

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLIMATE CHANGE AUTHORITY BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Climate Change
and Energy Efficiency, the Honourable Greg Combet AM MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Authority	Climate Change Authority
Carbon pricing mechanism	The Clean Energy Plan as embodied in the <i>Clean Energy Bill 2011</i> and associated provisions
CEO	Chief Executive Officer
Consequential amendments bill	<i>Clean Energy (Consequential Amendments) Bill 2011</i>
Department	Department of Climate Change and Energy Efficiency
Main bill	<i>Clean Energy Bill 2011</i>
Regulator	Clean Energy Regulator

General outline and financial impact

The 2011 Clean Energy Legislative Package

The Climate Change Authority Bill 2011 is part of the Clean Energy Legislative Package, which sets up the carbon pricing mechanism (the mechanism) as part of the Government's climate change plan, as set out in *Securing a clean energy future: the Australian Government's climate change plan*.

The full policy context and background to the mechanism is set out in the explanatory memorandum for the Clean Energy Bill 2011. A description of the bills which will introduce the mechanism is set out below.

Table I: The Clean Energy Bill 2011 and related bills

Main bill	<p>The Clean Energy Bill 2011 (the main bill) creates the mechanism. It sets out the structure of and process for introducing the mechanism. These include:</p> <ul style="list-style-type: none">• entities and emissions that are covered by the mechanism;• liable entities' obligation to surrender emissions units corresponding to their emissions;• limits on the number of emissions units that will be issued;• the nature of carbon units;• allocation of carbon units, including by auction and the issue of free units;• mechanisms to contain costs, including the fixed charge period and price floors and ceilings;• linking to other emissions trading schemes;• assistance in relation to emissions-intensive trade-exposed activities and coal-fired electricity generators; and• monitoring and enforcement.
Statutory bodies	<p>The Clean Energy Regulator Bill 2011 sets up the Clean Energy Regulator, which is a statutory authority that will administer the mechanism and enforce the law.</p> <p>The responsibilities of the Regulator include:</p> <ul style="list-style-type: none">• providing education on the mechanism, particularly about the administrative arrangements of the mechanism;• assessing emissions data to determine each entity's

	<p>liability;</p> <ul style="list-style-type: none"> • operating the Registry; • monitoring, facilitating and enforcing compliance with the mechanism; • allocating permits including freely allocated permits, fixed price permits and auctioned permits; • applying legislative rules to determine if a particular entity is eligible for assistance in the form of permits to be allocated administratively, and the number of other permits to be allocated; • administering the National Greenhouse and Energy Reporting System (NGERS), the Renewable Energy Target and the Carbon Farming Initiative (CFI); and • accrediting auditors for the CFI and NGERS.
	<p>The Climate Change Authority Bill 2011 sets up the Climate Change Authority, which will be an independent body that provides the Government expert advice on key aspects of the mechanism and the Government’s climate change mitigation initiatives.</p> <p>The Government will remain responsible for carbon pricing policy decisions.</p> <p>This Bill also sets up the Land Carbon and Biodiversity Board which will advise on key initiatives in the land sector.</p>
<p>Consequential amendments</p>	<p>The Clean Energy (Consequential Amendments) Bill 2011 (the consequential amendments bill) makes consequential amendments to ensure:</p> <ul style="list-style-type: none"> • the National Greenhouse and Energy Reporting System (NGERS) supports the mechanism; • the Australian National Registry of Emissions Units covers the mechanism and the Carbon Farming Initiative (CFI); • the Regulator covers the mechanism, CFI, the Renewable Energy Target and NGERS; • the Regulator and Authority are set up as statutory agencies and regulated by public accountability and financial management rules; • that emissions units and their trading are covered by laws on financial services and regulated by ASIC; • that activities related to emissions trading are covered by laws on money laundering and fraud; • synthetic greenhouse gases are subject to an equivalent carbon price applied through existing regulation of those substances; • the Regulator can work with other regulatory bodies, including Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Australian Transaction Reporting and Analysis Centre (Austrac);

	<ul style="list-style-type: none"> the taxation treatment of emissions units for the purposes of GST and income tax is clear; and the Conservation Tillage Refundable Tax Offset is established.
Technical bills	<p>Those elements of the mechanism which oblige a person to pay money are implemented through separate bills that comply with the requirements of section 55 of the <i>Constitution</i>.</p> <p>These bills are the Clean Energy (Unit Shortfall Charge—General) Bill 2011, the Clean Energy (Unit Issue Charge—Auctions) Bill 2011, the Clean Energy (Unit Issue Charge—Fixed Charge) Bill 2011, the Clean Energy (Charges—Customs) Bill 2011, the Clean Energy (Charges—Excise) Bill 2011, the Clean Energy (International Unit Surrender Charge) Bill 2011, the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011 and the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011.</p>
Related bills	<p>Other elements of the Government’s Climate Change Plan are being implemented through other legislation. These are:</p> <ul style="list-style-type: none"> the Clean Energy (Excise Tariff Legislation Amendment) Bill 2011 and the Clean Energy (Customs Tariff Amendment) Bill 2011, which impose an effective carbon price on transport fuels (other than those used by households and in light commercial vehicles) through excise and customs tariffs; the Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, which reduces the business fuel tax credit entitlement of non-exempted industries for their use of liquid and gaseous transport fuels, in order to provide an effective carbon price on business through the fuel tax system; and the Clean Energy Amendment (Household Assistance Amendments) Bill 2011, Clean Energy (Tax Laws Amendments) Bill 2011 and the Clean Energy (Income Tax Rates Amendments) Bill 2011, which will implement the household assistance measures announced by the Government on 10 July 2011. These bills amend relevant legislation to provide payment increases for pensioners, allowees and family payment recipients and provide income tax cuts and establish new supplements for low- and middle-income households.

The bill needs to be read in the context, in particular, of the main bill.

Climate Change Authority Bill 2011

The Climate Change Authority Bill 2011 establishes the Climate Change Authority which will be responsible for the conduct and completion of major reviews of the carbon pricing mechanism, the Renewable Energy Target Scheme, the Carbon Farming Initiative, the National Greenhouse and Energy Reporting System and other special reviews as requested by the Minister or by both Houses of Parliament.

It also establishes the Land Sector Carbon and Biodiversity Board which will be responsible for advising Government on key performance indicators and the implementation of particular land sector measures associated with climate change and undertaken by the Government's Biodiversity Fund.

Date of effect: Upon Royal Assent. Provisions dealing with the Climate Change Authority commence on 1 July 2012. Provisions dealing with the Land Sector Carbon and Biodiversity Board commence on a day to be fixed by Proclamation no earlier than the day after Royal Assent to the proposed *Clean Energy Act 2011* but within six months of that date.

Proposal announced: The measures are based on the positions included in the Government's announcement on 10 July 2011.

Financial impact: The financial impact is addressed in the explanatory memorandum for the main bill.

Regulation impact statement: The Regulation Impact Statement for the mechanism is available at <http://ris.finance.gov.au>. The RIS was prepared by the Department of Climate Change and Energy Efficiency and has been assessed as adequate by the Office of Best Practice Regulation.

Chapter 1

Climate Change Authority

Outline of chapter

1.1 The explanatory memorandum describes the Authority's functions and powers, membership, planning and reporting obligations.

Context of amendments

One of a Package of Bills

1.2 The Climate Change Authority Bill 2011 is part of the package of bills that establish the Clean Energy Plan.

1.3 Other key bills in that package are the:

- Clean Energy Bill 2011 (the main bill)
- Clean Energy (Consequential Amendments) Bill 2011 (the consequential amendments bill)
- Clean Energy Regulator Bill 2011.

1.4 The bill needs to be read in the context, in particular, of the first two bills mentioned above:

- the main bill contains the detail concerning the carbon pricing mechanism and empowers the Authority to conduct particular reviews;
- the consequential amendments bill amends the *National Greenhouse and Energy Reporting Act 2007*, the *Carbon Credits (Carbon Farming Initiative) Act 2011*, and the *Renewable Energy (Electricity) Act 2000* to empower the Authority to conduct reviews in relation to the schemes embodied in those Acts.

Authority's responsibilities

1.5 The Authority will perform a number of functions. It will:

- provide recommendations to the Government on future pollution caps;
- in doing so, make recommendations on the indicative national trajectory and emissions budget, having regard to the

long-term target set by the Government and estimates of the global emissions budget;

- provide independent advice to the Government on the progress that is being made to reduce Australia's emissions to meet national targets, any indicative national trajectory or budget;
- conduct regular reviews of, and make recommendations on, the carbon pricing mechanism (household assistance and the Jobs and Competitiveness Program will be reviewed separately);
- conduct reviews of and make recommendations on the National Greenhouse and Energy Reporting system, the Renewable Energy Target and the Carbon Farming Initiative;
- make recommendations to the Government on whether a robust methodology could be developed to recognise additional voluntary action by households;
- provide advice to Government on the role of the price floor and price ceiling beyond the first three years of the flexible price phase;
- conduct reviews and make recommendations on other matters as requested by the Minister for Climate Change and Energy Efficiency or the Parliament; and
- conduct or commission its own independent research and analysis into climate change and other matters relevant to its functions.

1.6 The Authority will engage with representatives interested in climate change from across Australia in order to share research and information on climate change and gain input into its analysis.

1.7 The Authority is required to undertake public consultation when completing its reviews and must publish all of its reports on its website.

1.8 The Government's intention is to establish an independent Authority to conduct reviews and provide advice to Government. The Authority will be required to take a number of specified factors into account but is not subject to Government direction in relation to the contents of its review reports.

Authority to provide independent advice

1.9 The intention to establish an independent Authority is reflected in a number of elements in the bill, including the limited scope for Ministerial directions to the Authority, and the limited grounds on which a member of the Authority may be removed from office.

1.10 The independent Authority is to be set up as a separate body corporate to highlight the independence of its activities, although to maximise administrative efficiency it will be able to utilise Government resources as appropriate.

1.11 The presence of the Chief Scientist as an *ex officio* member of the Authority is not intended to diminish its independence in the conduct of the reviews.

Summary of new law

1.12 The bill establishes the Authority, a body corporate comprising a Chair and eight other members. One of these eight members is the Chief Scientist. The Authority will be supported by a secretariat.

1.13 The primary functions of the Authority are to conduct reviews of the Clean Energy Act, the Renewable Energy Target Scheme, the Carbon Farming Initiative, the National Greenhouse and Energy Reporting System, and other special reviews as requested by the Minister.

1.14 There is to be a Chief Executive Officer (CEO) of the Authority who is responsible for the day-to-day administration of the Authority. For the purposes of the *Public Service Act 1999*, the CEO is the head of a statutory agency and can employ Australian Public Sector employees on behalf of the Commonwealth.

1.15 In order to ensure proper use and management of public money, public property and other Commonwealth resources, the Authority will be bound by the *Financial Management and Accountability Act 1997*.

1.16 The Authority will be required to produce a corporate plan setting out the Authority's objectives and the strategies and policies that are to be used to achieve those objectives.

1.17 The Authority will also be required to produce an annual report, which will be tabled in Parliament.

1.18 As with other bodies where a significant degree of independence is required, such as the Productivity Commission, the Authority is subject to Ministerial direction on general matters only.

1.19 The Minister may only terminate an appointment (other than the Chief Scientist) to the Authority on narrow grounds, including for misbehaviour, physical or mental incapacity or repeated absence from meetings of the Authority.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Independent Authority established to review the carbon pricing mechanism, the Renewable Energy Target Scheme, the Carbon Farming Initiative, and the National Greenhouse and Energy Reporting System	Renewable Energy Target reviewed biennially by a person, with appropriate qualifications, appointed by the Minister.
	There are currently no legislative provisions dealing with review of the National Greenhouse and Energy Reporting System.
	Minister to cause review of the Carbon Farming Initiative to be conducted every three years, with first report to be tabled by 31 December 2014.

Detailed explanation of new law

Establishment of Authority

1.20 The bill establishes the Authority. *[Part 2, Division 1, clause 10]*

Nature of the Authority

1.21 The Authority is a body corporate, comprising a Chair and eight other members. One of these eight members is the Chief Scientist. *[Part 2, Division 2, clause 16]* *[Part 2, Division 2, clause 17]* The Chief Scientist position is currently not a position established by legislation. This reference is intended to cover the person appointed by the Government in this capacity, including through legislation if the position is set up on that basis in the future.

1.22 Associate Members may be appointed for the purposes of conducting specific reviews. While there is no limit on the total number of Associate Members, no more than one associate member may be appointed per review. *[Part 2, Division 2, clause 22]*

1.23 Reflecting its status as an independent body, the Authority is subject to Ministerial direction of a general nature only. *[Part 2, Division 8, clause 57]* A Ministerial direction cannot relate to the conduct of a particular review or the content of a report of a particular review. The policy intention of this provision is to ensure that the Authority is accountable to the Minister and acts consistently with broad Commonwealth Government policy, whilst not empowering the Minister to provide directions or otherwise intervene in regard to either the conduct or content of particular reviews.

1.24 A Ministerial direction to the Authority has the status of a legislative instrument. [Part 2, Division 8, clause 57(1)] This promotes transparency, as it means any direction must be tabled in Parliament and incorporated into the Federal Register of Legislative Instruments. In line with the usual provisions for Ministerial directions, the directions are not disallowable (*Legislative Instruments Act 2003*, section 44(2), Item 41).

1.25 While the Authority is to be independent from specific direction by Government, its nature as a government Authority is recognised through a number of provisions. In particular:

- contracts entered into by the Authority are entered into on behalf of the Commonwealth [Part 2, Division 1, clause 13(3)]
- any real or personal property held by the Authority is held for and on behalf of the Commonwealth [Part 2, Division 1, clause 13(4)]
- any money received by the Authority is received for and on behalf of the Commonwealth [Part 2, Division 1, clause 13(5)]
- any financial liabilities of the Authority are taken to be liabilities of the Commonwealth [Part 2, Division 1, clause 14]
- the Authority has the privileges and immunities of the Crown in right of the Commonwealth [Part 2, Division 1, clause 15]
- the Authority will be subject to the *Financial Management and Accountability Act 1997*, which provides for the proper use and management of public money, public property and other Commonwealth resources. (This will be achieved through the consequential amendments bill rather than through this bill).

Functions of Authority

1.26 The Authority has the following functions:

- to conduct reviews under:
 - Part 22 of the *Clean Energy Act 2011*
 - proposed sections 76A and 76B of the *National Greenhouse and Energy Reporting Act 2007*
 - section 306 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*
 - section 162 of the *Renewable Energy (Electricity) Act 2000*
 - Part 3 of this proposed Act.

- if requested to do so by the Minister, to assist the Minister in preparing the Commonwealth Government’s response to recommendations set out in a report of such a review
- conduct research about matters relating to climate change and for purposes in connection with the performance of any of the Authority’s functions
- such other functions as are conferred on the Authority by this proposed Act
- such functions as are conferred on the Authority by any other law of the Commonwealth
- to do anything incidental to or conducive to the performance of any of the above functions.

[Part 2, Division 1, clause 11]

1.27 The following table summarises the reviews to be conducted by the Authority as referred to above.

Table 1.1: Summary of reviews to be conducted by the Authority

<i>Act</i>	<i>Summary of reviews</i>
<i>Clean Energy Act</i>	<ul style="list-style-type: none"> • Must conduct periodic reviews of certain matters relating to the carbon pricing mechanism. <ul style="list-style-type: none"> – The first review must be completed before the end of 31 December 2016. – The second review must be completed before the end of 31 December 2018. – Subsequent reviews will be conducted within 5 years of the previous deadline. • Must conduct a review recommending to the Government the level of the pollution caps and the indicative national emissions trajectory and carbon budget. <ul style="list-style-type: none"> – The first such review is to be completed by 28 February 2014, the second by 28 February 2016 and subsequent reviews annually by 28 February. • Must conduct a review reporting on progress towards meeting Australia’s emissions reduction targets and national carbon budget. <ul style="list-style-type: none"> – The first review is to be completed by 28 February 2014 and subsequent reviews are to be completed annually.

<i>Act</i>	<i>Summary of reviews</i>
	<ul style="list-style-type: none"> • In addition to the reviews specifically provided for, the Authority is to conduct reviews of matters that: <ul style="list-style-type: none"> – are specified by the Minister and – relate to the carbon pricing mechanism.
<p><i>National Greenhouse and Energy Reporting Act 2007</i> (as amended by the consequential amendments bill)</p>	<ul style="list-style-type: none"> • Must conduct periodic reviews of the operation of the <i>National Greenhouse and Energy Reporting Act 2007</i> and legislative instruments under this Act. • The first review must be completed before 31 December 2018 and not before 30 June 2016. • The second review will be undertaken by 31 December 2023. • All subsequent reviews will be completed within five years of the last review and may be undertaken and reported as part of the reviews of the carbon pricing mechanism.
<p><i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> (as amended by the consequential amendments bill)</p>	<ul style="list-style-type: none"> • Must conduct periodic reviews of the operation of the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> and legislative instruments under this Act. • The first review must be completed before the end of 31 December 2014. • Subsequent reviews will be conducted at 3 yearly intervals.
<p><i>Renewable Energy (Electricity) Act 2000</i> (as amended by the consequential amendments bill)</p>	<ul style="list-style-type: none"> • Must conduct periodic reviews of certain matters relating to the operation of the <i>Renewable Energy (Electricity) Act 2000</i>. • The first review must be conducted as soon as practicable after 30 June 2012. • Subsequent reviews will be conducted at 2 yearly intervals.
<p>This proposed Act</p>	<ul style="list-style-type: none"> • Must conduct special reviews of such matters as specified by the Minister, or by both Houses of Parliament by resolution, that relate to climate change and are covered by any of the legislative powers of the Parliament or the executive power of the Commonwealth.

1.28 Provisions relating to the conduct of these reviews (except for the reviews of matters relating to climate change in this bill), including requirements for public consultation, publication, and Government

response requirements, are contained in the main bill and the consequential bill.

1.29 In performing its functions, the Authority must have regard to certain principles which are expressly outlined in the bill, as well as other matters which it considers relevant. The principles in the bill are that any measures to respond to climate change should:

- be economically efficient, environmentally effective, equitable and in the public interest; and
- take account of the impact on households, workers, business and communities; and
- support the development of an effective global response to climate change; and
- be consistent with Australia's foreign policy and trade objectives.

[Part 2, Division 1, clause 12]

1.30 The term 'economically efficient' is intended to refer to measures which are cost-effective and support informed and efficient investment decisions. Costs of pollution reduction to the economy as a whole should be minimised and measures should be consistent with Australia's broader economic reform agenda. By ensuring actions to respond to climate change are economically efficient, the long-term competitiveness of Australian industry can be maintained while greater emissions reductions are achieved.

1.31 The concept of 'environmentally effective' includes consideration that measures are to be informed by the science and able to achieve Australia's environmental objectives. It is also essential that the measurement of emissions, sequestration and abatement has scientific integrity to deliver an environmentally effective outcome. This would include appropriate consideration of the precautionary principle.

1.32 Equity and fairness should be considered in the development, implementation and review of climate change policies. The application of climate change mitigation policy may have differential impacts across socio-economic groups, regions, market participants or sectors of the economy. Intergenerational equity is also an important consideration in assessing the fairness of adjustment cost. Consideration of the equity of measures will involve ensuring that those most needing help to adjust are assisted fairly and in a well targeted manner. Perverse outcomes should be avoided. Equity will also be an important prism through which the Authority should consider the impact on households, business and communities.

1.33 The concept of the public interest is an important principle to consider at all times, including, for instance, when the Authority is

considering how much weight to place on different and possibly competing objectives.

1.34 Impact on households, workers, businesses, and communities would be expected to encompass both economic and social impacts at a range of levels, including nationally, regionally and locally, and the need for effective structural adjustment initiatives and transitional arrangements. In considering the impact on households, low income or vulnerable households should be protected.

1.35 On an international level, it is important for the Authority's work to seek to support momentum for an effective global response to climate change, while being consistent with Australia's international obligations, trade objectives and foreign policy.

Powers of the Authority

1.36 The bill provides the Authority with the general power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions. *[Part 2, Division 1, clause 13(1)]*

1.37 The bill also provides that the Authority may enter into contracts. *[Part 2, Division 1, clause 13(2)]* This would allow the Authority to, for example, engage consultants or enter into contracts for premises and equipment.

Exercise of functions and powers

1.38 The Authority may, by writing, delegate functions and powers to:

- the CEO or
- a member or associate member of the Authority or
- a member of the staff of the Authority who is a Senior Executive Service or Acting Senior Executive Service employee, or an Executive Level 2 officer in the Australian Public Service or
- a Senior Executive Service or Acting Senior Executive Service employee, or an Executive Level 2 officer in the Australian Public Service in the Department assisting the Authority under section 40 of the Act. *[Part 2, Division 5, clause 40(1)]*

1.39 A delegate must comply with any written directions of the Authority. *[Part 2, Division 5, clause 40(2)]*

1.40 The Authority, however, must not delegate a function or power to an associate member unless the function or power relates to a matter connected with:

- the review specified in the associate member's instrument of appointment; or
- assisting the Minister to prepare the Government's response to recommendations set out in a report of the review specified in the associate member's instrument of appointment. *[Part 2, Division 5, clause 40(3)]*

Membership of the Authority

Appointment of members and associate members

1.41 The Minister is responsible for appointing members and associate members of the Authority. *[Part 2, Division 2, clause 18(1)] [Part 2, Division 2, clause 22(1)]*

Ex officio members

1.42 The Chief Scientist is an ex officio member of the Authority. *[Part 2, Division 2, clause 17]* It is intended that the Chief Scientist, by virtue of their position and relevant expertise, will assist the Authority in performing its functions at the highest possible quality. The presence of the Chief Scientist is not intended to affect the independence of the Authority with regard to particular reviews. It is expected the Chief Scientist will assist the Authority in having general regard to scientific matters and in providing access to the scientific community.

Number of members

1.43 The Authority will comprise of nine members, consisting of the Chair, the Chief Scientist and seven other members. *[Part 2, Division 2, clause 17]*

Term of membership

1.44 The Chair and members and associate members may hold office on either a full-time or part-time basis. *[Part 2, Division 2, clause 18(3)] [Part 2, Division 2, clause 22(5)]* The Chief Scientist holds their position on a part-time basis. *[Part 2, Division 2, clause 18(4)]* However, the Act prevents a member from also holding office as CEO unless that member is the full-time Chair. *[Part 2, Division 2, clause 18(5) and (6)]*

1.45 All members (other than the Chief Scientist) are to be appointed for a period of up to five years. *[Part 2, Division 2, clause 19]*

Associate members

1.46 As the Authority may be required to conduct a number of concurrent reviews, the bill provides that the Minister may appoint associate members. This allows the Authority's membership to be augmented through additional high quality specialist expertise for the purposes of particular reviews. *[Part 2, Division 2, clause 22(1)]*

1.47 An associate member's instrument of appointment must contain a statement to the effect that the associate member's appointment relates to a specified review. *[Part 2, Division 2, clause 22(6)]* The Minister must ensure that not more than one associate member is appointed for a particular review. *[Part 2, Division 2, clause 22(7)]*

1.48 An associate member holds office from the time specified in their instrument of appointment until the completion of the review or some period, no longer than 180 days, following the completion of the review, as specified in the associate member's instrument of appointment. The effect of this provision is to allow the Minister to appoint associate members for up to 180 days following the completion of a review, so that they can, if required, contribute to the Authority's work in assisting the Minister in preparing Government responses to reviews for which they have been appointed. *[Part 2, Division 2, clause 23]*

Expertise of members and Associate members

1.49 Before appointing a member (other than the Chief Scientist) or an associate member, the Minister must be satisfied that the member or associate member has substantial experience or knowledge, and significant standing in, at least one of the following fields:

- climate science
- economics (including environmental economics)
- industry
- social policy
- technology development and adoption
- employment policy
- energy production and supply
- greenhouse gas emissions measurement and reporting
- greenhouse gas abatement measures
- financial markets and investment
- trading of environmental instruments
- land resource management
- environmental management
- public administration.

[Part 2, Division 2, clause 18(2)]

1.50 This list reflects the wide range of skills and expertise necessary for the Authority to perform its functions at the highest possible level. As the Authority is not a regulator and performs a special advisory role to the Government, this list differs from the relevant fields of knowledge

required of Regulator members. For instance, the list includes ‘climate science’ which will be a highly relevant field of knowledge for the Authority in performing its functions.

1.51 In order to ensure proper use and management of public money, public property and other Commonwealth resources, the Authority will be subject to the *Financial Management and Accountability Act 1997*. The CEO will perform functions and exercise powers relating to public administration as the Chief Executive under this legislation. The CEO is the head of a Statutory Agency for the purposes of the *Public Service Act 1999* and the staff of the Authority are to be persons engaged under that Act. [Part 2, Division 7, clause 52] The CEO will be expected to direct these staff in their duties.

Acting positions

1.52 The bill anticipates that the Chair, a member or an associate member of the Authority may be unable to perform the duties of the office from time to time, such as when absent from Australia. The Minister can appoint an acting Chair, acting member, or acting associate member (as appropriate) in such circumstances. A person can only be appointed by the Minister in an acting position if they would be eligible for appointment for the position in which the person is acting. [Part 2, Division 2, clause 20] [Part 2, Division 2, clause 24] Section 33AB of the *Acts Interpretation Act 1901*, to commence later in 2011, provides that nothing done or purported to be done by, or in relation to, an acting member or acting associate member is invalid by virtue of the circumstances for the acting appointment not having arisen or having ceased.

1.53 The bill also provides that the Chief Scientist may appoint a Senior Executive Service employee to be his or her deputy for the purposes of attendance at one or more specified meetings of the Authority. A deputy of the Chief Scientist is entitled to attend and participate at a meeting of the Authority when the Chief Scientist is absent. A deputy is not entitled to any additional remuneration or allowances for attending a meeting of the Authority. [Part 2, Division 2, clause 21]

Terms and conditions for members and associate members

Remuneration and entitlements of members and associate members

1.54 Members (other than the Chief Scientist) and associate members of the Authority are to be paid at a rate determined by the Remuneration Tribunal, the independent tribunal established under the *Remuneration Tribunal Act 1973* to handle the remuneration of key Commonwealth officers. Where no determination has been made by the Tribunal, members (other than associate members) are paid at the rate prescribed in regulations. [Part 2, Division 3, clause 25(1)]

1.55 A full-time member and full-time associate member of the Authority have the recreation leave entitlements determined by the Remuneration Tribunal, and may be granted additional leave (other than recreation leave) by the Minister. *[Part 2, Division 3, clause 29(1) and 29(2)]*

1.56 The Chair of the Authority may grant leave of absence to a part-time member (other than the Chief Scientist) on terms and conditions decided by the Chair. *[Part 2, Division 3, clause 29(3)]* (It is not possible for recreation leave for part-time members to be set by the Remuneration Tribunal, as the Remuneration Tribunal Act only authorises determinations for full-time members of bodies like the Authority: *Remuneration Tribunal Act 1973*, section 7(3AA)).

Resignation and Termination

1.57 A member (other than the Chief Scientist) or associate member may resign by giving the Minister a written resignation. *[Part 2, Division 3, clause 30(1)]*

1.58 The Minister may only terminate an appointment of a member (other than the Chief Scientist) or associate member on narrow grounds, including for misbehaviour, physical or mental incapacity, bankruptcy, engagement in outside paid employment in certain circumstances, failure to disclose conflicts of interest or repeated absence from meetings of the Authority. *[Part 2, Division 3, clause 31]*

1.59 In the event that any terms and conditions of employment (other than for the Chief Scientist) need to be specified and are not already dealt with in the bill, the Minister may make a determination on those matters. *[Part 2, Division 3, clause 32]*

Decision-making by the Authority

1.60 The bill is not prescriptive as to how the Authority should make decisions. Subject to some minimum requirements, the Authority can regulate proceedings at its meetings as it sees appropriate. *[Part 2, Division 4, clause 38]*

1.61 These minimum requirements are:

- the Authority should hold such meetings as are necessary for the performance of its functions *[Part 2, Division 4, clause 33]*
- the Chair presides at all meetings at which he or she is present *[Part 2, Division 4, clause 34(1)]*
- if the Chair is not present, the other members present must appoint one of themselves to preside *[Part 2, Division 4, clause 34(2)]*
- five members constitute a quorum *[Part 2, Division 4, clause 35]*
- associate members are entitled to attend and participate in meetings considering matters connected with the review for

which they were appointed (including assisting the Minister to prepare the Government's response to any such review) [Part 2, Division 4, clause 36]

- questions are resolved by a majority of votes (including, where relating to a review for which they were appointed, the votes of any associate members) [Part 2, Division 4, clause 37(1)]
- if votes are evenly split, the presiding member has a casting vote [Part 2, Division 4, clause 37(2)]
- the Authority must keep minutes of its meetings. [Part 2, Division 4, clause 39]

Conflicts of interest

1.62 The bill contains a number of provisions aimed at ensuring that Authority members and associate members do not have interests that conflict with the proper performance of their duties. In particular, the bill establishes:

- a general requirement that members and associate members must give written notice to the Minister of all interests that conflict, or could conflict, with the proper performance of their functions [Part 2, Division 3, clause 26]
- a specific requirement that members or associate members disclose to a meeting of the Authority a conflict of interest in any matter before the Authority, and absent themselves from any deliberation or decision with respect to that matter unless the Authority otherwise determines [Part 2, Division 3, clause 27]
- a prohibition on a full-time member or a full-time associate member of the Authority from engaging in any other paid employment without the Minister's approval [Part 2, Division 3, clause 28(1)]
- a prohibition on any part-time member or part-time associate member from engaging in any paid employment that conflicts, or may conflict, with the proper performance of his or her duties. [Part 2, Division 3, clause 28(2)]

1.63 A failure to comply with the above requirements may provide grounds for the termination of a member's appointment (other than for the Chief Scientist). [Part 2, Division 3, clause 31(2)]

Chief Executive Officer

Role

1.64 The CEO is responsible for the day-to-day administration of the Authority and has the general power to do all things necessary or

convenient to be done for, or in connection with, the performance of his or her duties. *[Part 2, Division 6, clause 41]* *[Part 2, Division 6, clause 42(1) and (2)]*

1.65 The CEO must act in accordance with the policies determined, and any directions given, by the Authority. *[Part 2, Division 6, clause 42(3)]*

Appointment of CEO

1.66 The Minister is responsible for appointing the CEO. The Minister must consult the Authority before appointing the CEO. *[Part 2, Division 6, clause 43]*

1.67 Except where the Chair of the Authority is appointed as the CEO, the CEO will not be a member of the Authority.

Term of appointment

1.68 The CEO holds office on a full-time basis and is to be appointed for a period of up to five years. *[Part 2, Division 6, clause 43]*

Acting CEO

1.69 The bill anticipates that the CEO may be unable to perform the duties of the office from time to time, such as when absent from Australia. The Minister can appoint an acting CEO in such circumstances. *[Part 2, Division 6, clause 44]* Section 33AB of the *Acts Interpretation Act 1901*, to commence later in 2011, provides that nothing done or purported to be done by, or in relation to, an acting CEO is invalid by virtue of the circumstances for the acting appointment not having arisen or having ceased.

Remuneration and entitlements of CEO

1.70 The CEO is to be paid at a rate determined by the Remuneration Tribunal. Where no determination has been made by the Tribunal, the CEO is to be paid at the rate prescribed in regulations. *[Part 2, Division 6, clause 46]*

1.71 The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal. The Minister may grant leave of absence to the CEO, other than recreation leave, on terms and conditions determined by the Minister. *[Part 2, Division 6, clause 47]*

Outside employment

1.72 The CEO must not engage in paid employment outside the duties of his or her office without the approval of the Minister. *[Part 2, Division 6, clause 45]*

Conflicts of interest

1.73 The CEO must give written notice to the Minister and Authority of all interests, pecuniary or otherwise, that conflict, or could conflict, with the proper performance of his or her duties. *[Part 2, Division 6, clause 48]*

Resignation and Termination

1.74 The CEO may resign by giving the Minister a written resignation. If the CEO resigns, the Minister must notify the Authority of the resignation [Part 2, Division 6, clause 49]

1.75 The Minister may only terminate the CEO on narrow grounds, including for misbehaviour, physical or mental incapacity, bankruptcy, engagement in outside paid employment in certain circumstances, failure to disclose conflicts of interest or unauthorised absence in certain circumstances. [Part 2, Division 6, clause 50]

1.76 In the event that any terms and conditions of employment need to be specified and are not already dealt with in the bill, the Minister may make a determination on those matters. [Part 2, Division 6, clause 51]

Resourcing

Staff

1.77 For the purposes of the *Public Service Act 1999*, the CEO is the head of a Statutory Agency and can employ Australian Public Sector employees on behalf of the Commonwealth. [Part 2, Division 7, clause 52]

1.78 In order to ensure clear lines of accountability between the Authority, the CEO and staff, the CEO is not subject to direction by the Authority in relation to his or her actions taken under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*. [Part 2, Division 9, clause 58]

1.79 The consequential amendments bill provides that staff transferred to the Authority from the Department or the Office of the Renewable Energy Regulator will continue to be employed under the same terms and conditions as their previous employment (until the commencement of any new enterprise agreement entered into between the CEO and the staff of the Authority).

Consultants

1.80 The Authority also has the power to engage persons with suitable qualifications and experience as consultants. [Part 2, Division 7, clause 54]

Other public sector employees

1.81 The Authority may also be assisted by public sector officers and employees (Commonwealth, State or Territory), where their services are made available. It is expected that such assistance may particularly be required in the establishment of the Authority. The presence of such staff assisting the Authority is not intended to detract from the Authority's independent powers in relation to the reviews which it undertakes. [Part 2, Division 7, clause 53]

Planning obligations

1.82 The Authority must prepare a corporate plan at least once in each 3 year period, which sets out the objectives of the Authority and the strategies and policies that are to be followed to achieve those objectives. *[Part 2, Division 8, clause 55(1)-(3)]*

1.83 In addition to these general requirements, the corporate plan must also include details on any other matter that the Minister requires. *[Part 2, Division 8, clause 55(3)(c)]*

1.84 However, there is no requirement for the Minister to amend or approve the corporate plan.

1.85 Once a corporate plan has been prepared, the Chair must keep the Minister informed as to changes to the plan and matters that might significantly affect the achievement of the objectives set out in the plan. *[Part 2, Division 8, clause 55(4)]*

1.86 The Minister may give the Chair guidelines to use in preparing the Corporate Plan, or informing the Minister. *[Part 2, Division 8, clause 55(5) and (6)]*

1.87 The first corporate plan must be prepared within 12 months after the commencement of the Authority as specified in section 2 – in effect 13 months from the date Royal Assent is given to the Clean Energy Plan legislative package. *[Part 2, Division 8, clause 55(7)]*

Annual reports

1.88 The Authority is required to prepare an annual report for each financial year, for presentation by the Minister to Parliament. *[Part 2, Division 8, clause 56(1)]*

1.89 The annual report will set out

- a description of the objectives of the Authority
- an assessment of the extent to which the Authority's operations during the year have achieved those objectives. *[Part 2, Division 8, clause 56(2) and (3)]*

Special reviews requested by the Minister

1.90 As mentioned above, the bill also provides that the Minister, or both Houses of Parliament by resolution, may require the Authority to conduct special reviews relating to climate change in addition to the reviews it is required to provide under the other climate change laws. *[Part 3, clause 59(1) and (2)]*

1.91 In conducting a special review the Authority must undertake public consultation. *[Part 3, clause 59(3)]*

1.92 The Authority must give the report of a special review to the Minister, who must table copies of the report in each House of the Parliament within 15 sitting days of receiving it. *[Part 3, clause 60(1) and (2)]*

1.93 The Authority must publish the report of a special review on its website as soon as practicable after providing it to the Minister.

1.94 A report of a special review may set out recommendations to the Government but in formulating a recommendation that the Government should take particular action, the Authority must analyse the costs and benefits of the proposed action. This requirement, however, does not prevent the Authority from taking into account other matters when formulating a recommendation. The Authority must set out its reasons for any recommendations in its report. *[Part 3, clause 60(3)-(6)]*

1.95 The Minister must, on behalf of the Government, prepare a response to the Authority's recommendations as soon as practicable after receiving the report and must table copies of the response in each House of the Parliament within 6 months of receiving the report. The Government's response may have regard to the views of the Authority and any other person the Minister considers relevant. *[Part 3, clause 60(7) and (8)]*

Chapter 2

Land Sector and Carbon Biodiversity Board

Outline of chapter

2.1 This chapter describes the Land Sector Carbon and Biodiversity Board's functions and powers, membership, and reporting obligations.

Context

2.2 The bill establishes the Land Sector Carbon and Biodiversity Board, comprising a Chair and four other members.

2.3 The Board will perform a number of functions. It will:

- advise on performance indicators, implementation and funding guidelines for measures supported by the Government's Biodiversity Fund relating to biodiverse ecosystems and carbon sequestration in those ecosystems; and
- provide advice to the Government on the implementation, performance indicators and priorities for research of other prescribed land sector measures included as part of the Government's plan for a clean energy future.

2.4 The Board's functions are intended to ensure that efforts are not duplicated and benefits for landholders and the environment are realised.

2.5 The Board will also be required to produce an annual report for the Environment Minister, which will be tabled in Parliament.

Detailed explanation of new law

Establishment of Board

2.6 The Board will be constituted to assess and advise the Ministers for Environment, Agriculture and Climate Change, on matters relating to the implementation of land sector measures announced by the Government on 10 July 2011. [*Schedule 4, Division 1, clause 61*] [*Schedule 4, Division 1, clause 62*]

2.7 The Board will advise on performance indicators the implementation of, and research priorities in relation to, prescribed measures which:

- increase the land sector's resilience to climate change;
- assist landholders and regional communities benefit from greenhouse gas emissions reduction measures in the land sector, and from carbon sequestration; and
- improve long-term farm productivity.

2.8 It is intended that measures prescribed in the regulations would include:

- the Carbon Farming Futures package – investing in research, methodology development, farm projects on the ground including support for farmers to adopt conservation tillage equipment, and extension and outreach services;
- Regional NRM Planning for Climate Change – funding for natural resource management (NRM) organisations to incorporate climate change mitigation and adaptation components into existing regional NRM plans;
- Indigenous Carbon Farming Fund – funding to assist Indigenous Australians to benefit from carbon farming; and
- the Carbon Farming Initiative non-Kyoto Carbon Fund – providing incentives for land sector abatement activities that are not counted towards Australia's Kyoto commitments.

2.9 It is proposed that specific measures be prescribed to allow new measures to be added, or for measures to be removed, to respond to future Government policy initiatives in this area.

2.10 It is also intended that the Board provide advice on the coordination of research activities under the Carbon Farming Futures package, drawing on experience and work to date among government agencies and Rural Research and Development Corporations to reduce duplication and help set climate change investment research strategies. This will assist in targeting government research funding to key activities and gaps, and leveraging investment across the research community.

2.11 The Board will also advise the Environment Minister on performance indicators for, implementation of, and guidelines for funding of, the Government's Biodiversity Fund announced on 10 July 2011. This will provide funding for projects that establish, restore, enhance, improve, protect or manage biodiverse carbon stores to deliver biodiversity and related environmental benefits.

2.12 It is intended that measures through the Biodiversity Fund on which the Board will be able to provide advice will be aimed at:

- biodiverse reforestation and revegetation;
- management and enhancement of existing biodiverse carbon stores in the terrestrial landscape; and
- action to prevent the spread of invasive species across connected landscapes.

2.13 The Board will play a key oversight and review role in ensuring the Biodiversity Fund is well targeted and maximises the opportunities available. In particular, the Board will provide advice on the guidelines for the program, including priorities, streaming of funding and criteria for funding in relation to measures under the Program as outlined above.

2.14 The Board must perform its functions only within the limits of the Commonwealth's constitutional powers. *[Schedule 4, Division 1, clause 63]* It may also do anything incidental or conducive to the performance of its specified functions. *[Schedule 4, Division 1, clause 62]*

2.15 The Environment and Agriculture Ministers may establish committees to advise or assist the Board in the performance of its functions. These are expected to be technical committees and may comprise members of the Board or other persons appointed, by written instrument, by both Ministers. *[Schedule 4, Division 4, clause 78]*

Membership of the Board

2.16 The Board must have five members, including the Chair. *[Schedule 4, Division 2, clause 64]* Members are to be appointed by the Minister for Sustainability, Environment, Water, Population and Communities, defined in the Bill as the Environment Minister, and the Minister for Agriculture, Fisheries and Forestry, defined as the Agriculture Minister. The Climate Change Minister must be consulted on appointments. *[Schedule 4, Division 2, clause 65]*

2.17 The Environment and Agriculture Ministers must be satisfied that anyone appointed to the Board has substantial experience or knowledge in a range of specified fields including agricultural science, economics (including environmental economics), conservation ecology, greenhouse gas emissions measurement and reporting, greenhouse gas abatement measures (including measuring carbon storage), public administration and business management (including governance), and the management or care of indigenous-held land. *[Schedule 4, Division 2, clause 65(2)]*

2.18 Indigenous-held land has the same meaning as in section 4B of the *Aboriginal and Torres Strait Islander Act 2005*, which principally covers land in which an interest is held by an Aboriginal or Torres Strait Islander corporation, or by an Aboriginal or Torres Strait Islander person. The term 'management and care' is intended to encompass traditional custodianship and care arrangements as well as broader land management.

2.19 Members of the Board hold office on a part time basis.
[Schedule 4, Division 2, clause 65(4)]

2.20 All members are to be appointed for a period of up to five years.
[Schedule 4, Division 2, clause 66]

2.21 The Environment Minister and Agriculture Ministers can appoint an acting Chair or acting member of the Board when there is a vacancy in the office of the Chair or in the office of a member; or when the Chair or a member is absent from duty or absent from Australia.
[Schedule 4, Division 2, clause 67] Section 33AB of the *Acts Interpretation Act 1901*, to commence later in 2011, provides that nothing done or purported to be done by, or in relation to, an acting member is invalid by virtue of the circumstances for the acting appointment not having arisen or having ceased. A transitional provision is included in case Part 4 of this Bill commences before the new section 33AB takes effect. *[Schedule 5, clause 82A]*

2.22 The Environment Minister may grant leave of absence to the Chair of the Board on terms and conditions that the Environment Minister determines. The Chair of the Board may grant leave of absence to a Board member on terms and conditions decided by the Chair. *[Schedule 4, Division 2, clause 73]*

2.23 A Board member may resign by giving the Environment or Agriculture Ministers a written resignation. *[Schedule 4, Division 2, clause 74]*

2.24 The Environment Minister and Agriculture Minister can jointly terminate the appointment of a Board member, but only on narrow grounds, including bankruptcy, misbehaviour, physical or mental incapacity, unsatisfactory performance, or repeated absence from meetings of the Board. *[Schedule 4, Division 2, clause 75]*

2.25 The bill is not prescriptive as to how the Board should make decisions. Subject to some minimum procedural requirements which may be prescribed in regulations, the Board can regulate proceedings at its meetings as it sees appropriate. The regulations could include matters relating to the convening of meetings, the constitution of a quorum and the manner of decision-making. *[Schedule 4, Division 2, clause 68]*

Conflict of interest provisions

2.26 The bill contains a number of provisions aimed at ensuring that Board members do not have interests that conflict with the proper performance of their duties. In particular, the bill establishes:

- a general requirement that members must give written notice to the Environment and Agriculture Ministers of all interests that conflict, or could conflict, with the proper performance of their functions *[Schedule 4, Division 2, clause 69]*

- a specific requirement that members disclose to a meeting of the Board a conflict of interest in any matter before the Board, and absent themselves from any deliberation or decision with respect to that matter unless the Board determines otherwise *[Schedule 4, Division 2, clause 70]*
- a prohibition on any member from engaging in any paid employment that conflicts, or may conflict, with the proper performance of his or her duties. *[Schedule 4, Division 2, clause 71]*

2.27 A failure to comply with the above requirements may provide grounds for the termination of a member's appointment. *[Schedule 4, Division 2, clause 75(2)]*

Terms and conditions

2.28 Members of the Board are to be paid at a rate determined by the Remuneration Tribunal, the independent tribunal established under the *Remuneration Tribunal Act 1973* to handle the remuneration of key Commonwealth offices. Where no determination has been made by the Tribunal, members are paid at the rate prescribed in regulations. *[Schedule 4, Division 2, clause 72]* The same provisions apply to committee members. *[Schedule 4, Division 4, clause 79]*

2.29 In the event that any terms and conditions of employment need to be specified and are not already dealt with in the bill, the Environment Minister may make a determination on those matters. *[Schedule 4, Division 2, clause 76]*

Resourcing

2.30 The Board will be serviced by APS staff currently within the Department of Sustainability, Environment, Water, Population and Communities. This Department will provide secretariat functions for the Board and any committees, and may be assisted by any other Commonwealth Department, agency or authority, where their services are made available. It is envisaged that the Climate Change and Agriculture Departments in particular may provide such assistance. *[Schedule 4, Division 3, clause 77]* *[Schedule 4, Division 4, clause 80]*

Annual report

2.31 The Board must prepare an annual report for each financial year, for presentation by the Environment Minister to Parliament.

2.32 The annual report must contain a report on the Board's operations during that year. In keeping with the Government's commitment, this report must include information on the progress of land sector and biodiversity fund measures on which it is able to advise, including the contribution which those measures have made to

maintaining biodiversity, and to reducing greenhouse gas emissions in keeping with Australia's climate change objectives. *[Part 4, Division 5, clause 81]*

Chapter 3

Other matters

Outline of chapter

- 3.1 This chapter describes additional provisions in the Bill.
- 3.2 The bill applies to Commonwealth, State and Territory governments. *[Part 1, clause 6]*
- 3.3 The bill extends to all of Australia's external territories, and to matters within Australia's sovereign rights in the exclusive economic zone and continental shelf. The terms 'exclusive economic zone' and 'continental shelf' are defined in the *Acts Interpretation Act 1901*, as amended by the *Acts Interpretation Amendment Act 2011*. *[Part 1, clause 7]* *[Part 1, clause 8]*
- 3.4 As with clause 11 of the main bill, the bill extends to the Joint Petroleum Development Area as defined in the Petroleum (East Timor Sea) Treaty Act 2003. *[Part 1, clause 4, definition of 'Joint Petroleum Development Area']* *[Part 1, clause 9]*
- 3.5 The express application of the Act to the Joint Petroleum Development Area—an agreed joint development area under the Timor Sea Treaty [2003] ATS 13—is consistent with the obligations of Australia under article 4(1) of the Treaty between Australia and Timor-Leste on Certain Maritime Arrangements in the Timor Sea [2007] ATS 12.
- 3.6 The bill contains a standard regulation-making power. *[Part 5, clause 83]*
- 3.7 The short title of the bill is at clause 1, and a simplified outline of the bill is at clause 3. *[Part 1, clause 1]* *[Part 1, clause 3]*
- 3.8 Definitions of words used in the bill are set out in clause 4. *[Part 1, clause 4]*

Liability for damages

- 3.9 The bill specifies that certain persons are not liable to an action for damages for acts done in good faith (or omissions) in the performance of their functions under the bill or the associated provisions. The persons include the Authority, the Authority's delegates, the Board members, and members of any committees set up by the Board. *[Schedule 5, clause 82]* The type of provision is common in Commonwealth legislation and enables persons with statutory functions to perform their functions without fear of legal action being taken against them, as long as they perform those functions in good faith.

Application and transitional provisions

3.10 The operative provisions of Part 1 of the bill come into effect at the same time as section 3 of the *Clean Energy Act 2011*, which is a single day to be fixed by Proclamation. *[Part 1, clause 2]*

3.11 The provisions of Parts 2 and 3 come into effect on 1 July 2012, which is the proposed commencement date for the Authority. The provisions of Parts 4 and 5, which deal with the Board, come into effect on a single day to be fixed by Proclamation, but not before section 3 of the *Clean Energy Act 2011* comes into effect. This is intended to allow a short period for appointments to be finalised. *[Part 1, clause 2]*

3.12 These dates are conditional on other bills essential to the operation of the Clean Energy Plan legislation also receiving Royal Assent: clause 2 of the main bill.

Consequential amendments

3.13 Consequential amendments also come into effect at the same time as section 3 of the *Clean Energy Act 2011* receives Royal Assent: Clause 2 of the main bill.

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