

## SUPPLEMENTARY BUDGET ESTIMATES – OCTOBER 2015

## BACKPOCKET BRIEFING

**THE CER AS AN ENFORCEMENT AGENCY UNDER THE  
TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979****Issue**

The Clean Energy Regulator is currently an ‘enforcement agency’ under the *Telecommunications (Interception and Access) Act 1979* (TIA Act). As of 13 October 2015, as a result of the implementations of the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*, the Clean Energy Regulator will no longer be an ‘enforcement agency’ and will not have access to telecommunications data.

**Headline Statement**

- The Clean Energy Regulator considers access to telecommunications data to be a valuable investigative tool.
- Recognising the importance of people’s privacy, the Clean Energy Regulator utilises access to telecommunications data as a tool of last resort. The Clean Energy Regulator has implemented strict controls on the request for, and use of, telecommunications data.
- This has resulted in the Clean Energy Regulator only authorising access on four occasions relating to three investigations.

**Talking Points**

- As of 13 October 2015, as a result of the implementation of the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*, the Clean Energy Regulator will no longer be an ‘enforcement agency’ and will not have access to telecommunications data.
- The Chair and Chief Executive Officer of the Clean Energy Regulator wrote to the Attorney-General’s Department on 12 June 2015, seeking continued access to telecommunications data. This letter has been acknowledged as received, but no other advice provided.
- The Clean Energy Regulator is responsible for administering climate change laws that contain offences with significant criminal and civil penalties. Circumstances giving rise to breaches of climate change laws often also provide evidence of offences under the *Criminal Code Act 1995*.
- Information obtained as a result of access to telecommunications data was not available through other means and enabled the Clean Energy Regulator to progress the relevant investigations.
- While the rate of usage of telecommunications data in Clean Energy Regulator investigations is low, the loss of this tool is likely to result in some investigations not progressing to the extent that may have been possible.

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**Background**

- As part of its administration of climate change laws, the Clean Energy Regulator actively pursues those who opportunistically or deliberately contravene these laws.
- The Clean Energy Regulator has a team of qualified and experienced investigators who investigate alleged breaches of the legislation we administer.
- The Clean Energy Regulator, as an enforcement agency under the TIA Act, can authorise the disclosure of telecommunication when reasonably necessary for the enforcement of the criminal law or a law imposing a pecuniary penalty, or for the protection of public revenue.
- While recognising the usefulness of telecommunications data as an enforcement tool, the Clean Energy Regulator appreciates the potential sensitivity of this information source and the legislative provisions in place to maintain integrity. In order to meet its legislative obligations, the Clean Energy Regulator limits access to telecommunications data and has established robust mechanisms for requesting, accessing and using this data.
- There have been four authorisations for the disclosure of telecommunication information by the Clean Energy Regulator relating to three investigations.
- Authorisation for the disclosure of telecommunication information has been made on each occasion by Senior Executive members of the Clean Energy Regulator.
- The authorised officer must have regard to whether any interference with the privacy of any person or persons that may result from the disclosure or use of telecommunications data under request is justifiable, having regard to:
  - the likely relevance and usefulness of the information or documents, and
  - the reason why the disclosure or use concerned is proposed to be authorised.
- These authorisations have been limited to the disclosure of telecommunications data on the person of interest subject to an investigation, and only to verify information provided by that person to allegedly claim benefits administered by the Clean Energy Regulator to which they were not entitled.
  - In the first case, a subscriber check demonstrated that the phone number used in support of a claim made to the Clean Energy Regulator was invalid (that is, the phone number did not exist). This matter was subsequently referred to a state law enforcement agency.
  - In the second case, a subscriber check supported the allegation that an unknown person had fraudulently used the details of a known company in an attempt to create certificates. The certificates were failed.

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- The third case is ongoing and relates to an allegation of an installer breaching the Clean Energy Council guidelines (more than three installs a day). In this case:
  - : Subscriber details showed that the phone number was associated with the person of interest, and
  - : The metadata showed that the phone was being used in a different location than where the installations had occurred.
- In accordance with s186 of the TIA Act, the Clean Energy Regulator reports annually to the Attorney-General’s Department regarding access to telecommunications data for inclusion in its annual report to Parliament.
- The penalties contained in the climate change laws administered by the Clean Energy Regulator include significant terms of imprisonment (e.g. a breach of s 66L of the ANREU Act – 10 years).
- Additionally, for many of the matters investigated, offences under the Commonwealth and state and territory criminal codes also apply.
- Penalties applied by the courts for matters investigated by the Clean Energy Regulator include:
  - Civil penalties exceeding \$200,000 applied to parties involved in a breach of the Renewable Energy (Electricity) Act 2000 – MT Solar and others.
  - 20 months imprisonment with a nine month non-parole period to be served by way of home detention for breaches of the *Criminal Code Act 1995* arising from offences relating to the Renewable Energy Target – Mr John Testoni.
  - Two years imprisonment (served by way of intensive corrections order) for a breach of the NSW criminal code – this matter arose from an investigation into the improper creation of certificates and was referred to the NSW Police who prosecuted the matter – Ms Lucie Yeung.
  - Mr Neville Voss is currently before the Queensland courts charged with breaches of the *Criminal Code Act 1995* resulting from the improper creation of certificates. This matter has been adjourned to 30 October 2015 for a hand up committal and it is expected that Mr Voss will plead guilty.

**Attachments**

Attachment	Document
Attachment A	<b>Letter from the Attorney-General’s Department</b>
Attachment B	<b>Response by the Chair and CEO of the Clean Energy Regulator</b>

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