

Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment portfolio

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Hearing: Additional Estimates
Outcome: Agency
Programme: Clean Energy Regulator
Topic: Lake Bonney Wind Farm Applications Regulations
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Senator BACK: And further to that, now, could you just give us an overview as to what would be the criteria by which you would determine a person as being a fit and proper person to be that legal person?

Ms Munro: I might turn to Mr Purvis-Smith, who is our general counsel, because this is really a matter of the tests that are defined in the law. It might take a moment just to pull up the—

Mr Purvis-Smith: pull up the legislation, but as I am doing that I will say that there are a number of statutory criteria that we assess. They go to, for example, whether a person has committed any offences, particularly in relation to our legislation, and also whether they have been bankrupt and so on. It will just take me a moment to bring up the relevant information. Senator Back, I think you said you had three questions.

Senator BACK: Yes, I do. I can go on to the second and third, if that provides you with time. ... Before I go on to my third and last area, were you able to provide further information, Mr Purvis-Smith, or do you want to wait a bit longer?

Mr Purvis-Smith: The short answer is that it is Regulation 3L of the Renewable Energy (Electricity) Regulations 2001. As I said, it is relevant as to whether a person has been convicted of an offence—a law of the Commonwealth or a state or territory that relates to dishonest conduct or that relates to the conduct of a business. There are some matters in relation to what are effectively false or misleading statements made under the criminal code and foreign laws. There are some other provisions, which are whether the relevant person has been deregistered from state based schemes. And then, as I said, there are also matters about whether, if it is a body corporate, it has been wound up, and those sorts of things. From memory, I think there is also something in relation to being bankrupt, but I just cannot find that at the moment. There is a long list, but it is easily found in the regulations.

Senator BACK: That is fine. So, on notice, you can provide us with the evidence of those three.

Answer:

When considering whether to register a person under the *Renewable Energy (Electricity) Act 2000*, the Clean Energy Regulator (the Regulator) determines if the applicant is a “fit and proper person”.

Since 12 December 2012, when the fit and proper persons provisions were introduced into the Renewable Energy (Electricity) Regulations 2001, the Regulator must have regard to the matters specified in Regulation 3L.

The Regulator may also have regard to any other relevant matters, and may refuse the application for registration if satisfied that the applicant is not a fit and proper person.

The text of Regulation 3L is available on ComLaw at:

www.comlaw.gov.au/Series/F2001B00053.

In summary, regulation 3L requires the Regulator to consider whether an applicant:

- i. has been convicted of an offence that relates to dishonest conduct, the conduct of a business, or specific provisions of the Criminal Code;
- ii. has breached legislation administered by the Clean Energy Regulator;
- iii. has an order made against them under the *Competition and Consumer Act 2010* (or a foreign law that corresponds to the relevant provisions of that Act);
- iv. has been refused registration, been de-registered by or suspended from participating in a State or Territory energy efficiency scheme;
- v. has sought or been granted, or refused, accreditation or membership of a “clean energy organisation”, or had that accreditation or membership suspended or revoked; and
- vi. is insolvent under administration or (where the applicant is a body corporate) is an externally-administered body corporate.

Where the applicant is a body corporate, the Regulator must also have regard to whether an executive officer of the body corporate has been convicted of these offences or breached any of the specified legislation; whether a relevant order has been made against them; whether the officer has been refused registration, de-registered or suspended from participating in an energy efficiency scheme; and whether they have been refused accreditation by, or membership of, a “clean energy organisation”—or had that accreditation or membership suspended or revoked.

Should the Clean Energy Regulator receive evidence that the registered person does not meet the fit and proper person test, the Clean Energy Regulator would consider suspending the person’s registration under section 30A of the *Renewable Energy (Electricity) Act 2000*.

Any person with any allegations that any of our scheme participants are not fit and proper should provide such allegations and supporting evidence to Clean Energy Regulator.