

ENERGY SECURITY BOARD
National Energy Guarantee
TECHNICAL WORKING PAPER

**Compliance and Penalties for the
Emissions Reduction Requirement**

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Executive Summary

- The emissions reduction requirement is an annual obligation on market customers to ensure the average emissions intensity of their allocated generation portfolio in a given compliance period is at or below the prescribed electricity emissions target for that period.
- Compliance with the emissions reduction requirement will be assessed and reported annually, based on a financial year compliance period.
- A market customer will be deemed non-compliant with the emissions reduction requirement when its average emissions intensity exceeds the electricity emissions target for that compliance year by a margin greater than the deferred emissions intensity allowance.
- High level compliance data will be reported by the AER each year for transparency and to promote and maintain a culture of compliance.
- Market customers deemed to be non-compliant with the emissions reduction requirement may face sanctions from the AER. The AER has discretion when taking enforcement action.
 - Civil penalty provisions exceeding the existing standard maximum for AER civil penalties will be introduced for the emissions reduction requirement of the Guarantee.
 - Other enforcement tools will be used by the AER as needed. Court enforceable undertakings could be used to allow for market customers to make good where appropriate.
- Market customers or generators that are non-compliant with reporting and administrative requirements that underpin the emissions reduction requirement may also face sanctions from the AER.
- The Guarantee will draw on existing reporting requirements whenever possible. Where additional reporting requirements are imposed, market customers will need to comply with these requirements or risk facing compliance action.
- To encourage market competition, new requirements will be introduced on market customers not to unreasonably withhold allocations of generation from other market customers, and on generators not to unreasonably withhold their generation from being allocated to market customers.

1 Introduction

On 20 April 2018, the Energy Security Board (ESB) presented the COAG Energy Council with a high-level design proposal for the National Energy Guarantee (the Guarantee). The COAG Energy Council agreed that the ESB progress the detailed design of the Guarantee for determination by the Council at its August 2018 meeting.

As part of the development process, the ESB convened Technical Working Groups to advise on certain detailed design elements of the Guarantee. The Technical Working Groups were comprised of a broad range of stakeholders with relevant expertise from more than 30 organisations.

The purpose of this paper is to outline options and preferred approaches relating to compliance and penalties for the emissions reduction requirement under the Guarantee, in particular:

- how compliance is defined
- which aspects of compliance are reported on
- how compliance with reporting requirements will be treated, and
- the penalty regime for non-compliance.

These detailed design issues were considered by the Compliance and Penalties Technical Working Group.

This paper provides additional detail and context to the [Draft Detailed Design Consultation Paper](#). Interested parties are encouraged to lodge a submission to the consultation by **13 July 2018** for consideration by the ESB prior to the publication of the final design of the Guarantee.

2 Overview of High-Level Design

The emissions reduction requirement of the Guarantee is an annual obligation on market customers to ensure the average emissions intensity of the generation allocated to them in the emissions registry (the registry) is at or below the prescribed electricity emissions target for a given compliance period.

Under the proposed approach, the registry will be used to record relevant data including generation data, emissions data, electricity consumption by emissions-intensive trade-exposed (EITE) industries, commitments to GreenPower, as well as deferred and carried-forward emissions intensity reductions from previous compliance periods.

Generation and any associated emissions can be allocated to market customers (mostly retailers, but also large loads that purchase electricity directly from the NEM) in the registry for the purpose of the emissions reduction requirement.

The emissions reduction requirement has been designed to ensure that the Guarantee is integrated with existing electricity market operations and does not compromise financial market liquidity. Market customers can use existing contracts, or enter into new arrangements, to allocate generation and associated emissions to their load in the registry.

At the end of the compliance period, and following a specified reporting and revision window, the AER will assess the compliance of each market customer. This will be based on the final information within the registry.

The approach to compliance and penalties has been developed with reference to the following guiding principles:

1. The obligations should be fair and consistently applied.
2. The framework should be appropriately transparent in respect to AER activities, information requirements for market customers and third parties, along with the AER's compliance assessments.
3. The information requirements must be standardised and appropriate to meet the compliance requirements.
4. The regulatory burden and costs should be minimised where possible.

The compliance framework and penalty regime for the emissions reduction requirement are inherently interdependent with the broader design of the Guarantee. As such, the proposed approach to compliance and penalties will evolve as the detailed design of other elements of the Guarantee is settled after consultation. Decisions on other design elements will take into account the ability to monitor and enforce compliance.

3 Compliance with the emissions reduction requirement

3.1 Defining compliance

Compliance with the emissions reduction requirement is assessed and reported annually, based on a financial year compliance period.

The emissions intensity of the generation allocated to a market customer in the registry, for a given compliance period, will take into account:

- Total market customer load
- Exempt load (for example, EITE)
- Allocation of generation and associated emissions intensity to load
- Load associated with GreenPower
- Carry-forward and deferral
- Offsets (subject to Commonwealth Government decisions)

For more detail on the data sources that underpin each of these elements, please see the *Technical Working Paper on the Emissions Registry* and the *Technical Working Paper on Market Customer Load*.

Options for defining compliance with the emissions reduction requirement under the Guarantee

One option is to consider a market customer 'compliant' if the emissions intensity of their allocated generation in the given compliance period is at or below the electricity emissions target for that compliance period *plus* its unused maximum deferred emissions intensity allowance. Under this approach, a market customer could exceed the electricity emissions target, within a specified margin (see *Technical Working Paper on the Emissions Registry*, section 4.2), and still be deemed 'compliant'.

This approach would mean that market customers that take advantage of the flexibility allowances built into the policy would not be labelled 'non-compliant' or face any reputational risk by doing so. This approach is consistent with designing the deferred emissions intensity allowance as a component of the Guarantee.

Another option is to consider a market customer 'compliant' only when its allocated emissions intensity is at or below the prescribed electricity emissions target for the given compliance year. Under this approach, a market customer would be deemed 'non-compliant' for reporting purposes where they exceeded the electricity emissions target even if they did not exceed the deferral allowed.

The latter approach is consistent with compliance arrangements under the Commonwealth's Renewable Energy Target (RET). However, in the context of the emissions reduction requirement, this approach may discourage the deferral of emissions, even when it may be efficient to do so, since the market customer would be labelled 'non-compliant'.

In both cases, the market customer would not be penalised for non-compliance unless its emissions intensity exceeded the electricity emissions target including the deferred amount.

Preferred approach

- A market customer will be deemed 'compliant' when the emissions intensity of its allocated generation is below the electricity emissions target for the given compliance period, or when the emissions intensity exceeds the electricity emissions target but is within the deferral limits. A market customer which exceeds its electricity emissions target by more than the deferral limit will be deemed 'non-compliant'.
- Market customers which are deemed 'non-compliant' may be subject to penalties for non-compliance with the emissions reduction requirement of the Guarantee.

3.2 Reporting on compliance

The AER will report annually on high-level compliance with the electricity emissions target specified by the emissions reduction requirement of the Guarantee.

The AER will report annually on the overall compliance of the electricity sector with the electricity emissions target for that compliance year. This could include reporting on:

- some level of detail on the final emissions intensity of the 'unallocated pool' of generation in the registry
- any over-allocation by market customers
- the extent of the use of deferral and carry-forward of emissions intensity reductions for the given compliance period – as a lead indicator of potential non-compliance
- the extent of exemptions provided, and
- the quantity of load allocated to GreenPower (and therefore not included in the emissions intensity calculation).

Through compliance reporting or an alternative public reporting approach, the AER will also identify market customers by name and report their emissions intensities for each compliance period. Reporting will indicate clearly those market customers which have not complied with the scheme, as opposed to those which exceeded the target within an allowable margin. This will help to promote and maintain a culture of compliance. The report will be published by 31 December following the compliance year.

Preferred approach

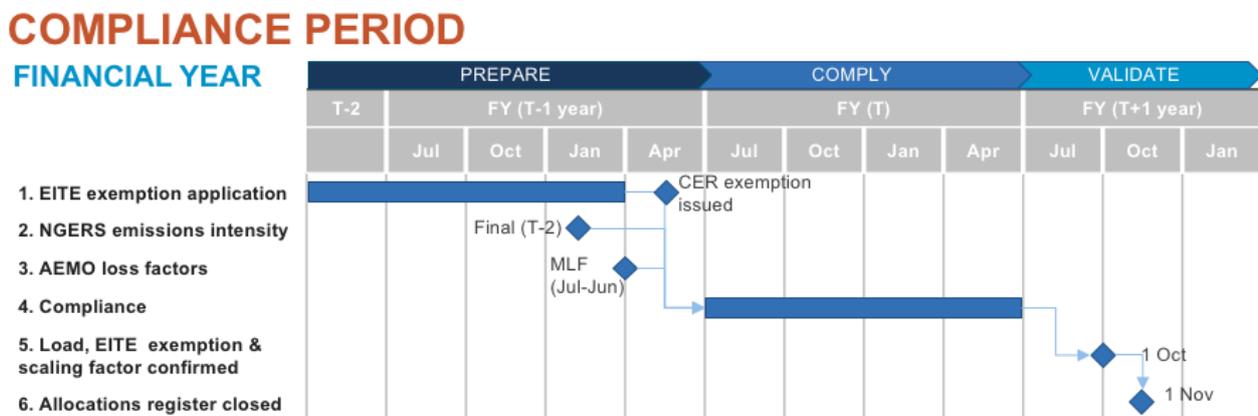
- The AER will publicly report on compliance with the emissions reduction requirement of the Guarantee annually. The AER will identify by name all market customers and their emissions intensities for the given compliance period. The AER will also report on other relevant parameters which may include some level of detail on the final emissions

intensity of the ‘unallocated pool’ of generation in the registry, the extent of the use of deferral and carry-forward of emissions intensity reductions for the given compliance period, the extent of exemptions provided and the quantity of load allocated to GreenPower.

3.3 Timeframe for assessing compliance

The compliance period for the emissions reduction requirement will align with the financial year, finishing on 30 June of a given year. The proposed timeline is illustrated in Figure 1. In the figure, the compliance year is ‘FY (T)’, using information from years FY (T-1) and FY (T-2).

Figure 1: Simplified timeline of the proposed compliance period for the emissions reduction requirement, based on 12-month compliance period aligned with the financial year



The majority of data required to assess compliance of market customers will be available at the end of a given compliance period, or shortly thereafter. See the *Technical Working Paper on the Emissions Registry* for further details. Note that the National Greenhouse and Energy Reporting scheme (NGER) data used to determine generator emissions intensities will be from the most recently available figures provided by the Clean Energy Regulator (CER), which will relate to two financial years prior to the compliance year.

However, some data inputs will need to be finalised following the end of the compliance period. For example, market customers may need to input allocations to the registry following the compliance period to reflect actual generation and load at the end of the period. Retail load and generation volume numbers may need to be adjusted following the end of the compliance period to account for losses. In some cases, AEMO settlement data may be subject to revisions at 20 business days, 20 weeks and 30 weeks following the release of the ‘final’ data.

To address the need for reporting and revisions after the compliance period has ended, there will be a reporting and revision window following the end of a compliance period in which market customers and generators may input and confirm outstanding data. The window for revisions to AEMO settlement data will extend until 30 September following the compliance year, which is expected to allow for the majority of revisions to occur. Market customers and generators will have an additional month, until a reporting deadline of 31 October, to record final allocations and adjustments.

Following this window, the registry will be closed to input and the AER will commence assessments from 1 November.

To determine compliance with the emissions reduction requirement, the emissions intensity assigned to each market customer will be calculated based on the final data in the registry (as it stands at the end of the reporting and revision window). The emissions intensity calculated by the registry for each market customer will be assessed against the electricity emissions target of the given compliance period.

Preferred approach

- The compliance period for the emissions reduction requirement will align with the financial year. Each compliance period will be followed by a reporting and revision window until 31 October, after which the AER will assess compliance.

3.4 Dealing with emissions intensity uncertainty

As outlined in section 2 and section 3.1 of this paper, compliance with the emissions reduction requirement of the Guarantee will be assessed following the end of the given compliance period based on a range of input data. It will be important that market customers have the ability to estimate and forward-plan their emissions intensities and make arrangements as needed to comply with the obligation.

Market customers can limit uncertainty around the emissions intensity for which they are liable by securing contracts with generators to cover their load. These contracts would create an agreement to allocate the right to count generation and its associated emissions intensity to the market customer.

As shown in Figure 1, to provide certainty of the emissions intensities applied to these allocations, the registry will use each generator's emissions intensity using the last published data (which will be from two financial years ago). For example, the emissions intensity of a given generator for the 2018-19 financial year (published under the NGER scheme in February 2020) will be applied to generation allocated under the emissions reduction requirement in the 2020-21 compliance period.

There will inevitably be some drawbacks to using emissions intensity data at a two-year lag to the compliance period. However, this approach is preferred to alternatives as it is simple and it provides market customers with certainty of the emissions intensities of generation with which they may enter contracts in the compliance period.

Special provisions will be designed for generators that may need them, for example, newly commissioned generators that have not previously reported emissions data. For instances in which a generator undertakes a capital project expected to improve its emissions intensity substantially (a difference above a defined threshold), there may be an opportunity for the generator to seek an updated emissions intensity to be nominated by the CER. The CER would need evidence that the improvement in emissions intensity was real and non-transitory. This updated emissions intensity would be recorded in the registry and would apply from the date that

it was recorded onwards (until replaced by the next result from the normal NGER reporting process). The uncertainty of this change in emissions intensity is unlikely to be problematic for market customers as it will result in an improvement in a generator's emissions intensity.

For market customer load which has not been covered by a contract with a specific generator, the market customer will be assigned the emissions intensity of the unassigned residual pool – as detailed in the *Technical Working Paper on the Emissions Registry*. A level of uncertainty exists for market customers drawing on this pool as they will not know their assigned emissions until the end of the compliance period. As mentioned previously, to mitigate this uncertainty, market customers can allocate generation and associated emissions so they are not exposed to this unallocated pool. It is likely that market customers will err to the side of caution by conservatively estimating the final emissions intensity of the unallocated pool and will seek to reduce their exposure accordingly. In addition, flexibility is allowed through allowing market customers to defer compliance within limits to future periods, enabling market customers to make some adjustments in later periods if the final emissions intensity of the unallocated pool is higher than planned for. No additional flexibility will be given to a market customer that is exposed to the residual.

3.5 Encouraging market competition

The emissions reduction requirement has been designed to allow flexibility for market customers to manage their requirements in an efficient way. The design carries penalties for market customers that do not comply with their emissions reduction requirements but does not carry penalties for over-achievement (market customers with emissions intensity significantly under what is required).

However, over-achievement should not be used in an anti-competitive way to prevent other market customers from accessing allocations to low emissions generation in the registry.

To ensure that a competitive market is fostered, there will be a legal requirement that market customers not unreasonably withhold allocations of generation from other market customers.

In addition, there will also be a requirement on generators not to unreasonably withhold allocating their generation to market customers. If generators refrain from allocating to market customers for anti-competitive purposes, they would breach this requirement. In addition, generators will have some administrative requirements to allocate all generation and associated emissions by the reporting and compliance date. For more on this, see section 4.1 below and also see the *Technical Working Paper on the Emissions Registry*.

The AER may take enforcement action for breach of this requirement.

Preferred approach

- To encourage market competition, new requirements will be introduced on market customers not to unreasonably withhold allocations of generation from other market customers, and on generators not to unreasonably withhold generation from being allocated to market customers.

4 Compliance with reporting and administrative requirements

The proposed compliance framework has been designed to minimise the reporting burden on generators and market customers. Where possible, the reporting required to assess compliance with the emissions reduction requirement will build on existing information sources. For the data being sourced from existing information sources, the existing frameworks for monitoring and enforcing reporting requirements will continue to apply.

Existing data sources that will be drawn on to assess compliance with the emissions reduction requirement are likely to include:

- Emissions intensity data: Emissions for each generator will be primarily sourced from NGER reporting. Monitoring and enforcing compliance with data reporting requirements and record keeping requirements will continue to be the responsibility of the CER. These requirements fall under the *National Greenhouse and Energy Reporting Act 2007*. For the purposes of calculating a generator's emissions intensity, emissions data will be combined with generation data that matches the year of the emissions data and scaled according to the marginal loss factors applying in the compliance year (both generation and market customer purchases will be calculated at the node). For further details, see the *Technical Working Paper on Market Customer Load*.
- Generation data: Output data for each market generator will be sourced from AEMO's settlement systems. This data will show actual volume of generation from each generator in the NEM over the compliance period. The compliance with data reporting requirements will continue to be the responsibility of the AEMO.
- GreenPower data: Market customers who sell GreenPower products will report those sales in the registry. To the extent that surrendered Large-scale Generation Certificates (LGCs) relate to generation that occurred in the compliance year (not banked from previous years), the corresponding renewable generation would need to be identified in the registry. Note the ESB will work with GreenPower to ensure that the registry can facilitate GreenPower additionality.

4.1 Compliance with any additional reporting requirements

Where new information is required to assess compliance with the emissions reduction requirement, such as emissions data for generation not currently captured in NGER reporting, additional reporting requirements will be introduced. This will be done with efforts to minimise duplication of existing reporting and to draw on existing systems and the associated compliance arrangements when this option exists. It is possible that the new requirements could be pursued via amendments to existing legislation (for example, amending the NGER Act) however the requirements could also be captured with amendments to the NEL and Rules.

In addition to specifying the reporting requirements, the amended legislation or rules (as appropriate) will introduce arrangements for monitoring and enforcing compliance with the requirements to ensure that the necessary information is received on time and in the format that it is needed. The AER may take enforcement action in response to the provision of false information to the registry, including the input of false allocation information by market customers.

Administrative obligations will also be introduced in respect of generators, supplementing the obligation on generators not to unreasonably withhold allocating their generation referred to in

section 3.5 above. This will reflect the importance to the scheme of generators reporting accurate information, in a timely manner. Generators will be required to enter or confirm allocations in a timely manner to allow AEMO to provide regular updates of the contents of the unallocated pool and its emissions intensity. They will also have an administrative requirement to allocate all generation and associated emissions by the reporting and compliance date.

Preferred approach

- Where additional reporting requirements are needed to assess compliance with the emissions reduction requirement, the additional requirements will be introduced with efforts to minimise duplication of existing reporting. Reporting requirements will draw on existing processes and the associated compliance arrangements when this option exists. Any additional requirements will be clearly articulated along with the associated compliance and enforcement framework. Some administrative obligations will be introduced on generators.

4.2 Compliance with allocation reporting requirements

Fundamental to the operation of the emissions registry is the capacity to ‘allocate’ generation from a generator to a market customer. For more detail on this process – see the *Technical Working Paper on the Emissions Registry*.

Responding to an allocation request

When a market customer allocates generation to their load in the registry, the allocation must be underpinned by evidence that the counterparty has approved it. This requirement will reduce the risk of generation being inaccurately allocated or the same generation being allocated to multiple market customers.

Non-compliance with this requirement will be automatically identified in the Registry and non-compliant entities may be subject to enforcement action.

Over-allocation of generation to a market customer

In simple terms, the volume of generation recorded in the registry should match the volume of load able to be allocated in the registry in each compliance period.

Market customers are required to ensure that - at the end of a compliance period and the subsequent reporting and revisions window - the volume of generation allocated to their load does not exceed the volume of their load. For example, if a market customer has a load of 2,000 MWh in a given compliance period it should not report allocations of greater than 2,000 MWh of generation in the registry. To do so would be deemed an over-allocation of generation.

Over-allocation to one market customer will prevent another market customer from being able to fully match its load with generation. As such, breaching this requirement may result in enforcement action by the AER. In addition, the volume of over-allocated generation would be deemed to be at the emissions intensity of the highest emissions intensity generator in the NEM (see the *Technical Working Paper on the Emissions Registry*, section 3.3).

The AER will assess compliance with allocation of generation requirements based on the final load and allocation data in the registry following the end of the reporting and revision window for a given compliance period. The AER and the courts, as relevant, will also take into account the impact of non-compliance on other entities, as over-allocation by one market customer will have impacted on the emissions intensity and compliance of another.

Preferred approach

- Market customers must adhere with the allocation requirements of the emissions registry for the registry to operate and for the AER to assess compliance with the emissions reduction requirement. As such, the AER will monitor and enforce compliance with allocation requirements.
- Market customers are required to ensure that - at the end of a compliance period and the subsequent reporting and revisions window - the volume of generation allocated to their load does not exceed the volume of their load. Failure to comply with this requirement may result in enforcement action by the AER.
- For market customers that over-allocate, the extent of the over-allocation will be deemed to take the emissions intensity of the highest emissions intensity generation in the NEM.

4.3 Introducing anti-avoidance provisions

The ESB is considering the merits of introducing an anti-avoidance regime in the NEL that relates to the Guarantee to reduce the risk of companies restructuring or taking similar action to avoid their obligations.

In simple terms, a general anti-avoidance regime would prohibit an entity which has a potential obligation under the Guarantee from taking action for the purpose of avoiding that obligation. For example, it could reduce the risk of companies restructuring to avoid or minimise their emissions reduction requirement by taking advantage of the small market customer exemption rule.

Anti-avoidance regimes are often included in taxation and revenue laws to prevent tax structuring for the purposes of avoidance. The anti-avoidance regime would be general in its scope, as distinct from specific avoidance or anti-gaming measures which might be included in respect of specific obligations.

Such a provision could help to reduce the complexity of the regulatory framework giving effect to the Guarantee. Where an anti-avoidance provision has been breached, part of consequences for the relevant entity could be for them to be put in the position they would have been in had the avoiding conduct not occurred.

Preferred approach

- A general anti-avoidance regime should be introduced. This would prohibit an entity which has a potential obligation under the Guarantee from taking action for the purpose of avoiding that obligation.

5 Enforcement

As outlined in section 3 of this paper, market customers that exceed the electricity emissions target for the given compliance period by more than the specified deferral amount will be deemed 'non-compliant'. The deferral and carry-forward provisions under the Guarantee are detailed in the *Technical Working Paper on the Emissions Registry*.

In this case, the AER will have the power under the NEL to take appropriate enforcement action to address the non-compliance, including initiating civil proceedings. The AER has discretion in deciding whether to take enforcement action and the nature of that action. Each case will be assessed on its merits. In determining an appropriate enforcement response, the AER considers all relevant factors and circumstances.

To avoid non-compliant behaviour, the AER will actively educate and engage with the market to ensure participants understand their obligations and encourage compliance. Annual reporting of compliance will also encourage a culture of compliance given the reputational risk to a market customer of being publicly reported as non-compliant.

To date, the industry has been compliant across a range of obligations. The strong culture of compliance has been observed through the AER's ongoing monitoring and compliance activities as well as in schemes such as the Renewable Energy Target.

5.1 Civil penalties for non-compliance

While the AER has discretion in applying enforcement options, under the National Electricity Law (NEL), the AER can initiate civil proceedings in the courts for alleged breaches of civil penalty provisions of the national energy laws. These may include:

- Injunctions: A court may grant an injunction requiring a person to do something or desist from doing something.
- Civil penalties: A court may order that an entity pay a financial penalty as a result of breaching its obligations.

Provisions could be introduced in the NEL such that a court could impose a civil penalty in the event that a market customer is non-compliant with the emissions reduction requirement in a given compliance period.

The standard civil penalty regime defined under the NEL carries a maximum penalty of \$100,000. This penalty regime is currently subject to review by the COAG Energy Council as part of their *AER Powers and Civil Penalty Regime* review process. If introduced, the proposed changes would introduce a two-tiered civil penalty limit, with a maximum civil penalty of \$1,000,000 for breaches of some civil penalty provisions.

Non-compliance with the emissions reduction requirement

The enforcement approach for non-compliance within the emissions reduction requirement of the Guarantee should effectively deter non-compliant behaviour, and the definition of “civil penalty” in the NEL will need to be amended for application in the context of the Guarantee in order to provide for a more meaningful upper limit. It is likely that this will need to occur irrespective of the civil penalty changes resulting from the current COAG Energy Council review. There is precedent for specifying exceptions to the standard civil penalty provisions, as this has already been done in respect of rebidding civil penalty provisions.

For deterrent effect the maximum penalty needs to be set at a level that is greater than the avoided cost through non-compliance. The preferred approach is that market customers would face a civil penalty with an upper limit of \$100 million for non-compliance. As described above, a civil penalty can only be awarded by a court. It is likely a court would take into account the circumstances and reasons surrounding the non-compliance and other relevant factors such as the impact on other market participants.

Discretion of the AER and the courts

The AER has discretion in terms of its approach to enforcement, including the level of penalty it seeks in any court proceedings. Enforcement action, including any penalties sought, may be assessed on a case by case basis and is likely to reflect the extent of the non-compliance and the context.

The AER will publish guidance on the enforcement options within its power and the circumstances in which they are likely to be applied in the context of Guarantee and the emissions reduction requirement. For example, this could include the extent to which the AER, when taking enforcement action, will consider any reasonable steps taken by a generator or market customer to fully allocate its generation or load. This guidance will also outline the factors which are likely to be taken into account when determining a civil penalty level.

Preferred approach

- Market customers deemed to be non-compliant with the emissions reduction requirement, in exceedance of the deferral limit, may face a civil penalty initiated by the AER under the NEL.
- The definition of “civil penalty” in the NEL will be amended under the Guarantee in order to provide for more meaningful upper limits. An upper limit of \$100 million for non-compliance is proposed.

5.2 Additional enforcement options

In enforcing compliance with the emissions reduction requirement and the related reporting obligations of the Guarantee, the AER may seek to undertake alternative enforcement options, rather than or in addition to civil penalties.

The AER, at its discretion, may issue administrative undertakings, infringement notices, or obtain court enforceable undertakings to resolve the non-compliance rather than a civil penalty.

5.2.1 Administrative undertakings

Administrative resolutions are a more informal and less intrusive enforcement option which the AER uses to resolve certain matters. The AER may be more likely to accept an administrative undertaking where the effect of an actual or potential breach is limited, and a business has taken (or agreed to take) appropriate steps to end the conduct and to remedy any harm done.

5.2.2 Infringement notices

Infringement notices specify the nature of the contravention and the amount of the penalty that must be paid. Currently, under Division 5 of the NEL, the AER has the ability to issue infringement notices for a breach. The infringement penalty for a breach of a relevant civil penalty provision is up to \$20,000.

Infringement notices give the recipient the option of paying a penalty in full (without there being an admission of breach) or electing to have the matter heard in court.

It is proposed that infringement notices of additional value are created to provide more meaningful penalty options to be applied under the Guarantee. These could be applied to additional reporting requirements or other breaches of a similar nature.

The amount of the penalty must be sufficient to act as a deterrent. In addition, the AER's current practice is to publish all infringement notices. The financial impost as well as the reputational impact should act as a disincentive for non-compliant behaviour.

5.2.3 Court enforceable undertakings

Court enforceable undertakings are written statements from an entity that it will take specified actions (for example, entering into contracts in order to resolve a breach). Compliance with these undertakings can be enforced by the courts and are a valuable tool in addition or as an alternative to infringement notices.

Given the design of the emissions reduction requirement and the competition concerns that have been raised, the AER may use enforceable undertakings to manage events where market customers have clearly shown efforts to enter into contracts or arrangements but they have not delivered as expected - for example, when a small retailer has a power purchase agreement (PPA) with a small renewable generator that has had delays in its build time. In this case the AER may enter into an enforceable undertaking where the market customer could potentially meet compliance once generation has started.

The AER could also use enforceable undertakings to require a market customer to make up in future years for the amount to which it has previously failed to meet its electricity emissions target. This could help to ensure that the sector as a whole does not fall short of its targets.

A Abbreviations and defined terms

AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CER	Clean Energy Regulator
COAG	Council of Australian Governments
Compliance period	The twelve-month period across which compliance with the emissions reduction requirement is assessed. The compliance period will align with the financial year.
EITE	Emissions-intensive trade-exposed
Emissions intensity	The volume of greenhouse gas emissions produced for every unit of output. For the electricity sector, this is usually tonnes of emissions for every megawatt-hour of electricity produced.
ESB	Energy Security Board
GreenPower	A program for purchasing renewable energy from government-accredited sources
Guarantee	National Energy Guarantee
LGC	Large-scale generation certificate under the RET
Market customer	NEM customers, which are mostly electricity retailers (note that this is different to the definition of a liable entity for compliance with the reliability requirement under the Guarantee).
MWh	Megawatt-hour
NEL	National Electricity Law
NEM	National Electricity Market
NGER	National Greenhouse and Energy Reporting scheme
PPA	Power purchase agreement
RET	National large-scale renewable energy target currently in place under the <i>Renewable Energy (Electricity) Act 2000 (Cth)</i>
Rules	National Electricity Rules
tCO ₂ -e	Metric tonnes of carbon dioxide equivalent

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