Extract from Hansard, Senate Estimates Committee: November 18, 2013

Senator MADIGAN: My questions go to wind farm accreditation. My office recently got a copy of a ministerial briefing note to Victorian planning minister, Matthew Guy, dated 21 August 2011. It advises that the Waubra wind energy facility is breaching the conditions of its planning permit regarding noise—and I quote: 'DPCD and the EPA remain concerned that noise compliance has not being achieved'. The briefing note was prepared by senior officers from the department of planning and the Victorian EPA with support from an expert acoustic consultant firm, SLR Pty Ltd. This briefing note is backed up by numerous reports commissioned by the Victorian department of planning, with details of the non-compliance. I also have another five ministerial briefing notes which refer to the non-compliance. These briefing notes, in turn, refer to 63 complaints made by residents directly to the operator as well as complaints to the Victorian Environment Protection Authority and local councils.

I add that the complaints registration procedure of the operator was so bad that it breached yet another condition of the planning permits. The minister has been repeatedly advised that the operator was in breach of conditions 14, 15 and 16 of the planning permits. The briefing note also refers to 11 houses vacated by residents who were experiencing noise problems from the wind farm. In August 2013 I wrote to the CER asking that you suspend Waubra's accreditation. On 1 November I again wrote to the CER and attached a copy of the August 2011 briefing note, asking that you suspend accreditation. I again wrote to the CER on 11 November with even more details of non-compliance and asking that you suspend accreditation. Has Waubra wind-farm's accreditation been suspended? If not, why not?

Ms Munro **:** Thank you for that question. In short, the answer is no—Waubra wind-farm's accreditation has not been suspended. I will explain why, in some general terms. I think the first thing to understand is that the responsibility for determining whether a power station is operating in accordance with state law rests with the state agency. The Renewable Energy (Electricity) Act does not give the Clean Energy Regulator an enforcement role in relation to the operation of state based power generators in accordance with state laws. So you are right to say that when we accredit power stations we do require and we confirm the documentary evidence that they have the requisite approvals in place.

It is also true that, if a state body withdrew operating permission—so, if the planning consent is withdrawn, or other findings are made that the power generator was contravening the law—we would take that into account in considering what further action we should take. However, even in those circumstances, it would not automatically mean—and it certainly would not instantly mean—that suspension of accreditation was the conclusion. Our general approach to compliance in this area, as with others, would be that we would certainly enter into correspondence, which would be a show-cause letter, and there might be an enforceable undertaking. There are a number of steps we would take before necessarily going to what is the most extreme action, if you like, that we can take under our powers.

We have been in correspondence with you, and in dialogue with your office about your freedom of information requests, and I note that you are referring here to a 2011 briefing to the Victorian minister, and perhaps some others. We have also explored this matter with the Victorian Department of Planning and Community Development. We have had no evidence from them that there is a determination to suspend their planning accreditation for contravention of their approval requirements and their permit conditions. So, based on the information that we have received to date, and also the willingness of the Victorian department to keep us updated, at the present time the regulator are not satisfied that there are grounds for us to take any formal action under

our legislation against either the department or the wind farm—and we are certainly well away from having to consider the matter of whether it would be appropriate to suspend their accreditation.

Senator MADIGAN: Thank you. Three months after the ministerial briefing note the Victorian Planning System Ministerial Advisory Committee published the following view in section 10.3—'Enforcement'—of its preliminary report:

The ability to effectively enforce planning schemes, planning permits and agreements is integral to the efficient operation of the planning system. In the absence of enforcement, the planning system stands to be abused and would lose credibility.

I put it to you that, rather than the Victorian minister for planning taking the advice of the ministerial advisory committee, senior planning advisors in his department, the EPA, independent expert acousticians and the number and consistency of complaints—all of which evidence ongoing non-compliance and planning permit breaches—the Victorian minister has been allowing Waubra wind farm to operate without regulation; he has been sitting on the problem and not passing on accurate information to the Clean Energy Regulator. So I ask: on what basis are you confident that the Victorian minister is acting in accordance with his statutory responsibilities to enforce Victoria's planning law? What has the CER done to form an independent view about Waubra? Has the CER exercised its power under section 125A to request information from the Victorian minister and his department—and, if not, why not?

Ms Munro **:** Again, Senator, I think your question is based on a misunderstanding of the requirements of our act. It is certainly not for the regulator to step into the shoes of the Victorian minister and, if you like, second-guess his decisions. We are satisfied that he is being advised. We are satisfied that the Department of Planning and Community Development is dealing with this issue. We are not ourselves going to form an independent view, or set ourselves up as a planning regulator, to override the Victorian authorities—or any other state based authority, for that matter. We rely on their decisions and whether or not they consider that action needs to be taken to withdraw the planning consents, and that has not been taken.

Your other question, which goes to the use of our information gathering powers: again, those are powers, if you like, at the extreme end of our toolkit. Senators might recall that, when the Clean Energy Regulator was established, there was some concern in the community about the draconian powers that were in our act and also in the Renewable Energy Act. Those powers are ones that can be used, and are used, in cases where there is no other means of obtaining that information and it is necessary to obtain that information.

However, in this case, we have been in correspondence with the Department of Planning and Community Development. They have shared information with us. And we are very far from being in a situation where it would be necessary for us to exercise those powers, which in fact we would use, and have used, only very rarely.

CHAIR: Senator Madigan, we have now had 45 minutes in what was supposed to be a 25-minute session with this group. I will give you one more question.

Senator MADIGAN: It is not the responsibility of the CER to enforce state planning laws—I acknowledge that. However, it is the responsibility of the CER to protect the integrity of the large-scale Renewable Energy Target.

You are required to ensure that you accredit eligible power stations only. The regulatory responsibilities of the CER are clearly instructed under the governing

Commonwealth legislation. The Renewable Energy (Electricity) Act is explicit about the CER's responsibilities. The Victorian Planning and Environment Act is explicit about the responsibilities of the Victorian regulator. The failure of the state to enforce state law is not an excuse or justification, quite frankly, for the CER to fail its statutory obligations to enforce Commonwealth law. The CER should not interpret or distort Commonwealth law by assigning it the same meaning as that which is enforceable under state law.

The CER failed to consider the unmet conditions on noise compliance of the Waubra wind farm at the time they approved the accreditation of the Waubra wind farm. You still do not hold any evidence of compliance from either the operator or the state regulator that compliance has been achieved.

In contrast, my office has provided you with reasonable grounds that fulfil requirements of section 30E of the Renewable Energy (Electricity) Act, in particular that should provide suitable incentive for the CER to exercise your powers under that section of the act until such time as the CER is satisfied that the Victorian Planning and Environment Act has been enforced.

From whom has the CER taken advice that suspension is not warranted? And could you direct me to how your position of inaction is supported under the Commonwealth act?

Ms Munro **:** Senator, I do not accept any of the premises on which your question—or, rather, statement—is based. First of all, you are expressing an opinion about the failure of the state to enforce state planning law. We do not share that view. Second, you are interpreting the requirements on us in a way that we also do not share. We are the regulator and we have properly formed the view, according to our legislation, that the Waubra wind farm was eligible to be accredited at the time which they applied for accreditation and we have formed the view that they continue to be eligible. The material that you have sent to us does not, in our view, constitute a reason for us to take a different position on that.