

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

Question No: 208
Hearing: Supplementary Budget Estimates
Outcome: Agency
Programme: Clean Energy Regulator
Topic: NON-COMPLIANCE
Hansard Page: N/A
Question Date: 28 October 2014
Question Type: Written

Senator Madigan asked:

The Clean Energy Regulator encourages scheme participants to voluntarily comply with legislative requirements. The CER ensures that its regulatory responses are proportionate to the risks posed by any non-compliance.

1. What does the CER consider are the risks posed by any non-compliance?
2. Does the CER choose how it responds to any regulatory concerns- including to breaches and reports of non-compliance- with regard to the level of risk the breach or noncompliance might present to the operator or does the CER formulate regulatory responses based on the laws to which the Clean Energy Regulator is held?

Answer:

1. The impact of non-compliance with legislation administered by the Clean Energy Regulator is varied and affected by a number of factors, depending largely on:
 - the nature, including cause, of the non-compliance;
 - the extent of the non-compliance; and
 - the motivation and behaviour leading to, or resulting in, the non-compliance.

The potential impacts include the loss of confidence by participants and the community in the integrity of the individual programmes and schemes and financial loss to participants and, potentially, the Commonwealth.

Non-compliance identified by the Clean Energy Regulator ranges from inadvertent minor recording and reporting errors to deliberate criminal acts which result in financial loss by participants.

2. The Clean Energy Regulator's risk-based approach to dealing with non-compliance is outlined in the agency's Compliance, Education and Enforcement policy (www.cleanenergyregulator.gov.au/About-us/Corporate-policies/compliance-education-and-enforcement-policy/Pages/default.aspx).

The Clean Energy Regulator has a wide range of enforcement options available to deal with non-compliance, ranging from administrative actions (advisory and warning letters) to enforceable undertakings, account and accreditation suspensions, voluntary surrender of improperly created certificates to civil and court actions.

In accordance with the Compliance, Education and Enforcement policy, alleged breaches of administered legislation are reviewed to determine the appropriate

response, taking into consideration a number of factors. This includes an initial assessment and analysis of the relevant facts to decide the likelihood that a breach has or is likely to occur, its seriousness and likely consequences. Consideration of the behaviour and motivation of the alleged participants is incorporated in this assessment.

While all alleged breaches are carefully considered, the Clean Energy Regulator exercises discretion in determining the type of response appropriate to address the non-compliance and resolve matters, including whether further action is justified.

Where the initial assessment indicates that further investigation is required, matters are referred to the agency's Investigations and Enforcement Branch and dealt with according to the Australian Government Investigations Standards.