

Chapter 5

The rise and cost of the green bureaucracy

Introduction

5.1 This chapter of the report outlines the rise of a new green bureaucracy to oversee the administration of the carbon tax and other aspects of the government's Clean Energy Future legislative program.

5.2 This chapter:

- shines a light on the costs to the Commonwealth Budget of the green regulators and agencies;
- highlights the truncated process of consultation regarding the regulators and agencies; and
- puts into sharp focus the growth in the green bureaucracy.

5.3 In the event that the relevant legislation to give effect to the regulators is passed by the parliament, the committee recommends careful scrutiny of the regulators and the potential impact that a specific regulator, the Clean Energy Finance Corporation (CEFC), could have on the Commonwealth Budget.

The regulatory structure

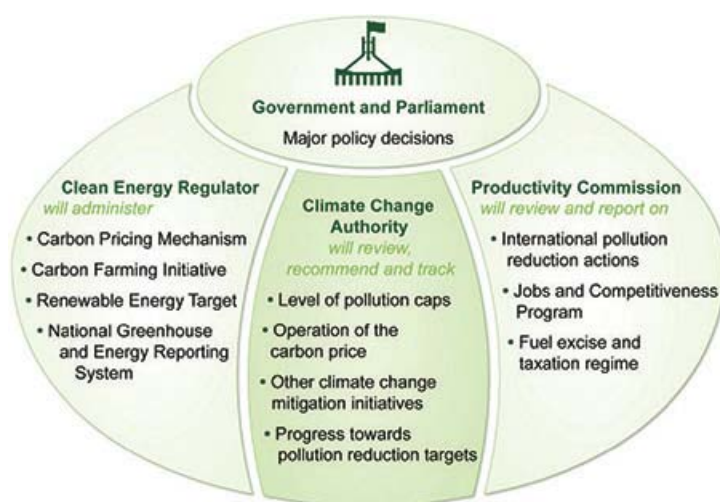
5.4 The governance structure for the scheme is set out in the graphic below. The Australian Government and the Minister for Climate Change and Energy Efficiency are responsible for setting the overall policy direction for climate change.

5.5 The Climate Change Authority (CCA) will recommend pollution caps and oversee the operation of the flexible carbon permit trading market. It will be staffed by around 45 employees, including commissioners.¹ The Clean Energy Regulator (CER) will administer the scheme that enables the trading of permits. It will be resourced by 330 staff.² These agencies are in the process of being established with staff and other resources being marshalled to establish these entities.

5.6 The Productivity Commission will conduct ad hoc reviews into climate change matters at the direction of the government and will review the compensation provided under the scheme but not the direct spending on, for example, the CEFC. As a result, significant Commonwealth expenditure will not be subject to periodic, independent scrutiny. The Productivity Commission is already established and the CEFC is yet to be established - there is, as yet, no bill to create that agency.

1 Mr Blair Comley, Secretary of the Department of Climate Change and Energy Efficiency, *Estimates Hansard*, 17 October 2011, p. 3.

2 Mr Blair Comley, Department of Climate Change and Energy Efficiency, *Estimates Hansard*, 17 October 2011, p. 3.

Graphic 5.1: Governance arrangements for the carbon tax³

Issues

5.7 The Energy Supply Association of Australia raised concerns about the scope of the Clean Energy Regulator's information-gathering and monitoring powers, including that they should be contained to circumstances where the CER has a reasonable belief that breach or non-compliance has occurred.⁴ These concerns express similar views to those raised in the press at the time the bills were exposed in draft by the Shadow Environment Minister, the Hon. Greg Hunt MP.⁵

5.8 The Explanatory Memorandum for the Clean Energy Bill 2011 states:

The Regulator has broad powers to gather information to let it monitor compliance with the mechanism, investigate possible contraventions and, where necessary, take enforcement action. These powers reflect the nature of the mechanism, under which liable entities must actively comply with its requirements, as well as avoid contravening the law.⁶

5.9 While the Joint Committee '...is satisfied that the scope of the Clean Energy Regulator's powers is appropriate given its role in promoting compliance with the mechanism and in ensuring its ongoing integrity and security',⁷ this committee wants such regulatory powers subject to scrutiny in the future to ensure their proper administration.

3 The graphic is from the Australian Government, *Clean Energy Future Plan*, Chapter Three – Putting a price on carbon (Figure 3.3), <http://www.cleanenergyfuture.gov.au/clean-energy-future/securing-a-clean-energy-future/#content04>, (accessed 10 July 2011). The content is identical to that contained in the Clean Energy Bill 2011, *Explanatory Memorandum*, p. 13.

4 Energy Supply Association of Australia, *Submission 1 to the Joint Select Committee*, p. 3.

5 Greg Hunt MP, 'Real power to go to carbon cops', *Herald Sun*, 22 August 2011 <http://www.greghunt.com.au/Pages/Article.aspx?ID=2156> (accessed 18 October 2011).

6 Clean Energy Bill 2011, *Explanatory Memorandum*, p. 218.

7 Joint Select Committee on Australia's Clean Energy Future Legislation (October 2011), *Advisory Report on the Clean Energy Bills and the Steel Transformation Bill 2011*, p. 96.

Other agencies

5.10 In addition to the establishment of the regulators referred to above, other agencies will also be getting involved in the implementation of the government's Clean Energy Plan - the CEFC and the Australian Renewable Energy Agency (ARENA).

Clean Energy Finance Corporation

5.11 The role of the CEFC will be to invest in the commercialisation and deployment of renewable energy, energy efficiency and low-emissions technology. It has allocated funding under the Clean Energy Plan of \$10 billion over five years from 2013-14.⁸ This is amongst the largest single cost item of the Clean Energy Future Plan.

5.12 The CEFC was subject to inquiry during the course of the committee's public hearings. The corporation is a part of the regulatory architecture for the overall carbon tax scheme but despite this its exact status remains unclear with it possibly being part of the Treasury Portfolio or the Finance and Deregulation Portfolio.⁹ It is not yet established.¹⁰

5.13 The reason for the inability of the government to determine which Minister will have responsibility for the CEFC opens the way for speculation about whether disagreements between Ministers or departmental secretaries are driving the delay.

5.14 The rationale given by the Gillard Government for a public sector organisation competing with private businesses in the provisions of loans is that:

- Recipients of commercial loans provided by the CEFC are expected to be charged an interest rate comparable to that offered by lenders in the private sector.
- The objective of the CEFC is to remove market barriers that would otherwise hinder the financing of large-scale clean energy and renewable projects. That is, the CEFC will operate in the 'market gap', encouraging projects that wouldn't otherwise proceed by providing an alternative source of debt or equity to underpin a project's financial viability.¹¹

5.15 While the CEFC will be providing a variety of loans, some of which are to be non-commercial, this inevitably gives rise to concerns about the fiscal impact of such organisations on the Commonwealth Budget:

8 Australian Government, *Clean Energy Future - Securing a clean energy future: The Australian Government's Climate Change Plan*, p. 121.

9 Senator Mathias Cormann, Chair of the Senate Select Committee on the Scrutiny of New Taxes and Mrs Luise McCulloch, Department of the Treasury, *Committee Hansard*, 10 August 2010, p. 8.

10 Mr Stein Helgeby, Deputy Secretary, Financial Management Group, Department of Finance and Deregulation, *Estimates Hansard*, 18 October 2011, p. 27.

11 Treasury, reply to Question on Notice taken at the public hearing on 10 August 2011.

- The fiscal impact of \$944 million across the forward estimates reflects the net impact of revenue and expenses excluding public debt interest costs. Departmental expense is equal to \$60 million over the forward estimates.
- Over half is explained by the expense associated with concessional loans and the remainder is largely explained by the allowance that is made for defaults.
- The funding provided to the CEFC will impact on gross debt. To the extent that the CEFC acquires offsetting debt-like assets, such as loans, there will be a lesser impact on net debt.
- Treasury expects that taxpayers will, over time, receive interest and dividends. That is, taxpayers will get a positive return on the investment.¹²

5.16 Many of the government's claims about the rationale for the CEFC and about its fiscal impact seem to be mutually contradictory.

5.17 The inevitable concern with a government-owned financing corporation providing funds to industry is the age-old issue of picking winners. During the 1980s various state governments were engaged in this practice, with the electorates across Western Australia, South Australia and Victoria left to pick up the pieces.

5.18 To the extent that picking winners is unsuccessful, there will be an impact on the Commonwealth Budget. The extent of that impact is a 'thorny issue'. At present:

There are some issues that we [the Department of Finance and Deregulation] are working through which go to transparency and accountability which are really around how to classify the entity and how to classify the transactions – essentially how to account for what it does. We are working through that with the ABS [Australian Bureau of Statistics], with ANAO [Australian National Audit Office], with Treasury and within Finance to understand the entity and understand the kinds of activities it will undertake.¹³

5.19 The Department of Finance and Deregulation explained the matter further:

Whilst the Clean Energy Finance Corporation is in the general government sector, the key issue is the activities that it undertakes are the essential thing in determining whether those activities hit the budget bottom line or not. If you look at the Clean Energy Future program, you will note that we allocated the costs from the Clean Energy Finance Corporation to the budget bottom line. The corporation is being set up to provide loans to commercial operations. In the vast majority of cases we anticipate that will be so, so the impact on the budget bottom line does not occur. We have, however, said that in some proportion of those activities of the corporation there may be an impact on the bottom line of the budget, and we have taken

12 Treasury, reply to Question on Notice taken at the public hearing on 10 August 2011.

13 Mr Stein Helgeby, Deputy Secretary, Department of Finance and Deregulation, *Estimates Hansard*, 18 October 2011, p. 27.

that into account in the numbers that were incorporated in the release that was put out on the Clean Energy Future package.¹⁴

5.20 The test for the impact on the Commonwealth Budget is as follows:

If an entity in the general government sector is undertaking investments to achieve a return, then they do not impact on the budget bottom line, according to the accounting standards.

To the extent to which the Clean Energy Finance Corporation is undertaking investments, and that is the government's policy, then the majority of its activities will not impact on the budget bottom line. However, as announced in the policy, there are effectively two streams of its investments: one is for renewable energy and the other is for clean energy. On the renewable energy side, which is an emerging set of technologies, we have made an allowance of 15 per cent of those investments being deemed ultimately as grants, which would impact on the budget bottom line.

Effectively, 50 per cent of the activities of the entity will be in renewable energy investments, of which 15 per cent are assumed as grants because it is an emerging technology, and there may be some investments that do not achieve a particular return.¹⁵

5.21 In these circumstances the total cost of the CEFC program is \$10 billion over five years, with \$2 billion being spent annually. Of that, \$1 billion per year is for activities related to renewable energy and it is this part of the expenditure that is likely to be non-commercial and hit the Commonwealth Budget. The value of that impact is, according to the Department of Finance and Deregulation, 15 per cent of that \$1 billion. That is a \$150 million per year hit to the Budget under the CEFC.

Australian Renewable Energy Agency

5.22 ARENA will be a statutory authority, set up to provide funds for research, development and commercialisation of renewable energy technologies. It will incorporate a number of existing programs, such as the Australian Centre for Renewable Energy, the Australian Solar Institute and the Australian Biofuels Research Institute. It is projected to be revenue neutral, as it will utilise \$3.2 billion of funding already allocated to those programs over nine years. Future funding for ARENA will also come from dividends paid by the CEFC.¹⁶

5.23 ARENA is located within the portfolio of the Department of Resources, Energy and Tourism.

14 Mr David Tune, Secretary of the Department of Finance and Deregulation, *Estimates Hansard*, 18 October 2011, p. 73.

15 Mr David Martine, Deputy Secretary, Budget Group, Department of Finance and Deregulation, *Estimates Hansard*, 18 October 2011, pp 72 – 73.

16 Australian Government, *Clean Energy Future - Securing a clean energy future: The Australian Government's Climate Change Plan*, p. 122.

5.24 In the context of ARENA, on 13 October 2011, the Senate referred the provisions of the Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Bill 2011 and the Australian Renewable Energy Agency Bill 2011 to the Senate Environment and Communications Committee for inquiry and report. Submissions were to be received by 20 October 2011. The reporting date is 7 November 2011.

5.25 Given the important role of ARENA, that is, its oversight of \$3.2 billion, it is surprising that such a tight reporting timeline was applied to the process of scrutinising the Bills.

5.26 The ARENA Bills were not part of the government's Clean Energy Future Legislative Program that was introduced into the Parliament on 13 September 2011.¹⁷

Other regulators

5.27 In addition to the climate change regulators and other agencies outlined above, several other regulators will also be involved in the new regime and these are outlined below.

Australian Competition and Consumer Commission

5.28 The government announced on 13 July 2011 that the Australian Competition and Consumer Commission (ACCC) would be policing claims by businesses that could mislead consumers into believing that price rises had occurred due to the carbon tax when this was not the case.

5.29 The funding for the ACCC to undertake this activity is:

...\$12.8 million over four years to the ACCC and those funds will go towards the establishment of a dedicated team which will involve more than 20 staff and their activities will be directed towards enforcement and towards education of businesses and consumers.¹⁸

5.30 This measure was not included as a cost in the government's Clean Energy Plan announced on 10 July 2011.

Finance sector and criminal justice regulators

5.31 Under the government's Clean Energy Future Legislative Package, the Australian Securities and Investments Commission (ASIC) will also have a role in the emissions trading scheme. As emissions units will be permits and will be defined as financial products, ASIC will have responsibility for the regulation of related carbon

17 Source: <http://www.aph.gov.au/house/committee/jspacefl/bills.htm> (accessed 18 October 2011).

18 Joint Press Conference with the Hon. David Bradbury MP, Parliamentary Secretary to the Treasurer and Mr Peter Kell, Deputy Chair of the Australian Competition and Consumer Commission and Member of Enforcement Committee, Press Conference – Melbourne, 13 July 2011.
<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=transcripts/2011/103.htm&pageID=004&min=wms&Year=&DocType> (accessed 13 July 2011).

permit trading markets.¹⁹ At this time, there are no publicly available costings for ASIC which will undertake this important role.

5.32 The Clean Energy Regulator will also have powers to work with the Australian Transaction Reports and Analysis Centre, the Australian Federal Police and the Commonwealth Director of Public Prosecutions regarding fraud and criminal activity that could be involved with the permits. As highlighted in chapter 3, there is considerable risk around of fraud around permits and this highlights the need for well resourced regulators to act to ensure the integrity of the permits.

5.33 The Clean Energy Regulator will also have powers to work with the Australian Transaction Reports and Analysis Centre, the Australian Federal Police and the Commonwealth Director of Public Prosecutions regarding fraud and criminal activity that could be involved with the permits²⁰.

19 Clean Energy Bill 2011, *Explanatory Memorandum*, p. 38.

20 Clean Energy Bill 2011, *Explanatory Memorandum*, p.38

The cost of the regulators

5.34 The table below provides an overview of the costs of the green regulators and agencies:

Table 5.1: The cost of green regulators and agencies

	Clean Energy Regulator (\$m) ²¹	Climate Change Authority (\$m) ²²	Productivity Commission Reviews (\$m) ²³	Clean Energy Finance Corporation (\$m) ²⁴	Australian Renewable Energy Agency (\$m)	Australian Competition and Consumer Commission (\$m) ²⁵	Australian Securities and Investment Commission (\$m)
2011-12	-68	0	-4	-60	Yet to be disclosed.	-12.8	Yet to be disclosed.
2012-13	-68	-6	-4		Yet to be disclosed.		Yet to be disclosed.
2013-14	-61	-9	-5		Yet to be disclosed.		Yet to be disclosed.
2014-15	-59	-9	-5		Yet to be disclosed.		Yet to be disclosed.
Totals	-256	-25	-18	-60	Yet to be disclosed.	-12.8	Yet to be disclosed.

A deficient consultation process

5.35 The Clean Energy Plan legislative package comprises 19 bills constituting more than 1 100 pages of new legislation. Yet even these 19 bills are already known not to constitute the entire legislative package proposed by the government. The ARENA Bills were introduced into the parliament separately and the CEFC Bill has not yet been introduced.

5.36 Many stakeholders have expressed concern and dismay at the timelines provided to participate in the Joint Committee on Australia's Clean Energy Future and make a meaningful contribution:

AMEC also expresses its complete dissatisfaction in the manner in which this step-change legislation has been introduced. The timelines throughout

21 Clean Energy Bill 2011, *Explanatory Memorandum*, p. 41.

22 Clean Energy Bill 2011, *Explanatory Memorandum*, p. 41.

23 Clean Energy Bill 2011, *Explanatory Memorandum*, p. 41.

24 Treasury, reply to Question on Notice taken at the public hearing on 10 August 2011.

25 Joint Press Conference with the Hon. David Bradbury MP, Parliamentary Secretary to the Treasurer and Mr Peter Kell, Deputy Chair of the Australian Competition and Consumer Commission and Member of Enforcement Committee, Press Conference – Melbourne, 13 July 2011.

<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=transcripts/2011/103.htm&pageID=004&min=wms&Year=&DocType> (accessed 13 July 2011).

the legislative consultation process have been extremely short, which has not allowed AMEC and its members any reasonable time to properly consider the finer detail of the legislation.²⁶

BFVG is also disappointed in the amount of time granted (six days including a weekend) by Government to provide submissions in regards to the proposed suite of legislation (approximately 1100 pages) under the banner of Carbon Tax. BFVG would have thought that such an important suite of legislation deserved a longer time to enable both industries affected and the general community to provide in-depth submissions and encourage worthwhile debate.²⁷

5.37 As mentioned earlier, the Clean Energy Future legislative plan is not the entire suite of legislation that will give effect to the government's plan. ARENA and the CEFC were not part of the suite of 19 Bills introduced into the Parliament on 13 September 2011. The concern about the process also extended to groups supportive of the government's reform program. Below is an excerpt from a media release from the group Climate Action Newtown – 100% Renewable Campaign:

The 100% Renewable Energy campaign has today welcomed the introduction of the carbon price bills in parliament, but questioned the reasons for the delay on the Clean Energy Finance Corporation and Australian Renewable Energy Agency bills.

“The bills that deliver more renewable energy for Australia are the real clean energy bills. If the government is hoping to win community support for the carbon tax these are the bills that need to be front and centre in parliament,” said Lindsay Soutar, 100% Renewable Campaign Co-ordinator.

The parliamentary timetable announced by the government yesterday did not include the renewable energy bills to institute the Clean Energy Finance Corporation and Australian Renewable Energy Agency. It is unclear when these bills will be introduced into the parliament.

“While we welcome the introduction of the carbon price bills, we think the government’s decision to delay the bills for the two new renewable energy agencies is the wrong one.

...

"Renewable energy is something we know the Australian people support – it's the most popular part of the package - so why delay it?"²⁸

26 Association of Mining and Exploration Companies, *Submission 8 to the Joint Select Committee*, p. 3.

27 Bundaberg Fruit & Vegetable Growers, *Submission 10 to the Joint Select Committee*, p. 3.

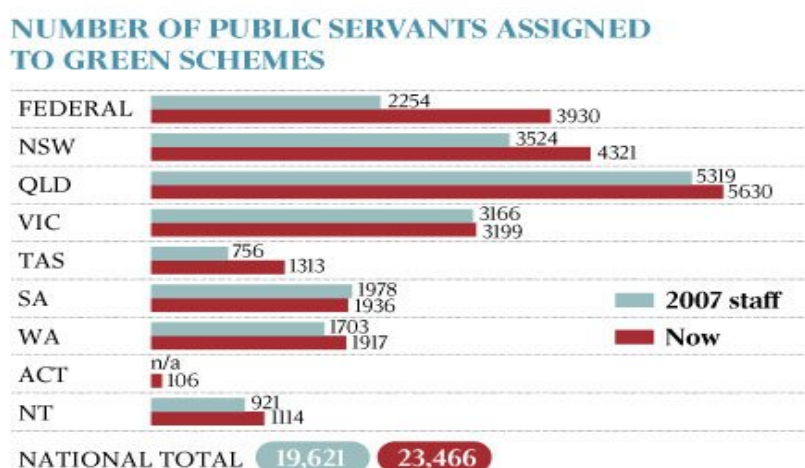
28 Source: <http://100percent.org.au/blogs/media-release-pass-real-clean-energy-bills-now-says-100-renewable-energy> (accessed 18 October 2011).

Rise of the green machine

5.38 Since coming to office in 2007, the Rudd and Gillard Government's have overseen a rapid and sharp rise in the number of officials engaged in policy advising and regulating matters pertaining to the environment.

5.39 The table below provides a national snapshot of the rise of the 'green machine'. As the table below highlights, the number of green bureaucrats has risen from 19 621 in 2007 to 23 466 in 2011. That is around 1 000 new staff per year since 2007.

Graphic 5.2: Number of public servants assigned to green schemes, across Australia²⁹



5.40 The federal green workforce has risen by more than 75 per cent since 2007.³⁰ It has risen from 2 254 in 2007 to 3 930 in 2011. This growth in the green workforce equates to a workforce of around 4 000 permanent staff. To this 4 000 staff, there is a need to add another 345 for the CER and the CCA. Further growth can be expected once ARENA and the CEFC are more developed.

5.41 According to the Chief Executive of the Australian Industry Group, Ms Heather Ridout, '[t]he growing green bureaucracy is a concern for our members'.³¹

29 Natasha Bitá, 'Green public sector on the rise', *The Australian*, <http://www.theaustralian.com.au/national-affairs/green-public-sector-on-the-rise/story-fn59niix-1226095589075> (accessed 18 October 2011).

30 Natasha Bitá, 'Green public sector on the rise', *The Australian*, <http://www.theaustralian.com.au/national-affairs/green-public-sector-on-the-rise/story-fn59niix-1226095589075> (accessed 18 October 2011).

31 Natasha Bitá, 'Green public sector on the rise', *The Australian*, <http://www.theaustralian.com.au/national-affairs/green-public-sector-on-the-rise/story-fn59niix-1226095589075> (accessed 18 October 2011).

Committee comment

5.42 The committee notes the ever-expanding green bureaucracy and the potential fiscal risk posed by an agency such as the CEFC. In addition, the regulators will acquire powers to undertake their tasks and while they will most likely attempt to act judicially, the committee recommends that the Senate review the conduct of the green regulators – the Climate Change Authority and the Clean Energy Regulator.

Recommendation 6

If the Clean Energy Future legislative package is passed by the Parliament, the committee recommends that the Senate review the conduct of the relevant regulators.

Recommendation 7

If the Clean Energy Future legislative package is passed by the Parliament, the committee recommends that the Senate review the cost to the Budget of the Clean Energy Finance Corporation and the Australian Renewable Energy Agency given that between them they will be responsible for \$13 billion of expenditure.

