
The Parliament of the Commonwealth of Australia

Advisory Report on the

Clean Energy Finance Corporation Bill 2012

Clean Energy Legislation Amendment Bill 2012

Clean Energy (Customs Tariff Amendment) Bill 2012

Clean Energy (Excise Tariff Legislation Amendment) Bill
2012

House of Representatives
Standing Committee on Economics

May 2012
Canberra

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Chair's foreword

The Australian Government's Clean Energy Future Legislation Package in 2011 included a commitment to establish the Clean Energy Finance Corporation (CEFC) to facilitate the flow of finance into the clean energy sector. Following a review by an Expert Panel, chaired by Jillian Broadbent AO, the Government adopted the recommended design and introduced the Clean Energy Finance Corporation Bill 2012.

The CEFC's objective is to overcome capital market barriers that hinder the financing, commercialisation and deployment of renewable energy, energy efficiency and low emissions technologies. In short, this market failure in Australia means that the private sector is not investing in clean energy technology projects on a scale that is desirable if we are to realise our potential as an innovator and producer of clean energy. The CEFC is a mechanism to bring the finance and clean energy sectors closer together.

In establishing the CEFC, the Government is making a significant investment in Australia's clean energy future. While the Government will provide the organisation with a broad mandate, the independent CEFC Board will be responsible for investing in clean energy projects. All investment decisions will be made through a commercial filter. Finance will be offered on the least generous terms; enough to enable a project to enter the commercial arena, but not to create substantial negative externalities or market distortions. It is envisaged that there will also be co-investment with the private sector.

The CEFC will expect to make returns on investments, but in making its investment decisions will also take into account other positive community and environment benefits that the private sector would not necessarily consider. This commercial approach to investment decisions combined with its consideration of

the positive external benefits make the CEFC a key component of Australia's clean energy strategy.

The CEFC will complement the carbon price, renewable energy target and other programs and initiatives to encourage and facilitate development of the clean energy sector. The CEFC will be part of an innovation chain, investing in projects and technologies that are at the later stage of development and are viable commercial prospects. Other programs such as the Australian Renewable Energy Agency provide grants at the earlier research and development stage. To give effect to these agency and program relationships as part of the Clean Energy Future Package, provision is made for the sharing of appropriate information between the CEFC and relevant agencies.

As part of its inquiry, the committee also looked at the Clean Energy Legislation Amendment Bill 2012, the Clean Energy (Customs Tariff Amendment) Bill 2012, and the Clean Energy (Excise Tariff Legislation Amendment) Bill 2012. Changes in the Clean Energy Legislation Amendment Bill: support the establishment of the CEFC; give effect to other government commitments in relation to the coverage of gaseous fuels – liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG); and make other technical amendments to improve the operation of the carbon pricing mechanism.

In response to calls from the gaseous fuels sector and the recommendation of the Joint Select Committee on Australia's Clean Energy Future Legislation, LPG, LNG and CNG not used for transport purposes will now be covered by the carbon pricing mechanism rather than the fuel tax system. This amendment will mean that it will be easier for industry to manage its cash flow, firms will have more flexibility in managing their carbon liabilities, and compliance costs will be reduced.

The treatment of LPG and LNG that is not used for transport purposes will align with the arrangements for liquid fuels under the carbon pricing mechanism. The changes to the coverage of LPG and LNG will take effect from 1 July 2013 to allow transitional and compliance arrangements to be considered, developed and implemented.

Bringing non-transport CNG under the carbon pricing mechanism will reduce compliance costs for small producers and reduce administrative costs for Government in relation to excise. If the Bill is passed, the CNG changes will be able to commence on 1 July 2012 as CNG is produced from a natural gas that is already subject to an upstream price under the carbon pricing mechanism. The Excise and Tariff bills also give effect to changes to the treatment of non-transport CNG, by exempting it from customs and excise duty.

The Clean Energy Legislation Amendment Bill also contains provisions to enhance the operation of reporting entities under the National Greenhouse and Energy

Reporting Act by streamlining the nomination of the person responsible for reporting on the organisation's carbon emissions. The Bill also seeks to remove the requirement for regulators to publish 'total energy consumption', and retain the more appropriate 'net energy consumption' requirement, as it does not include the transformation of one energy commodity to another.

The Bill also proposes to enhance the security of the Australian National Registry of Emissions Units, by providing the regulator with additional time (from 48 hours to five business days) to make decisions about giving effect to a transfer instruction and dealing with suspicious transactions.

This Bill also includes technical amendments to the Carbon Farming Initiative (CFI) by simplifying the process of finalising methodology determinations, to provide more time to approve the methodologies of existing projects and facilitate their transition to the CFI.

I would like to thank the organisations that participated in the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair



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Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Mr Stephen Ciobo
Members	Mr Scott Buchholz MP Mr Stephen Jones MP Dr Andrew Leigh MP Ms Kelly O'Dwyer MP Mr Craig Thomson MP
Supplementary members	Mr Paul Fletcher MP Mr Dan Tehan MP

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Staff	Mr David Monk Ms Samantha Mannette
Administrative Officer	Ms Natasha Petrović



Terms of reference

On 24 May 2012 the Selection Committee requested the Committee to inquire into and report on:

- Clean Energy Finance Corporation Bill 2012;
- Clean Energy Legislation Amendment Bill 2012;
- Clean Energy (Customs Tariff Amendment) Bill 2012
- Clean Energy (Excise Tariff Legislation Amendment) Bill 2012

Under Standing Order 222(e), reports of the Selection Committee are treated as having been adopted by the House when they are presented.



List of abbreviations

ANREU Act	Australian National Registry of Emissions Units Act
ARENA	Australian Renewable Energy Agency
CFI	Carbon Farming Initiative
CEFC	Clean Energy Finance Corporation
CNG	compressed natural gas
FTC	fuel tax credit
JSCACEFL	Joint Select Committee on Australia's Clean Energy Future Legislation
LNG	liquefied natural gas
LPG	liquefied petroleum gas
OTN	obligation transfer number
RET	Renewable Energy Target



Recommendation

2 Issues in the Bills

Recommendation 1

The House pass the Clean Energy Finance Corporation Bill 2012, the Clean Energy Legislation Amendment Bill 2012, the Clean Energy (Customs Tariff Amendment) Bill 2012, and the Clean Energy (Excise Tariff Legislation Amendment) Bill 2012.

Introduction

Referral of the Bill

- 1.1 On 24 May 2012 the Selection Committee referred the following bills to the committee for inquiry and report:
- Clean Energy Legislation Amendment Bill 2012;
 - Clean Energy Finance Corporation Bill 2012;
 - Clean Energy (Customs Tariff Amendment) Bill 2012; and
 - Clean Energy (Excise Tariff Legislation Amendment) Bill 2012.

Origins and purpose of the Bills

- 1.2 During 2011 the Australian Parliament passed the Clean Energy Legislative Package and Steel Transformation Plan. The package introduces a mechanism to place a value on greenhouse gas emissions and seeks to achieve lasting reductions over time. The design of the plan has been the subject of considerable public debate, discussion and policy development. The Joint Select Committee on Australia's Clean Energy Future Legislation noted that the 'the science of climate change and climate change mitigation policy have been subject to extensive review and inquiry.'¹ Since 1992 the Commonwealth Parliament has conducted 36 committee inquiries into climate change related issues.

1 Joint Select Committee on Australia's Clean Energy Future Legislation, *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*, October 2011, p. 6.

- 1.3 The four bills referred to the committee build on the existing legislative framework by establishing the Clean Energy Finance Corporation (CEFC) and making minor and technical amendments designed to improve the operation of the carbon pricing mechanism.

Clean Energy Legislation Amendment Bill 2012

- 1.4 The Clean Energy Legislation Amendment Bill supports the establishment of the Clean Energy Finance Corporation. In addition the Bill addresses commitments made by the government during passage of the original legislation.

- 1.5 The inquiry by the Joint Select Committee on Australia's Clean Energy Future Legislation identified the need for further fine tuning of the treatment of liquid petroleum gas under the mechanism. The Minister for Energy Efficiency and Climate Change, the Hon Greg Combet, MP, stated:

During passage of the Clean Energy Act in 2011 the government, following consultation with industry, committed to consider the coverage of gaseous fuels – which include liquefied petroleum gas, liquefied natural gas and compressed natural gas – in a similar way to how large liquid fuel users may be able to opt into the carbon price mechanism.

This commitment responded to representations by the gaseous fuels sector and to a recommendation made by the Joint Select Committee on Australia's Clean Energy Future Legislation.²

- 1.6 In addition to addressing matters relating to LPG, the Clean Energy Legislation Amendment Bill deals with four additional measures. The Bill amends the *National Greenhouse and Energy Reporting Act 2007* to enhance its operation for reporting entities.
- 1.7 The Bill makes technical amendments to the Carbon Credits (Carbon Farming Initiative) Act 'to ensure the robustness of the processes supporting the Carbon Farming Initiative.'³
- 1.8 The *Australian National Registry of Emissions Units Act 2011* will be amended to enhance the security of the registry.
- 1.9 Finally, the Bill makes amendments relating to the CEFC. The Minister noted that the 'bill amends legislation establishing the Australian Renewable Energy Agency and the Clean Energy Regulator to provide for

2 The Hon Greg Combet, MP, Minister for Energy Efficiency and Climate Change, *House of Representatives Hansard*, 23 May 2012, p. 8.

3 The Hon Greg Combet, MP, Minister for Energy Efficiency and Climate Change, *House of Representatives Hansard*, 23 May 2012, p. 9.

the appropriate sharing of information between those agencies and the Clean Energy Finance Corporation.’⁴

Clean Energy Finance Corporation Bill 2012

1.10 The Clean Energy Finance Corporation Bill gives effect to the Government’s commitment (made as part of its Clean Energy Future Package in July 2011) to establish the CEFC. The Explanatory Memorandum (EM) noted that ‘the Corporation will be a \$10 billion fund dedicated to investing in clean energy.’⁵ The Minister stated:

The Clean Energy Finance Corporation is a key part of the government's plan. It will encourage private investment and help overcome financial barriers to commercialising and deploying cleaner energy technologies.⁶

1.11 The CEFC will receive funding of \$2 billion per year for five years from 2013-14. The EM notes that the CEFC is intended to be self-sustaining once mature.

Clean Energy (Customs Tariff Amendment) Bill 2012 and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012

1.12 These Bills amend the Excise Tariff Act and the Customs Tariff Act. The EM advises that ‘the amendments provide that, from 1 July 2012, compressed natural gas (CNG) used for non-transport purposes will not be subject to the effective carbon price through the fuel tax system so that it may be covered by the carbon pricing mechanism.’⁷

Consultation

1.13 The design of the CEFC was undertaken by an expert review panel chaired by Ms Jillian Broadbent. The review recommended a framework for how the corporation should operate. The Minister stated that government is implementing the recommendations through the Clean Energy Finance Corporation Bill. The CEFC review panel, through its consultation process, received 151 public submissions.

4 The Hon Greg Combet, MP, Minister for Energy Efficiency and Climate Change, *House of Representatives Hansard*, 23 May 2012, p. 9.

5 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 7.

6 The Hon Greg Combet, MP, Minister for Energy Efficiency and Climate Change, *House of Representatives Hansard*, 23 May 2012, p. 6.

7 Explanatory Memorandum, Clean Energy Legislation Amendment Bill 2012, p. 6.

1.14 The review panel was appointed in October 2011 and presented its report to government in March this year.

1.15 Ms Broadbent, in her letter transmitting the final report to the government, stated:

Since the establishment of the Expert Review Panel for the Clean Energy Finance Corporation (CEFC) on 12 October 2011, we have consulted broadly and sought submissions across the sector. The Panel appreciated the generosity of time given by individuals in those consultations and the quality and content of the submissions which we received.

Across the Panel and the Secretariat, each submission was given due consideration and the common themes have been captured in this report.

In preparing this report, the Panel, both through our own research and reading submissions, reinforced its view of the positive role the CEFC can play in the Government's vision for a cleaner energy future, tackling climate change, lowering carbon emissions and transforming Australia's energy sector.⁸

1.16 In addition to Ms Broadbent, the expert review panel comprised Mr Ian Moore and Mr David Paradise. Each of the members had significant experience in financial markets. The report noted that 'Ms Broadbent's 30 year banking career has given her experience in all forms of financing across the risk spectrum, from equity through to secured debt and the appropriate pricing differentials involved.'⁹ Mr Moore has 35 years of banking, finance, insurance and actuarial experience. Mr Paradise is the 'founding principal of Paradise Investment Management which has \$6.5 billion under management, with offices in Australia and the United States of America.'¹⁰

1.17 During the hearing, some members asked whether there were any witnesses from the relevant agencies who had experience working in the finance sector, specifically with respect to venture capital, private equity, portfolio investment, debt finance or equity capital markets. This was an important question because it brought attention to and highlighted the purpose of and experience of the Expert Panel comprising Ms Broadbent, Mr Moore and Mr Paradise. The Expert Panel was brought together to

8 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 2.

9 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. v.

10 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. v.

ensure that the types of experience identified by the committee was available in the development of the CEFC. During the hearing, Treasury confirmed that the Bill 'reflects the findings of the expert review panel into the Clean Energy Finance Corporation.'¹¹

Objective and scope of the inquiry

- 1.18 The objective of the review is to examine the adequacy of the Bills in achieving their policy objectives. In referring the Bills, the Selection Committee stated:

REASONS FOR REFERRAL/PRINCIPAL ISSUES FOR CONSIDERATION: (a) The advantages to the Australian economy from the establishment of the Clean Energy Finance Corporation (CEFC); (b) the need for such a government entity given its stated purpose, and to investigate why market failures have occurred, particularly if such projects are expected to deliver a commercial return; (c) to investigate whether the legislation has adequate provisions when it comes to assessing the commercial feasibility of projects selected by the CEFC, and the suitability of the initiatives the CEFC will be supplementing in terms of the government's clean energy programs; (d) whether adequate safeguards and standards exist in relation to the selection of projects by the CEFC to prevent waste of taxpayer's money; and (e) the suitability of the government's accounting treatment in light of the allocation of appropriations for this government entity.¹²

Structure of the report

- 1.19 Chapter 2 provides a more detailed discussion of the Bills and discusses the key issues raised at the hearing.

11 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 3.

12 House Selection Committee, Report 53, 24 May 2012.

Issues in the Bills

Clean Energy Legislation Amendment Bill 2012

Overview

- 2.1 The Bill has five main sets of amendments:
- to bring gaseous fuels into the carbon price mechanism;
 - to ensure the robustness of the processes supporting the Carbon Farming Initiative;
 - to enhance the security of the Australian National Registry of Emissions Units;
 - to allow the Australian Renewable Energy Agency and the Clean Energy Regulator to share information with the Clean Energy Finance Corporation (CEFC); and
 - to enhance the operation of the *National Greenhouse and Energy Reporting Act 2007*.
- 2.2 The provisions in relation to gaseous fuels operate alongside those in the Clean Energy (Excise Tariff Legislation Amendment) Bill 2012 and the Clean Energy (Customs Tariff Amendment) Bill 2012. The excise and tariff Bills will be discussed with the gaseous fuels provisions.

Gaseous fuels

Background

- 2.3 These provisions arise from a recommendation of the Joint Select Committee on Australia's Clean Energy Future Legislation (JSCACEFL) in October 2011. The Clean Energy legislation last year provided that gaseous fuels would be subject to an equivalent carbon price through the fuel tax system. That committee heard evidence from LPG Australia about the application of the mechanism to liquefied petroleum gas (LPG), which appeared to assume the primary use for LPG is as fuel for transport, despite the wide range of non-transport uses for LPG.
- 2.4 LPG Australia is the peak body for LPG suppliers in Australia. LPG Australia stated at the Joint Committee's hearings:
- Our industry sector is a little perplexed as to why we are not in the emissions trading scheme, and we welcome the opportunity today to raise those concerns again. The industry is represented by a number of petroleum and marketers in LPG. Our industry has two distinct market segments – the auto gas market segment, where we service about 700,000 vehicles and we also handle the stationary energy market. They are two distinct markets. Those two markets are also serviced by electricity and natural gas.¹
- 2.5 LPG Australia indicated that the treatment of LPG under the scheme could lead to distortions in treatment, which would leave the LPG sector disadvantaged. Given LPG's status as a cleaner fuel, this appeared to be inconsistent.
- 2.6 The gaseous fuels sector faces a number of problems with the current legislation. Firstly, there are cash flow issues because firms have to pay an excise on a regular basis, whereas their competitors in other stationary energies do not have to pay their liability until the following February. Secondly, because it is an excise, firms in that sector do not have the opportunity when we go to a trading market in 2015 to purchase international credits and hedge their liability.² Further, LPG Australia stated before the Joint Committee that there are significant compliance costs:

1 JSCACEFL, Mr Warring Neilson, LPG Australia, *Committee Hansard*, Sydney, 28 September 2011, p. 7.

2 JSCACEFL *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*, October 2011, p. 97.

There is a flow-on cost that occurs in that exercise because, while we are excluded from the litigation and controlling our carbon costs, the complexity of us remaining in an excise scheme is that we are up for a massive reconciliation program with the Australian Taxation Office to handle our transport excise and then on top of that we have got a carbon excise that we have to try to deal with. We deliver thousands and thousands of cylinders and we would have to reconcile each invoice back. It just does not make sense. How we operate in New Zealand is that when we purchase the product and we put it in our storage we pay the carbon tax on that, so we already know what our obligation is in terms of carbon. Under this current regime we would be doing that and all we would simply do is we would adjust that balance with the transport excise and deduct it from the carbon cost. They are the two main things. What will happen is that by remaining in this current mechanism our costs for our consumer will actually increase. So not only do we impair the original consumer but I think we also impair the takeup of a fuel that can provide an enormous contribution to abatement.³

2.7 LPG Australia suggested that the matter could be dealt with in a straightforward way through the new legislation:

I think it is a matter of clarifying the definitions. If you look at the way that natural gas is going to be handled, the same approach could be taken with LPG. It is just a matter of clarifying the definitions so that you clearly identify the marketer and who has the obligation. The producer will have the obligation. I do not think there are a lot of changes that need to occur. I think the system is reasonably – well, I should not say simplistic. Nothing is simplistic in the way the regulations have come about. But I do not believe there is a great deal of complication there.⁴

2.8 The Joint Committee recommended:

That the Government examine the proposals made by LPG Australia concerning the treatment of LPG under the mechanism and, where appropriate, refine the provisions to ensure that a carbon price is most efficiently applied to all uses of LPG.⁵

3 JSCACEFL, Mr Warring Neilson, LPG Australia, *Committee Hansard*, Sydney, 28 September 2011, p. 7.

4 JSCACEFL, Mr Warring Neilson, LPG Australia, *Committee Hansard*, Sydney, 28 September 2011, p. 9.

5 JSCACEFL *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*,

- 2.9 These points were confirmed in the Regulatory Impact Statement for this proposal.⁶

Commencement of coverage and transitional arrangements

- 2.10 Non-transport liquefied petroleum gas and liquefied natural gas (LNG) will have a carbon price applied under the carbon pricing mechanism from 1 July 2013 in place of the current arrangements. The current arrangements will apply from 1 July 2012 to 1 July 2013 and involve the application of an effective carbon price to non-transport LPG and LNG through the fuel tax system.
- 2.11 Mandatory coverage of non-transport LPG and LNG under the carbon pricing mechanism will begin on 1 July 2013. This allows time for transitional and compliance arrangements to be carefully considered, developed and implemented. This aligns the treatment of non-transport LPG and LNG with the coverage of liquid fuels by the carbon pricing mechanism. It is also consistent with the Government's original commitment on 11 October 2011 to examine coverage of gaseous fuels.
- 2.12 Under the carbon pricing mechanism, the point at which excise or customs duty becomes payable (entry into home consumption, generally by the importer, manufacturer or marketer of non-transport LPG or LNG) will be the initial point of liability for emissions resulting from the use of these fuels.
- 2.13 Regulations made for the *Clean Energy Act 2011* will be able to specify situations in which a person can quote an 'obligation transfer number' (OTN). This will allow a large end user of LPG, LNG or compressed natural gas (CNG) to manage their own liability for emissions from these fuels in specified circumstances. It will also enable businesses that use these fuels as feedstock to avoid paying a carbon price in respect of fuel that does not result in emissions. To bring about coverage of non-transport LPG and LNG under the carbon pricing mechanism, these fuels will not have excise and customs duties applied.⁷

October 2011, p. 99.

6 Explanatory Memorandum (Combined), Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012, and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, p. 10.

7 Explanatory Memorandum (Combined), Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012, and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, p. 35.

Coverage of non-transport CNG

- 2.14 To correctly apply the carbon charge on non-transport CNG under the Government's Clean Energy Plan, the exemption from fuel excise or excise equivalent customs duty for non-transport use of CNG needs to be restored from 1 July 2012. Non-transport CNG will instead be subject to the carbon price directly under the carbon pricing mechanism.
- 2.15 Coverage of non-transport CNG from 1 July 2012 will occur because:
- CNG is produced from natural gas that is already subject to an upstream price under the carbon pricing mechanism. This allows coverage to be implemented relatively simply by removing the requirement for producers of non-transport CNG to pay carbon price equivalent excise duty; and
 - some small non-transport CNG producers are not currently required to participate in the excise system, and would be required to install metering equipment to enable their participation in the excise system.
- 2.16 The requirement for CNG producers to pay excise or customs duty on non-transport CNG will be removed through legislative changes to excise arrangements for CNG producers and the adjustment of administrative arrangements by the Tax Office. The default point of liability for emissions from non-transport CNG will then rest with the natural gas supplier that supplies the gas from which the CNG is produced.
- 2.17 CNG producers will have the option of quoting an OTN to their supplier which will enable them to assume mechanism liabilities for the natural gas they use to create CNG. The natural gas supplier would not be able to refuse this transfer of liability.⁸

Off-road use in agriculture, forestry and fisheries activities

- 2.18 An equivalent carbon price is not applied to off-road fuel use by the agriculture, forestry and fishing sectors. This policy will be continued by allowing non-transport LPG, LNG and CNG users in these industries to claim fuel tax credits which are equivalent to the amount of carbon price

8 Explanatory Memorandum (Combined), Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012, and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, p. 36.

even when the fuel is subject to the carbon pricing mechanism and no fuel tax has been paid.⁹

Ongoing coverage of gaseous fuels under the fuel tax system

- 2.19 Non-transport CNG will be covered by the carbon pricing mechanism from 1 July 2012. From 1 July 2013 non-transport LPG and LNG will move from the effective carbon price under the fuel tax system to being covered by the carbon pricing mechanism.
- 2.20 Bringing about coverage of non-transport CNG, LPG and LNG under the carbon pricing mechanism requires excluding non-transport CNG, LPG and LNG from excise and customs duties and as a consequence excluding users of non-transport CNG, LPG and LNG from being able to claim fuel tax credits (FTCs) for their use of the fuels.
- 2.21 A new FTC will be available for the agriculture, fishing and forestry industries. The FTC will be equivalent to the amount of the carbon price that is embedded in the cost of gaseous fuels acquired for non-transport use. This is consistent with the general policy that these industries should not be subject to a carbon price on the fuels acquired for non-transport use.¹⁰

Carbon Farming Initiative

- 2.22 The Initiative is a voluntary scheme. Participants are eligible to receive carbon credits for every tonne of carbon pollution saved or stored. These credits can be exported or sold to companies that want to offset their emissions or to sell carbon neutral products.¹¹
- 2.23 The Bill seeks to maintain the integrity of the Carbon Farming Initiative by requiring that projects have secured all required regulatory approvals before they receive any credits. It simplifies the process of finalising methodology determinations by clarifying the material to be used by the Domestic Offsets Integrity Committee in making determinations.

9 Explanatory Memorandum (Combined), Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012, and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, p. 36.

10 Explanatory Memorandum (Combined), Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012, and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, pp. 36-37.

11 The Hon. Mr Greg Combet MP, Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 24 March 2011, p. 3147.

- 2.24 The Bill provides more time to approve methodologies for existing projects to facilitate the transition of these projects into the Initiative. Methodologies submitted for assessment by the middle of 2012, and approved by the middle of 2013, can be backdated to the middle of 2010 and that will improve the operation of the Carbon Farming Initiative for project proponents.¹²

Australian National Registry of Emission Units

- 2.25 The Registry underpins the Carbon Farming Initiative. The aim is to allow farmers, landholders and other participants with offsets projects under the initiative to receive, hold and transfer their carbon credits securely.
- 2.26 It is based on a previously existing registry that the Australian Government established in 2008 to meet key obligations that Australia has under the Kyoto protocol. Legislation introduced in March 2011 has put the Kyoto registry, which was previously operating on an administrative basis, on a legislative footing.
- 2.27 Units held in the registry are to be treated as personal property for the limited purposes of laws relating to bankruptcy, external administration, wills, intestacy and deceased estates, and any other prescribed purpose. This reduces any legal uncertainty surrounding the units in these circumstances. A range of information in the registry will be made publicly available, including the name of account holders, and the regulations may require publication of the total number of specified Kyoto units held in accounts.¹³
- 2.28 The Bill amends the Australian National Registry of Emission Units Act (ANREU Act) to enable regulations to identify Registry accounts that are subject to restrictions or limitations in relation to the operation of the account, including restrictions or limitations on the transfer of carbon units, Australian Carbon Credit Units, Kyoto units or prescribed international units to or from the identified account or the issue of carbon units to the account.
- 2.29 The Bill also amends the ANREU Act to increase the period within which the Clean Energy Regulator can defer giving effect to an instruction from

12 The Hon. Mr Greg Combet MP, Minister for Industry and Innovation and Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 23 May 2012, p. 9.

13 The Hon. Mr Greg Combet MP, Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 24 March 2011, pp. 3150-51.

no more than 48 hours to no later than the end of the fifth business day after the day on which the instruction was received.¹⁴

Providing information to the Clean Energy Finance Corporation

- 2.30 The CEFC will make decisions concerning investments in clean energy technologies and projects. In making these decisions or concerning the ongoing efficacy of investments, the CEFC may require information about specific issues from the Australian Renewable Energy Agency or the Clean Energy Regulator.
- 2.31 The sharing of relevant and appropriate information between the CEFC and the Australian Renewable Energy Agency and between the CEFC and the Regulator is limited to the circumstances spelt out in the Australian Renewable Energy Agency Act and the Clean Energy Regulator Act respectively and this is not a general ability for the CEFC to obtain or request information.
- 2.32 The bill includes a new section 73A in the Australian Renewable Energy Agency Act, which provides that the Agency may disclose information to CEFC if the disclosure will enable or assist the CEFC to perform or exercise any of its functions or powers.
- 2.33 The bill amends section 49 of the Clean Energy Regulator Act, to add the CEFC to the list of bodies with which the Regulator may disclose 'protected information'. Section 49 specifies the circumstances in which the Regulator may disclose such information and the manner in which this may occur.¹⁵

National Greenhouse and Energy Reporting System

- 2.34 The System is the national framework for the reporting of information on greenhouse gas emissions, energy consumption and energy production.
- 2.35 A person with 'operational control' of a facility is generally responsible for carbon price liability and associated reporting obligations. Where operational control is not clear, a nomination may be made. The Bill

14 Explanatory Memorandum (Combined), Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012, and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, p. 58.

15 Explanatory Memorandum (Combined), Clean Energy Legislation Amendment Bill 2012, Clean Energy (Customs Tariff Amendment) Bill 2012, and Clean Energy (Excise Tariff Legislation Amendment) Bill 2012, p. 63.

streamlines the requirements for nomination. Annual nominations will no longer be required and nominations may last for as long as required.

- 2.36 The Bill provides that the regulator only needs to publish a 'net energy consumption'. An additional requirement to publish 'total energy consumption' is removed. The 'net energy consumption' requirement is more appropriate because it does not include the transformation of one energy commodity into another.¹⁶

Clean energy customs and excise Bills

- 2.37 These Bills deal with the treatment of gaseous fuels and are linked to the Clean Energy Legislation Amendment Bill 2012. They are discussed above.

Clean Energy Finance Corporation Bill 2012

Background

- 2.38 The Clean Energy Finance Corporation Bill 2012 (CEFC Bill) gives effect to the Government's commitment to establishing a Clean Energy Finance Corporation as part of its Clean Energy Future Package.
- 2.39 The Government appointed an Expert Review Panel (the Review Panel) on 12 October 2011 that was tasked with advising on the design of the CEFC. The Review Panel members were Ms Jillian Broadbent AO, the Chair, Mr David Paradice and Mr Ian Moore.
- 2.40 In addition to consulting with key stakeholders about the role of the CEFC and its relationship with the Renewable Energy Target (RET), the Review Panel received 151 public submissions, which are available on its website.¹⁷
- 2.41 In its report, the Review Panel provided the Government with broad principles to guide the direction of the CEFC, and proposed a 'flexible mandate for the CEFC to enable the corporation to respond to changing circumstances and opportunities'. The Review Panel concluded:

16 The Hon. Mr Greg Combet MP, Minister for Industry and Innovation and Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 23 May 2012, p. 9.

17 CEFC Expert Review, <<http://www.cefcexpertreview.gov.au/content/Content.aspx?doc=consultation/submissions/default.htm>>.

The Review Panel believes that the CEFC will play an important role in furthering Australia's place in a cleaner energy world and developing the technology, design, construction and operating skills to do so. Australia requires these skills to integrate cleaner energy technologies with our existing energy infrastructure and markets. Australia's geography, renewable resources and adaptive engineering skills are well suited to our playing a significant global role in this sector.¹⁸

- 2.42 The Government released the Review Panel's report on 17 April 2012, and supported the 26 recommendations. The CEFC Bill seeks to implement the framework outlined in these recommendations.

Key features of the CEFC Bill

- 2.43 The CEFC will be a mechanism to help mobilise investment in renewable energy, low-emission and energy efficiency projects and technologies in Australia. The focus will be on technologies that are solely or mainly Australian-based.
- 2.44 The CEFC will receive \$2 billion per year for five years from 2013-2012. However, it is the intention that the CEFC will become self-sustaining. If the Bill is passed, the substantive provisions of the Act will commence six months after Royal Assent. It is intended that CEFC investment operations will commence on 1 July 2013.
- 2.45 In the second reading speech, the Minister for Industry and Innovation and Minister for Climate Change, the Hon Greg Combet AM MP (the Minister), described the CEFC as a key part of the Government's plan to 'build a clean energy future which will strengthen the economy and protect our environment'.¹⁹ In the Explanatory Memorandum, the CEFC was described as a fund dedicated to investing in clean energy, it was stated:

The Corporation will supplement existing initiatives, such as the Renewable Energy Target and the carbon price, to catalyse and leverage the flow of funds for commercialisation and deployment of renewable energy, low-emission and energy efficiency technologies necessary for Australia's transition to a lower carbon economy.

18 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. iv.

19 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 23 May 2012, p. 6.

Australia is a late starter in the transformation to clean technology due to its access to low cost fossil fuels. This transformation will require substantial capital which the private sector alone may not be able to provide. Current global financial conditions, the complex nature of Australia's electricity markets, the cost of renewable energy, and the preference of investing institutions for listed assets inhibit the financing of the clean energy sector.²⁰

- 2.46 The CEFC is designed to complement other Government policies and programs, such as the Australian Renewable Energy Agency (ARENA), the Clean Technology Investment Program and the Clean Technology Innovation Program. It is planned that the CEFC will liaise with ARENA to form an 'innovation chain'. ARENA will focus on the early stages of development, for example by providing grants and support for newer renewable energy projects. The CEFC will concentrate its investments on projects and technologies that are at the later stage of development and commercialisation. The aim is to assist commercially viable projects which may be facing some barriers to obtaining solely private funding.²¹
- 2.47 A brief outline of key features of various parts of the CEFC Bill is included below.

CEFC Board and staffing

- 2.48 Part 3 of the CEFC Bill establishes the CEFC Board and sets out the appointment, termination, terms and employment conditions and process for Board meetings. Part 4 establishes the position of Chief Executive Officer (CEO) and sets out procedures for their appointment and resignation, and deals with the recruitment of staff and consultants and committees.
- 2.49 The CEFC will be established as a Commonwealth Authority under the *Commonwealth Authorities and Companies Act 1997*. The CEFC will be managed by an independent board comprised of members who must have the 'appropriate reputation and expertise' in a range of areas including: banking and finance, investments, economics, engineering, energy technologies, government funding programs or bodies, the environmental sector, financial accounting and law. The requirements for appointment are outlined in proposed section 16 of part 3.
- 2.50 The CEFC Bill provides that the Board shall consist of a Chair and at least four, but no more than six, other members. Board members are appointed

20 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 7.

21 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 36.

for a term of up to five years, but they can be reappointed for another term. They are paid allowances determined by Remuneration Tribunal regulations.

- 2.51 The CEFC Board will be appointed by the Government. However, the Minister highlighted the intention for the CEFC to operate independently, stating that the Government will not be able to 'direct the corporation in relation to specific projects for investment'.²²
- 2.52 The CEFC Board's function includes oversight of the CEFC's investment function to invest, directly and indirectly, in clean energy technologies. The Board appoints the CEO, who will be responsible for the day-to-day administration of the CEFC. This is a full-time position.
- 2.53 The CEFC will be staffed with experienced personnel to provide support to the Board and CEO to 'determine the best investments and manage taxpayers' money appropriately'.²³

Financial arrangements

- 2.54 Part 5 establishes a CEFC Special Account and sets out the procedures and payments to and from the Account. For the purposes of section 21 of the *Financial Management and Accountability Act 1997*, a Special Account is a ledger which records a right to draw money from the Consolidated Revenue Fund. The CEFC will be able to draw on money when needed for its functions. The Minister explained the purpose of this arrangement is:

To allow the corporation to focus on its primary function of investing in the clean energy sector, a special account is being created to manage surplus funds and limit the corporation's need to undertake a cash management function.²⁴

- 2.55 It is envisaged that the CEFC will invest using commercial principles and return a profit. The profits and returns on investments will be available to reinvest. The CEFC may receive gifts of money or assets (with the written approval of the nominated Minister) and will be exempt from income tax, in keeping with the practice for entities in the government sector.

22 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 23 May 2012, p. 6.

23 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 23 May 2012, p. 7.

24 The Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency, *House of Representatives Hansard*, 23 May 2012, p. 7.

Investment function

- 2.56 Part 6 sets out the CEFC's investment function and performance criteria. Proposed section 58 provides that the CEFC 'is to invest directly, and indirectly, in clean energy technologies'. The CEFC may do any or all of the following:
- (a) investing in businesses or projects for the development or commercialisation of, or in relation to the use of, clean energy technologies;
 - (b) investing in businesses that supply goods or services needed to develop or commercialise, or needed for use in, clean energy technologies;
 - (c) giving guarantees in accordance with section 69.²⁵
- 2.57 The definition of investment in the CEFC Bill has been extended to include giving a guarantee. However, guarantees are to be limited to the amount of the uncommitted balance in the CEFC Special Account.²⁶
- 2.58 Proposed section 60 of the CEFC Bill outlines the nature of clean energy technologies that the CEFC may invest in:
- (1) *Technologies that are any one or more of the following are **clean energy technologies**:*
 - (a) *energy efficiency technologies;*
 - (b) *low-emission technologies;*
 - (c) *renewable energy technologies.*
 - (2) ***Energy efficiency technologies** includes technologies (including enabling technologies) that are related to energy conservation technologies or demand management technologies.*
 - (3) ***Renewable energy technologies** includes:*
 - (a) *hybrid technologies that integrate renewable energy technologies; and*
 - (b) *technologies (including enabling technologies) that are related to renewable energy technologies.*
 - (4) *A technology is a **low-emission technology** if the Board is satisfied, in accordance with guidelines made under subsection (5), that the technology is a low-emission technology.*
 - (5) *The Board must, by writing, make guidelines setting out the matters to which the Board will have regard in satisfying itself that a technology is a low-emission technology.*
 - (6) *The guidelines must not be inconsistent with the Investment Mandate.*

25 Clean Energy Finance Corporation Bill 2012, clause 58(2).

26 Clean Energy Finance Corporation Bill 2012, clause 69.

(7) The Board must publish guidelines made under subsection (5) on the Corporation's website.

- 2.59 In determining investments the CEFC must apply a 'commercial filter' to select viable projects. However, it was qualified in the EM that the standard would not be as stringent as the private sector equivalent as it would also be giving weight to the wider positive benefits of the project.²⁷
- 2.60 The CEFC will be required to develop and publish a number of policies on its investment activities, which must cover:
- the investment strategy of the Corporation;
 - benchmarks and standards for assessing the performance of the Corporation's investments and of the Corporation itself;
 - risk management for the Corporation's investments and for the Corporation itself; and
 - a matter specified in the regulations.²⁸
- 2.61 The CEFC must publish on its website its first set of policies by the time it starts performing its investment function on 1 July 2013.
- 2.62 Proposed section 63 sets certain parameters for the CEFC and its subsidiaries' investments, for example by prohibiting direct investment in property or infrastructure. The Explanatory Memorandum stated:
- The Corporation and its subsidiaries may only invest through a broad range of financial assets. Allowing the Board to invest directly in non-financial assets would be inconsistent with the Government's broader fiscal policy and budget management. It is intended the Corporation will facilitate finance for clean energy technologies and projects through its investments, not build or buy projects.²⁹
- 2.63 The CEFC will also be guided by an investment mandate, comprised of directions in the form of legislative instruments, provided by the Government. The investment mandate is a mechanism for the Government to articulate its 'broad expectations for how the Corporation's funds will be invested and managed by the Board'.³⁰ Proposed subsection 64(3) provides the directions may include:
- (3) Without limiting subsection (1), a direction may set out the policies to be pursued by the Corporation in relation to any or all of the following:*

²⁷ Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 39.

²⁸ Clean Energy Finance Corporation Bill 2012, clause 68.

²⁹ Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 42.

³⁰ Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 43.

- (a) *matters of risk and return;*
- (b) *technologies, projects and businesses that are eligible for investment;*
- (c) *the allocation of investments between the various classes of clean energy technologies;*
- (d) *making investments on concessional terms;*
- (e) *the types of financial instruments in which the Corporation may invest;*
- (f) *the types of derivatives which the Corporation may acquire;*
- (g) *the nature of the guarantees the Corporation may give and the circumstances in which they may be given;*
- (h) *broad operational matters;*
- (i) *other matters the responsible Ministers consider appropriate to deal with in a direction under subsection (1).*

2.64 The responsible Ministers are to consult the Board on the initial investment mandate, and subsequent changes. The CEFC are to receive a draft of new directions and be provided the opportunity to make a submission on the changes. Directions under section 64(1) will be made legislative instruments (non-disallowable) and registered on the Federal Register of Legislative Instruments and tabled in parliament, along with any relevant CEFC submissions.

2.65 The investment mandate will also include the application of the Australian Industry Participation Plans, to help ensure that the Australian industry is afforded full, fair and reasonable opportunity to participate in projects.³¹

Miscellaneous provisions

2.66 Part 7 covers miscellaneous matters including CEFC subsidiaries, the publication of investment reports and annual reports, disclosure of information, delegations and review of the Act.

2.67 Proposed section 71 provides that CEFC subsidiaries must not be incorporated or formed outside Australia.

2.68 To help ensure transparency of CEFC operations, the organisation is required to produce and publish annual reports and quarterly investment reports.³² Proposed section 73 makes provision for protecting commercial-

31 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 44.

32 Clean Energy Finance Corporation Bill 2012, clauses 72-74.

in-confidence information. However, the onus is on the affected person to demonstrate that the release of the information would be detrimental to their commercial interests.

- 2.69 Proposed sections 76 to 80 provide for the delegation of certain powers and functions by the relevant Minister, the CEFC, the Board, CEO and officers.
- 2.70 A review of the operation of the CEFC Act will occur after 1 July 2016, which is to include assessing the CEFC's effectiveness.³³

Discussion on the CEFC

CEFC operating environment

- 2.71 The CEFC will have a commercial approach to its operations. The Review Panel stated that the CEFC will finance Australia's clean energy sector using financial products and structures to address the barriers currently inhibiting investment.³⁴ The Review Panel considered that an appropriate objective to be to:

...apply capital through a commercial filter to facilitate increased flows of finance into the clean energy sector thus preparing and positioning the Australian economy and industry for a cleaner energy future.³⁵

- 2.72 The Review Panel noted that the CEFC will be challenged in achieving this objective because 'there is a tension between funding the clean energy sector, applying a commercial filter, and maintaining the financial self-sufficiency of the corporation.'³⁶ In particular, the Review Panel commented that the CEFC 'will invest responsibly and manage risk so it is financially self-sufficient and achieves a target rate of return.'³⁷

33 Clean Energy Finance Corporation Bill 2012, clause 81.

34 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. ix.

35 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. ix.

36 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. ix.

37 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. ix.

- 2.73 The EM stated that 'it is expected that the Corporation will apply a commercial filter when making its investment decisions, focussing on projects and technologies at the later stages of development.'³⁸
- 2.74 During the hearing, the committee examined the Treasury about the CEFC's operating environment, its investment mandated, target rate of return, and how the CEFC may differ from a private sector equivalent. The committee sought further information on the rationale for the CEFC concentrating its investments projects and technologies that are at the later stages of development and commercialisation. Treasury stated:
- When the expert review panel examined where the gaps are in the market, it was also cognisant of the fact that it was going to be primarily an investment vehicle. It saw the initial R&D stages as investments that are more likely to require grants because, at that stage, a project is unlikely to make a financial return into the future. By focusing on later stage developments and the commercialisation of the project, the commercial filter that they spoke about is about projects that have a real prospect of making a return. The early-stage R&D is more appropriate for grants programs such as ARENA.³⁹
- 2.75 The EM noted that 'by allowing the payment of profits from the Corporation to ARENA to support projects and technologies along the innovation chain, the Act recognises that the Corporation has a public policy purpose of furthering the development of the renewable energy sector.'⁴⁰
- 2.76 A further area of examination focused on the CEFC's investment mandate. Clause 64 of the Bill sets out how the responsible Minister may, by legislative instrument, give the Board directions about the performance of the Corporation's investment function. The EM stated that 'it is appropriate that the Government, as manager of the economy and owner of the Corporation, have a mechanism for articulating its broad expectations for how the Corporation's funds will be invested and managed by the Board.'⁴¹ The EM noted that 'a direction from the responsible Ministers may also include: matters of risk and return; eligibility criteria for investments; allocation of investments between different types of clean energy technologies; the types of financial

38 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 10.

39 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 3.

40 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 36.

41 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 43.

instruments the Corporation may invest in; and broad operational matters.’⁴²

- 2.77 The investment mandate is made after the passage of the legislation. Treasury stated:

Under the legislation the investment mandate is made by the government with the board, so the investment mandate cannot be physically done prior to the passage of the legislation and the board being appointed. The government has publicly stated that the expectation will be around the government bond rate, which is what was included in the expert review panel's report.⁴³

- 2.78 Treasury advised that the Corporation's rate of return will be around the government bond rate. The expectations will not be as great as a private sector equivalent. The Review Panel stated:

The filter will not be as stringent as the private sector equivalent, as the CEFC has a public policy purpose and values any positive externalities being generated. Consequently, it has different risk/return requirements. For a given return, the CEFC may take on higher risk and, for a given level of risk, due to positive externalities, may accept a lower financial return.⁴⁴

- 2.79 The Review Panel noted that in achieving the target rate of return, 'the portfolio will need to earn a rate sufficient to incorporate a margin for losses and operating expenses.'⁴⁵ The Department of Finance and Deregulation (Finance) advised that 'we have a fairly conservative estimate that around 7½ per cent of its total capital each year will not be recovered.'⁴⁶ Finance noted that the budget includes a 'provision for \$150 million of investments that will not be recovered.'⁴⁷

- 2.80 Some members suggested that this could mean that the Corporation could lose \$600 million over four years but Finance did not agree with this conclusion. Finance commented that it 'would not agree because the investment mandate will set an investment return target for the body', and
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42 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 44.

43 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 3.

44 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. xi.

45 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 19.

46 Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, p. 7.

47 Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, p. 7.

you 'would not separate the investments from the returns, because it is a business.'⁴⁸ Finance stated:

...that the impact on the budget will be driven by the target rate of return, and that will be made up of, essentially, two factors: one is the assumption of a default rate and the other is an assumption of a return rate. With regard to how you get your target rate of return, there are an infinite range of possibilities – from a higher default rate and a higher return rate to a lower default rate and a lower return rate, from how the corporation goes about its business to what risk profile it takes on its portfolio.⁴⁹

2.81 Treasury was asked on what evidence was the 7.5 per cent default rate based. Treasury stated:

The assumed rate for the purposes of the forward estimates for the investments of the Clean Energy Finance Corporation (CEFC) is 7.5 per cent of the additional invested funds each year. The rate of 7.5 per cent is an average across the portfolio of CEFC investments and is based broadly on expected performance of the corporation, noting the risks of the industry in which the CEFC will invest, particularly the potential for higher risk in renewable energy sector....

The 7.5 per cent rate represents an initial assumption and will be reviewed as necessary following experience with the operation of the CEFC.⁵⁰

2.82 A final point of examination focused on Clause 61 of the Bill relating to Australian-based investments. The EM notes that 'in making the Corporation's investments, the Board must also be satisfied that the investment is solely or mainly Australian-based.'⁵¹ The Board will determine guidelines setting out the requirements of Australian-based investments which can only be done after the passage of the legislation and the creation of the Board. Some members raised questions about whether the potential Australian-based investments might be overseas owned. Treasury advised that 'we are talking about where the assets would be located and not the ownership.'⁵² This focus on Australian-

48 Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, p. 8.

49 Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, p. 12.

50 Department of the Treasury, *Answers to Questions on Notice*, 28 May 2012.

51 Explanatory Memorandum, Clean Energy Finance Corporation Bill 2012, p. 42.

52 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 3.

based investments stems from the Clean Energy Finance Corporation Expert Review. The Review Panel stated:

The Panel regards it as paramount that CEFC investments must be principally located in Australia. This requirement would not exclude foreign participation in projects operating in Australia.⁵³

Financial barriers to investment in clean energy

- 2.83 One of the key topics discussed in the hearing was the barriers that exist to companies being able to raise finance to make substantial, long term investments in clean energy. Currently in Australia, there are a number of institutional and economic impediments to the sort of investments that Australia needs to make to establish a robust clean energy industry. Such investments will provide jobs and wealth for Australians and reduce the impact of climate change, which has potentially catastrophic costs.
- 2.84 The committee accepts that government intervention in an economy should not be taken lightly, but it is widely recognised that market failure can occur and that governments have a role in correcting these failures. The discussion in this section picks up on these market failures and explains the fundamental reason for the CEFC. In short, there is market failure in the finance sector and the CEFC will address this in a way that minimises market distortions and disruption.

Tenor of Australian debt markets

- 2.85 The length of time until a debt matures is sometimes referred to as its tenor. In Australia, the tenor of Australian debt is approximately five years. In its submission to the Expert Review, Royal Bank of Scotland stated that bank finance has a typical loan tenor of seven to nine years, and ANZ stated that the wholesale Australian debt markets have a tenor of one to five years.⁵⁴
- 2.86 This compares with the much longer periods involved in these investments, which ANZ pointed out can be up to 25 years. Therefore, longer term projects face greater risk, either due to the possible need to refinance or through the need to amortise debt more quickly.

53 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 13.

54 Submissions to CEFC Expert Review: Royal Bank of Scotland, p. 5; ANZ, p. 2.

Availability

2.87 The general lack of funds available for clean energy investment was a common theme in the Expert Review.⁵⁵ In its submission to the review, Acciona Energy referred to this as ‘timidity in the capital market’.⁵⁶ Treasury gave an overview of this problem at the hearing, noting that Australia’s lack of experience in the sector creates difficulties at a financial level, as well as operational:

Importantly, there is really a limited track record of dealing with these projects within the financial sector, which means that financial corporations add a risk premium because of the uncertainties. That is important for renewable energy projects because of the high upfront capital costs imposing a high risk premium on them. The benefits from the investment come from very long investment periods, so the returns are highly discounted. Under traditional financing mechanisms, that tends to mean that they do not get over the hurdle rates of return.⁵⁷

2.88 A further factor is that assessing energy projects needs to be done on a case by case basis, which makes due diligence expensive. The Expert Review discussed this as follows:

A number of submissions cited the costs associated with conducting due diligence on renewable energy projects and the lack of standardisation of projects. Assessment of the quality of the resource and potential production variability are central to the due diligence process. However, the cost of undertaking these assessments can be a deterrent. In addition, unique factors in clean energy projects do not lend themselves to a standardised assessment and approval process. Without these economies of scale, the financial sector underinvests in its capacity to service the industry.⁵⁸

2.89 Treasury advised the committee that the Global Financial Crisis has compounded this effect because banks in other countries, which have

55 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 25.

56 Submission to CEFC Expert Review: ACCIONA Energy Oceania, p. 1.

57 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 4.

58 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 26.

more experience in the due diligence of these projects, are concentrating on domestic business.⁵⁹

- 2.90 Westpac gave some practical examples of how clean energy projects in Australia can miss out on financial support in its submission to the Expert Review. For instance, most solar projects in Australia have a capacity of 5MW and require \$10-15 million in funding. This financial scale puts them at the level of commercial banking, but the technology risks and the complexity of the project require a (higher) institutional banking level of due diligence.⁶⁰ In the current climate, and given lenders' level of expertise, this sort of project will find it difficult to obtain funding.

Positive spillovers

- 2.91 An important goal for the CEFC will be to secure positive externalities for Australian industry and the Australian community. These externalities are expected to be in making clean energy cheaper and innovations in processes. Treasury summarised this as follows:

The CEFC in making its investments will look to the externalities from each project. Those externalities relate primarily to moving along the innovation chain and down the cost curve. Those benefits are not captured directly by the proponents of a project but subsequent proponents of other projects and ultimately in cheap and marginal costs of production of renewable energy.⁶¹

- 2.92 For example, there may be a project that is potentially valuable to Australia in terms of the innovation it may generate amongst the clean energy industry or its ability to push down prices. If that project cannot clear current funding hurdles, given the lack of expertise and increased risk in Australia currently with these projects, then it would be to Australia's advantage to ensure that the project is funded and goes ahead through other means. The CEFC will allow such a project to proceed, by taking into account Australia's best interests, rather than the more traditional, narrow approach through a private bank.

- 2.93 As the Review Panel noted, the goal is for the clean energy industry to mature:

Beyond the spillover effects to subsequent projects and the potential for knowledge sharing, as the CEFC's investments are

59 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 3.

60 Submission to CEFC Expert Review: Westpac, p. 5.

61 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 5.

made and projects progress, the sector will mature. This progress to maturity is critical if Australia is to develop the skills and expertise to capture the employment and industry opportunities available and ultimately to provide us with a range of real options for energy production in the future.⁶²

- 2.94 As the industry matures, private sector lenders will have a greater level of expertise and the technology will also become more established. The risks in lending will reduce, thereby reducing the need for the CEFC. One matter that the Government may wish to consider is whether an exit strategy for the CEFC, or Government involvement in it, is required. This would be a suitable matter to consider in the review of the operation of the CEFC, envisaged in clause 81 of the Bill.

Minimising market distortions

- 2.95 The committee notes two features of the CEFC and its operations that will minimise market distortions. The first is that, as recommended by the Expert Review and confirmed by Treasury in evidence, the CEFC should only offer finance on the least generous terms that will enable a project to proceed. Treasury described the effect of this in evidence as, 'that means we are not providing supernormal profits to those corporations, simply because they get cheap finance.'⁶³
- 2.96 The second is that the CEFC will apply a commercial filter to its investments, which will often result in it co-investing with a commercial partner during the early stages. The Expert Review discussed this and it was confirmed by the Department of Climate Change and Energy Efficiency at the hearing.⁶⁴
- 2.97 The CEFC is being established to address market failure and generate positive spillovers. It would not be appropriate for such an organisation to then create substantial negative externalities or market distortions in another way. The commerciality and 'least generous' requirements for investments will minimise the chance this occurs.

62 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 32.

63 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 13.

64 Ms Jenny Wilkinson, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 28 May 2012, p. 20.

Benefits to the community

2.98 As discussed earlier, an important goal for the CEFC will be to secure positive externalities for Australian industry and the Australian community. In its review, the Review Panel stated:

While each investment will individually support the sector, it is the cumulative impact of the positive externalities of expanding the sector experience, moving down the cost curve and creating third party benefits, which are essential to positioning Australia for a cleaner energy future. These strengthen the foundation for the ultimate goal to create a vibrant Australian clean energy sector with real options for future energy generation and, in the longer term, the jobs and export opportunities it brings.⁶⁵

2.99 The Review Panel envisaged that:

Positive externalities will flow from each CEFC investment. These positive externalities are necessary if the CEFC's objective is to be achieved. They flow initially as spillover benefits to subsequent projects. Over time, they will have a broader cumulative impact across the sector, on carbon emissions and contribute to the task of preparing and positioning the Australian economy for a cleaner energy future.⁶⁶

2.100 In its evidence to the committee, Treasury reiterated that in addition to the financial return, positive externalities – the wider benefits to the Australian community – would be taken into account in the CEFC's determination of its investments into clean energy projects.

2.101 Treasury indicated that the CEFC will operate to reduce barriers to renewable energy investment, and so bring in renewable energy earlier and reduce the cost of production of renewable energy.⁶⁷ Treasury stated:

In essence it is allowing movement down the cost curve so that renewable energy projects are more efficient and, therefore, their costs are cheaper to implement.⁶⁸

2.102 When questioned by the committee on whether these cost efficiencies would directly benefit households, Treasury responded:

65 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 9.

66 CEFC Expert Review Panel, *Clean Energy Finance Corporation Expert Review: Report to Government*, March 2012, Commonwealth of Australia, p. 32.

67 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, 28 May 2012, p. 5.

68 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, 28 May 2012, p. 9.

I do not know what goes through to households. But my point was that it would result in more efficient or cheaper production of energy. How that cheaper production goes through to the household is another matter, allowing for the competitiveness of the retail sector and whether or not they pass it on. By having more efficient renewable energy generation with lower marginal costs into the future, that should reduce costs.⁶⁹

- 2.103 The Department of Climate Change and Energy Efficiency confirmed that electricity prices were expected to increase by 10 per cent as a result of emissions pricing. In response to similar questioning on what benefits the CEFC might deliver to households, the Department commented:

...if the Clean Energy Finance Corporation reduces the cost of investing in renewable technologies, then you would expect that to result in lower wholesale electricity prices and, potentially, lower large-scale renewable energy certificates. So you would expect both of those to come down if the cost of actually financing these investments was lower.⁷⁰

Conclusion

- 2.104 The committee supports the passage of the package of Bills. The Clean Energy Legislation Amendment Bill 2012 contains a range of amendments, the most important of which is to bring non-transport gaseous fuels into the emissions pricing mechanism. This has been requested by industry and was also a recommendation in 2011 by the Joint Select Committee on Australia's Clean Energy Future Legislation. The amendment will mean that it will be easier for industry to manage its cash flow, firms will have more flexibility in managing their carbon liabilities, and compliance costs will be reduced.
- 2.105 The Bill also makes other amendments to improve the operation of the emissions pricing framework. They include:
- requiring that projects under the Carbon Farming Initiative have secured all required regulatory approvals before they receive any credits;

69 Mr Mike Waslin, Department of the Treasury, *Committee Hansard*, 28 May 2012, p. 13.

70 Ms Jenny Wilkinson, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 28 May 2012, p. 22.

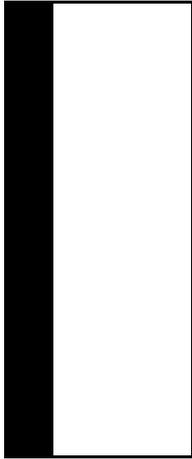
- enabling regulations to be made to identify accounts under the Australian National Registry of Emissions Units that are subject to restrictions or limitations; and
 - streamlining requirements for nominating a person with 'operational control' of a facility under the National Greenhouse and Energy Reporting System.
- 2.106 The provisions of the Clean Energy Legislation Amendment Bill 2012 and the associated excise and customs bills are non-controversial and were only briefly covered during the hearing.
- 2.107 The hearing concentrated on the Clean Energy Finance Corporation Bill 2012. The Bill reflects the design of the Expert Review chaired by Jillian Broadbent AO, which consulted extensively with the finance and clean energy sectors. Its recommendations comprise a way to bring the two sectors closer together.
- 2.108 The committee heard evidence that there is a significant shortage of funding for clean energy projects due to market failures. In particular, there is a lack of expertise in the financial sector about the clean energy sector, making it difficult for banks to accurately assess and price risk, with the consequence that many projects are not going ahead. Overseas banks have this expertise, but they are not engaged in international loans following the Global Financial Crisis. Further, Australian debt markets operate on much shorter maturities than those involved in energy infrastructure projects, which again increases risk.
- 2.109 The CEFC will take a broader view of these investments and will provide finance to projects that demonstrate positive spillovers, such as through industry-wide effects such as reducing costs or enhancing innovation. The whole community will benefit from these projects proceeding.
- 2.110 The CEFC will apply a commercial filter to its decisions. Although the Government will set the broad directions, individual decisions will be made separately from political influence. The CEFC will aim to deliver a positive return on its investments, most likely around the Government bond rate. Therefore, taxpayers' funds will be properly managed and adverse effects on the economy through market distortions will be minimised.
- 2.111 The CEFC will be an effective means of encouraging private sector investment in clean energy. It will not replace the private sector or deter the private sector from making commercially sound investments. What it will do, through co-financing initially, is increase private sector

involvement in a high-technology sector with a growth outlook. The Bills should pass.

Recommendation 1

2.112 The House pass the Clean Energy Finance Corporation Bill 2012, the Clean Energy Legislation Amendment Bill 2012, the Clean Energy (Customs Tariff Amendment) Bill 2012, and the Clean Energy (Excise Tariff Legislation Amendment) Bill 2012.

Julie Owens MP
Chair
30 May 2012



Dissenting Report –
Mr Steven Ciobo MP, Deputy Chair,
Ms Kelly O’Dwyer MP, Mr Scott Buchholz MP,
Mr Paul Fletcher MP and Mr Dan Tehan MP,
Liberal Party of Australia

Introduction

The Clean Energy Finance Corporation Bill 2012, the Clean Energy Legislation Amendment Bill 2012, the Clean Energy (Customs Tariff Amendment) Bill 2012, and the Clean Energy (Excise Tariff Legislation Amendment) Bill 2012 (the Bills) are an extension of the Government's Carbon Tax package.

Liberal Members of the Committee believe these Bills will be expensive to taxpayers, expose them to underwriting a significant amount of commercialisation risk, and provides for this to occur at the wrong time given the economic challenges Australia faces. It is striking that taxpayers will be asked to fund projects that will not deliver lower electricity prices, however will in fact, add to cost of living pressures being exacerbated by Labor's carbon tax.

Liberal Members are also concerned the Government's approach to the enabling legislation is deliberately crafted to constrain flexibility and require legislative revision by the Parliament. We note the CEFC's funding is removed from typical budgetary discretion owing to the method of legislative appropriation. As Australia has experienced a very significant erosion of our fiscal position owing to Government decisions, the CEFC and its funding is a clear Labor policy indulgence funded by taxpayers.

The CEFC is directed to invest taxpayers' funds in admitted high-risk technologies that have failed to attract requisite private-sector capital. Not only is there inherent risk presently associated with the clean-energy sector, there is also insufficient clarity attaching to the management of risk of loss of taxpayers funds invested through the CEFC.

Liberal Members of the Committee are particularly concerned by the lack of diligence betrayed in both verbal and written responses to questions in the public hearing on the issue of the assumed default rate. Liberal Members were not provided with a satisfactory response to how the forecast default rate was formulated and we remain concerned there is a very real risk of unacceptable losses accruing from defaulting investments.

Liberal Members of the Committee are also concerned operating costs of the CEFC appear unrefined. Start-up costs for the CEFC in the first year are \$57.3 million and are provisioned for the CEO's remuneration, staff remuneration, and consultancy fees. That notwithstanding, these are all yet to be determined and were not able to be provided to the Committee.

Portentously, under section 41 of the CEFC Bill, these do not have to be referred to the Remuneration Tribunal. The Committee was also not provided with the board member's fees, as they were yet to be determined by the same Tribunal.

Liberal Members of the Committee hold the view the CEFC is a politically driven creation being implemented at the behest of the Australian Greens Party and the Labor Party, inappropriately rushed through the House of Representatives Standing Committee on Economics with little opportunity for genuine scrutiny.

The creation and operation of the CEFC will come at significant cost to taxpayers. This is driven by the very real risk associated with investing in the clean-energy sector and the future pressure the CEFC will place on government revenue.

Perversely the beneficial environmental outcomes will be low, with the CEFC not expected to deliver any reduction in domestic energy prices, nor have any impact on Australia's ability to meet our Renewable Energy Target.

Liberal Members of the Committee have sought to highlight serious concerns and shortcoming with the Bills in this dissenting report and, as they are connected with Labor's Carbon Tax, recommend they be opposed.

Risk to Taxpayers

Default Rate

The Coalition members of the Committee are all too aware of the cost, waste and mismanagement of the Government programmes including the Home Insulation Programme (HIP) and Building the Education Revolution (BER).

Time and time again, Government forecasts have proven wrong, budgets have been blown and taxpayers have been left with little or nothing to show for the billions added to public debt.

Liberal Members of the Committee were concerned that Departmental testimony indicated many of the underlying assumptions which impact the viability of the CEFC and its cost to taxpayers are based on little evidence beyond Government direction.

Treasury could provide no substantive explanation as to how the default rate for investments was arrived at or whether they bear any similarity to experiences in Australia or overseas:

Mr TEHAN: You talked about this 7½ per cent. What evidence is that based on— this default rate? What programs have you looked at? What other investments have you looked at to come up with this rate? What evidence has led you to the 7½ per cent?

Mr Nicol: The 7½ per cent was based on discussions between departments when the body was initially conceived. It was some time ago, so it is stretching my recollection, but it was based on a broad view, I think, of the inherent risk of the industry. Every investment vehicle in any industry is going to have a write-off rate of some description.

Mr TEHAN: So what did you look at? Did you look at the Solar Flagships Program, for instance?

Mr Nicol: I will have to take that on notice to get exact details.¹

The response from Treasury to the question on notice was simply to restate that “The rate of 7.5 per cent is an average across the portfolio of CEFC investments and is based broadly on expected performance of the corporation, noting the risk of the industry in which the CEFC will invest, particularly the potential for higher risk in renewable energy sector.”

It is clear to the Coalition that Treasury could not provide any evidence on how this figure was determined.

Failure to Heed Past Lessons

Mindful of the Solar Flagships Program and ZeroGen project which together received some \$800 million in taxpayer funds and delivered little, Coalition members of the Committee were eager to understand how these experiences were factored into modelling of expected failure/default rates and the anticipated CEFC investment strategy.

Remarkably, Treasury testimony suggested these significant project failures had not been considered and no assurance could be made similar incidents of large-scale taxpayer losses would be avoided:

Mr CIOBO: I go to that conservative estimate allowance of 7.5 per cent. What has Treasury looked at with regard to, for example, the \$700 million Solar Flagships Program the Australian government was involved in? What mistakes were made there that will not be made with respect to investment by CEFC in this case?

Mr Waslin: Solar Flagships was a grant program. The CEFC will be making investments. The board will have the responsibility for determining the investments. They will be co-financing with the private sector, so they are brought on board. They are not directly comparable because the Solar Flagships is a grant program.

¹ Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, p. 9.

Mr CIOBO: How much money was lost/granted on the Solar Flagships Program by taxpayers?

Mr Waslin: It is not on the Treasury program.

CHAIR: It is not a relevant question when you are talking about a grant.

Mr Waslin: A grant, by definition, is a payment with no –

Mr CIOBO: No, that is why I am asking how much money is allocated?

CHAIR: It is not what you asked.

Mr Waslin: I do not know that number; it is not in the Treasury portfolio.

Mr CIOBO: Would you let us know. What about the ZeroGen project?

Mr Waslin: As I said, they are not projects within the Treasury portfolio.

Mr CIOBO: I am just mindful that \$700 million was spent on Solar Flagships, \$100 million on the ZeroGen project – that is \$800 million. I am just interested to know what lessons have been learned from mistakes that will help to guide investment decisions of Australian taxpayer funds in future?²

No Legislated Safeguards

Given the remarkable size of the investment in CEFC and accounts of massive losses in Australian-based and international renewable energy projects, the Liberal Members of the Committee are concerned there is no explicit stop-loss strategy included in the Bill as an ultimate safeguard for taxpayers:

Mr BUCHHOLZ: What mechanisms do you have in place should the write-offs you have budgeted for be exceeded by the market? Would you stop lending money? Is there any mandate, or are there any provisions you guys have spoken about, like how bad is bad before you say, 'We can't continue to forge ahead with this'? Is there a line in the sand where, bang, you say, 'This is enough; we are not throwing good money after bad,' or is it just, 'Ten billion is the number; when it's gone, it's gone'?

Mr Waslin: One of the board's functions, as listed in provision 14(1)(b) of the bill, is:

² Mr Mike Waslin, Department of Treasury, *Committee Hansard*, Canberra, 28 May 2012, pp. 19

... to ensure the proper, efficient and effective performance of the Corporation's functions
...

So it is incumbent upon the board to invest within that requirement. They are not going to go out there and say, 'We're going to blow everything.' That is not consistent with the requirement. That is why we have an independent board and why people of a high standard are appointed to the corporation – to ensure the efficient operation of the corporation.³

Market Distortions

Crowding Out

As a significant borrower on capital markets, the Government is already responsible for the upward pressure on interest rates driving up the cost of finance for businesses and homeowners with mortgages.

Given the \$10 billion investment in the CEFC will be funded by a commensurate amount of Government debt, Coalition members of the Committee view the CEFC as detrimental to the wider economy and further risk to the Nation's fiscal position.

Funding Inferior, Less Efficient Technology

Treasury testimony made repeated mention of the principle purpose of the CEFC: to invest in projects and technologies which would otherwise not receive private sector funding.

Following questioning by a Coalition member of the Committee, Treasury confirmed investments could be made which the private sector had assessed as being too risky or delivering sub par returns.

Inherent in this admission is that taxpayers will be asked to underwrite the riskiest of investments in exchange for some of the lowest possible returns. Risk to capital aside, taxpayers will certainly not get value for money:

Mr CIOBO: Yes, but I am asking why, in the department of climate change's view, these projects would not get up?

Ms Wilkinson: They would not get up if they could not receive funding on commercial terms which are available at the moment.

³ Mr Mike Waslin, Department of Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 13.

Mr CIOBO: From the private sector?

Ms Wilkinson: That is correct.

Mr CIOBO: And would that be a reflection of risk? This is what we were talking with Treasury before. Do you think the private sector would consider them too risky to fund?

Ms Wilkinson: It would be because the private sector made an assessment that the return was not sufficient to cover the issues that they were concerned about, and certainly the private sector would not take into account the externalities that Mr Waslin was talking about.⁴

This strategy risks supporting inferior technologies not capable of delivering a market rate return at the expense of promising technologies competing for a share of the Renewable Energy Target:

Mr CIOBO: Earlier you made comments, Ms Wilkinson, about CEFC altering the composition of renewable energy sources. Why will the operation of CEFC alter the composition of renewable energy sources?

Ms Wilkinson: I am thinking in the long term. I am thinking about the fact that the CEFC might support and provide funding for the deployment of renewable energy sources which would not otherwise get up.

Mr CIOBO: Why would they not otherwise get up?

Ms Wilkinson: The mandate of the Clean Energy Finance Corporation is to identify projects which they consider consistent with their mandate.⁵

⁴ Ms Jenny Wilkinson, Department of Climate Change and Energy Efficiency, *Committee Hansard*, Canberra, 28 May 2012, p. 20.

⁵ Ms Jenny Wilkinson, Department of Climate Change and Energy Efficiency, *Committee Hansard*, Canberra, 28 May 2012, p. 20.

Taxpayers Value

Return on Investment

While acknowledging the CEFC as a 'business', Treasury was unable to answer whether the CEFC would be subject to guidelines to which other Government Business Enterprises (GBEs) must comply.

Significantly, Treasury was also unable or unwilling to provide assurances shareholders (taxpayers) would receive value for their investment:

Mr FLETCHER: And I am also interested to know whether the CEFC is required to comply with section 4.7 of those guidelines which says that all GBEs are required to add shareholder value. Mr Waslin, are you confident that the \$10 billion that the Australian taxpayer is going to put into this venture is going to be a good investment for the Australian taxpayer?

Mr Waslin: It is designed to overcome the financial barriers for the clean energy sector.

Mr FLETCHER: That is not actually the question I am asking. The question I am asking is this. It is from the point of view of the Australian taxpayers as \$10 billion of taxpayers' money is being put into this venture. I am interested to know –

Mr Waslin: It is a governmental policy issue. The government can decide how it wishes to make its investments and how to spend its funds.

Mr FLETCHER: So the government has made that decision. What I am interested to know is whether Treasury is confident that that would be a good investment.

Mr Waslin: That is a comment on policy.⁶

Rate of Return

Under questioning from Coalition members it was clear that the Treasury could not state the expected rate of return for taxpayer dollars spent.

Ms O'DWYER: Speaking of investments, then, it is probably worth looking at the investment mandate. What is the target rate of return for the investments that the government will make?

Mr Waslin: Under the legislation the investment mandate is made by the government with the board, so the investment mandate cannot be physically done prior to the passage of the legislation and the board being

⁶ Mr Mike Waslin, Department of Treasury, *Committee Hansard*, Canberra, 28 May 2012, pp. 16

appointed. The government has publicly stated that the expectation will be around the government bond rate, which is what was included in the expert review panel's report.

Under further questioning Mr Waslin conceded that Treasury had provided no modelling on the rate of return and further conceded that "It is up to the government to determine the target rate of return."

Overseas funds

Treasury were asked to provide specific examples of similar overseas funds.

Ms O'DWYER: Like Dr Leigh, I would also like to apologise for the short amount of time and notice you have had to be here, because we only invited you on Friday, and it is rather a shame that there has not been more time for you to prepare. A number of the questions I am going to ask I suspect you will need to take on notice. I am interested in following up on my colleagues Dan Tehan and Steve Ciobo's line of questioning in relation to the failure rate. You may need to take this on notice. Would you be able to provide us with a list of overseas examples of funds overseas, a list of their failure rates and also their rates of return?

Treasury provided only partial answers in response citing the United Kingdom Green Investment Bank (which is yet to make any investment). It did not provided any information on its rate of return.

Similarly, Treasury cited the United States Department of Energy Loans Program and again did not provide the rate of return on investment.

Investment mandate

Treasury were questioned about the significance of s61 of the legislation, specifically, what was meant by "Australian based investment" that would form part of the investment mandate.

Ms O'DWYER: What about overseas investment? What about companies that are predominantly owned by foreign or overseas investors?

Mr Waslin: We are talking about where the assets would be located and not the ownership.

Ms O'DWYER: So, so long as the assets are here, for the purpose of this section of the bill, you would say that that makes it an Australian-based investment?

Mr Waslin: Yes

Ms O'DWYER: Irrespective of the fact that the guidelines have not yet been drafted?

Mr Waslin: That is what is behind the solely or mainly based. It is a similar approach to what the UK Green Investment Bank is also taking.

Ms O'DWYER: But it would be up to the board to take a different view?

Mr Waslin: Basically the board is to come up with what is solely or mainly Australian based.

It is unclear whether Australian taxpayer money will simply be sent offshore.

Electricity Prices

The CEFC is vaunted by the Government as an instrumental part of the Carbon Tax package. Its premise is to fund renewable energy technologies with a view to making clean energy cheaper than that generated by fuels trapped under the Carbon Tax.

Considering \$10 billion is to be invested by taxpayers in the CEFC, the Coalition members of the Committee were surprised to learn that no mandate had been provided to invest in technology which would offset increases to electricity prices under the Carbon Tax.

The Department of Climate Change and Energy Efficiency confirmed no modelling had been conducted to determine whether electricity prices would be higher or lower with the CEFC:

Mr CIOBO: Should Australian taxpayers therefore expect to see the retail price of electricity decrease as a result of their \$10 billion investment in renewables through the CEFC?

Ms Wilkinson: Again, it depends. In most jurisdictions in Australia, the retail electricity price is determined by independent pricing tribunals, and they key off the wholesale electricity price. So a lower wholesale electricity price, by and large, translates into a lower retail electricity price.

Mr CIOBO: On your modelling, does the price decrease as a result of the operation of the CEFC? Is it larger than, equal to or less than the forecast increase in electricity prices as a result of the introduction of the carbon tax?

Ms Wilkinson: As I said, I am not aware of modelling undertaken within the department of climate change. I can take that on notice – modelling what the impact of the CEFC is. It is difficult to actually undertake that

modelling until the CEFC has been finalised in all its elements, including things like the investment mandate.

Mr CIOBO: But you are confident that it will reduce wholesale electricity prices, even though you have not done any modelling?

Ms Wilkinson: No, I guess I am just making a statement of fact as to what determines wholesale electricity prices, and one of the important things is the actual cost of investing in new generation technologies.⁷

Cost to Taxpayers

Estimated Write-offs

Coalition members of the Committee are deeply concerned with revelations that, in the unlikely case Treasury estimates and assumptions are correct, the CEFC will still be responsible for investment losses totalling some \$600 million over four years:

Mr CIOBO: Based on that 7½ per cent figure Treasury forecasts, therefore, that the Clean Energy Finance Corporation will lose \$150 million in the year 2012-13, \$150 million in 2013-14, \$150 million in 2014-15 and \$150 million in 2015-16. Is that correct?

Mr Nicol: I do not think you can characterise it that way because the fund will be making investments that will –

Mr CIOBO: You are expecting defaults of \$150 million for each of those years.

Mr Nicol: The budget has included a provision for \$150 million of investments that will not be recovered.

Mr CIOBO: So Treasury forecasts that taxpayers will lose \$150 million a year, purely based on investments, not returns, each year for four years – a total loss of \$600 million. This is just on investments, I am not talking about returns.⁸

⁷ Ms Jenny Wilkinson, Department of Climate Change and Energy Efficiency, *Committee Hansard*, Canberra, 28 May 2012, p. 22.

⁸ Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, p. 8.

As outlined earlier, given the estimated default rate is a 'guess' only, losses could very well be much higher and put the goal of CEFC self-sustainability at risk or, indeed, the total \$10 billion investment:

Mr Nicol: We are assuming that 7½ per cent of the investments each year are not recovered.

Mr CIOBO: So are you saying that you think in reality the default rate will be higher than that or lower than that?

Mr Nicol: At the moment that is our best guess.⁹

Arbitrary Start-up Costs

The Coalition members of the Committee were concerned with the arbitrary funding, some \$60 million, for the start-up and establishment of the CEFC.

Treasury was unable to explain how these significant funds were allocated and what proportion would be allocated to the remuneration of the Board, CEO, staff and consultancy.

Ms O'DWYER: Will each of the board members receive fees?

Mr Waslin: Yes, and they will be paid as determined by the Remuneration Tribunal.

Ms O'DWYER: Do you have any expectation around what those figures will be?

Mr Waslin: No, not at this stage. The Remuneration Tribunal will make the decision.

Ms O'DWYER: They will make the decision; but in coming up with this figure have you made a provision? Do you have an expectation around where it might be or in what range?

Mr Waslin: No. The Remuneration Tribunal will make a decision. Other like institutions could be the Future Fund.

Ms O'DWYER: And the fees there would be what?

Mr Waslin: I do not know. We would have to take that on notice.¹⁰

Concerns which were raised about the budgeted figures, which were not higher in earlier years as one would expect, were not addressed and called into question the assumption the CEFC can, in time, become self-sustaining:

Ms O'DWYER: I am interested in understanding a little bit more about the board and the operating costs associated with the Clean Energy Finance Corporation. The Inspector-General of Taxation in appropriations costs about \$1.5 million.

⁹ Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, p. 7.

¹⁰ Mr Mike Waslin, Department of Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 12

According to the appropriations that we are looking at here over the forward estimates, we are looking at around about \$60 million – to be exact, \$57.3 million over the forward estimates. Can you perhaps provide us with a little more information as to exactly what that \$60 million is going to be funding?

Mr Waslin: There will be around 40 staff, when it is fully operational. There will be accommodation and a lot of start-up expenses. The corporation will need to take legal advice in terms of entering into contracts – due diligence for entering into contracts. Basically, it is setting up all the computer systems and consultancies on understanding the proposals.

Ms O'DWYER: As I look at these appropriation figures, there is not, for instance, a lot of money in year 1 or even in years 1 and 2; it is effectively the same throughout.

Mr Waslin: Government is giving the corporation money to help with its establishment. During the initial years they are not expecting that there will be a return, but the expectation from the expert review panel is that the corporation will become self-sufficient and able to fund its own operating expenses from its earnings.

Ms O'DWYER: What is that expectation based on?

Mr Waslin: For the expert review panel, that was one of the –

Ms O'DWYER: This is a bit circular.¹¹

No Impact on the Renewable Energy Target

For the \$10 billion invested and the inherent risk 'picking winners' in the renewable energy sector, especially given the Government's track record, it concerns the Coalition members of the Committee there is no guarantee of additional renewable energy generation capacity over and above the bipartisan Renewable Energy Target:

Mr CIOBO: My questions in the first instance are probably to Treasury although obviously Climate Change is welcome to contribute as well. The mandatory renewable energy target is 20 per cent. Is that correct?

Mr Waslin: The RET – yes.

Mr CIOBO: As a result of the CEFC, what will be the energy target into the future

¹¹ Mr Mike Waslin, Department of Treasury, *Committee Hansard*, Canberra, 28 May 2012, pp. 11-12

as a result of its operation?

Mr Waslin: The renewable energy target is 20 per cent. That is government policy.

Mr CIOBO: So, 20 per cent with or without the CEFC?

Mr Waslin: Yes.¹²

In fact, testimony from the Department of Climate Change and Energy Efficiency revealed that in the absence of this very risky \$10 billion investment Australia is nonetheless forecast to achieve the Renewable Energy Target.

Mr CIOBO: So the department of climate change has done modelling that looks at whether we can meet our renewable energy target without the operation of the CEFC?

Ms Wilkinson: Yes. The renewable energy target has been in place for some time. We have done a number of modelling exercises which predated the announcement of the Clean Energy Finance Corporation.

Mr CIOBO: Great. Can we meet our renewable energy target without the CEFC?

Ms Wilkinson: As I said earlier, the modelling certainly suggests that, with the combination of the carbon price and the renewable energy target in that model, you would expect the renewable energy target to be met.¹³

To Coalition members of the Committee, this evidence highlights the inherent flaw in the often-quoted principle purpose of the CEFC to 'overcome financial barriers' for projects rather than pursue investments in projects which would deliver the greatest possible environmental benefit.

Undue Political Influence

Appropriation Measures

The Coalition members of the Committee formed the view the Bill is intended to bind future governments to the annual appropriations to the CEFC.

¹² Mr Mike Waslin, Department of Treasury, *Committee Hansard*, Canberra, 28 May 2012, p. 4.

¹³ Ms Jenny Wilkinson, Department of Climate Change and Energy Efficiency, *Committee Hansard*, Canberra, 28 May 2012, p. 21.

In what seems to be a politically motivated strategy, the first payment to the CEFC Special Account is timed to take place near or during the caretaker period ahead of the next federal election thereby limiting the ability of an incoming government to make changes to the funding model or wind up the CEFC.

It is interesting to note legislating automatic appropriations in this manner is uncommon in the Australian context, and will require the Parliament to amend or repeal the associated legislation to make any changes.

While the Treasury seemed to infer automatic endowment would provide some certainty for co-investors, tellingly, no evidence as to why this measure is strictly necessary was provided:

Mr FLETCHER: My last question for you is about section 46, which deals with the appropriation. Could you just explain the effect of that arrangement – so that is appropriating \$2 billion a year over five years – and why that is necessary? And, specifically, is that intended to lock in a future government such that it is not able to reverse this?

Mr Waslin: The way in which it works is that the moneys are appropriated to a special account. Through section 48, the corporation may request funds from the special account when it needs those funds either to pay its operating expenses or for loans, but for the initial period of three years it will have funds for operating expenses. Getting to your point, from the public consultations, the importance of the way the corporation is being set up is that if it needs to enter into long-term contracts, because of the nature of this, the corporation's credibility depends upon the private sector's acceptance that the corporation will have the funds when it needs those funds. So, if it enters into a contract to lend over five years –

Mr FLETCHER: I have heard the explanation. Let me ask this question: is this a common arrangement?

Mr Waslin: The difference is that the corporation has had a special account set up. The alternative would have been to provide the \$10 billion directly to the corporation, and it could invest the \$10 billion and, therefore, it would have the funds over the whole period. This appropriation arrangement and the operation of the special account is that it draws down the funds only when it needs them for investment in the clean energy sector. The idea was not to establish a corporation with a large pool of funds which would go off and then become a money market corporation. It is designed to keep it focused on investing in the clean energy sector.

Mr FLETCHER: Is it a common arrangement to legislate so that there is a series of appropriations in a piece of legislation dealing with one government owned corporation?

Mr Youngberry: There are other examples where we provide appropriations over a period of time – most notably, the replenishments for the International Development Association, which is under the World Bank, where we do provide a special appropriation that exists through time to provide certainty for that funding.

Mr Nicol: My recollection is that in medical research, I think, or in general research we also have a similar mechanism.¹⁴

Lack of Proper Scrutiny

The Coalition members of the Committee took exception to the short notice provided ahead of the public hearings and the limited time allotted which saw key witnesses ill-prepared to answer even the most basic questions.

Coalition members note the Chair opposed a motion extending the duration of the hearing and the tenure of the enquiry until 30 August 2012. This would have provided an opportunity for public comment and for expert witnesses (at other locations) to be called:

Ms O'DWYER: You are arguing against the whole existence of House of Reps Standing Committee on Economics in that case. The first notice of this inquiry by the House of Representatives into this particular issue was a press release that was issued on Friday. The hearing is now today, on Monday, and the report, according to the current tabling, is going to be on Wednesday. That is, we have less than a week to deal with a \$10 billion bill. My view would be that not enough scrutiny has been applied to this bill. There would be substantial witnesses who would be prepared to come before this committee to provide evidence. It is simply not enough for us to have a two-hour hearing today that has been called on effectively in the dead of night to try to deal quickly with this legislation because the government wants to avoid scrutiny.¹⁵

¹⁴ Mr David Nicol, Department of Finance and Deregulation, *Committee Hansard*, Canberra, 28 May 2012, pp. 17-18.

¹⁵ Ms Kelly O'Dwyer MP, Standing Committee on Economics, *Committee Hansard*, Canberra, 28 May 2012, p. 2.

The appropriations connected with these bills amount to at least \$10 billion. It is unacceptable only two hours were allocated for their scrutiny and that the hearing was summarily guillotined by the Chair:

Mr CIOBO: Can I ask the Department of Treasury –

CHAIR: You are going to have to call it a day, Mr Ciobo.

Mr CIOBO: Opposition members have had serious concerns about \$10 million worth of investment –

CHAIR: And the opposition have had the bulk of the questions today.

Mr CIOBO: Well, that is great that, for \$5 billion an hour, they are getting the chance to ask some questions! We have many more questions on our side we would like to continue asking.

CHAIR: I am sorry; I am going to call the meeting –

Mr CIOBO: So you are going to shut us down?

CHAIR: I am ... ¹⁶

Conclusion

The Coalition members of the Committee oppose the Bills on the basis that they are connected with the Government's Carbon Tax package.

Notwithstanding this, the CEFC represents an unacceptable risk to taxpayers of which the Coalition members of the Committee believe Treasury and the Department of Climate Change and Energy Efficiency failed to demonstrate a proper understanding.

Even assuming all assumptions are correct, the CEFC will see upwards of \$600 million lost in write offs and no increase in Australia's capacity to meet the Renewable Energy Target. To put it plainly, for all the risk, and it is substantial, there is no environmental gain.

¹⁶ Steven Ciobo MP, Standing Committee on Economics, *Committee Hansard*, Canberra, 28 May 2012, p. 23.

Perversely, rather than supporting competitive renewable energy technologies which can be delivered at no cost to taxpayers, the CEFC risks over representing inferior projects in the market by providing what essentially amounts to a subsidy.

Finally, given the deteriorating fiscal position of the Government since 2007, it seems almost unthinkable the Government would legislatively commit to fixed appropriations over the forward estimates.

Recommendation

The House does not pass the Clean Energy Finance Corporation Bill 2012, the Clean Energy Legislation Amendment Bill 2012, the Clean Energy (Customs Tariff Amendment) Bill 2012, and the Clean Energy (Excise Tariff Legislation Amendment) Bill 2012.

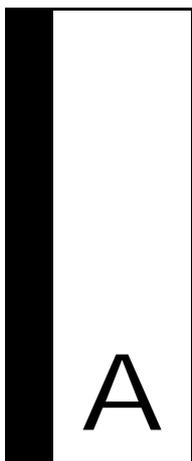
Steven Ciobo MP
Deputy Chair

Kelly O'Dwyer MP

Scott Buchholz MP

Paul Fletcher MP

Dan Tehan MP



Appendix A – Details of evidence

Answers to Questions on Notice

1. Department of the Treasury
2. Department of Climate Change and Energy Efficiency

Public Hearing—Monday, 28 May 2012, Canberra

Department of Climate Change and Energy Efficiency

Ms Eliza Murray, Director, Carbon Farming Initiative Design, Carbon Farming Initiative Policy Branch

Dr Andrew Pankowski, Director, Coverage and Legislation Branch

Mr Joseph Pryor, Analyst, Coverage and Legislation Branch

Ms Maya Stuart-Fox, Assistant Secretary, Carbon Farming Initiative Policy Branch

Ms Jenny Wilkinson, First Assistant Secretary, Climate Strategy and Markets Division

Mr Simon Writer, Special Advisor, Carbon Pricing Legislation, Coverage and Legislation Branch

Mr Peter Young, Assistant Secretary, Coverage and Legislation Branch

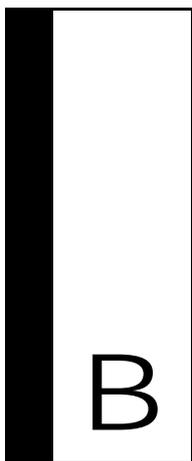
Department of Finance and Deregulation

Mr David Nicol, First Assistant Secretary, Budget Group

Mr Tim Youngberry, First Assistant Secretary, Financial Reporting and Cash Management Division

Department of the Treasury

Mr Mike Waslin, Head, CEFC Secretariat



Appendix B – List of advisory reports

Below is a list of advisory reports tabled by the House of Representatives Standing Committee on Economics in the 43rd Parliament.

No.

1. Inquiry into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011; and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011
2. Inquiry into Indigenous economic development in Queensland and advisory report on the Wild Rivers (Environmental Management) Bill 2010
3. Advisory report on the Taxation of Alternative Fuels Bills 2011
4. Advisory report on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011
5. Advisory report on the Competition and Consumer (Price Signalling) Amendment Bill 2010 and the Competition and Consumer Amendment Bill (No. 1) 2011
6. Advisory report on the Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011
7. Advisory report on the Corporations (Fees) Amendment Bill 2011
8. Advisory report on the Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and the Pay As You Go Withholding Non-compliance Tax Bill 2011

9. Advisory report on the Minerals Resource Rent Tax Bill 2011 and related bills
10. Review of the Tax Laws Amendment (2011 No. 9 Measures) Bill 2011
11. Review of the Insurance Contracts Amendment Bill 2011
12. Advisory report on the Tax and Superannuation Laws Amendment (2012 Measures No. 1) Bill 2012