in the integrity of the legislative schemes administered by the CER and ASIC.
- 2.3. CER and ASIC recognise the need for the fullest collaboration and cooperation between the two agencies at all levels to discharge their respective functions and to achieve their statutory purposes, to the extent permitted by law. CER and ASIC also acknowledge that timeliness and accountability strengthen the effective discharge of their respective roles and responsibilities.
- 2.4. When a matter is not dealt with explicitly in this MoU, it is expected that both CER and ASIC will discuss the matter and resolve it quickly in accordance with the principles established by this MoU.

3. SCOPE

- 3.1. Specific matters requiring greater detail will be included as Annexures to this MoU.
- 3.2. This MoU and its Annexures are intended to supersede any previous MoUs or arrangements between the Parties on the same subject matter. Subject to paragraph 10.3, any difficulties or unintended consequences will be resolved by negotiation between the representatives nominated at Schedule A of this MOU.
- 3.3. Any reference to "MoU" in this document is to be read to include the Annexures and Schedules attached to this MoU from time to time.
- 3.4. No part of this MoU is intended to create legally binding obligations on either Party.

4. CER

- 4.1. 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.

4.2. CER has responsibility administering and enforcing legislation outlined in Schedule B.

5. ASIC

5.1. ASIC is a regulatory and law enforcement agency charged with promoting market integrity and consumer protection across the financial services sector. ASIC was established by section 7 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). It is responsible for the administration and enforcement of the *Corporations Act 2001* (Corporations Act) and other relevant legislation outlined in Schedule B.

6. LIAISON

- 6.1. The agencies agree that there will be regular liaison meetings between the agencies.
- 6.2. To facilitate and enhance the full and timely sharing of information between the two Parties, officers of ASIC and CER may meet for discussions in relation to specific areas of common interest.
- 6.3. 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 A. Each agency may change its liaison contact officers as necessary, and will provide the other agency with an amended list.
- 6.4. CER and ASIC will be responsible for the day to day operation of this MoU and will liaise as required to discuss the progress of current matters of common interest, to improve the sharing of information, to attempt to identify opportunities for joint enforcement or other activities where appropriate, and to resolve problems that may arise either in audit, investigation or prosecution of particular matters or other relationships between the two agencies.
- 6.5. Agencies agree that, where appropriate, they will consult with each other in relation to arrangements for joint publications and joint contact with stakeholder groups. CER and ASIC may issue joint media releases or publications in relation to any joint enforcement or other activities. The agencies will collaborate in drafting proposed joint media releases or other joint publications.

7. INFORMATION SHARING

- 7.1. Each agency is subject to statutory obligations of secrecy or confidentiality, which govern the disclosure and use of confidential or protected information.
- 7.2. CER and ASIC agree to exchange confidential and protected information if permitted by the relevant statutory provisions. Information may be provided by one agency in compliance with a request from the other agency. An agency may also provide information to the other agency, even if it has not been first requested, if the information would be likely to assist that other agency in administering or enforcing the particular laws for which that agency is responsible.
- 7.3. If information provided pursuant to this MoU becomes subject of a subpoena, freedom of information request, or other legal demand for access, the recipient agency must immediately notify the owner agency, to enable the owner agency to advise any intended action relating to the release, disclosure, publication or production of such information, and to advise of its views concerning the same.

8. AREAS OF COLLABORATION

Areas of collaboration and disclosure of information (which may be confidential or protected) would include, but not be limited to:

8.1. Mutual assistance:

- 8.1.1. Mutual assistance to monitor/enforce compliance with CER and ASIC legislation, including information on potential breaches of legislation administered by either agency, of entities of interest to either or both; and
- 8.1.2. Temporary staff exchanges to facilitate transfer of expertise and skills.

8.2. Exchange of carbon market information:

- 8.2.1. General collaboration to support market intelligence and to achieve a thorough understanding of the activities in or associated with carbon markets;
- 8.2.2. Financial services, financial transactions and Registry transactions involving emissions units, where emissions units includes carbon units, Australian carbon credit units (ACCUs), eligible international emissions units (EIEUs), and financial markets relating to emissions units [s 50 of CER Act];
- 8.2.3. The activities of Australian Financial Service Licence holders or applicants involved in the CER's legislative schemes;
- 8.2.4. Australian clearance and settlement facilities relating to emissions units; and
- 8.2.5. CER data, including major holdings of emissions units.

8.3. Eligibility of scheme participants:

- 8.3.1. The provision of publicly available information held by ASIC in its ASCOT database, to assist CER to administer and enforce compliance with CER legislation;
- 8.3.2. Company office holders involved in CER's legislative schemes, and the exchange of information with respect to compliance under CER and ASIC legislation; and
- 8.3.3. Information regarding the solvency and complex corporate structures of entities participating in CER legislative schemes.

8.4. Audit:

- 8.4.1. The activities of auditors involved in the CER's legislative schemes to support administration; and
- 8.4.2. Provision of inspection services in relation to registered greenhouse and energy auditors.

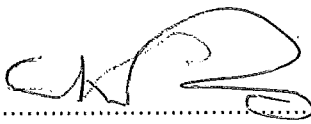
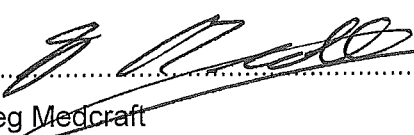
9. ANNEXURES

- 9.1. A set of Annexures to this MoU will be negotiated and added from time to time by the Parties. These Annexures will form part of this MoU when agreed in accordance with paragraph 9.3.
- 9.2. Each Annexure will relate to specific, mutually agreed priorities and issues of relevance to both Parties. Annexures will also include guidelines for the effective management of these issues and priorities.
- 9.3. An Annexure is taken to be agreed under this MoU if it is signed by the Chair of CER and the Chairman of ASIC or their authorised representatives. An Annexure takes effect from the date it is signed unless otherwise specified.

10. REVIEW AND TERMINATION OF THIS MOU

- 10.1. This MoU will be reviewed within three (3) years of the date of signing. Either agency may request a variation of this MoU from time to time.
- 10.2. CER and ASIC may not vary this MoU, except by agreement in writing signed by the Chair of CER and the Chairman of ASIC. All variations to the MoU are to be recorded in the Change Control Register at Schedule C.
- 10.3. If there is a disagreement over any matter related to issues covered in the MoU, the parties will seek to resolve them at the operational level. Should this negotiation fail, the matter is to be referred to the Chair of CER and the Chairman of ASIC.
- 10.4. Either agency may terminate this MoU by giving 30 days written notice to the other agency. The termination will take effect on the expiry of the notice unless otherwise arranged by the agencies.
- 10.5. This MoU will remain in force unless terminated by the agencies.
- 10.6. This MoU shall take effect on and from the date when it becomes signed by both the Chair of CER and the Chairman of ASIC.

SIGNATURES

Signed for the Clean Energy Regulator by:	Signed for the Australian Securities and Investments Commission by:
	
Chloe Munro Chair, Clean Energy Regulator	Greg Medcraft Chairman, Australian Securities and Investments Commission
Date of signature: 01/06/2012	Date of signature: 1/6/12

ATTACHMENTS

- Schedule A:** Liaison contact officers
- Schedule B:** Schedule of legislation
- Schedule C:** Change Control Register

SCHEDULE A

LIAISON CONTACT OFFICERS UNDER PARAGRAPH 6.3

Information will be exchanged between authorised liaison contact officers of CER and ASIC.

In accordance with paragraph 6.3 of this MoU, the following is a schedule of CER and ASIC liaison contact officers that are authorised to exchange information.

SCHEDULE B

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 Units 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 Securities and Investments Commission

- *Australian Securities and Investments Commission Act 2001*
- *Corporations Act 2001*
- *Business Names Registration Act 2011*
- Subordinate legislation to the above Acts

SCHEDULE C

CHANGE CONTROL REGISTER

Version	Date	Revisions made	Areas affected
1.0	1 June 2012	N/A	N/A