Clean Energy (Consequential Amendments) Bill 2011

(Government)

(1) Schedule 1, item 307, page 58 (line 17), after “11A,”, insert “11AA, 11AB,”.  
[operational control]

(2) Schedule 1, page 65 (after line 12), after item 339, insert:

339AA At the end of section 10

Add:

(4) A determination under subsection (3) may also deal with matters required or permitted by section 32 or 32A of the Clean Energy Act 2011 to be dealt with by such a determination.  
[landfill emissions]

(3) Schedule 1, item 348, page 66 (line 8), after “11A,”, insert “11AA, 11AB,.”.  
[operational control]

(4) Schedule 1, item 349, page 66 (after line 27), after section 11A, insert:

11AA Operational control during part of fixed charge year—nominated person

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, the first 9 months of a fixed charge year:

(a) 2 or more persons could satisfy paragraph 11(1)(a) in relation to a facility throughout the period;

(b) no particular person has the greatest authority to introduce and implement the policies mentioned in subparagraphs 11(1)(a)(i) and (iii) in relation to the facility throughout the period;
(c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period;
(d) as at the start of 1 April in the fixed charge year, it may reasonably be expected that a person would have had an interim emissions number for the fixed charge year if it were assumed that:
   (i) the person had operational control over the facility throughout the period; and
   (ii) none of the persons mentioned in paragraph (a) of this subsection had operational control over the facility throughout the period.

Nomination

(2) The persons mentioned in paragraph (1)(a) must, before the end of 30 April in the fixed charge year, jointly nominate one of them to be the nominated person in relation to the facility for the period.

Civil penalty: 1,000 penalty units.

(3) A nomination must:
   (a) be in writing; and
   (b) be in a form approved by the Regulator; and
   (c) be accompanied by such information as is specified in the regulations.

(4) If:
   (a) any of those persons is a foreign person; and
   (b) any of those persons is not a foreign person;
   a foreign person cannot be nominated.

Operational control—nomination made

(5) If a nomination is made and the facility is a facility of a joint venture, the nominated person is taken, for the purposes of this Act, to have operational control over the facility throughout the period.

(6) If a nomination is made and the facility is not a facility of a joint venture, the nominated person is taken, for the purposes of this Act and the Clean Energy Act 2011, to have operational control over the facility throughout the period.

Operational control—nomination not made

(7) If no nomination is made and the facility is a facility of a joint venture, each of the persons mentioned in paragraph (1)(a) is taken, for the purposes of this Act, to have operational control over the facility throughout the period.

(8) If no nomination is made and the facility is not a facility of a joint venture:
   (a) each of the persons mentioned in paragraph (1)(a) is taken, for the purposes of this Act and the Clean Energy Act 2011, to have operational control over the facility throughout the period; and
   (b) if there is a provisional emissions number of such a person for the fixed charge year in relation to greenhouse gases emitted from the operation of the facility during the period—for the purposes of this Act and the Clean Energy Act 2011, that provisional emissions number is taken to be the number worked out using the formula set out in subsection (9).

(9) The formula is:
Unadjusted provisional emissions number
Total number of persons mentioned in paragraph (1)(a)

where:

unadjusted provisional emissions number means the number that, apart from paragraph (8)(b), would be the provisional emissions number of the person for the fixed charge year in relation to greenhouse gases emitted from the operation of the facility during the period.

Exception

(10) A person is not required to comply with subsection (2) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under:
   (a) this Act; or
   (b) the Clean Energy Act 2011.

11AB Operational control during part of fixed charge year—trust with multiple trustees

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, the first 9 months of a fixed charge year:
   (a) because of section 11, 11A or 11AA, a trust has operational control over a facility throughout the period;
   (b) throughout the period, there are 2 or more trustees of the trust;
   (c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period;
   (d) as at the start of 1 April in the fixed charge year, it may reasonably be expected that a person would have had an interim emissions number for the fixed charge year if it were assumed that:
      (i) the person had operational control over the facility throughout the period; and
      (ii) the trust did not have operational control over the facility throughout the period.

Nomination

(2) The trustees must, before the end of 30 April in the fixed charge year, jointly nominate one of them to be the nominated trustee in relation to the facility for the period.

Civil penalty: 1,000 penalty units.

(3) A nomination must:
   (a) be in writing; and
   (b) be in a form approved by the Regulator; and
   (c) be accompanied by such information as is specified in the regulations.

(4) If:
   (a) any of those trustees is a foreign person; and
   (b) any of those trustees is not a foreign person;
a foreign person cannot be nominated.

Operational control

(5) If a nomination is made, the nominated trustee is taken, for the purposes of this Act and the Clean Energy Act 2011, to have operational control over the facility throughout the period.

(6) If no nomination is made:
   (a) each of those trustees is taken, for the purposes of this Act and the Clean Energy Act 2011, to have operational control over the facility throughout the period; and
   (b) if there is a provisional emissions number of such a trustee for the fixed charge year in relation to greenhouse gases emitted from the operation of the facility during the period—for the purposes of this Act and the Clean Energy Act 2011, that provisional emissions number is taken to be the number worked out using the formula set out in subsection (7).

(7) The formula is:

\[
\frac{\text{Unadjusted provisional emissions number}}{\text{Total number of trustees mentioned in paragraph (1)(b)}}
\]

where:

unadjusted provisional emissions number means the number that, apart from paragraph (6)(b), would be the provisional emissions number of the trustee for the fixed charge year in relation to greenhouse gases emitted from the operation of the facility during the period.

Exception

(8) A trustee is not required to comply with subsection (2) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under:
   (a) this Act; or
   (b) the Clean Energy Act 2011.

(5) Schedule 1, item 349, page 67 (line 13), omit “period.”, substitute “period;”.

(6) Schedule 1, item 349, page 67 (after line 13), at the end of subsection 11B(1), add:
   (d) if the period is included in a fixed charge year—section 11AA does not apply to the facility for the period.

(7) Schedule 1, item 349, page 68 (lines 16 to 24), omit paragraph 11B(8)(b), substitute:
   (b) if there is a provisional emissions number of such a person for the eligible financial year in relation to greenhouse gases emitted from the operation of the facility during the period—for the purposes of this Act and the Clean Energy Act 2011, that provisional emissions number is taken to be the number worked out using the formula set out in subsection (9).
(8) Schedule 1, item 349, page 68 (lines 30 and 31), omit “or the controlling corporation, as the case may be,”.

[operational control]

(9) Schedule 1, item 349, page 69 (line 17), omit “period.”, substitute “period;”.

[operational control]

(10) Schedule 1, item 349, page 69 (after line 17), at the end of subsection 11C(1), add:

(d) if the period is included in a fixed charge year—section 11AB does not apply to the facility for the period.

[operational control]

(11) Schedule 3, item 1, page 174 (lines 12 and 13), omit subsection 11(2), substitute:

(2) The Regulator may refuse the application if the Regulator is satisfied that the applicant is not a fit and proper person.

(2A) For the purposes of subsection (2), in determining whether the applicant is a fit and proper person, the Regulator:

(a) must have regard to the matters specified in regulations made for the purposes of this subsection; and

(b) may have regard to such other matters (if any) as the Regulator considers relevant.

[renewable energy certificates]

(12) Schedule 3, item 5, page 176 (lines 4 and 5), omit subsection 30A(5), substitute:

(5) The Regulator may, by written notice, suspend the registration of a registered person if the Regulator is satisfied that the registered person is not a fit and proper person.

(5A) For the purposes of subsection (5), in determining whether the registered person is a fit and proper person, the Regulator:

(a) must have regard to the matters specified in regulations made for the purposes of this subsection; and

(b) may have regard to such other matters (if any) as the Regulator considers relevant.

[renewable energy certificates]

(13) Schedule 4, page 189 (after line 3), after item 25, insert:

25A After subsection 47(1)

Insert:

Effect of transmission

(1A) The transmission is of no force until the Administrator transfers the unit under subsection (7) or (8).

[transmission of registered Kyoto units by operation of law etc.]