

Environment and Communications Legislation
Answers to questions on notice
Climate Change, Energy, the Environment and Water Portfolio

Inquiry: Future Made in Australia (Guarantee of Origin) Bill 2024 [Provisions] and related bills

Question No: IQ24-000160

Hearing Date: 15 October 2024

Division/Agency: Electricity Division

Topic: Restriction of trading certificates - legal advice

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Question Date: 15 October 2024

Question Type: Spoken

Senator Cadell asked:

Senator CADELL: It was suggested by Hydro Tasmania themselves today—and they were questioned quite well by our chair—that the restriction of trading certificates below the line REGOs be in the state that they're created only for Tasmania. The chair raised some questions on constitutionality. Did the department ever get advice or examine the constitutionality of such an event?

Mr White: That goes to a question of legal privilege.

Senator CADELL: No, the advice would be privilege; whether you asked for advice would not be legal privilege.

Mr White: We have advice.

Senator CADELL: And you're not willing to share that.

Mr White: The advice is legally privileged.

Senator CADELL: So we're not going to be able to examine that, whether it was constitutionally viable or not and what was suggested.

CHAIR: Would you like to consider whether there was anything you, potentially, could tell us and take that on notice?

Mr White: Yes, I'd be happy to take that on notice.

Answer:

1. The Department of Climate Change, Energy, the Environment and Water received legal advice from the Australian Government Solicitor in September 2023 on the matter raised by Senator Cadell.
2. The department considered that advice in the design of the policy of restrictions on below-baseline certificates.
3. That legal advice is subject to legal professional privilege.