



Australian Government  
Clean Energy Regulator

## Office of the Chair

EC15/50

Ms Katherine Jones  
Deputy Secretary, National Security and Criminal Justice Group  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Dear Ms Jones

### Enforcement agency access to telecommunications data

I refer to your letter of 27 May 2015. The Clean Energy Regulator wishes to apply for continued access to telecommunications data. I am of the view that we are able to make a compelling case for access and clearly demonstrate an ability to uphold the privacy safeguards embedded in the data retention scheme and request that the Attorney-General declare the Clean Energy Regulator to be an enforcement agency under section 176A of the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*.

The Clean Energy Regulator is a statutory authority established under the *Clean Energy Regulator Act 2011*. The Clean Energy Regulator administers climate change laws which include:

- the *Carbon Credits (Carbon Farming Initiative) Act 2011*;
- the *National Greenhouse and Energy Reporting Act 2007*;
- the *Renewable Energy (Electricity) Act 2000*; and
- the *Australian National Registry of Emissions Units Act 2011*.

In administering these climate change laws, the Clean Energy Regulator is responsible for carrying the legislation into effect, monitoring and ensuring compliance with the administrative requirements associated with the application of these laws, and for investigating possible breaches of these laws.

The climate change laws administered by the Clean Energy Regulator contain offences with significant criminal and civil penalties. For example, the *Renewable Energy (Electricity) Act 2000* (the REE Act):

- Section 24 – improper creation of certificates – penalty; one penalty unit per certificate. For a body corporate, the penalty is five penalty units per certificate. An average solar PV household system is currently eligible for approximately 60 certificates.
- Section 24A – improper creation of certificates – civil penalty provision.
- Section 24B – False information resulting in the improper creation of certificates – civil penalty provision.

The Clean Energy Regulator has successfully taken civil penalty action for offences under the REE Act. In the matter of MT Solar Pty Ltd and others, penalties totalling \$209,400 were imposed.

The circumstances giving rise to offences under climate change laws often also provide evidence for offences under the *Criminal Code Act 1995*. For example, an investigation by the Clean Energy Regulator into the activities of Mr John Testoni relating to providing false information that resulted in the improper creation of certificates, lead to Mr Testoni being charged with 24 counts of section 137.2 of the *Criminal Code Act 1995*. Mr Testoni was sentenced to 18 months imprisonment.

Access to telecommunications data is a valuable tool for investigating offences under climate change law. However, the Clean Energy Regulator recognises that access to this data does impact on the privacy of the individuals involved. For that reason, the Clean Energy Regulator has developed an internal policy for managing requests for access to this data and also for the storage and management of any data received. Use of telecommunications data is a tool of last resort. This internal policy has resulted in the Clean Energy Regulator only requesting access to telecommunications data on four occasions relating to three separate investigations. The information obtained as a result of those requests was not available through other means and enabled us to progress the relevant investigations.

As a statutory authority of the Australian Government, the Clean Energy Regulator is bound by the Australian Privacy Principles. Additionally, employees of the Clean Energy Regulator are bound by the secrecy provisions contained in Part 3 of the *Clean Energy Regulator Act 2011*. As previously stated, the Clean Energy Regulator has also implemented our own internal policy to govern requests for telecommunications data and the management and storage of any data received.

Therefore, I believe it would be appropriate for the Clean Energy Regulator to have continuing access to telecommunications data.

If you require further information or clarification, please contact [REDACTED] General Manager, Investigations and Regulatory Support at [REDACTED] [@cleanenergyregulator.gov.au](mailto:[REDACTED]@cleanenergyregulator.gov.au) or (02) 6159 [REDACTED]

Yours sincerely



Chloe Munro  
Chair, Clean Energy Regulator  
12 June 2015