

# Consultation paper – review of ESS compliance framework

10 October 2017

## 1. We are reviewing our compliance framework and guidance

IPART administers the Energy Savings Scheme (**ESS**). The principal objective of the ESS is to reduce the consumption of energy (electricity and gas) by encouraging investment in additional energy saving activities.

We assess the compliance of Accredited Certificate Providers (**ACPs**) to ensure that the Energy Savings Certificates (**ESCs**) that they create represent valid, genuine energy savings. In doing so, we protect the integrity of the scheme.

Although, in recent years we have had a high level of compliance by ACPs, we propose to review our approach to compliance to ensure that our framework remains best practice and addresses emerging issues. As part of this review, we are proposing specific amendments to audit requirements and progression to higher volumetric ESC creation limits, as well as other changes to clarify the Compliance and Performance Monitoring Strategy (**CPMS**) and the Application Guide (together, the **Guides**).

The CPMS sets out how we monitor, assess and manage the compliance and performance of ACPs. It explains our general approach for setting and adjusting audit regimes, how we determine the specific audit requirements and our approach for managing non-compliance. The Application Guide provides guidance to applicants applying for accreditation as an ACP.

This consultation paper explains the context and purpose of the review and discusses key changes, seeking feedback on:

- ▼ two proposed changes to our compliance approach
- ▼ the draft *Accredited Certificate Provider Compliance Guide* (largely the former CPMS), and
- ▼ the draft *Accredited Certificate Provider Application Guide* (largely the former Application for Accreditation Guide).

Submissions responding to this consultation paper are due by 13 November 2017.

As part of our broader review of our administration of the ESS, we will also review other aspects of our compliance framework, including the requirements for managing audits, auditors and Measurement and Verification Professionals. We will provide more information on these aspects of our review in late 2017.

### 1.1 The changes aim to improve compliance and clarify guidance

We regularly review our approach to compliance to ensure it remains appropriate. In 2014, we reviewed our CPMS and made minor amendments. In 2015, the NSW Government made some changes to the ESS legislation and recommended that we review particular aspects of our compliance framework. As a result of this, in response to some recent compliance issues and as part of our commitment to continual improvement, we decided to undertake a comprehensive review of our compliance framework.

In November 2016, we asked stakeholders how we could improve the CPMS, along with other aspects of our compliance approach. We are now amending the Guides in response

to stakeholder feedback. The amendments are intended to provide clearer guidance for ACPs and applicants on:

- ▼ their obligations under the ESS
- ▼ how ACPs can better manage their accreditations
- ▼ what we consider when making decisions about ACPs and their accreditations, and
- ▼ our approach to managing non-compliance by ACPs.

## 1.2 Invitation for submissions

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We invite written comment on this paper, the two proposed changes to our compliance approach and the draft Guides, and encourage all interested parties to provide submissions.

**Submissions are due by 13 November 2017.**

We would prefer to receive them electronically via email to [ess@ipart.nsw.gov.au](mailto:ess@ipart.nsw.gov.au).

You can also send comments by mail to:

**Energy Savings Scheme – ESS Compliance Review**

Independent Pricing and Regulatory Tribunal

PO Box K35

Haymarket Post Shop NSW 1240

## 2. We have restructured our Guides and made them clearer for applicants and ACPs

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This section sets out how we have significantly restructured the information in the Guides (refer Figure 2.1). In particular, we have separated the current CPMS into two separate guides – a compliance guide and an application guide.

The proposed amendments clarify our compliance approach and target information to the relevant stakeholders, primarily ACPs, auditors and applicants. The amendments include:

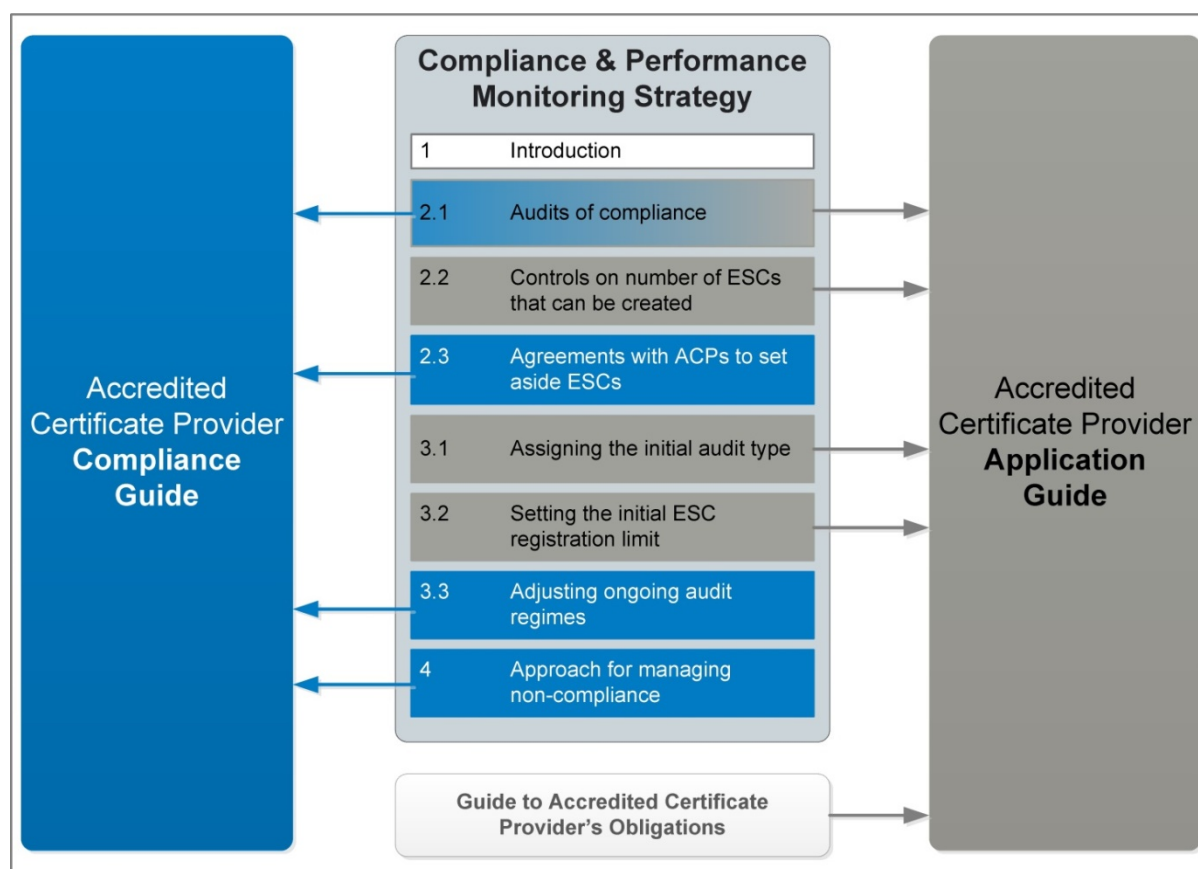
- ▼ changing the name of the CPMS to '*Accredited Certificate Provider Compliance Guide*'
- ▼ changing the name of the Application Guide to '*Accredited Certificate Provider Application Guide*'
- ▼ moving information that relates specifically to applicants from the CPMS and other related documents to the *Accredited Certificate Provider Application Guide*
- ▼ amending and adding information to both documents to better guide and help applicants and ACPs successfully participate in the ESS, and
- ▼ improving the general readability of the Guides.

In particular, we have:

- ▼ updated and moved information about how we set audit regimes and ESC creation limits when accrediting applicants for accreditation (from sections 2.2, 2.3, 3.1 and 3.2 of the CPMS) to the *Accredited Certificate Provider Application Guide* (refer section 5), and

- ▼ moved and updated information currently in the [Guide to Accredited Certificate Provider's Obligations](#) to the *Accredited Certificate Provider Application Guide* (refer section 3).

**Figure 2.1 Restructure of the Guides**



We do not propose to make changes to the substance of our guidance beyond the two outlined in section 3 below. Instead, our changes are to improve clarity and explanation.

In the *Accredited Certificate Provider Compliance Guide* we have clarified and simplified our explanations in a number of areas, including:

- ▼ clarifying the definition of successful audits (section 3.2)
- ▼ decreasing the ESC creation limits in response to non-compliance (section 3.5.1), and
- ▼ guidance on how ACPs should apply for amendments to their accreditation (sections 4 and 5).

In the *Accredited Certificate Provider Application Guide*, we have clarified and simplified our explanations in a number of areas, including:

- ▼ setting out the obligations of ACPs (section 3)
- ▼ how we set accreditation conditions (section 5)
- ▼ how we determine confidence ratings when assessing an application (section 5.3.1)
- ▼ how we set the ESC creation limits when we accredit ACPs (section 5.3), and
- ▼ our typical approach for applicants without a compliance record (section 5.3.2).

### 3. We propose to change aspects of our compliance approach

This section sets out the proposed changes that we seek comments on:

- ▼ increasing the scope of audits to include all unaudited ESCs (through conditions of accreditation in Accreditation Notices), and
- ▼ increasing the number of ESCs that need to be audited to move to the highest creation limits under a volumetric audit regime (Figure 4.1 of the *Accredited Certificate Provider Compliance Guide*).

#### 3.1 Increasing the scope of audits

Audits are our key tool for assessing the compliance of ACPs. As such, we need audits to cover all aspects of an ACP's participation.

We propose to require that each audit of an ACP covers all unaudited ESCs registered up to the date that the ACP engages an auditor. While we currently expect this to be the scope of each audit of an ACP, it is not always reflected in practice. This means that some audit reports may not provide a full picture of an ACP's compliance with the ESS requirements.

There may be circumstances in which we would not require all unaudited ESCs to be audited as part of the audit scope.

This requirement would be included as a condition of accreditation in Accreditation Notices, most likely in item 4 of the Schedule. The wording of the condition would be to the effect of:

*Each audit must cover all unaudited ESCs registered up to the date that the ACP engages the Auditor, unless the Scheme Administrator issues the ACP with a written notice advising that an audit of specified ESCs is not required.*

We seek comments on

- 1 Should ACPs be required to include all unaudited ESCs in the scope of each audit?

#### 3.2 Increasing the number of ESCs that ACPs need to audit to move to the highest creation limits

If an ACP with a volumetric audit regime<sup>1</sup> continues to demonstrate compliance and completes consecutive successful audits, we may consider increasing the number of ESCs that it can register between audits (ie, the volumetric ESC creation limit). In general, the volumetric ESC creation limit commences at 5,000 ESCs and increases in set increments to a maximum of 200,000 ESCs. To be considered eligible for an increase, ACPs must typically complete a minimum number of successful audits involving a minimum number of ESCs.

We propose to increase the total number of ESCs that must be audited for an ACP to be eligible to transition to the 150,000 and 200,000 ESC creation limits as set out in Table 2.1. This aligns the number of ESCs to be audited at these levels with the lower levels, where the total number of ESCs to be audited is the number of audits times half the ESC limit (eg, 3 x

<sup>1</sup> A volumetric audit regime is one which requires an ACP to arrange for an audit once they have registered a specified number of ESCs.

50,000 = 150,000, for a 100,000 ESC limit). Ensuring that ACPs' systems are adequately tested at higher limits protects the integrity of the scheme and the risks to ACPs.

Our proposed changes are set out in figure 4.1 of the draft *Accredited Certificate Provider Compliance Guide*.

**Table 3.1 Amendments to the total number of ESCs that must be audited**

Existing ESC limit <sup>a</sup>	# audits that must be done at that step	Total # ESCs that must be audited	New requested limit
100,000	3	Currently 100,000 Proposed amendment to 150,000	150,000
150,000	3	Currently 150,000 Proposed amendment to 225,000	200,000

<sup>a</sup> A condition of accreditation set out in the Accreditation Notice.

We seek comments on

- Should we increase the number of ESCs that ACPs must audit to be eligible to transition to the 150,000 and 200,000 ESC creation limits?

## Submissions policy

We may not accept late submissions. Our normal practice is to make submissions publicly available on the ESS website [www.ess.nsw.gov.au](http://www.ess.nsw.gov.au) as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning us on (02) 9290 8452.

We may choose not to publish a submission—for example, if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. We will then make every effort to protect that information, but it could be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW), or where otherwise required by law.

If you would like further information on making a submission, our submission policy is available on the IPART website [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au).