

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

Question No: 200
Hearing: Supplementary Budget Estimates
Outcome: Agency
Programme: Clean Energy Regulator
Topic: FRAUD UNDER THE RENEWABLE ENERGY TARGET
Hansard Page: N/A
Question Date: 29 October 2014
Question Type: Written

Senator Back asked:

I refer to the statement made by Ms Munro, at Supplementary Budget Estimates hearing of 20 October 2014:

“I would comment that fraud under the renewable energy target is not actually fraud against the Commonwealth but it is a fraud against the customers of those entities.”

Referring to the answer given to QoN 80, Additional Estimates 4 March 2014:

The Clean Energy Regulator relies on each wind farm operator to undertake a self-assessment and declare in writing to the Clean Energy Regulator that it is compliant with its obligations under state/territory laws. Wind farm operators are also required to provide documents showing approvals provided by state/territory regulators. Giving false or misleading information or documents to the Commonwealth are serious offences under the Criminal Code (which is the Schedule to the Criminal Code Act 1995 (Cth)). There are also other sanctions available to the Clean Energy Regulator under the clean energy legislation.

1. How does the CER reconcile the inconsistency above?
2. Is the CER's indifference to the proper investigation of matters going to the entitlement of accredited power stations explained by Ms Munro's statement, viz., that the unlawful receipt of LGCs “fraud under the renewable energy target is not actually fraud against the Commonwealth” but merely “a fraud against the customers of those entities?”
3. Given the provisions of the Criminal Code (set out above), does the CER maintain that power stations do not commit offences against the Commonwealth by failing to report or disclose matters which directly concern their entitlement to participate in the RET scheme?

Answer:

1. The Clean Energy Regulator actively pursues those who opportunistically or deliberately contravene the laws we administer. In determining the appropriate course of action, it is the nature of the offence, not the victim, which is the primary consideration.
2. The Clean Energy Regulator strongly refutes the suggestion that we are indifferent to the proper investigation of matters. The Clean Energy Regulator has established a team of properly qualified and experienced investigators and all allegations of breaches of administered legislation are referred to this team where they are assessed and managed in accordance with the Australian Government Investigations Standards.

There are a range of compliance and enforcement tools, including criminal and civil penalty provisions, available to the Regulator and they are used when appropriate.

For example:

In the period 1 July 2013 to 30 September 2014:

- 7 Enforceable Undertakings have been agreed by the Regulator.
- 3 REC Registry accounts have been suspended.
- 36,891 STCs have been voluntarily surrendered as a result of investigations undertaken.
- One matter has been referred to the AFP for investigation assistance.
- One matter resulting from an investigation by the Regulator is before the courts in Queensland.
- One matter is with the Commonwealth DPP for consideration of prosecution.

Recently a matter referred by the Regulator to the NSW Police, and investigated with the assistance of the Regulator, was finalised in the NSW courts with the offender being ordered to a custodial sentence of two years to be served by way of an intensive correction order under the supervision of Corrective Services NSW.

A civil prosecution initiated by the Regulator against five parties resulted in penalties of \$209,400 (plus costs) being imposed.

Two other matters investigated by the former Office of Renewable Energy Regulator resulted in convictions and penalties of 200 hours community service and 18 months imprisonment, to be served by way of home detention.

3. No. Many of the above matters relate to provision of false and misleading information.