

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

**Question No:** 229  
**Hearing:** Supplementary Budget Estimates  
**Outcome:** Agency  
**Programme:** Clean Energy Regulator  
**Topic:** WAUBRA WIND FARM - PROVISION OF INFORMATION  
**Hansard Page:** N/A  
**Question Date:** 29 October 2014  
**Question Type:** Written

**Senator Back asked:**

I refer to sections 137.1 and 137.2 of the Criminal Code which create offences for giving false or misleading information or documents.

1. The provisions above apply to an accredited power station when providing information to the CER, including in their accreditation forms, electricity returns, and standing notices submitted to the CER as required under the REE Act 2000 does the CER agree?
2. Does the CER agree that the failure of an accredited power station to include in documents that that power station is obliged to submit to the CER, information that it is not being operated “in accordance with any relevant Commonwealth, State, Territory or local government planning and approval requirements”, amounts to an omission rendering the document or information false or misleading?
3. In other words, does the CER agree that an accredited power station is obliged to inform the CER of facts and circumstances that show that the power station is not being operated “in accordance with any relevant Commonwealth, State, Territory or local government planning and approval requirements”?
4. Or does the CER consider that the question of whether or not an accredited power station is being operated “in accordance with any relevant Commonwealth, State, Territory or local government planning and approval requirements”, is entirely irrelevant to that power station’s entitlement to be accredited?

**Answer:**

1. Yes. Section 136.1 (false or misleading statements in applications) of the *Criminal Code Act 1995* (the Criminal Code) may also be relevant.
2. Failure to provide information or a document may not amount to an omission rendering the document or information false or misleading. In terms of whether an offence has been committed under the Criminal Code, it depends on the state of mind of the person providing the information or document. For example, subsection 137.1(1) of the Criminal Code provides as follows (emphasis added to paragraph 137.1(1)(b)):
  - (1) A person is guilty of an offence if:
    - (a) the person gives information to another person; and
    - (b) the person does so **knowing** that the information:
      - (i) is false or misleading; or
      - (ii) omits any matter or thing without which the information is misleading; and
  - (c) any of the following subparagraphs applies:

- (i) the information is given to a Commonwealth entity;
- (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
- (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

The term “knowledge” is defined in section 5.3 of the Criminal Code as follows:

A person has **knowledge** of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.

It is also important to note that the offence is not committed if the information is not false or misleading in a material particular, or if the information did not omit any matter or thing without which the information is misleading in a material particular.

3. No. The Clean Energy Regulator requires each power station to declare that it is compliant with its obligations under state/territory laws and approvals. However it is up to the relevant state/territory to oversee and enforce those laws, including planning permits and noise limits. For example when submitting a Standing Notice for the creation of Large-scale Generation Certificates, the operator (or authorised person on behalf of the power station) is required to declare that:
  - (a) the power station/s has been operating in accordance with all relevant Commonwealth, State, Territory or local government planning and approval requirements since the most recent date large scale generation certificates were created on behalf of the power station/s, and
  - (b) whether there has been a breach of the conditions of a permit or conviction of an offence under any Commonwealth, State, Territory or local government law related to the operation of the power station/s since the most recent date large scale generation certificates were created on behalf of the power station/s.

This form makes it clear that the giving of false or misleading information is a serious offence. There may also be repercussions for the ongoing accreditation of the power station, particularly if the operator is convicted of a relevant offence.

4. It is relevant only at the time of the Clean Energy Regulator’s accreditation decision. Please see also Supplementary Budget Estimates 2014 Question 220.