

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (10/03/2009)

Australian Climate Change Regulatory Authority Bill 2009

No. , 2009

(Climate Change and Water)

**A Bill for an Act to establish the Australian Climate
Change Regulatory Authority, and for other
purposes**

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
^1 Short title	1
^2 Commencement	2
^3 Simplified outline	2
^4 Definitions	3
^5 Vacancy in the office of a member of the Authority	6
^6 Crown to be bound	6
^7 Extension to external Territories.....	6
^8 Extension to exclusive economic zone and continental shelf	6
^9 Innocent passage of foreign ships etc.	7
Part 2—Australian Climate Change Regulatory Authority	8
Division 1—Authority’s establishment, functions, powers and liabilities	8
^10 Australian Climate Change Regulatory Authority	8
^11 Functions of the Authority	8
^12 Powers of the Authority.....	8
^13 Effective administration	9
^14 Authority’s liabilities are Commonwealth liabilities	9
^15 Authority has privileges and immunities of the Crown	9
Division 2—Constitution and membership of the Authority	10
^16 Constitution of the Authority	10
^17 Membership of the Authority	10
^18 Appointment of members of the Authority.....	10
^19 Period of appointment for members of the Authority	11
^20 Acting members of the Authority	11
Division 3—Terms and conditions for members of the Authority	13
^21 Remuneration	13
^22 Disclosure of interests to the Minister	13
^23 Disclosure of interests to the Authority	13
^24 Outside employment.....	14
^25 Leave of absence	14
^26 Resignation.....	15
^27 Termination of appointment	15
^28 Other terms and conditions	15
Division 4—Decision-making by the Authority	16
^29 Holding of meetings	16
^30 Presiding at meetings.....	16

EXPOSURE DRAFT

^31	Quorum.....	16
^32	Voting at meetings etc.	16
^33	Conduct of meetings.....	16
^34	Minutes.....	17
Division 5—Delegation		18
^35	Delegation by the Authority	18
Division 6—Staff of the Authority etc.		19
^36	Staff.....	19
^37	Persons assisting the Authority.....	19
^38	Consultants	19
Division 7—Planning and reporting obligations		20
^39	Corporate plan	20
^40	Annual report.....	20
Division 8—Other matters		22
^41	Minister may give directions to the Authority	22
^42	Chair of the Authority not subject to direction by the Authority on certain matters	22
Part 3—Secrecy		23
^43	Secrecy	23
^44	Disclosure or use for the purposes of this Act or a climate change law	24
^45	Disclosure to the Minister.....	24
^46	Disclosure to the Secretary etc.	24
^47	Disclosure to a Royal Commission.....	25
^48	Disclosure to certain agencies, bodies and persons	25
^49	Disclosure to certain financial bodies	27
^50	Disclosure with consent.....	29
^51	Disclosure of publicly available information.....	29
^52	Disclosure of summaries or statistics.....	29
^53	Delegation	29
Part 4—Miscellaneous		30
^54	Regulations.....	30

EXPOSURE DRAFT

1 **A Bill for an Act to establish the Australian Climate**
2 **Change Regulatory Authority, and for other**
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 ^{^1} **Short title**

8 This Act may be cited as the *Australian Climate Change*
9 *Regulatory Authority Act 2009*.

EXPOSURE DRAFT

Part 1 Preliminary

Section ^2

1 ^2 Commencement

- 2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

6

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections ^1 and ^2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections ^3 to ^54	At the same time as section 3 of the <i>Carbon Pollution Reduction Scheme Act 2009</i> commences.	

- 7 Note: This table relates only to the provisions of this Act as originally
8 passed by both Houses of the Parliament and assented to. It will not be
9 expanded to deal with provisions inserted in this Act after assent.

- 10 (2) Column 3 of the table contains additional information that is not
11 part of this Act. Information in this column may be added to or
12 edited in any published version of this Act.

13 ^3 Simplified outline

14 The following is a simplified outline of this Act:

- 15 • This Act establishes the Australian Climate Change
16 Regulatory Authority.

17 • The Authority has such functions as are conferred on it by:

18 (a) the *Carbon Pollution Reduction Scheme Act 2009*;
19 and

EXPOSURE DRAFT

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| (b) the <i>National Greenhouse and Energy Reporting Act 2007</i> ; and |
| (c) the <i>Renewable Energy (Electricity) Act 2000</i> . |

^4 Definitions

In this Act:

Authority means the Australian Climate Change Regulatory Authority.

Climate Change Convention means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 2 ([1994] ATS 2). In 2009, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

climate change law means any of the following:

- (a) this Act;
- (b) the *Carbon Pollution Reduction Scheme Act 2009*;
- (c) regulations under the *Carbon Pollution Reduction Scheme Act 2009*;
- (d) a determination under subsection 103(1) or (2) of the *Carbon Pollution Reduction Scheme Act 2009*;
- (e) the *National Greenhouse and Energy Reporting Act 2007*;
- (f) regulations under the *National Greenhouse and Energy Reporting Act 2007*;
- (g) the *Renewable Energy (Electricity) Act 2000*;
- (h) regulations under the *Renewable Energy (Electricity) Act 2000*;
- (i) the *Renewable Energy (Electricity) (Charge) Act 2000*.

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973*.

EXPOSURE DRAFT

Part 1 Preliminary

Section ^4

1 ***engage in conduct*** means:

- 2 (a) do an act; or
3 (b) omit to perform an act.

4 ***exclusive economic zone*** has the same meaning as in the *Seas and*
5 *Submerged Lands Act 1973*.

6 ***expert advisory committee*** has the same meaning as in the *Carbon*
7 *Pollution Reduction Scheme Act 2009*.

8 ***foreign country*** includes a region where:

- 9 (a) the region is a colony, territory or protectorate of a foreign
10 country; or
11 (b) the region is part of a foreign country; or
12 (c) the region is under the protection of a foreign country; or
13 (d) a foreign country exercises jurisdiction or control over the
14 region; or
15 (e) a foreign country is responsible for the region's international
16 relations.

17 ***foreign government body*** means:

- 18 (a) the government of a foreign country; or
19 (b) an agency or authority of a foreign country; or
20 (c) the government of part of a foreign country; or
21 (d) an agency or authority of part of a foreign country.

22 ***international climate change body*** means:

- 23 (a) a body established under the Climate Change Convention or
24 the Kyoto Protocol; or
25 (b) a body established by a body mentioned in paragraph (a).

26 ***Kyoto Protocol*** means the Kyoto Protocol to the United Nations
27 Framework Convention on Climate Change done at Kyoto on
28 11 December 1997, as amended and in force for Australia from
29 time to time.

30 Note: The text of the Kyoto Protocol is set out in Australian Treaty Series
31 2008 No. 2 ([2008] ATS 2). In 2009, the text of an international
32 agreement in the Australian Treaty Series was accessible through the
33 Australian Treaties Library on the AustLII website
34 (www.austlii.edu.au).

EXPOSURE DRAFT

1 **member of the Authority** includes the Chair of the Authority.

2 **objectives of the Authority** includes:

- 3 (a) the specific objectives of the Authority in relation to the
4 *Carbon Pollution Reduction Scheme Act 2009* or regulations
5 under that Act; and
6 (b) the specific objectives of the Authority in relation to the
7 *National Greenhouse and Energy Reporting Act 2007* or
8 regulations under that Act; and
9 (c) the specific objectives of the Authority in relation to the
10 *Renewable Energy (Electricity) Act 2000* or regulations under
11 that Act.

12 **official of the Authority** means:

- 13 (a) a member of the Authority; or
14 (b) a member of the staff of the Authority; or
15 (c) a person whose services are made available to the Authority
16 under section ^37; or
17 (d) a person engaged as a consultant under section ^38.

18 **protected information** means information that:

- 19 (a) was obtained after the commencement of this section by a
20 person in the person's capacity as an official of the
21 Authority; and
22 (b) relates to the affairs of a person other than the official of the
23 Authority.

24 **Royal Commission** has the same meaning as in the *Royal*
25 *Commissions Act 1902*.

26 **Secretary** means the Secretary of the Department.

27 **staff of the Authority** means the staff described in section ^36.

28 **State/Territory government body** means:

- 29 (a) the government of a State or Territory; or
30 (b) an agency or authority of a State or Territory.

31 **territorial sea** has the same meaning as in the *Seas and Submerged*
32 *Lands Act 1973*.

EXPOSURE DRAFT

Part 1 Preliminary

Section ^5

1 ***United Nations Convention on the Law of the Sea*** means the
2 United Nations Convention on the Law of the Sea done at Montego
3 Bay on 10 December 1982.

4 Note: The text of the Convention is set out in Australian Treaty Series 1994
5 No. 31 ([1994] ATS 31). In 2009, the text of an international
6 agreement in the Australian Treaty Series was accessible through the
7 Australian Treaties Library on the AustLII website
8 (www.austlii.edu.au).

9 ***vacancy***, in relation to the office of a member of the Authority, has
10 a meaning affected by section ^5.

11 **^5 Vacancy in the office of a member of the Authority**

12 For the purposes of a reference in:

- 13 (a) this Act to a ***vacancy*** in the office of a member of the
14 Authority; or
15 (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the
16 membership of a body;

17 there are taken to be 4 offices of members of the Authority in
18 addition to the Chair of the Authority.

19 **^6 Crown to be bound**

- 20 (1) This Act binds the Crown in each of its capacities.
21 (2) This Act does not make the Crown liable to a pecuniary penalty or
22 to be prosecuted for an offence.
23 (3) The protection in subsection (2) does not apply to an authority of
24 the Crown.

25 **^7 Extension to external Territories**

26 This Act extends to every external Territory.

27 **^8 Extension to exclusive economic zone and continental shelf**

28 This Act extends to a matter relating to the exercise of Australia's
29 sovereign rights in the exclusive economic zone or the continental
30 shelf.

EXPOSURE DRAFT

Preliminary **Part 1**

Section **^9**

1 **^9 Innocent passage of foreign ships etc.**

2 This Act does not apply to the extent that its application would be
3 inconsistent with the exercise of rights of foreign ships in:
4 (a) the territorial sea; or
5 (b) the exclusive economic zone; or
6 (c) waters of the continental shelf;
7 in accordance with the United Nations Convention on the Law of
8 the Sea.

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority

Division 1 Authority's establishment, functions, powers and liabilities

Section ^10

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Part 2—Australian Climate Change Regulatory Authority

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Division 1—Authority's establishment, functions, powers and liabilities

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^10 Australian Climate Change Regulatory Authority

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The Australian Climate Change Regulatory Authority is established by this section.

8

9

Note: In this Act, *Authority* means the Australian Climate Change Regulatory Authority—see section ^4.

10

11

^11 Functions of the Authority

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The Authority has the following functions:

13

(a) such functions as are conferred on the Authority by this Act or a climate change law;

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(b) such functions as are conferred on the Authority by any other law of the Commonwealth;

16

17

(c) to do anything incidental to or conducive to the performance of any of the above functions.

18

19

^12 Powers of the Authority

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(1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

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(2) The powers of the Authority include, but are not limited to, the power to enter into contracts.

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(3) Any contract entered into by the Authority is to be entered into on behalf of the Commonwealth.

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(4) Any real or personal property held by the Authority is held for and on behalf of the Commonwealth.

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EXPOSURE DRAFT

1 (5) Any money received by the Authority is received for and on behalf
2 of the Commonwealth.

3 (6) The Authority cannot hold real or personal property, or money, on
4 trust for a person other than the Commonwealth.

5 Note: The Commonwealth may hold real or personal property or money on
6 trust.

7 (7) To avoid doubt, a right to sue is taken not to be personal property
8 for the purposes of subsection (4).

9 **^13 Effective administration**

10 In performing its functions and exercising its powers, the Authority
11 must strive to administer the laws that confer functions and powers
12 on it:

13 (a) effectively; and

14 (b) with a minimum of procedural requirements.

15 **^14 Authority's liabilities are Commonwealth liabilities**

16 (1) Any financial liabilities of the Authority are taken to be liabilities
17 of the Commonwealth.

18 (2) In this section:

19 *financial liability* means a liability to pay a person an amount,
20 where the amount, or the method for working out the amount, has
21 been determined.

22 **^15 Authority has privileges and immunities of the Crown**

23 The Authority has the privileges and immunities of the Crown in
24 right of the Commonwealth.

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority
Division 2 Constitution and membership of the Authority

Section [^]16

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2 **Division 2—Constitution and membership of the Authority**

3 **[^]16 Constitution of the Authority**

- 4 (1) The Authority:
- 5 (a) is a body corporate with perpetual succession; and
- 6 (b) must have a seal; and
- 7 (c) may acquire, hold and dispose of real and personal property;
- 8 and
- 9 (d) may sue and be sued in its corporate name.
- 10 (2) The seal of the Authority is to be kept in such custody as the
- 11 Authority directs and must not be used except as authorised by the
- 12 Authority.
- 13 (3) All courts, judges and persons acting judicially must:
- 14 (a) take judicial notice of the imprint of the seal of the Authority
- 15 appearing on a document; and
- 16 (b) presume that the document was duly sealed.

17 **[^]17 Membership of the Authority**

- 18 The Authority consists of the following members:
- 19 (a) a Chair;
- 20 (b) at least 2, and not more than 4, other members.

21 **[^]18 Appointment of members of the Authority**

- 22 (1) Each member of the Authority is to be appointed by the Minister
- 23 by written instrument.
- 24 Note: The member of the Authority is eligible for reappointment: see
- 25 subsection 33(4A) of the *Acts Interpretation Act 1901*.
- 26 (2) A person is not eligible for appointment as a member of the
- 27 Authority unless the Minister is satisfied that the person has:
- 28 (a) substantial experience or knowledge; and
- 29 (b) significant standing;
- 30 in at least one of the following fields:

EXPOSURE DRAFT

- 1 (c) economics;
- 2 (d) industry;
- 3 (e) energy production and supply;
- 4 (f) energy measurement and reporting;
- 5 (g) greenhouse gas emissions measurement and reporting;
- 6 (h) greenhouse gas abatement measures;
- 7 (i) financial markets;
- 8 (j) trading of environmental instruments.

9 (3) The Chair of the Authority holds office on a full-time basis.

10 (4) A member of the Authority (other than the Chair) may hold office
11 on either a full-time or a part-time basis.

12 **^19 Period of appointment for members of the Authority**

13 A member of the Authority holds office for the period specified in
14 the instrument of appointment. The period must not exceed 5 years.

15 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*
16 *Act 1901*.

17 **^20 Acting members of the Authority**

18 *Acting Chair of the Authority*

19 (1) The Minister may appoint a person to act as the Chair of the
20 Authority:

- 21 (a) during a vacancy in the office of the Chair of the Authority
22 (whether or not an appointment has previously been made to
23 the office); or
- 24 (b) during any period, or during all periods, when the Chair of
25 the Authority:
 - 26 (i) is absent from duty or Australia; or
 - 27 (ii) is, for any reason, unable to perform the duties of the
28 office.

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority

Division 2 Constitution and membership of the Authority

Section ^20

- 1 *Acting member of the Authority (other than the Chair of the*
2 *Authority)*
- 3 (2) The Minister may appoint a person to act as a member of the
4 Authority (other than the Chair of the Authority):
- 5 (a) during a vacancy in the office of a member of the Authority
6 (other than the Chair of the Authority), whether or not an
7 appointment has previously been made to the office; or
- 8 (b) during any period, or during all periods, when a member of
9 the Authority (other than the Chair of the Authority):
- 10 (i) is absent from duty or Australia; or
11 (ii) is, for any reason, unable to perform the duties of the
12 office.

13 *Eligibility*

- 14 (3) A person is not eligible for appointment to act as:
- 15 (a) the Chair of the Authority; or
16 (b) a member of the Authority (other than the Chair of the
17 Authority);
- 18 unless the person is eligible for appointment as a member of the
19 Authority.

20 Note: See subsection ^18(2).

21 *Validation*

- 22 (4) Anything done by or in relation to a person purporting to act under
23 an appointment is not invalid merely because:
- 24 (a) the occasion for the appointment had not arisen; or
25 (b) there was a defect or irregularity in connection with the
26 appointment; or
27 (c) the appointment had ceased to have effect; or
28 (d) the occasion to act had not arisen or had ceased.

29 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

EXPOSURE DRAFT

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2 **Division 3—Terms and conditions for members of the**
3 **Authority**

4 **[^]21 Remuneration**

5 (1) A member of the Authority is to be paid the remuneration that is
6 determined by the Remuneration Tribunal. If no determination of
7 that remuneration by the Tribunal is in operation, a member of the
8 Authority is to be paid the remuneration that is prescribed by the
9 regulations.

10 (2) A member of the Authority is to be paid the allowances that are
11 prescribed by the regulations.

12 (3) This section has effect subject to the *Remuneration Tribunal Act*
13 *1973*.

14 **[^]22 Disclosure of interests to the Minister**

15 A member of the Authority must give written notice to the Minister
16 of all interests, pecuniary or otherwise, that the member has or
17 acquires and that conflict or could conflict with the proper
18 performance of the member's functions.

19 **[^]23 Disclosure of interests to the Authority**

20 (1) A member of the Authority who has an interest, pecuniary or
21 otherwise, in a matter being considered or about to be considered
22 by the Authority must disclose the nature of the interest to a
23 meeting of the Authority.

24 (2) The disclosure must be made as soon as possible after the relevant
25 facts have come to the knowledge of the member of the Authority.

26 (3) The disclosure must be recorded in the minutes of the meeting of
27 the Authority.

28 (4) Unless the Authority otherwise determines, the member of the
29 Authority:

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority

Division 3 Terms and conditions for members of the Authority

Section ^24

- 1 (a) must not be present during any deliberation by the Authority
2 on the matter; and
3 (b) must not take part in any decision of the Authority with
4 respect to the matter.
- 5 (5) For the purposes of making a determination under subsection (4),
6 the member of the Authority:
7 (a) must not be present during any deliberation of the Authority
8 for the purpose of making the determination; and
9 (b) must not take part in making the determination.
- 10 (6) A determination under subsection (4) must be recorded in the
11 minutes of the meeting of the Authority.

12 **^24 Outside employment**

- 13 (1) A full-time member of the Authority must not engage in paid
14 employment outside the duties of his or her office without the
15 Minister's approval.
- 16 (2) A part-time member of the Authority must not engage in any paid
17 employment that conflicts or may conflict with the proper
18 performance of his or her duties.

19 **^25 Leave of absence**

- 20 (1) A full-time member of the Authority has the recreation leave
21 entitlements that are determined by the Remuneration Tribunal.
- 22 (2) The Minister may grant leave of absence, other than recreation
23 leave, to a full-time member of the Authority on the terms and
24 conditions as to remuneration or otherwise that the Minister
25 determines.
- 26 (3) The Chair of the Authority may grant leave of absence to a
27 part-time member of the Authority on the terms and conditions that
28 the Chair determines.

EXPOSURE DRAFT

1 [^]26 **Resignation**

- 2 (1) A member of the Authority may resign his or her appointment by
3 giving the Minister a written resignation.
- 4 (2) The resignation takes effect on the day it is received by the
5 Minister or, if a later day is specified in the resignation, on that
6 later day.

7 [^]27 **Termination of appointment**

- 8 (1) The Minister may terminate the appointment of a member of the
9 Authority for misbehaviour or physical or mental incapacity.
- 10 (2) The Minister may terminate the appointment of a member of the
11 Authority if:
- 12 (a) the member:
- 13 (i) becomes bankrupt; or
- 14 (ii) applies to take the benefit of any law for the relief of
15 bankrupt or insolvent debtors; or
- 16 (iii) compounds with his or her creditors; or
- 17 (iv) makes an assignment of his or her remuneration for the
18 benefit of his or her creditors; or
- 19 (b) if the member is a full-time member—the member engages,
20 except with the Minister’s approval, in paid employment
21 outside the duties of his or her office (see section [^]24); or
- 22 (c) if the member is a part-time member—the member engages
23 in paid employment that conflicts or may conflict with the
24 proper performance of his or her duties (see section [^]24); or
- 25 (d) the member fails, without reasonable excuse, to comply with
26 section [^]22 or [^]23; or
- 27 (e) the member is absent, except on leave of absence, from 3
28 consecutive meetings of the Authority.

29 [^]28 **Other terms and conditions**

30 A member of the Authority holds office on the terms and
31 conditions (if any) in relation to matters not covered by this Act
32 that are determined by the Minister.

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority

Division 4 Decision-making by the Authority

Section ^29

1

2 **Division 4—Decision-making by the Authority**

3 **^29 Holding of meetings**

- 4 (1) The Authority is to hold such meetings as are necessary for the
5 performance of its functions.
- 6 (2) The Chair of the Authority may convene a meeting at any time.

7 **^30 Presiding at meetings**

- 8 (1) The Chair of the Authority presides at all meetings at which he or
9 she is present.
- 10 (2) If the Chair of the Authority is not present at a meeting, the
11 members of the Authority present must appoint one of themselves
12 to preside.

13 **^31 Quorum**

14 At a meeting of the Authority, 2 members of the Authority
15 constitute a quorum.

16 **^32 Voting at meetings etc.**

- 17 (1) At a meeting of the Authority, a question is decided by a majority
18 of the votes of members of the Authority present and voting.
- 19 (2) The person presiding at a meeting has a deliberative vote and, in
20 the event of an equality of votes, also has a casting vote.

21 **^33 Conduct of meetings**

22 The Authority may, subject to this Division, regulate proceedings
23 at its meetings as it considers appropriate.

24 Note: Section 33B of the *Acts Interpretation Act 1901* provides for
25 participation in meetings by telephone etc.

EXPOSURE DRAFT

Australian Climate Change Regulatory Authority **Part 2**

Decision-making by the Authority **Division 4**

Section [^]34

1 **[^]34 Minutes**

2 The Authority must keep minutes of its meetings.

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority

Division 5 Delegation

Section ^35

1

2 **Division 5—Delegation**

3 **^35 Delegation by the Authority**

4 (1) The Authority may, by writing, delegate any or all of its functions
5 and powers to:

6 (a) a member of the Authority; or

7 (b) a person who is:

8 (i) a member of the staff of the Authority; and

9 (ii) an SES employee or acting SES employee.

10 Note: The expressions *SES employee* and *acting SES employee* are defined
11 in section 17AA of the *Acts Interpretation Act 1901*.

12 (2) A delegate must comply with any written directions of the
13 Authority.

14 (3) Subsection (1) does not apply to:

15 (a) a power to make, vary or revoke a legislative instrument; or

16 (b) a power conferred by section 186 of the *Carbon Pollution*
17 *Reduction Scheme Act 2009*.

18 Note: Section 186 of the *Carbon Pollution Reduction Scheme Act 2009* deals
19 with windfall gain declarations.

EXPOSURE DRAFT

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2 **Division 6—Staff of the Authority etc.**

3 **^{^36} Staff**

4 (1) The staff of the Authority are to be persons engaged under the
5 *Public Service Act 1999*.

6 (2) For the purposes of the *Public Service Act 1999*:

7 (a) the Chair of the Authority and the staff of the Authority
8 together constitute a Statutory Agency; and

9 (b) the Chair of the Authority is the Head of that Statutory
10 Agency.

11 **^{^37} Persons assisting the Authority**

12 The Authority may also be assisted:

13 (a) by officers and employees of Agencies (within the meaning
14 of the *Public Service Act 1999*); or

15 (b) by officers and employees of authorities of the
16 Commonwealth; or

17 (c) by officers and employees of a State or Territory; or

18 (d) by officers and employees of authorities of a State or
19 Territory;

20 whose services are made available to the Authority in connection
21 with the performance of any of its functions.

22 **^{^38} Consultants**

23 (1) The Authority may engage persons having suitable qualifications
24 and experience as consultants to the Authority.

25 (2) The consultants are to be engaged on the terms and conditions that
26 the Authority determines in writing.

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority

Division 7 Planning and reporting obligations

Section ^39

1

2 **Division 7—Planning and reporting obligations**

3 **^39 Corporate plan**

- 4 (1) The Authority must prepare a corporate plan at least once each
5 3-year period and give it to the Minister.
- 6 (2) The plan must cover a 3-year period.
- 7 (3) The plan must include details of the following matters:
8 (a) the objectives of the Authority;
9 (b) the strategies and policies that are to be followed by the
10 Authority in order to achieve those objectives;
11 (c) such other matters (if any) as the Minister requires.
- 12 (4) The Chair of the Authority must keep the Minister informed about:
13 (a) changes to the plan; and
14 (b) matters that might significantly affect the achievement of the
15 objectives set out in the plan.
- 16 (5) The Minister may give the Chair of the Authority written
17 guidelines that are to be used by the Chair in deciding whether a
18 matter is covered by paragraph (3)(c) or (4)(b).
- 19 (6) A guideline given under subsection (5) is not a legislative
20 instrument.
- 21 (7) The Authority must ensure that the first corporate plan is prepared
22 within 12 months after the commencement of this section.

23 **^40 Annual report**

- 24 (1) The Authority must, as soon as practicable after the end of each
25 financial year, prepare and give to the Minister, for presentation to
26 the Parliament, a report on its operations during that year.
- 27 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
28 contains extra rules about annual reports.
- 29 (2) A report under subsection (1) for a financial year must set out:

EXPOSURE DRAFT

- 1 (a) a description of the objectives of the Authority; and
2 (b) an assessment of the extent to which the Authority's
3 operations during that year have achieved those objectives.
- 4 (3) An assessment under paragraph (2)(b) must be made against
5 performance indicators set out in the report.
- 6 (4) A report under subsection (1) is in addition to a report under
7 section 105 of the *Renewable Energy (Electricity) Act 2000*.
- 8 (5) If a report under section 105 of the *Renewable Energy (Electricity)*
9 *Act 2000* relating to a calendar year (the **REE report**) has been
10 presented to the Parliament, the report under subsection (1) of this
11 section for the financial year ending on 30 June after the end of the
12 calendar year:
13 (a) need not deal comprehensively with the working of that Act
14 during so much of the financial year as overlaps the calendar
15 year; and
16 (b) must include a summary of the REE report, to the extent to
17 which the REE report deals with the working of the
18 *Renewable Energy (Electricity) Act 2000* during so much of
19 the financial year as overlaps the calendar year.
- 20 (6) If this section does not commence at the start of a financial year,
21 the period:
22 (a) beginning at the commencement of this section; and
23 (b) ending at the end of 30 June after that commencement;
24 is taken, for the purposes of this section, to be a financial year.

EXPOSURE DRAFT

Part 2 Australian Climate Change Regulatory Authority

Division 8 Other matters

Section ^41

1

2 **Division 8—Other matters**

3 **^41 Minister may give directions to the Authority**

4 (1) The Minister may, by legislative instrument, give directions to the
5 Authority in relation to the performance of its functions and the
6 exercise of its powers.

7 Note: For variation and revocation, see subsection 33(3) of the *Acts*
8 *Interpretation Act 1901*.

9 (2) A direction under subsection (1) must be of a general nature only.

10 (3) The Authority must comply with a direction under subsection (1).

11 **^42 Chair of the Authority not subject to direction by the Authority**
12 **on certain matters**

13 To avoid doubt, the Chair of the Authority is not subject to
14 direction by the Authority in relation to the Chair's performance of
15 functions, or exercise of powers, under:

16 (a) the *Financial Management and Accountability Act 1997*; or

17 (b) the *Public Service Act 1999*;

18 in relation to the Authority.

1

2

Part 3—Secrecy

3

4

^{^43} Secrecy

5

(1) A person commits an offence if:

6

(a) the person is, or has been, an official of the Authority; and

7

(b) the person has obtained protected information in the person's capacity as an official of the Authority; and

8

(c) the person:

9

10

(i) discloses the information to another person; or

11

(ii) uses the information.

12

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

13

Exceptions

14

(2) Each of the following is an exception to the prohibition in subsection (1):

15

16

(a) the disclosure or use is authorised by section ^{^44}, ^{^45}, ^{^46}, ^{^47}, ^{^48}, ^{^49}, ^{^50}, ^{^51} or ^{^52};

17

18

(b) the disclosure or use is in compliance with a requirement under:

19

20

(i) a law of the Commonwealth; or

21

(ii) a prescribed law of a State or a Territory.

22

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

23

24

(3) Except where it is necessary to do so for the purposes of giving effect to this Act or a climate change law, an official of the Authority is not to be required:

25

26

27

(a) to produce to a court or tribunal a document containing protected information; or

28

29

(b) to disclose protected information to a court or tribunal.

EXPOSURE DRAFT

Part 3 Secrecy

Section ^44

1 **^44 Disclosure or use for the purposes of this Act or a climate**
2 **change law**

3 An official of the Authority may disclose or use protected
4 information if:

- 5 (a) the disclosure or use is for the purposes of this Act or a
6 climate change law; or
7 (b) the disclosure or use is for the purposes of the performance of
8 the functions of the Authority under this Act or a climate
9 change law; or
10 (c) the disclosure or use is otherwise in connection with the
11 performance of the official's duties under this Act or a
12 climate change law; or
13 (d) the disclosure or use is in connection with giving another
14 official of the Authority access to information for the
15 purposes of, or in connection with:
16 (i) the performance of the functions of the Authority under
17 this Act or a climate change law; or
18 (ii) the performance of the duties of the other official of the
19 Authority under this Act or a climate change law.

20 **^45 Disclosure to the Minister**

21 An official of the Authority may disclose protected information to
22 the Minister.

23 **^46 Disclosure to the Secretary etc.**

24 An official of the Authority may disclose protected information to:

- 25 (a) the Secretary; or
26 (b) an officer of the Department who is authorised by the
27 Secretary, in writing, for the purposes of this subsection;
28 if the disclosure is for the purposes of:
29 (c) advising the Minister; or
30 (d) facilitating the monitoring of Australia's compliance with its
31 international obligations under:
32 (i) the Climate Change Convention; or
33 (ii) the Kyoto Protocol.

1 **^47 Disclosure to a Royal Commission**

- 2 (1) An official of the Authority may disclose protected information to
3 a Royal Commission.
- 4 (2) The Chair of the Authority may, by writing, impose conditions to
5 be complied with in relation to protected information disclosed
6 under subsection (1).
- 7 (3) An instrument under subsection (2) is not a legislative instrument.

8 **^48 Disclosure to certain agencies, bodies and persons**

9 *Scope*

- 10 (1) This section applies if the Chair of the Authority is satisfied that
11 particular protected information will enable or assist any of the
12 following agencies, bodies or persons:
- 13 (a) the Australian Bureau of Statistics;
14 (b) the Australian Communications and Media Authority;
15 (c) the Australian Competition and Consumer Commission;
16 (d) the Australian Prudential Regulation Authority;
17 (e) the Australian Securities and Investments Commission;
18 (f) the National Competition Council;
19 (g) the Productivity Commission;
20 (h) an agency within the meaning of the *Freedom of Information*
21 *Act 1982*;
22 (i) the Australian Energy Regulator;
23 (j) the Australian Statistician;
24 (k) the Commissioner of Taxation;
25 (l) the Australian Competition Tribunal;
26 (m) the Director of Public Prosecutions;
27 (n) the Australian Transaction Reports and Analysis Centre;
28 (o) the Reserve Bank of Australia;
29 (p) an expert advisory committee;
30 (q) a State/Territory government body;
31 (r) a foreign government body;
32 (s) an international climate change body;

EXPOSURE DRAFT

Part 3 Secrecy

Section ^48

- 1 (t) a prescribed professional disciplinary body;
2 to perform or exercise any of the functions or powers of the
3 agency, body or person.

4 *Disclosure*

- 5 (2) If an official of the Authority is authorised by the Chair of the
6 Authority, in writing, for the purposes of this section, the official
7 may disclose that protected information to the agency, body or
8 person concerned.
- 9 (3) The Chair of the Authority may, by writing, impose conditions to
10 be complied with in relation to protected information disclosed
11 under subsection (2).
- 12 (4) An instrument under subsection (3) is not a legislative instrument.

13 *Prescribed professional disciplinary bodies*

- 14 (5) A person commits an offence if:
15 (a) the person is:
16 (i) a prescribed professional disciplinary body; or
17 (ii) a member of a prescribed professional disciplinary
18 body; and
19 (b) protected information has been disclosed under
20 subsection (2) to the body; and
21 (c) the person:
22 (i) discloses the information to another person; or
23 (ii) uses the information.

24 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

25 *Exceptions*

- 26 (6) Each of the following is an exception to the prohibition in
27 subsection (5):
28 (a) the disclosure or use is for the purpose of deciding whether or
29 not to take disciplinary or other action;
30 (b) the disclosure or use is for the purpose of taking that action.

1 Note: A defendant bears an evidential burden in relation to a matter in
2 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

3 **^49 Disclosure to certain financial bodies**

4 *Scope*

- 5 (1) This section applies if the Chair of the Authority is satisfied that
6 particular protected information will enable or assist a body
7 corporate that:
8 (a) either:
9 (i) conducts, or is involved in the supervision of, a
10 financial market; or
11 (ii) is a body corporate that holds an Australian CS facility
12 licence; and
13 (b) is specified in the regulations;
14 to monitor compliance with, enforce, or perform functions or
15 exercise powers under:
16 (c) the *Corporations Act 2001*; or
17 (d) the business law of a State or Territory; or
18 (e) the business law of a foreign country; or
19 (f) the operating rules (if any) of the body corporate.

20 *Disclosure*

- 21 (2) If an official of the Authority is authorised by the Chair of the
22 Authority, in writing, for the purposes of this section, the official
23 may disclose that protected information to the body corporate.

24 *Conditions*

- 25 (3) The Chair of the Authority may, by writing, impose conditions to
26 be complied with by the body corporate and its officers, employees
27 and agents in relation to protected information disclosed to the
28 body corporate under subsection (2).
- 29 (4) A person commits an offence if:
30 (a) the person is subject to a condition under subsection (3); and
31 (b) the person engages in conduct; and

EXPOSURE DRAFT

Part 3 Secrecy

Section ^49

- 1 (c) the person's conduct breaches the condition.
- 2 Penalty: Imprisonment for 2 years or 120 penalty units, or both.
- 3 (5) An instrument under subsection (3) is not a legislative instrument.
- 4 *Secondary disclosure and use*
- 5 (6) A person commits an offence if:
- 6 (a) the person is:
- 7 (i) a body corporate; or
- 8 (ii) an officer, employee or agent of a body corporate; and
- 9 (b) protected information has been disclosed under
- 10 subsection (2) to the body corporate; and
- 11 (c) the person:
- 12 (i) discloses the information to another person; or
- 13 (ii) uses the information.
- 14 Penalty: Imprisonment for 2 years or 120 penalty units, or both.
- 15 *Exceptions*
- 16 (7) Each of the following is an exception to the prohibition in
- 17 subsection (6):
- 18 (a) the disclosure or use is with the consent of the Chair of the
- 19 Authority;
- 20 (b) the disclosure or use is for the purpose of monitoring
- 21 compliance with, enforcing, or performing functions or
- 22 exercising powers under:
- 23 (i) the *Corporations Act 2001*; or
- 24 (ii) the business law of a State or Territory; or
- 25 (iii) the business law of a foreign country; or
- 26 (iv) the operating rules (if any) of the body corporate.
- 27 Note: A defendant bears an evidential burden in relation to a matter in
- 28 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).
- 29 *Meaning of expressions*
- 30 (8) In this section, the following expressions have the same meanings
- 31 as in the *Corporations Act 2001*:
-

- 1 (a) *Australian CS facility licence*;
2 (b) *financial market*;
3 (c) *officer*;
4 (d) *operating rules*.

5 **^50 Disclosure with consent**

6 An official of the Authority may disclose protected information
7 that relates to the affairs of a person if:

- 8 (a) the person has consented to the disclosure; and
9 (b) the disclosure is in accordance with that consent.

10 **^51 Disclosure of publicly available information**

11 An official of the Authority may disclose protected information if
12 it is already publicly available.

13 **^52 Disclosure of summaries or statistics**

14 An official of the Authority may disclose:

- 15 (a) summaries of protected information; or
16 (b) statistics derived from protected information;

17 if those summaries or statistics, as the case may be, are not likely
18 to enable the identification of a person.

19 **^53 Delegation**

- 20 (1) The Chair of the Authority may, by writing, delegate any or all of
21 his or her functions and powers under this Part to a member of the
22 Authority.
23 (2) A delegate must comply with any written directions of the Chair of
24 the Authority.

EXPOSURE DRAFT

Part 4 Miscellaneous

Section ^54

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2

Part 4—Miscellaneous

3

4

^54 Regulations

5

The Governor-General may make regulations prescribing matters:

6

(a) required or permitted by this Act to be prescribed; or

7

(b) necessary or convenient to be prescribed for carrying out or

8

giving effect to this Act.