

Our Reference: 52282
Contact Officer: Isabelle Arnaud
Contact Phone: (02) 6243 1271



**Australian
Competition &
Consumer
Commission**

5 August 2014

The Proper Officer
GridX Power Pty Ltd
PO Box 93
Mascot NSW 1460

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Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

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www.accc.gov.au

Dear Sir or Madam

Substantiation Notice issued under section 60FA(2) and Substantiation Statement required under section 60FD of the *Competition and Consumer Act 2010*

Substantiation Notice

Accompanying this letter is a carbon tax removal substantiation notice (**the Substantiation Notice**) issued by the Chairman of the Australian Competition & Consumer Commission (**ACCC**) under section 60FA of the *Competition and Consumer Act 2010 (CCA)*.

The Substantiation Notice requires GridX Power Pty Ltd to give to the ACCC a written statement that explains certain matters specified in the Substantiation Notice relating to the carbon tax repeal and its impact upon GridX Power Pty Ltd's costs and prices. The Substantiation Notice also requires GridX Power Pty Ltd to provide both information and documents that substantiate the explanation contained in that written statement.

The Substantiation Notice requires GridX Power Pty Ltd to give the written statement, information and documents to the ACCC at its office situated at 23 Marcus Clarke Street, Canberra, ACT 2601 during normal business hours, and marked to the attention of Carbon Coordination or alternatively sent by email to carbonco-ordination@acc.gov.au.

The date by which GridX Power Pty Ltd must comply with the Substantiation Notice is 26 August 2014, being 21 days after GridX Power Pty Ltd was given the Substantiation Notice.

If GridX Power Pty Ltd considers there are genuine reasons why it may not be able to comply with the Substantiation Notice on or before the due date, it should make an application to the ACCC **within 14 days** after the Substantiation Notice was given requesting an extension of the period for complying with the Substantiation Notice, together with reasons in support of that request. The ACCC will then consider whether to recommend that the Chairman extend the period for compliance. Any extension granted cannot be for a period of more than 28 days. Please note any request for an extension cannot be considered if it is made after the period of 14 days from the date the Substantiation Notice was given.

Pursuant to section 60FC(3) of the CCA, it is a criminal offence of strict liability not to comply with a Carbon Tax Removal Substantiation Notice. The offence is punishable by a fine of \$34,000 for corporations and \$6,800 for individuals. Giving false or misleading information, or giving documents containing false or misleading information, is a serious offence under sections 137.1 and 137.2 of the *Criminal Code (Cth)*.

An extract of the relevant statutory provisions is attached to the Substantiation Notice at Schedule 2.

Substantiation Statement

In addition to the requirement to comply with the attached Substantiation Notice, GridX Power Pty Ltd is also required to provide to the ACCC a carbon tax removal substantiation statement (**the Substantiation Statement**) and supporting information in accordance with section 60FD of the CCA.

The Substantiation Statement is a written statement that sets out GridX Power Pty Ltd's estimate, on an average annual percentage price basis or an average annual dollar price basis, of GridX Power Pty Ltd's cost savings that have been, are, or will be directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be passed on to each class of GridX Power Pty Ltd's customers. The Substantiation Statement is also required to be published on GridX Power Pty Ltd's website. The Substantiation Statement and supporting information must be given to the ACCC by close of business on 18 August 2014.

Pursuant to section 60FD(5) of the CCA, it is a criminal offence of strict liability not to provide a Carbon Tax Removal Substantiation Statement, or not to make that statement available on an entity's website. The offence is punishable by a fine of \$68,000 for corporations and \$6,800 for individuals. Giving false or misleading information, or giving documents containing false or misleading information, is a serious offence under sections 137.1 and 137.2 of the *Criminal Code* (Cth).

An extract of the relevant statutory provisions relating to Carbon Tax Removal Substantiation Statements is also attached to this letter.

Further information on complying with a substantiation notice or a substantiation statement can be found at www.accc.gov.au/business/carbon-tax-repeal.

If you have any questions about the Notice or believe you have received it in error please contact Isabelle Arnaud, Director, Enforcement ACT and National on (02) 6243 1271.

Yours sincerely



Brenton Philp
General Manager
Enforcement ACT and National

RELEVANT STATUTORY PROVISION

60FD Carbon tax removal substantiation statements

Scope

- (1) This section applies to an entity if the entity:
 - (a) is an electricity retailer that sells electricity to electricity customers; or
 - (b) is a natural gas retailer that sells natural gas to natural gas customers; or
 - (c) is a bulk SGG importer that sells synthetic greenhouse gas to SGG customers.

Carbon tax removal substantiation statement

- (2) Within 30 days after the Royal Assent day, the entity must give to the Commission:
 - (a) a written statement that sets out:
 - (i) if the entity has electricity customers—the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of electricity customers during the financial year that began on 1 July 2014; and
 - (ii) if the entity has natural gas customers—the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of natural gas customers during the financial year that began on 1 July 2014; and
 - (iii) if the entity has SGG customers—the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of SGG customers during the financial year that began on 1 July 2014; and
 - (b) information that substantiates the estimate or estimates set out in the statement.

Note: Section 137.1 of the *Criminal Code* creates an offence of providing false or misleading information.

- (3) A statement under paragraph (2)(a) is to be known as a ***carbon tax removal substantiation statement***.
- (4) If the entity has given a carbon tax removal substantiation statement to the Commission, the entity must ensure that a copy of the statement is available on the entity’s website, in a way that is readily accessible by the public, until the end of 30 June 2015.

Compliance

- (5) An entity commits an offence if:
- (a) the entity is subject to a requirement under subsection (2) or (4); and
 - (b) the entity is capable of complying with the requirement; and
 - (c) the entity omits to do an act; and
 - (d) the omission breaches the requirement.

Penalty: 500 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) If subsection (5) of this section applies to an individual (whether or not because of subsection 6(2)), subsection (5) of this section has effect, in relation to the individual, as if the reference to 500 penalty units were a reference to 40 penalty units.
- (8) If subsection (2) of this section applies to an individual (whether or not because of subsection 6(2)), the individual is excused from giving an estimate or information under subsection (2) of this section on the ground that the estimate or information might tend to incriminate the individual or expose the individual to a penalty.

Section does not limit section 60H

- (9) This section does not limit section 60H (which is about the price-related information-gathering powers of the Commission).

Section does not limit section 155

- (10) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

Report to Parliament

- (11) Within 13 months after the Royal Assent day, the Commission must report to Parliament in respect of compliance by all entities.

COMPETITION AND CONSUMER ACT 2010

SECTION 60FA(2)

CARBON TAX REMOVAL SUBSTANTIATION NOTICE

TO: GridX Power Pty Ltd ACN 100 209 354
PO Box 93
Mascot NSW 1460

I, Rodney Graham Sims, Chairman of the Australian Competition and Consumer Commission (**the ACCC**) give this CARBON TAX REMOVAL SUBSTANTIATION NOTICE (**the Notice**) UNDER section 60FA(2) of the *Competition and Consumer Act 2010* (**the CCA**) to GridX Power Pty Ltd ACN 100 209 354, being an **electricity retailer** that sells electricity to **electricity customers** for the purposes of section 60FA(1) of the CCA.

I REQUIRE GridX Power Pty Ltd to:

- (i) give to the ACCC a written statement (**the statement**), signed by an authorised officer of GridX Power Pty Ltd, that explains:
 - a. how the **carbon tax repeal** has affected, or is affecting, GridX Power Pty Ltd's **regulated supply input costs**; and
 - b. how reductions in GridX Power Pty Ltd's **regulated supply input costs** that are directly or indirectly attributable to the **carbon tax repeal** are reflected in the **prices** charged by GridX Power Pty Ltd for **regulated supplies** of electricity.
- (ii) give to the ACCC information, signed by an authorised officer of GridX Power Pty Ltd, that substantiates the explanation set out in the statement; and
- (iii) produce to the ACCC documents that substantiate the explanation set out in the statement.

Definitions

In this Notice the defined terms refer to those terms as defined in section 60A of the CCA.

TIME AND PLACE FOR COMPLIANCE WITH THE NOTICE

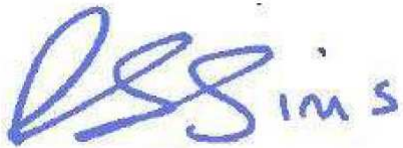
This Notice requires GridX Power Pty Ltd to give the statement and information, and produce the documents, required by the Notice to the ACCC at its office situated at 23 Marcus Clarke Street, Canberra, ACT 2601 during normal business hours, and marked to the attention of Carbon Co-ordination or alternatively sent by email to carbonco-ordination@acc.gov.au.

GridX Power Pty Ltd must comply with the Notice within 21 days after GridX Power Pty Ltd was given the Notice.

OTHER INFORMATION

Important information about the Notice and its effect is provided in Schedule 1. A copy of the relevant sections of the CCA is provided in Schedule 2.

DATED: 4 August 2014



.....
Rodney Graham Sims
Chairman

SCHEDULE 1

EXPLANATION OF SECTIONS OF THE CCA CONCERNING CARBON TAX REMOVAL SUBSTANTIATION NOTICES

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY

Complying with the Carbon Tax Removal Substantiation Notice

Unless the ACCC extends the time for compliance with the Carbon Tax Removal Substantiation Notice, the person to whom this Carbon Tax Removal Substantiation Notice is given (**the recipient**) must comply with the notice within 21 days after being given the notice (**the applicable compliance period**).

An individual has the right to refuse or fail to give particular information or produce a particular document in response to the Carbon Tax Removal Substantiation Notice if the information or document might tend to incriminate the individual or expose them to a penalty. This privilege only applies to individuals and not to corporations.

Extending the applicable compliance period

The Carbon Tax Removal Substantiation Notice recipient may, at any time within 14 days after the notice was given to the recipient by the ACCC, apply in writing to the ACCC for an extension of the compliance period. Such a request should be sent to the ACCC at the address given in the Carbon Tax Removal Substantiation Notice and marked to the attention of Carbon Co-ordination or alternatively sent by email to carbonco-ordination@accc.gov.au.

After receiving an application, the ACCC will determine whether to extend the compliance period. A request for an extension will not automatically be granted by the ACCC. If the ACCC decides to extend the compliance period, the ACCC will notify the Carbon Tax Removal Substantiation Notice recipient in writing. The ACCC cannot grant a request for an extension for a period greater than 28 days.

Refusing or failing to comply with the Carbon Tax Removal Substantiation Notice

It is a criminal offence of strict liability to refuse or fail to comply with a Carbon Tax Removal Substantiation Notice punishable by a fine of \$34,000 for corporations and \$6,800 for individuals.

Giving false or misleading information etc.

Giving false or misleading information, or giving documents containing false or misleading information to:

- a Commonwealth entity;
- a person who is exercising powers or performing functions in accordance with a law of the Commonwealth; or
- in compliance with a law of the Commonwealth

is a serious offence under sections 137.1 and 137.2 of the *Criminal Code*.

The *Criminal Code* provides for penalties of up to 12 months imprisonment for such offences.

Schedule 1 explains the effect of sections 60FB and 60FC of the CCA and sections 137.1 and 137.2 of the *Criminal Code*, as required by section 60FA(5) of the CCA. It is not legal advice.

SCHEDULE 2

Competition and Consumer Act 2010

60A Definitions

In this Part:

applicable compliance period, for a carbon tax removal substantiation notice, has the meaning given by subsection 60FC(2).

bulk SGG importer means an entity that:

- (a) holds a controlled substances licence under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* that allows the entity to import synthetic greenhouse gases; and
- (b) supplies synthetic greenhouse gas to SGG customers.

carbon charge component of levy means so much of the amount of the levy as is calculated by multiplying the number of tonnes of carbon dioxide equivalence by a per unit charge applicable under subsection 100(1) of the *Clean Energy Act 2011* for the issue of a carbon unit.

carbon tax removal substantiation notice has the meaning given by subsection 60FA(3).

carbon tax removal substantiation statement has the meaning given by subsection 60FD(3).

carbon tax repeal means:

- (a) the repeal of the following Acts by the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*:
 - (i) the *Clean Energy Act 2011*;
 - (ii) the *Clean Energy (Charges—Customs) Act 2011*;
 - (iii) the *Clean Energy (Charges—Excise) Act 2011*;
 - (iv) the *Clean Energy (Unit Issue Charge—Auctions) Act 2011*;
 - (v) the *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011*;
 - (vi) the *Clean Energy (Unit Shortfall Charge—General) Act 2011*; and
- (b) the amendments of the following Acts made by the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*:
 - (i) the *Fuel Tax Act 2006*;
 - (ii) the *Fuel Tax (Consequential and Transitional Provisions) Act 2006*; and
- (c) the amendments made by the following Acts:
 - (i) the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014*;
 - (ii) the *Excise Tariff Amendment (Carbon Tax Repeal) Act 2014*;
 - (iii) the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Act 2014*;
 - (iv) the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Act 2014*.

carbon tax repeal transition period means the period:

- (a) beginning at the start of 1 July 2014; and
- (b) ending at the end of 30 June 2015.

carbon tax scheme means the scheme embodied in the following:

- (a) the *Clean Energy Act 2011*, as in force at the start of 1 January 2014;

- (b) the associated provisions (within the meaning of that Act as in force at that time);
- (c) the following provisions of the *Fuel Tax Act 2006*, as in force at the start of 1 January 2014:
 - (i) Division 42A;
 - (ii) section 43-5, so far as that section relates to a carbon reduction;
 - (iii) section 43-8;
 - (iv) section 43-11;
- (d) section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*, as in force at the start of 1 January 2014, so far as that section relates to carbon charge component;
- (e) section 4A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*, as in force at the start of 1 January 2014, so far as that section relates to carbon charge component;
- (f) section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*, as in force at the start of 1 January 2014, so far as that section relates to carbon charge component;
- (g) sections 6FA, 6FB and 6FC of the *Excise Tariff Act 1921*, as in force at the start of 1 January 2014;
- (h) section 19A of the *Customs Tariff Act 1995*, as in force at the start of 1 January 2014.

electricity customer means an entity that purchases electricity.

electricity retailer means:

- (a) an entity who:
 - (i) is a retailer within the meaning of the *National Energy Retail Law* as it applies in a State or a Territory; and
 - (ii) sells electricity to electricity customers; or
- (b) an entity who is a retailer within the meaning of the *Electricity Industry Act 2000* (Vic.); or
- (c) an entity who is a retail entity within the meaning of the *Electricity Act 1994* (Qld); or
- (d) an entity who:
 - (i) holds a retail licence within the meaning of the *Electricity Industry Act 2004* (WA); or
 - (ii) holds an integrated regional licence within the meaning of the *Electricity Industry Act 2004* (WA) that authorises the entity to sell electricity; or
- (e) an entity who is an electricity entity within the meaning of the *Electricity Reform Act* (NT) and whose licence under that Act authorises the entity to sell electricity; or
- (f) any other entity who produces electricity in Australia.

engages in price exploitation in relation to the carbon tax repeal: see section 60C.

entity means any of the following:

- (a) a corporation (as defined by section 4);
- (b) an individual;
- (c) a body corporate;
- (d) a corporation sole;
- (e) a body politic;
- (f) a partnership;
- (g) any other unincorporated association or body of entities;
- (h) a trust;

- (i) any party or entity which can or does buy or sell electricity, natural gas or synthetic greenhouse gas.

infringement notice means an infringement notice issued under subsection 60L(1).

infringement notice compliance period: see section 60P.

infringement notice provision means section 60C or 60K.

listed corporation has the meaning given by section 9 of the *Corporations Act 2001*.

National Energy Retail Law means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA).

natural gas has the same meaning as in the National Gas (Commonwealth) Law (as defined by the *Australian Energy Market Act 2004*).

natural gas customer means an entity that purchases natural gas.

natural gas retailer means:

- (a) an entity who:
 - (i) is a retailer within the meaning of the *National Energy Retail Law* as it applies in a State or a Territory; and
 - (ii) sells natural gas to natural gas customers; or
- (b) an entity who is a gas retailer within the meaning of the *Gas Industry Act 2001* (Vic.); or
- or
- (c) an entity who is a retailer within the meaning of the *Gas Supply Act 2003* (Qld); or
- (d) an entity who holds a trading licence under the *Energy Coordination Act 1994* (WA); or
- or
- (e) an entity who holds a licence under the *Gas Act 2000* (Tas.) to sell gas by retail.

price, in relation to a supply, includes:

- (a) a charge of any description for the supply; and
- (b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

regulated goods: see section 60B.

regulated supply means a supply that:

- (a) occurs during the carbon tax repeal transition period; and
- (b) is of regulated goods.

regulated supply input costs of an entity means the entity's input costs in relation to the making by the entity of regulated supplies of electricity, natural gas or synthetic greenhouse gas.

Royal Assent day means the day on which the Act that inserted this Part receives the Royal Assent.

SGG customer means an entity that purchases synthetic greenhouse gas.

SGG equipment has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

synthetic greenhouse gas has the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

Division 2A—Carbon tax removal substantiation notices

60FA Carbon tax removal substantiation notices

Scope

- (1) This section applies to an entity if the entity:
 - (a) is an electricity retailer that sells electricity to electricity customers; or
 - (b) is a natural gas retailer that sells natural gas to natural gas customers; or
 - (c) is a bulk SGG importer that sells synthetic greenhouse gas to SGG customers.

Carbon tax removal substantiation notice

- (2) The Commission must, within 30 days after the Royal Assent day, by written notice given to the entity, require the entity:
 - (a) to give to the Commission, within the period specified in the notice, a written statement that explains:
 - (i) how the carbon tax repeal has affected, or is affecting, the entity's regulated supply input costs; and
 - (ii) how reductions in the entity's regulated supply input costs that are directly or indirectly attributable to the carbon tax repeal are reflected in the prices charged by the entity for regulated supplies of electricity, natural gas or synthetic greenhouse gas; and
 - (b) to do either or both of the following:
 - (i) give to the Commission, within the period and in the manner and form specified in the notice, information that substantiates the explanation set out in the statement;
 - (ii) produce to the Commission, within the period and in the manner specified in the notice, documents that substantiate the explanation set out in the statement.
- (3) A notice under subsection (2) is to be known as a ***carbon tax removal substantiation notice***.
- (4) A period specified in a carbon tax removal substantiation notice must be 21 days after the notice is given.
- (5) A carbon tax removal substantiation notice must explain the effect of:
 - (a) section 60FB; and
 - (b) section 60FC; and
 - (c) sections 137.1 and 137.2 of the *Criminal Code*.

Section does not limit section 60H

- (6) This section does not limit section 60H (which is about the price-related information-gathering powers of the Commission).

Section does not limit section 155

- (7) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

60FB Extending periods for complying with carbon tax removal substantiation notices

- (1) An entity that has been given a carbon tax removal substantiation notice may, at any time within 14 days after the notice was given to the entity by the Commission, apply in writing to the Commission for an extension of the period for complying with the notice.

- (2) The Commission may, by written notice given to the entity, extend the period within which the entity must comply with the notice, so long as the extension is for a period of not more than 28 days.

60FC Compliance with carbon tax removal substantiation notices

- (1) An entity that is given a carbon tax removal substantiation notice must comply with it within the applicable compliance period for the notice.
- (2) The *applicable compliance period* for a carbon tax removal substantiation notice is:
 - (a) the period of 21 days specified in the notice; or
 - (b) if the period for complying with the notice has been extended under section 60FB—the period as so extended;and includes (if an application has been made under section 60FB for an extension of the period for complying with the notice) the period up until the time when the applicant is given notice of the Commission’s decision on the application.
- (3) An entity commits an offence if:
 - (a) the entity is subject to a requirement under subsection (1); and
 - (b) the entity is capable of complying with the requirement; and
 - (c) the entity omits to do an act; and
 - (d) the omission breaches the requirement.

Penalty: 200 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) If subsection (3) of this section applies to an individual (whether or not because of subsection 6(2)), subsection (3) of this section has effect, in relation to the individual, as if the reference to 200 penalty units were a reference to 40 penalty units.
- (6) If subsection (1) of this section applies to an individual (whether or not because of subsection 6(2)), the individual is excused from giving information or producing a document in accordance with a carbon tax removal substantiation notice on the ground that the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

s.137.1 and 137.2 of *Criminal Code*

137.1 False or misleading information

- (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.

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

(5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the *first person*) to the person mentioned in that subparagraph (the *second person*), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence".

137.2 False or misleading documents

(1) A person is guilty of an offence if:

- (a) the person produces a document to another person; and
- (b) the person does so knowing that the document is false or misleading; and
- (c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).