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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLEAN ENERGY FINANCE CORPORATION BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

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Glossary

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

Abbreviation	***Definition***
Act	Clean Energy Finance Corporation Bill as passed
Acts Interpretation Act	*Acts Interpretation Act 1901*
ARENA	Australian Renewable Energy Agency
ABS	Australian Bureau of Statistics
Bill	*Clean Energy Finance Corporation Bill 2012*
Board	Clean Energy Finance Corporation Board
CAC Act	*Commonwealth Authorities and Companies Act 1997*
CEFC	Clean Energy Finance Corporation
Chair	Chair of the Clean Energy Finance Corporation Board
FMA Act	*Financial Management and Accountability Act 1997*
ITAA 97	*Income Tax Assessment Act 1997*
Legislative Instruments Act	*Legislative Instruments Act 2003*
Nominated Minister	See paragraphs 7.14 to 7.16
Responsible Ministers	The Treasurer and Finance Minister
Remuneration Tribunal Act	*Remuneration Tribunal Act 1973*
Uhrig Review	Review of the Corporate Governance of Statutory Authorities and Office Holders

General outline and financial impact

Outline

The Clean Energy Finance Corporation Bill 2012 ('the Bill') gives effect to the Government's commitment (made as part of its Clean Energy Future Package in July 2011) to establish the Clean Energy Finance Corporation ('the Corporation'). The Corporation will be a $10 billion fund dedicated to investing in clean energy. The Corporation will supplement existing initiatives, such as the Renewable Energy Target and the carbon price, to catalyse and leverage the flow of funds for commercialisation and deployment of renewable energy, low-emission and energy efficiency technologies necessary for Australia's transition to a lower carbon economy.

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

The Corporation is a mechanism to help mobilise investment in renewable energy, low-emission and energy efficiency projects and technologies in Australia. The Corporation will finance Australia's clean energy sector using financial products and structures to address the barriers currently inhibiting investment.

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

In October 2011, the Government appointed an Expert Review Panel to advise on the design of the Corporation. The Panel presented its report to the Government in March this year. The Government accepted the recommendations of that report and is implementing them through this Bill.

The Bill establishes the following:

- The Corporation, a body corporate and Commonwealth authority under the *Commonwealth Authorities and Companies Act 1997* (CAC Act);

  – The Bill gives the Corporation the power to invest in financial assets for the development of Australian-based renewable energy technologies, low-emission technologies and energy efficiency projects.

  – The Bill requires that the Corporation must ensure, at any time on or after 1 July 2018, at least half of the funds invested at that time for the purposes of its investment function are invested in renewable energy technologies.

  – The Bill gives the Corporation the power to enter into investment agreements itself, and make investments through subsidiaries.

- The Clean Energy Finance Corporation Special Account ('CEFC Special Account'), which is a special account for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act);

  – The Bill specially appropriates funds to the CEFC Special Account. The CEFC Special Account will be credited with $2.0 billion per annum for five years. The first instalment is to be paid to the CEFC Special Account on 1 July 2013. $2.0 billion will subsequently be credited to the CEFC Special Account on 1 July 2014, 1 July 2015, 1 July 2016 and 1 July 2017.

  – The purpose of the CEFC Special Account is making payments to the Corporation as authorised by the Act; and to make payments to the Australian Renewable Energy Agency (ARENA).

  – The Corporation is intended to be self-sustaining once mature. Therefore, any funds returned to the Corporation from its investments (including any capital and interest earned) will be available for reinvestment.

  – The Corporation's primary function is to invest its funds in the clean energy sector. As the Corporation is not intended to operate a cash management function, it is not appropriate that the Corporation hold large amounts of money which is provided by the Commonwealth. Therefore, the Bill establishes mechanisms for flows of

payments between the CEFC Special Account and the Corporation that ensure the Corporation can access funds when needed to undertake its investment function, whilst limiting surplus cash reserves.

- The Board of the Corporation ('Board') with statutory responsibility for decision making and managing the Corporation's investments; and

  – The Board consists of a Chair and at least 4 and up to 6 other members, appointed on a part-time basis. The responsible Ministers will appoint and remove Board members in accordance with the criteria set out in the Bill. The Board's remuneration will be set by the Remuneration Tribunal.

- The Chief Executive Officer (CEO) of the Corporation, responsible for the day-to-day administration of the Corporation.

  – The CEO is to be appointed by the Board, in consultation with the responsible Ministers, on a full-time basis. The Board will determine the terms and conditions of the CEO's employment, including remuneration and allowances.

The Bill requires responsible Ministers to issue an investment mandate — a collection of Ministerial directions — to the Board about the performance of its functions.

- The Corporation will make individual investment decisions independently of the Government. The purpose of the investment mandate is to provide a mechanism for the Government to articulate its broad expectations of how the Corporation invests and is managed by the Board.

- The Corporation must take all reasonable steps to comply with the investment mandate.

- The Bill gives the responsible Ministers powers of direction over the broad mandate of the Corporation, but does not allow it to direct the Corporation on specific investments.

- The investment mandate may include, but not be limited to, directions on matters of risk and return, eligibility criteria of investments in renewable energy technologies, low-emission technologies and energy efficiency projects, allocation of

investment, limits on concessional investments, types of financial instruments in which the Corporation may invest and broad operational matters.

- It is expected that the Corporation will apply a commercial filter when making its investment decisions, focussing on projects and technologies at the later stages of development. By adopting a commercial approach, it is expected the Corporation will invest responsibly and manage risk so it is financially self-sufficient and achieves a target rate of return.

- The Government intends to apply Australian Industry Participation Plans (AIPPs) to the Corporation through the investment mandate. The objective of AIPPs is to ensure Australian industry is afforded full, fair and reasonable opportunity to participate in projects. The Government will work with the Board to ensure that the system is streamlined where possible to ensure obligations are tailored to proponents at different stages of commercialisation.

- The investment mandate will be in the form of a written legislative instrument. Because the investment mandate represents the policy direction of the Government and has the potential to impact on the Commonwealth Budget, it will be a non-disallowable instrument. This is consistent with Ministerial directions issued to statutory bodies like the Future Fund.

The Bill requires the Board to formulate and publish written policies in relation to, but not be limited to, the investment strategy for the Corporation, benchmarks and standards for assessing the performance of the Corporation and risk management strategy. This ensures transparency in the Corporation's investment operations, assures the Government and community the Corporation is managing public money prudently and keeps market participants fully informed.

The Bill provides for the Corporation to share information with organisations like ARENA and Low Carbon Australia for the purpose of enabling the Corporation, or the organisations, to perform their functions and powers.

The nominated Minister must arrange for a review of the operation of this Act, including the effectiveness of the Corporation in facilitating the development of renewable energy technologies, low-emission technologies and energy efficiency projects in Australia, to be undertaken as soon as is practicable after 1 July 2016.

Date of effect: The short title and commencement provisions of the Act start on the day on which the Bill receives Royal Assent. All other sections and schedules commence on the date fixed by a proclamation issued by the Governor-General. If no proclamation is made, all other sections and schedules will commence on the day after 6 months from the day of Royal Assent.

Proposal announced: On 10 July 2011, the Government announced the Clean Energy Finance Corporation as part of the Clean Energy Future Package, a comprehensive plan to reduce carbon pollution and secure a clean energy future. Expenditure on the Corporation has been accounted for the *Mid-Year Economic and Fiscal Outlook 2011-12* (MYEFO 2011-12). The Government appointed an Expert Review Panel to advise on the design of the Corporation on 12 October 2011. The Panel's Report was released by the Government on 17 April 2012.

Financial impact: The Government will provide $2.0 billion per year for five years from 2013-14.

The Corporation has these fiscal balance (FB) and underlying cash balance (UCB) implications ($ millions):

$m	***2012-13***	***2013-14***	***2014-15***	***2015-16***	***Total***
Special Appropriations	nil	2000.0	2000.0	2000.0	6000.0
Annual Appropriations	19.6	18.8	18.9	nil	57.3
FB	- 19.6	- 466.8	- 454.7	- 405.2	- 1346.4
UCB	- 19.6	- 168.8	- 120.9	- 11.9	- 321.2

- Note: The figures in the financial impact table differ from the Mid-Year Economic Fiscal Outlook 2011-12 due to an additional forward estimate year. Annual appropriations will be provided to support the establishment and operating costs for the Corporation.

The Corporation will have a net negative impact on the fiscal balance of $1346.4 million over the forward estimates and a net negative impact on the underlying cash balance of $321.2 million over the same period.

The fiscal and underlying cash balance impacts include a prudent recognition that some investments will not be recovered, and interest revenue. The fiscal balance impact also includes the concessional component of loans. This treatment reflects budget accounting standards and is consistent with the treatment of similar investments.

Human rights implications: This Bill does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 8, paragraphs 8.1 to 8.4.

Compliance cost impact: Low. This Bill only imposes compliance cost on those submitting an investment proposal to the Corporation. Any ongoing compliance cost will be investment related.

Chapter 1
Part 1 — Preliminary

Summary of new law

1.1 Part 1 of the Bill sets out the objects of the Act, arrangements for commencement and definitions.

Detailed explanation of new law

Section 1: Short title

1.2 This section provides that the Bill, when enacted, may be cited as the *Clean Energy Finance Corporation Act 2012*.

Section 2: Commencement

1.3 This section provides for the short title and commencement provisions of the Act start on the day on which the Bill receives Royal Assent.

1.4 All other sections and schedules commence on the date fixed by a proclamation issued by the Governor-General, or six months and one day after Royal Assent if no proclamation is made.

Section 3: Object

1.5 The object of the Act is to establish the Clean Energy Finance Corporation in order to facilitate increased flows of finance into the clean energy sector. Funds will be applied through a commercial filter. Alongside the other key elements of the Government's Clean Energy Future Plan, this will prepare and position the Australian economy and industry for a cleaner energy future.

Section 4: Definitions

1.6 This section defines the key terms used in this Act. Although these are largely self-explanatory, the following points should be noted:

- The definition of investment is expanded to include guarantees to ensure that the Corporation is able to provide a full range of financing.
- The uncommitted balance of the Account is the available balance of the Special Account that can be used to issue a guarantee.

Section 5: Crown to be bound

1.7 The Crown is bound in all its capacities by this Act.

Section 6: Extension to external territories

1.8 This section ensures that the Act applies in all external Territories. This would mean, for example, that the Corporation could invest in projects located in Norfolk Island.

Section 7: Extra territorial application

1.9 This section ensures that the operation of the Act applies both within and outside of Australia. While the Corporation will invest in the development of renewable energy, low-emission and energy efficiency technologies or projects that are Australian-based, the Corporation's investments may include commercial activities overseas.

Chapter 2
Part 2 — Clean Energy Finance Corporation

Summary of new law

2.1 Part 2 establishes the Corporation and sets out the Corporation's functions, powers and constitutional limits.

Detailed explanation of new law

Section 8: Establishment

2.2 Section 8 establishes the Corporation, a body corporate with a seal that can acquire and dispose of real and personal property. The Corporation can sue and be sued.

- The Corporation is subject to the CAC Act. This ensures that the Corporation has a governing Board subject to directors' duties. That is, Board members and officers must exercise their powers and duties in the best interests of the Corporation and for a proper purpose. Directors' duties apply to help ensure that prudent decisions are made on money that the Corporation holds in its own right.

- As the Corporation is a Commonwealth Authority, Board members are also subject to duties under the CAC Act, including duties of care and diligence (section 22 of the CAC Act), good faith (section 23 of the CAC Act), proper use of position (section 24 of the CAC Act), proper use of information (sections 25 and s26 of the CAC Act) and disclosure of material personal interests (section 27F of the CAC Act).

Section 9: Corporation's functions

2.3 This section sets out the functions of the Corporation. Its main function will be to invest, using financial assets, in clean energy technologies, including energy efficiency, low-emission and renewable energy technologies that are solely or mainly Australian-based (see

Part 6). The Corporation may make investments itself, and through its subsidiaries.

2.4 The Corporation may also liaise with relevant bodies, including the ARENA, Commonwealth organisations and State and Territory governments, for the purpose of facilitating investment in clean energy technologies.

2.5 The Corporation must also act in a proper, efficient and effective manner in the performance of its functions.

Section 10: Constitutional limits

2.6 The Corporation will only be able to perform its functions within the limits on Commonwealth power imposed by the Constitution. The Corporation would be likely to exercise its power to provide finance in relation to:

- the corporations power (section 51(xx) of the Constitution), that is, it would provide finance to, or otherwise for the benefit of a foreign, trading or financial corporation; or

- the external affairs power (section 51(xxix) of the Constitution), that is, in order to give effect to Australia's obligations under the United Nations Climate Change Convention, by investing in the development of renewable energy and low-emission technologies.

Section 11: Corporation's powers

2.7 This section gives the Corporation the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Section 12: Corporation does not have the privileges and immunities of the Crown

2.8 The Corporation does not enjoy the privileges and immunities of the Crown in right of the Commonwealth, other than those provided by legislation or the Constitution.

Chapter 3
Part 3 — Board of Corporation

Summary of new law

3.1 Part 3 establishes the Board of the Corporation and sets out the appointment, termination, terms and conditions of employment and processes for Board meetings.

Detailed explanation of new law

Division 1 — Establishment and functions

Section 13: Establishment

3.2 This section establishes the Board of the Corporation.

Section 14: Functions of the Board

3.3 This section sets out the functions of the Board. The Board must ensure the proper, efficient and effective performance of the Corporation's functions. The Corporation has an investment function to invest, directly and indirectly, in clean energy technologies and the Board's function includes oversight of the Corporation's investment function (see Part 6).

3.4 The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

3.5 Anything done in the name of, or on behalf of, the Corporation by the Board, or with the authority of the Board, is take to have been done by the Corporation.

Division 2 — Board Members

Section 15: Membership

3.6 The Board would consist of a Chair and at least 4, and no more than 6, other members.

3.7 Consistent with subsection 33(2B) of the *Acts Interpretation Act 1901* ('the Acts Interpretation Act'), the performance of the functions, or of the exercise of the powers of the Board is not affected by there being a vacancy or vacancies in the membership of the Board.

Section 16: Appointment of Board Members

3.8 This section would provide that Board members (other than the Chair) are to be appointed by the responsible Ministers by written instrument, on a part-time basis.

3.9 Given the expected quantum of funds under the Board's management and the complexity involved in operating in a higher risk segment of the market, it is important to have Board members who are well-qualified. Consequently, a person cannot be appointed as a Board member unless he or she appears to the responsible Ministers to be qualified for appointment because of his or her reputation in and knowledge of, or experience in, one or more of the following areas:

- banking and finance;
- venture capital, private equity or investment by way of lending or credit;
- economics;
- engineering;
- energy technologies;
- government funding programs or bodies;
- the environmental sector;
- financial accounting;
- law.

3.10 Commonwealth employees, holders of full-time office under a Commonwealth law and statutory office holders are not eligible for Board appointments. This provision is designed so that the Corporation operates, and is seen to operate, independently from the Government.

Section 17: Chair

3.11 The Chair is to be appointed, by written instrument, by the responsible Ministers from amongst the Board members. A person could be appointed Chair by the responsible Ministers by first selecting them for the Board and then as Chair.

3.12 The definition of a Chair includes a person who is acting as Chair of the Board, consistent with section 33A of the Acts Interpretation Act.

Section 18: Term of Appointment

3.13 A member holds office for the period specified in his or her instrument of appointment. This period cannot exceed five years. The Uhrig Review supported finite board terms and suggested that appointments to statutory authorities generally be limited to terms of three years. In order to allow for continuity of management and appropriate transfer of corporate knowledge on the Board, it is considered that appointments of up to five years are appropriate for the Board.

3.14 As a result of subsection 33AA of the Acts Interpretation Act, which provides that in any Act 'appoint' includes 're-appoint', a Board member is able to be reappointed for a further period of up to five years. Therefore, with reappointment, the individual's total period of membership may exceed five years.

Section 19: Acting appointments

3.15 The nominated Minister is empowered to appoint a person, by written instrument, to act as the Chair during a vacancy in the office of Chair or during any period, or during all periods, when the Chair is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office. This person would be an existing Board member.

3.16 The nominated Minister is also empowered to appoint a person to act as a member (other than as Chair) during a vacancy in the office of a member or during any period, or during all periods, when a member is

absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

3.17 Section 33AB of the Acts Interpretation Act contains provisions dealing with acting appointments which are relevant to acting appointments made under section 19. In the event that the occasion for the appointment had not arisen, or there was a defect or irregularity in connection with a person's appointment, or the appointment had ceased to have effect, a person's appointment to act under section 19 will not invalidate anything done by the person when purporting to act under this section. For example, this provision would cover a situation in which a person is acting because a Board member was going to be overseas but the Board member was able to get an earlier flight and was in fact in Australia at the time of the meeting.

3.18 Section 33A of the Acts Interpretation Act contains further provisions dealing with acting appointments which are relevant to acting appointments made under section 19. The effect of these provisions is that:

- an acting appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment;
- the appointer may determine the terms and conditions of the appointment, including remuneration and allowances, and terminate the appointment at any time;
- where the appointment is to act in a vacant office, the appointee must not continue to act in the office for more than 12 months;
- where the appointee is acting in an office other than a vacant office and the office becomes vacant while the appointee is acting then, unless his or her instrument of appointment provides otherwise, the appointee may continue to act until the appointer otherwise directs, the vacancy is filled, or a period of 12 months from the day the vacancy ends, whichever happens first;
- the appointment ceases to have effect if the appointee resigns in writing directed to the appointer; and
- while the appointee is acting in the office, he or she has and may exercise all the powers, and is to perform all the functions and duties, of the holder of the office and this Act

and any other legislation will apply in relation to the appointee as if the appointee were the holder of the office.

3.19 However, a person is only eligible to act as Chair of the Board or as a Board member if he or she would have been eligible for appointment as a Board member under subsection 16(2). For example, the person is not eligible if he or she does not have the appropriate reputation and expertise.

3.20 For the purposes of reference in this Act and the Acts Interpretation Act to a vacancy in the Office of a Board member, there are taken to be six offices of a Board member in addition to the Chair.

Section 20: Remuneration

3.21 This section deals with the remuneration of Board members who are appointed under section 16.

3.22 Subsection 20(1) provides that Board members appointed under section 16 are to be paid remuneration that is determined by the Remuneration Tribunal, provided that there is an applicable determination in operation. Otherwise, such Board members are to be paid the remuneration that is prescribed by the regulations.

3.23 Board members are paid the allowances that are prescribed by the regulations. Subsection 3(2) of the *Remuneration Tribunal Act 1973* ('the Remuneration Tribunal Act') explains that remuneration includes annual allowances. As the Remuneration Tribunal is not required to make additional determinations in relation to other allowances, these may be prescribed in the regulations.

3.24 Section 20 operates subject to the Remuneration Tribunal Act, which provides for the Remuneration Tribunal to conduct inquiries and make determinations on the remuneration of certain office holders. That is, if remuneration determined or prescribed under this Act conflicts with a determination by the Remuneration Tribunal, the Remuneration Tribunal determination applies.

Section 21: Leave of absence

Chair

3.25 This section deals with the granting of leave of absence to the Chair.

Other Board members

3.26 This section deals with the granting of leave of absence to Board members who are appointed under section 16.

Section 22: Resignation of Board members

3.27 This section sets out the resignation procedure for Board members.

Section 23: Termination of appointment of Board members

3.28 This section sets out the procedures and grounds for the termination of appointment of Board members. The responsible Ministers have the discretion to terminate the appointment of a Board member on the grounds of misbehaviour, or physical or mental incapacity if the Board member is unable to perform the duties of his or her office.

3.29 The responsible Ministers may also terminate the appointment of a Board member if:

- the member becomes bankrupt, applies for relief from bankruptcy, enters into an arrangement with creditors regarding the payment of his or her debts or assigns all or part of his or her remuneration for the benefit of creditors;
- the member fails, without reasonable excuse, to disclose interests which may potentially conflict with the performance of their functions of office;
- the member does not attend three consecutive meetings of the Board and is not on a leave of absence during that time;
- if the responsible Ministers are of the opinion that the member's performance has been unsatisfactory for a significant period of time.

Section 24: Other terms and conditions of Board members

3.30 The responsible Ministers may determine other terms and conditions for Board members in addition to those covered by this Act.

Division 3 — Meetings of the Board

Section 25: Convening meetings

3.31 The Board is to hold meetings as necessary for the efficient performance of its functions.

3.32 Section 33B of the Acts Interpretation Act contains extra rules about participation in meetings by telephone. Under 33B of the Acts Interpretation Act, the Board may permit any or all members to participate in a meeting by telephone, closed-circuit television or any other means of communication and these members are taken to be present at the meeting and to form part of any quorum for the meeting. Where permission has been granted to participate in meetings by telephone, closed-circuit television or any other means of communication, a meeting may be held at two or more places at the same time.

3.33 Meetings are to be held at the times and places that the Board determines subject to the following qualifications:

- The Chair may call at meeting at any time; and
- The Chair must call at least six meetings each calendar year; and
- The Chair must call a meeting if requested to do so in writing by another Board members. A meeting must be held within 30 days after receiving the written request.

Section 26: Presiding at meetings

3.34 The Chair must preside at all meetings of the Board. However, if the Chair is absent, the other members present must appoint one of themselves to preside over the meeting. There is no restriction on which Board members are eligible to preside at meetings in this instance. (Note: the term 'Chair' includes a person acting as Chair.)

Section 27: Quorum

3.35 Four Board members constitute a quorum for a meeting of the Board, or at any time there are only five Board members, three Board members constitute a quorum. This provision has the effect of requiring at least half of the Board to be present to constitute a quorum. This provision takes into account the transitional period for the Corporation.

3.36 Under section 27J of the CAC Act, a Board member must not, unless permitted by the Board or responsible Ministers, participate in the deliberations or decisions of the Board on a matter for which that member has an interest. If this requirement results in a quorum no longer being present, the remaining Board members at the meeting will constitute a quorum for the purpose of any deliberation or decision with respect to that matter.

Example 3.1

Assume the Board consists of seven members: Deborah, Michelle, Elisabeth, Judy, Karla, Michael and Gary.

However, Deborah and Gary are unable to attend a meeting. Further, Michael, Karla and Michelle have a conflict of interest in respect of a matter that will be discussed in the meeting, and therefore only Elisabeth and Judy are able to participate.

In this circumstance, subsection 27(2) provides that Elisabeth and Judy will constitute a quorum as the remaining members at the meeting.

Section 28: Voting at meetings

3.37 Questions at meetings are to be decided by a majority of the votes of the members present. The person presiding at a meeting, which could be the Chair or another member under section 26, has a deliberative and, if necessary, a casting vote, that is, the deciding vote when the votes on each side are equal.

Section 29: Conduct of meetings

3.38 The Board may regulate proceedings at its meetings as it considers appropriate.

Section 30: Minutes

3.39 The Board must keep minutes of its meetings.

Section 31: Decisions without meetings

3.40 Section 31 allows the Board to determine that decisions can be made without a meeting of the Board on a particular matter or a range of matters.

3.41 If the Board determines that it may make decisions without a meeting and determines a method by which Board members are to

indicate their agreement, a decision relating to a particular matter or matters is taken to have been made at a meeting of the Board if:

- without a meeting of the Board, a majority of members eligible to participate indicate their support of the resolution in accordance with the method determined by the Board;

- all members were informed of the proposed resolution, or reasonable efforts had been made to inform them of it.

3.42 A Board member is not entitled to vote on a proposed decision if he or she would not have been entitled to vote on the proposal if the matter is discussed at a meeting.

3.43 The Board is required to keep a record of resolutions that are made without a meeting in accordance with this section.

Chapter 4
Part 4 — Chief Executive Officer, staff and consultants and committees

Summary of new law

4.1 Part 4 establishes the Chief Executive Officer (CEO) and sets out procedures for his or her appointment and resignation, deals with the recruitment of staff and consultants and committees.

Detailed explanation of new law

Division 1 — Chief Executive Officer of Corporation

Section 32: Establishment

4.2 This section establishes the CEO of the Corporation.

Section 33: Functions of the CEO

4.3 The CEO is responsible for the day-to-day administration of the Corporation and has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

4.4 The Board will determine the policies which the CEO is to follow. The CEO's responsibilities may be directed by the Board through written directions, which the CEO must comply with once issued by the Board.

4.5 Subsection 33(6) is included to assist readers, as a direction from the Board is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* ('the Legislative Instruments Act').

Section 34: Appointment

4.6 The CEO is to be appointed by the Board by written instrument, in consultation with the responsible Ministers, on a full-time basis.

4.7 The Board must not appoint a Board member as the CEO of the Corporation. As the Board is responsible for the appointment and removal of the CEO and the CEO is responsible for implementing the decisions made by the Board, subsection 34(4) ensures the separation of the role of the CEO from the Board.

4.8 The Board must appoint the first CEO within six months of the commencement of this provision.

Section 35: CEO holds office during Board's pleasure

4.9 This section provides that the CEO holds office during the Board's pleasure. The Board may only terminate the CEO, after the Chair has consulted with the responsible Ministers. If the Board terminates the CEO, the Chair must notify the responsible Ministers.

Section 36: Acting appointments

4.10 The Board is empowered to appoint a person other than a Board member, by written instrument, to act as the CEO during a vacancy in the office of the CEO or during any period, or during all periods, when the CEO is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

4.11 Section 33AB of the Acts Interpretation Act contains provisions dealing with acting appointments which are relevant to acting appointments made under section 36. In the event that the occasion for the appointment had not arisen, or there was a defect or irregularity in connection with a person's appointment, or the appointment had ceased to have effect, a person's appointment to act under section 36 will not invalidate anything done by the person when purporting to act under this section.

4.12 Section 33A of the Acts Interpretation Act contains further provisions dealing with acting appointments which are relevant to acting appointments made under section 36. The effect of these provisions is that:

- an acting appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment;

- the appointer may determine the terms and conditions of the appointment, including remuneration and allowances, and terminate the appointment at any time;

- where the appointment is to act in a vacant office, the appointee must not continue to act in the office for more than 12 months;

- where the appointee is acting in an office other than a vacant office and the office becomes vacant while the appointee is acting then, unless his or her instrument of appointment provides otherwise, the appointee may continue to act until the appointer otherwise directs, the vacancy is filled, or a period of 12 months from the day the vacancy ends, whichever happens first;

- the appointment ceases to have effect if the appointee resigns in writing directed to the appointer; and

- while the appointee is acting in the office, he or she has and may exercise all the powers, and is to perform all the functions and duties, of the holder of the office and this Act and any other legislation will apply in relation to the appointee as if the appointee were the holder of the office.

Section 37: Terms and conditions

4.13 Any terms and conditions in relation to the CEO's employment not covered in this Act are to be determined by the Board, including terms and conditions relating to remuneration and allowances.

Section 38: Outside employment

4.14 As the CEO is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of the office without the Chair's approval.

4.15 If the Chair gives approval for outside employment to the CEO, the Chair has a duty to notify the responsible Ministers.

Section 39: Disclosure of interests

4.16 The CEO has a duty to disclose to the Board, by writing, all material personal interests which may potentially conflict with the performance of their functions of office.

Section 40: Resignation

4.17 Section 40 sets out the procedures the CEO must follow when resigning.

Division 2 — Staff and consultants

Section 41: Staff

4.18 Section 41 provides for the Corporation to employ staff, on terms and conditions the Corporation determines in writing, for the performance of its functions and exercise of its powers.

4.19 Subsections 41(3) and 41(4) provide for the Corporation to arrange with an Agency Head, a public policy purpose body established by a law of the Commonwealth or an appropriate State or Territory authority for the services of officers or employees to be made available to the Corporation.

Section 42: Consultants

4.20 Section 42 empowers the Corporation to engage consultants, which includes investment managers, to provide services in connection to the functions of the Corporation. This could include the provision of advisory services. Consultants are not restricted to individuals and can include companies. Consultants are engaged on the terms and conditions specified by the Corporation.

Division 3 — Committees

Section 43: Committees

4.21 The Board may establish committees, constituted by Board members, non-Board members or a combination of the two, to advise or assist in the performance of the Board's or the Corporation's functions.

The Board may specify the terms of reference, terms and conditions of appointment and procedures for a committee.

Section 44: Remuneration and allowances

4.22 Committee members who are not Board members are to be paid remuneration and allowances set by the Corporation. For committee members who are Board members, the Remuneration Tribunal will determine the remuneration and allowances to be paid.

Chapter 5
Part 5 — Financial arrangements

Summary of new law

5.1 Part 5 establishes the CEFC Special Account and sets out the procedures for payments to and from the Account.

Detailed explanation of new law

Division 1 — Clean Energy Finance Corporation Special Account

Subdivision A — Establishment of Account

Section 45: Establishment of Account

5.2 Section 45 establishes the CEFC Special Account. For the purposes of section 21 of the FMA Act, a Special Account is a ledger which records a right to draw money from the Consolidated Revenue Fund.

5.3 Any amounts credited to the CEFC Special Account are quarantined from the rest of the Consolidated Revenue Fund and can only be debited for the purposes set out in section 47.

5.4 The financial arrangements set out in Part 5 will ensure public money is managed prudently while ensuring the Corporation's access to capital to undertake investments in the clean energy sector.

Subdivision B — Credits

Section 46: Credits to the Account

5.5 Section 46 provides for amounts to be credited to the CEFC Special Account.

5.6 The CEFC Special Account must be credited with $2 billion per year on 1 July from 2013 to 2017. This provides the Corporation with certainty in funding and these amounts will roll over to be available in future years if the amounts are not invested in one year.

5.7 The Corporation's $2 billion per year from 2013 to 2017 is deemed as a special appropriation at law under section 21 of the FMA Act.

5.8 The CEFC Special Account must also be credited with the Corporation's surplus money that is returned under section 54.

Subdivision C — Debits

Section 47: Purposes of the Account

5.9 The CEFC Special Account is to be used for the purposes of:

- The Commonwealth making payments to the Corporation as authorised by the nominated Minister under section 49, if the Corporation has requested a payment under section 48 to meet its liabilities or to maintain an operating balance in the Corporation's bank account (see paragraphs 5.10 to 5.17);
- The Commonwealth making payments to ARENA, paid out of the earnings of the Corporation, as authorised by the nominated Minister under section 51 if the Corporation has made a request for a payment to ARENA under section 50 (see paragraphs 5.18 to 5.24).

Section 48: Corporation's request for a payment for itself

5.10 This section sets out the procedures for the Corporation's request for a payment.

5.11 The Corporation may, in writing, request a specific payment by the Commonwealth to meet the liabilities or expenses of the Corporation that are due or will become due; or so to maintain at least an operating balance in the Corporation's bank account. This allows the Corporation to make commitments and then draw down the funds as required.

5.12 Maintaining an operating balance in the Corporation's bank account allows for efficient operation of the Corporation's functions and minimises the administrative burden on the Commonwealth.

5.13 Liabilities include, but are not limited to, loan disbursements, equity investments, staff payments, rent and procurement.

5.14 Subsection 48(3) makes clear that the Corporation must not request a payment that would exceed the uncommitted balance of the Account at the time the request is made.

Section 49: Nominated Minister's authorisation of payment to Corporation

5.15 Once the Corporation has requested a payment to meet the liabilities of the Corporation or to maintain at least an operating balance in its bank account, the nominated Minister must, in writing, authorise the payment, subject to any agreement between the nominated Minister and Corporation regarding how the request is to be made and the appropriate amount for the Corporation's operating balance.

5.16 The Commonwealth must as soon as is practical pay the Corporation the authorised amount, by debiting the CEFC Special Account, if it is approved by the nominated Minister.

5.17 Subsection 49(3) is included to assist readers, as an authorisation by the nominated Minister is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Section 50: Corporation's request for a payment for ARENA

5.18 This section sets out the procedures for the Corporation to request a payment by the Commonwealth of a specified amount to ARENA out of the Corporation's profits.

5.19 Payments may only be requested if they could, at the time, be paid out of the earnings of the Corporation.

5.20 Subsection 50(3) makes clear that the Corporation must not request a payment by the Commonwealth to ARENA that would exceed the uncommitted balance of the Account at the time the request is made.

Section 51: Nominated Minister's authorisation of payment for ARENA

5.21 The nominated Minister must authorise the payment requested by the Corporation and specify the timing and method of payment, and if the payment is authorised the Commonwealth must pay the specified amount on the specified day by debiting the CEFC Special Account.

5.22 The nominated Minister can specify the timing of the payment to limit the impact on the budget as ARENA funding is a grant and will impact the budget bottom line when allocated.

5.23 The Corporation and ARENA focus on different stages of the innovation chain. The Corporation will concentrate its investments on projects and technologies that are at the later stages of development and commercialisation, whereas ARENA will provide grant funding for renewable energy projects at early stages of development. By allowing the payment of profits from the Corporation to ARENA to support projects and technologies along the innovation chain, the Act recognises that the Corporation has a public policy purpose of furthering the development of the renewable energy sector.

5.24 Subsection 51(3) is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Section 52: Agreement between nominated Minister and Corporation

5.25 Once the Corporation is established, the nominated Minister and Corporation will come to an agreement on how requests are to be made, including the form of the request and who the request is to be given to; the time period in which liabilities will become due and the appropriate amount of the Corporation's operating balance. It is intended that the nominated Minister and Corporation will agree on the listed matters to encourage efficient administration of payments.

Division 2 — The Corporation's money

Section 53: Application of the Corporation's money

5.26 The Corporation's funds consist of money paid to the Corporation that has been authorised by the nominated Minister and any other money received by the Corporation, including earnings from investments and gifts.

5.27 The Corporation may use its money in the performance of its investment function, in paying or discharging the costs and expenses incurred by the Corporation in the performance of its functions, in paying remuneration and allowances to the Board, CEO, employees and staff, secondees and consultants, and in the payment of any returns to the Commonwealth.

5.28 The Corporation may also invest surplus money on a deposit with a bank, in securities of the Commonwealth or of a State or Territory, in securities guaranteed by the Commonwealth, a State or Territory or in any other manner approved by the Finance Minister, under section 18 of the CAC Act.

Section 54: Managing surplus money

5.29 It is envisaged the Corporation will invest using commercial principles and return a profit. The nature of the Corporation's investments is likely to be lumpy and there may be a timing mismatch between funds accumulated by the Corporation from earnings, maturing investments and new investments. As such, the section 54 provides for the Corporation to return any surplus money of the Corporation and its wholly-owned subsidiaries to the Commonwealth, where it is not immediately required for the purposes of the Corporation or subsidiary, if the surplus money exceeds $20 million (which is around the amount the Corporation's operating expenses have been costed as), or if it exceeds the amount prescribed in the regulations.

5.30 The threshold for surplus funds is initially set at $20 million; however, this may be changed by regulation, if for administrative efficiency another value is more appropriate.

Section 55: Borrowing

5.31 The Board cannot borrow except for short-term borrowing associated with the settlement of transactions or any circumstances listed in the regulations for the purposes of this section. These restrictions ensure that the Board is able to operate efficiently without exposing the budget to undue risk.

5.32 Regulations may be made to specify circumstances in which it is considered appropriate for the Board to be able to borrow. Regulations may also be used to clarify any uncertainty on whether a particular activity constitutes borrowing.

5.33 While it is not anticipated that the Board will have a need to borrow, this provision allows for unforseen events or changes in the investment environment without the need for amending the legislation. Regulations would be disallowable by Parliament.

5.34 In addition, subsection 55(4) provides the Corporation with flexibility in financing subsidiaries with a loan rather than equity.

Section 56: Receipt of gifts

5.35 Section 56 allows the Corporation, with the written approval of the nominated Minister, to accept gifts of money or financial assets.

Section 57: Taxation

5.36 To avoid any doubt, subsection 57(1) makes the income of the Corporation exempt from income tax under the *Income Tax Assessment Act 1997* ('the ITAA 97'). This is consistent with the general principle that entities within the General Government Sector are not subject to income tax. The Corporation is subject to notional fringe benefits tax and goods and services tax.

5.37 Subsection 57(2) clarifies that the Board is not subject to tax under a law of a State or Territory, such as stamp duty, if the Commonwealth is not subject to the tax.

Chapter 6
Part 6 — Investment function

Summary of new law

6.1 Part 6 sets out the Corporation's investment function and criteria that the Corporation must follow in the performance of its investment function.

Detailed explanation of new law

Division 1 — Investment Function

Section 58: Investment Function

6.2 The Corporation's investment function is to invest, directly and indirectly. That is, through direct investments, investments through partnerships, trusts and joint ventures, or investment through subsidiaries, in clean energy technologies. The performance of the Corporation's functions may include investing in businesses or projects for the development or commercialisation of clean energy technologies or investing in businesses that supply goods or services needed to develop or commercialise clean energy technologies.

6.3 Subsection 58(3) makes clear that the Corporation must ensure, at any time on or after 1 July 2018, at least half of the funds invested at that time for the purposes of its investment function are invested in renewable energy technologies.

6.4 It is expected that the Corporation will apply a commercial filter when making its investment decisions, focussing on projects and technologies at the later stages of development, consistent with the Report of the Expert Review Panel on the Clean Energy Finance Corporation. The filter will not be as stringent as the private sector equivalent, as the Corporation has a public policy purpose and values any positive externalities being generated. Consequently, it has different risk/return requirements. For a given return, the Corporation may take on higher risk and, for a given level of risk, due to positive externalities, may accept a lower financial return.

6.5 The Corporation has the capacity to offer concessional finance and directly influence financial barriers. The individuality of each project necessitates a case by-case approach. The Corporation can tailor concessionality in each case and apply it through availability, tenor or cost of finance or by absorbing additional risk. In setting the terms, the Corporation will provide only the least generous terms required for the proposal to go ahead (that is as close to market terms as possible).

6.6 The Corporation will invest on the premise that existing Commonwealth policies continue to operate, principally the Renewable Energy Target and the carbon price. This approach together with: its specially appropriated funds; its clean energy sector focus; a target rate of return around the government's bond rate; and a recognition of the broader economic benefits of the positive externalities of its investments, can combine to make transactions acceptable to the Corporation where they have been unacceptable to private financiers.

Section 59: Complying investments

6.7 The Board has a duty to take all reasonable steps to ensure that investments for the purposes of the Corporation's investment function are at all times complying investments.

6.8 Subsection 59(2) defines complying investment as one that is made in clean energy technology, is solely or mainly Australian-based and is not an investment in carbon capture and storage, nuclear technology or nuclear power.

6.9 Subsection 59(3) sets out the procedures the Board must follow as soon as is practical after the Board becomes aware that an investment no longer is, or never was, a complying investment.

6.10 Subsection 59(4) sets out the procedures the responsible Ministers may take if they are satisfied that the investment no longer is, or never was, a complying investment.

6.11 Subsection 59(6) makes clear that the fact that an investment no longer is, or never was, a complying investment does not affect the validity of an investment.

6.12 An investment does not become a non-complying investment merely because the technology invested in no longer qualifies as a clean energy technology because its performance has not met reasonable expectations or because different standards are being applied. This provision takes into account the developing nature of clean energy technology and recognises that as clean energy technologies develop,

standards for assessing performance will change. As such, this provision allows these technologies to remain complying investments in the event standards change or technologies do not meet expectations.

6.13 Subsection 59(8) is included to assist readers, as a direction from the responsible Ministers is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Section 60: Clean energy technologies

6.14 This section defines clean energy technologies, renewable energy technologies, energy efficiency technologies and low-emission technologies.

6.15 The term 'renewable energy technologies' is defined to include hybrid technologies and technologies (including enabling technologies) that are related to renewable energy technologies. Technologies that are related to renewable energy technologies include, for example, technologies that store energy generated using renewable energy, technologies that predict renewable energy supply or technologies that assist in the delivery of energy generated using renewable energy technologies to energy consumers.

6.16 A hybrid technology is one that integrates a renewable energy generation technology with other energy generation systems. The purpose of allowing hybrid technologies is because they can make renewable projects more economic, for example by overcoming intermittency issues and capturing any spikes in prices. An example of a hybrid technology would be a power plant which combines solar-based thermal energy with thermal energy from gas or other renewable energy sources, to provide a combined energy flow that drives the power generation from the plant. It is expected that a hybrid technology would have a majority renewable component, otherwise it is unlikely to need funding from the Corporation and should be able to access commercial financing.

6.17 The Board is empowered to determine guidelines setting out the criteria for what constitutes a low-emission technology for the purposes of its investments. The Government anticipates that the Board will set the threshold for low-emission technology to be a maximum of 50 per cent of the emissions on the current national electricity grid, consistent with the Report of the Expert Review Panel on the Clean Energy Finance Corporation. However, some flexibility is required to cover non-electrical energy and the need to consider low-emission technology on a case-by-case basis. It is not expected that the Corporation will invest in conventional gas, despite meeting the

threshold for low-emission technology, as conventional gas has a long track record and has been able to access finance.

6.18 The Board's guidelines must not be inconsistent with the investment mandate set by the Government, and must be published on the Corporation's website.

6.19 Subsection 60(8) is included to assist readers, as the Board's guidelines are not legislative instruments within the meaning of section 5 of the Legislative Instruments Act.

Section 61: Australian–based investments

6.20 In making the Corporation's investments, the Board must also be satisfied that the investment is solely or mainly Australian-based. The Board must determine guidelines setting out the requirements of Australian-based investments, which must not be inconsistent with the investment mandate, and the Board must publish these guidelines on the Corporation's website.

6.21 Subsection 61(5) is included to assist readers, as the Board's guidelines are not legislative instruments within the meaning of section 5 of the Legislative Instruments Act.

Section 62: Prohibited investments

6.22 The Corporation is prohibited from investing in carbon capture and storage technologies, nuclear technology or nuclear power.

Division 2 — Performance of investment function

Section 63: Financial assets

6.23 The Corporation and its subsidiaries may only invest through a broad range of financial assets. Allowing the Board to invest directly in non-financial assets would be inconsistent with the Government's broader fiscal policy and budget management. It is intended the Corporation will facilitate finance for clean energy technologies and projects through its investments, not build or buy projects. For example, section 63 would prohibit the Corporation from investing directly in property and infrastructure.

6.24 It is appropriate to give legislative effect to a non-legislative instrument as in force from time to time in subsection 63(3), as the

definition of financial asset is intended to be widely read, consistent with the definition of financial asset used for budget reporting purposes. This is derived from the Australian Bureau of Statistics ('the ABS') manual of concepts and classification principles used for publishing government finance statistics.

6.25 Regulations may also be made to clarify that an asset specified in the regulations is a financial asset for the purposes of this Act. It is not intended that these regulations would contradict the definition of a financial asset in the ABS publication — merely that it would provide the Board with certainty in relation to whether certain assets would fit within this definition. For the same reason, the regulations may also clarify that an asset is not a financial asset.

6.26 If the Board holds an asset which was mistakenly acquired by the Board or given to the Board or which ceases to be a financial asset due, for example, to a revision of the ABS government finance statistics manual, the Board must realise that asset as soon as is practicable.

6.27 The Act treats this investment as a complying investment up to the time it is realised. This ensures that the investment is considered an investment of the Corporation for that period and that the other rules in the Act relating to investments of the Corporation apply to that investment for the time it is held by the Board.

Section 64: Investment Mandate

6.28 It is appropriate that the Government, as manager of the economy and owner of the Corporation, have a mechanism for articulating its broad expectations for how the Corporation's funds will be invested and managed by the Board. This section establishes a framework that enables the Government to give strategic guidance to the Board while preserving the Board's role in making investment decisions independently from Government.

6.29 Under subsection 64(1), the responsible Ministers have the power to give the Board written directions in relation to the performance of its investment functions and the exercise of its powers.

6.30 The responsible Ministers must issue at least one direction under this section, to ensure that an investment mandate is in force at all times. This is done to provide clarity for the Board.

6.31 In setting an investment mandate, the responsible Ministers are to have regard to facilitating increased flows of finance into the clean energy sector and any other matters the Ministers consider to be

relevant. This requirement will give the Board, and the Parliament, comfort that the responsible Ministers must consider the scope of their directions from an investment perspective while ensuring that the responsible Ministers still have the flexibility to consider broader policy and national interest considerations.

6.32 A direction from the responsible Ministers may also include: matters of risk and return; eligibility criteria for investments; allocation of investments between different types of clean energy technologies; the types of financial instruments the Corporation may invest in; and broad operational matters. The investment mandate will also include the application of Australian Industry Participation Plans (AIPPs). The objective of AIPPs is to ensure Australian industry is afforded full, fair and reasonable opportunity to participate in projects. The Government will work with the Board to ensure that the system is streamlined where possible to ensure obligations are tailored to proponents at different stages of commercialisation.

6.33 Directions under subsection 64(1) are legislative in character and are therefore legislative instruments for the purposes of the Legislative Instruments Act. However, any directions issued by the responsible Ministers as part of the investment mandate are non-disallowable instruments (covered by section 42 of the Legislative Instruments Act) under item 41 of the table in subsection 44(2) of the Legislative Instruments Act.

- As legislative instruments, any directions given to the Board under section 64(1) are required to be registered on the Federal Register of Legislative Instruments and tabled in Parliament.

- This approach enables the public and Parliament to hold the Government accountable for the directions it issues to the Board without impeding the Government's ability to manage its finances.

Section 65: Limits on Investment Mandate

6.34 Section 65 makes clear that that the responsible Ministers must not issue a direction that is inconsistent with the Act or has the direct or indirect effect of requiring the Board to make a particular investment. This provision ensures the Board makes its investment decisions independently of the Government, while still allowing the Government to set broad policies for the Corporation.

Section 66: Board to be consulted on Investment Mandate

6.35 The responsible Ministers are required to consult the Board on the initial investment mandate and any changes or additions to the investment mandate. This is achieved by the responsible Ministers sending a draft of the new direction to the Board and inviting the Board to make a submission within a reasonable time limit.

- What constitutes a reasonable time limit will be determined on a case-by-case basis with regard to relevant circumstances and priorities at the time.
- It may be the case that urgent changes are required in the national interest. In this situation, it would be reasonable for the Board to be asked to consider the draft direction quickly.
- However, where there is less urgency, or the change in the investment mandate is quite substantial, it would be reasonable to provide the Board with more time to consider the draft direction.

6.36 In practice, it is likely there would be discussions between the departments of the responsible Ministers, the Board and the CEO of the Corporation before Ministers make changes or additions to the investment mandate.

6.37 Any submission received by the responsible Ministers from the Board must be tabled in Parliament with the direction. In this way the Board will be able to ensure that their views on the expected impact on their ability to maximise returns are publicly known.

Section 67: Compliance with Investment Mandate

6.38 It is the responsibility of the Board to take all reasonable steps to ensure that all policies and decisions regarding the operation and investment of the Corporation and its subsidiaries are in accordance with the investment mandate issued by the responsible Ministers.

6.39 Since the investment mandate is intended to provide broad guidance to the Board it may contain directions that require the Board to apply its judgement on whether or not the Corporation is complying with the mandate.

6.40 If the Board becomes aware of a breach of the investment mandate or judges that a policy does not comply with the investment mandate it must inform the responsible Ministers in writing as soon as is

practical, including a proposed strategy to bring the operations of the Corporation into accord with the investment mandate.

6.41 Similarly, if the Government identifies areas where the Board is not complying with the investment mandate, the responsible Ministers can issue written directions to the Board to take action to remedy the situation. The Act requires the Board to comply with any such directions, underlining that the responsible Ministers are the final arbiters on what is intended by the investment mandate.

6.42 Subsection 67(6) is included to assist readers, as a direction from the responsible Ministers is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Section 68: Investment policies

6.43 The Board is required to publish a number of policies on its investment activities that are to be complied with by the Corporation. In particular, the Board is required to develop and publish a policy on:

- the strategy it is adopting for the investment of the Corporation;
- the benchmarks and standards the Board uses for assessing the performance of the investments of the Corporation in general, the performance of any investments it wishes to identify separately, and the performance of certain classes of investments;
- how it proposes to manage risks associated with investments of the Corporation;
- other matters that are specified in the regulations.

6.44 Under subsection 33(3) of the Acts Interpretation Act, the Board is able to repeal, rescind, revoke, amend, or vary any such policies.

6.45 The policies that the Board develops must not be incompatible with the investment mandate.

6.46 The Board must publish the first set of policies on the Corporation's website as soon as is practicable and no later than 1 July 2013.

6.47 The Board must conduct reviews of these policies periodically and when the responsible Ministers change the investment mandate. It

is not expected that these reviews would be a formal process or that the results of the reviews would be required to be published. However, if the review resulted in any changes to the policies, the updated policies would need to be published on the Corporation's website.

6.48 If the Board enters into a transaction which is not consistent with the investment mandate or a policy that it has published under section 68, the transaction is still a valid transaction. This ensures that third parties are not affected by any inconsistency with the Board's policies. However, the Board is required to take all reasonable steps to comply with investment mandate under subsection 67(1).

6.49 Subsection 68(9) is included to assist readers, as an investment policy published by the Board is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Section 69: Guarantees

6.50 As the Corporation is dealing with public money and to ensure the Corporation invests its funds prudently, it is appropriate to limit the guarantees the Corporation can provide to the amount of the uncommitted balance of the CEFC Special Account. If the Corporation purports to give a guarantee that exceeds the uncommitted balance of the CEFC Special Account, the guarantee will be void.

6.51 Subsection 69(4) makes clear that a subsidiary of the Corporation must not give a guarantee.

Section 70: Derivatives

6.52 Derivatives are widely used by financial market participants as a tool for risk management. The types and volumes of derivatives being traded has grown exponentially as the underlying markets have created demand for these types of instruments.

6.53 This section provides for the Board to make use of derivatives as a risk management tool and to indirectly achieve exposure to financial assets other than derivatives. The Board may also use derivatives to reduce the transaction cost of achieving required exposures. However, the Board may not use derivatives for speculative purposes or for leverage.

6.54 The Board must formulate a policy on its investment strategy and take all reasonable steps to comply with this policy under section 68. The acquisition of derivatives under this section cannot be inconsistent with this strategy.

Chapter 7
Part 7 — Miscellaneous

Summary of new law

7.1 Part 7 deals with miscellaneous matters, including matters relating to the Corporation's subsidiaries, the publication of investment reports and annual reports, disclosure of information, delegations and review of the Act.

Detailed explanation of new law

Section 71: Investments made by Corporation's subsidiaries

7.2 Given that the Corporation's investments will be Australian-based, the Corporation's subsidiaries must not be incorporated or formed outside of Australia. This requirement assists the Corporation in maintaining control over their subsidiaries.

7.3 A subsidiary of the Corporation is subject to the investment mandate, the Corporation's investment policies and the rules on the acquisition of derivatives under section 70.

7.4 A subsidiary is subject to the investment mandate and provisions of the Act and should not be used to circumvent the investment restrictions of the Board.

Section 72: Publication of investment reports

7.5 To ensure transparency in the Corporation's investment operations, to assure the Government and community the Corporation is managing public money prudently and to keep market participants fully informed, the Corporation must publish an investment report within one month of 31 March, 30 June, 30 September and 31 December each year.

7.6 This section also requires the Corporation to report on investments made by its subsidiaries, as the performance of the Corporation's investment function includes investments made by subsidiaries and other investment vehicles.

Section 73: Publication of reports etc.

7.7 The responsible Ministers may publish reports, documents or any information given by the Board in keeping the responsible Ministers informed of the operations of the Corporation and its subsidiaries under section 16 of the CAC Act, except where the information is commercial-in-confidence. In practice, the Board is likely to report through the Corporation's annual or investment reports; nevertheless, this clause allows the Minister to publish information from the Corporation where it is not covered by sections 72 and 74.

7.8 To protect information that is commercial-in-confidence, the Minister must not publish information that the Board is satisfied is commercial-in-confidence.

7.9 In determining whether the information is commercial-in-confidence, the Board may be satisfied if a person can demonstrate that the release of the information would cause competitive detriment, the information is not public or readily discoverable and the information is not required to be disclosed under Commonwealth, State or Territory laws. The onus is on the affected person to demonstrate these factors to the Board to reduce the administrative burden on the Board.

Section 74: Extra matters to be included in annual report

7.10 Under section 9 of the CAC Act, the Corporation is required to prepare an annual report for the responsible Ministers. The annual report must include the following information, in addition to what is prescribed in the CAC Act:

- the total value of the Corporation's investments, broken down by class of clean energy technology;
- the realisation of any investments;
- if less than half of the funds invested for the purposes of the Corporation's investment function are invested in renewable energy technologies, the Corporation must provide reasons why it has not met this requirement;
- the total value of concessions given;
- the assets and liabilities of the Corporation and a statement of cash flows;

- the remuneration and allowances of Board members and senior staff;
- benchmark the Corporation's expenses / operating costs against similar organisations;
- procurement contracts that have a value of more than $80,000;
- credits and debits into the CEFC Special Account in the financial year.

7.11 This section also requires the Corporation to report on investments made by its subsidiaries in its annual report.

Section 75: Disclosure of official information

7.12 This section will facilitate the sharing of information between the Corporation and:

- ARENA
- The ABS
- The Clean Energy Regulator
- Low Carbon Australia Limited
- Australian Public Service employees in a responsible Minister's Department
- A State or Territory government
- A prescribed agency or authority of a State or Territory
- A prescribed agency, body or person.

7.13 This information sharing is for the purpose of enabling or assisting the Corporation, or any of the listed bodies or persons, to perform or exercise any of their functions or powers.

Section 76: Nominated Minister

7.14 To promote the efficient operation of the Act and reduce the administrative burden on the Board, as soon as is practical after the commencement of the Act, the responsible Ministers must determine

that one of them is to be the nominated Minister for the purposes of the Act. This determination may be varied but not revoked.

7.15 Subsection 76(3) is included to assist readers, as a determination by the responsible Ministers is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

7.16 To keep the other responsible Minister informed, the nominated Minister may give the other responsible Minister any information or documents obtained by the nominated Minister.

Section 77: Delegation by nominated Minister

7.17 To promote the efficient operation of the Act and to ensure timely administration, the nominated Minister may, in writing, delegate the functions of authorising payment to the Corporation or payment for the clean energy sector to the Secretary of the Department of the nominated Minister.

Section 78: Delegation by Corporation

7.18 The Corporation may delegate any of its powers and functions to a Board member or the CEO.

Section 79: Delegation by Board

7.19 The Board may delegate any of its powers and functions to a Board member or the CEO.

Section 80: Delegation and subdelegation by CEO

7.20 The CEO may delegate any of his or her powers or functions, including any powers or functions delegated to the CEO by the Board or Corporation, to a senior member of the Corporation's staff.

7.21 The Board will have oversight of delegations and subdelegations and will identify senior staff to delegate powers and functions to.

7.22 Allowing the CEO to delegate his or her powers or functions to staff of a senior level, who would undertake the tasks concerned is a normal administrative arrangement. It is envisaged that the CEO would be held accountable by the Board for managing, monitoring and controlling the activities of those senior officials who perform the tasks under delegation.

Section 81: Review of operation of Act

7.23 The nominated Minister must arrange for a review of the operation of this Act to be undertaken as soon as is practicable after 1 July 2016, including the effectiveness of the Corporation in facilitating the development, commercialisation and use of clean energy technologies.

7.24 Any such review must involve public consultation, the person undertaking the review must give the nominated Minister a written report and the nominated Minister must table any completed report in Parliament House within 15 sitting days of receiving the report.

Section 82: Regulations

7.25 The Governor-General may make regulations under section 82 covering matters required to be prescribed in the Act, or matters that it would be convenient to prescribe for the purposes of this Act.

Chapter 8
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Clean Energy Finance Corporation Bill 2012

8.1 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

8.2 The object of the Bill is to establish the CEFC to facilitate increased flows of finance into the clean energy sector.

Human rights implications

8.3 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

8.4 This Bill is compatible with human rights as it does not raise any human rights issues.

Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP