Climate Change Authority Bill 2011

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Law and Bills Digest Section

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Climate Change Authority Bill 2011

Date introduced: 13 September 2011

House: House of Representatives

Portfolio: Climate Change and Energy Efficiency

Commencement: Sections 1 and 2 commence upon Royal Assent. Section 3, Parts 2 and 3 commence on 1 July 2012 but if section 3 of the Clean Energy Bill 2011 does not commence by this date, then they do not commence at all. Sections 4 to 9 and Parts 4 and 5 commence on a single day to be fixed by Proclamation, though not before the Clean Energy Bill 2011 receives Royal Assent. However if they do not commence within six months from the day this Bill and the Clean Energy Bill 2011 receive Royal Assent, then they commence the day after the end of that period.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

As it its name implies, the Australian Climate Change Authority Bill 2011 (the Bill) creates the statutory Australian Climate Change Authority (the Authority), which is intended to act as an independent body providing the Government with expert advice on key aspects of the carbon pricing mechanism and mitigation goals. The Bill also establishes the Land Sector Carbon and Biodiversity Board (the Board) which will advise the Environment Minister, the Climate Change Minister and the Agriculture Minister about climate change measures that relate to the land sector.

Background

The Bill is part of a suite of Bills that provide for the establishment and administration of the Government’s plan for a cleaner energy future. Extensive discussion of the Clean Energy Bill, its basis and the carbon pricing mechanism is contained in the relevant Bills Digest.

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Committee consideration

The Bill was referred to the Joint Select Committee on Australia’s Clean Energy Future Legislation for inquiry. Details of the inquiry can be found here: Inquiry into Australia’s Clean Energy Future.\(^1\) The Committee tabled its report on 7 October 2011.

Financial implications

The Explanatory Memorandum states that the financial impact of this Bill is dealt with in the Explanatory Memorandum for the Clean Energy Bill 2011.\(^2\)

Key provisions

Division 1 – The establishment, functions, powers and liabilities of the Authority

The Bill deals mainly with the establishment and administrative aspects of the Authority.

Clause 11 provides that the functions of the Authority include:

- conducting reviews into and making recommendations on:
  - progress in achieving Australia’s emission reduction targets and any national carbon budget; the level of carbon pollution caps and any indicative national emissions trajectory for the first five years of the emissions trading scheme (the first to be completed by 28 February 2014) and annually thereafter
  - the National Greenhouse Gas and Energy Reporting System (the first to be completed by 31 December 2018)
  - the Carbon Farming Initiative by (the first to be completed by 31 December 2014) and every three years thereafter\(^3\)
  - the integrity of international units and review of the 50% limitation on using international carbon units (the first to be completed by 31st December 2016)
  - the need and level of a floor and ceiling on the market price by 2017
  - the Renewable Energy Target\(^4\) (by the second half of 2012) and every two years thereafter
  - any matters relating to climate change, as specified by the Minister or both Houses of Parliament

- to conduct research about matters relating to climate change:

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2. Explanatory Memorandum, Climate Change Authority Bill 2011, p. 6.

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– to perform such functions that are conferred by this Act, or by any other law of the Commonwealth and
– to do anything incidental to or conducive to the performance of these duties.

**Clause 12** provides that the Authority must be guided by certain principles, such that any measures to respond to climate change should be:

- equitable, economically efficient and environmentally effective, and
- in the public interest, taking into account impacts on households, business, workers and communities, and
- supportive of the development of an effective global response to climate change, and
- consistent with Australia’s foreign policy and trade objectives, and
- such other principles (if any) as the Authority considers relevant.

**Comment**

While all of these principles may be seen as relevant and desirable, the Explanatory Memorandum makes no comment about the obvious tension that can exist between these often competing principles. Note also that the principles are joined by the conjunctive ‘and’ not ‘or’.

**Powers of the Authority**

**Clause 13** provides that:

- the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and
- the powers of the Authority include, but are not limited to, the power to enter into contracts.

**Clause 14** provides that the Authority’s financial liabilities are the Commonwealth’s liabilities.

**Clause 15** provides that the Authority has the privileges and **immunities of the Crown** in right of the Commonwealth.

**Constitution and membership of the Authority**

**Clause 16** provides that the Authority is a body corporate which must have a seal and may acquire, hold and dispose of real and personal property and may sue and be sued in its corporate name.

**Clause 17** provides that the Authority consists of a Chair, the Chief Scientist and seven other Members. The role of the Chief Scientist is to provide relevant expertise to assist the Authority with its functions, but without affecting the independence of the Authority.\(^5\)

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5. Explanatory Memorandum, Climate Change Authority Bill 2011, p. 16.

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Clause 18 provides that the Minister is to appoint Members by written instrument. A person is not eligible for appointment as an Authority Member (other than a Chief Scientist) unless the Minister is satisfied that the person has:

- substantial experience or knowledge, and
- significant standing in at least one of the listed fields. Among these fields are:
  - climate science
  - environmental management
  - economics (including environmental economics)
  - industry
  - social policy
  - technology development and adoption
  - employment policy
  - energy production and supply
  - trading of environmental instruments
  - land resource management
  - public administration
  - greenhouse gas emissions measurement and reporting
  - greenhouse gas abatement measures and
  - financial markets and investment.

It is noteworthy that the requirement for membership is not substantial experience and knowledge. The current drafting seems to have the potential to pool persons with substantial experience in one of these areas, but not necessarily relevant technical knowledge and vice versa.

A Member of the Authority may hold office on a full or part-time basis. The Chief Scientist holds the office on a part-time basis.

Associate Authority Members

The Climate Change Minister may appoint as many associate Members of the Authority as he sees fit. The eligibility requirements for selection mirror those for the appointment of Authority Members under clause 18 (clause 22). The Explanatory Memorandum states that these Members are intended to add to ‘the high quality specialist expertise for the purposes of particular reviews’. 6

Clause 19 provides that a Member of the Authority holds office for the period specified in the instrument of appointment, but that period must not exceed five years.

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6. Ibid.

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Terms and conditions for Authority Members and associate Members

Clause 25 deals with the remuneration and allowances of Members of the Authority. Members of the Authority are to be paid such remuneration as is determined by the Remuneration Tribunal, or if no determination is in operation, a Member is to be paid such remuneration as is prescribed by the regulations. Allowances are prescribed by regulations.

Clause 26 provides that a Member or associate Member of the Authority must give written notice to the Minister of all interests, pecuniary or otherwise, that the Member has, or acquires, and that do, or may, conflict with the proper performance of the Member’s functions.

Clause 27 provides that a Member or associate Member of the Authority who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Authority must disclose the nature of the interest to a meeting of the Authority. Such notice must be provided in a timely manner and recorded in the minutes. Unless the Authority otherwise determines, the Member of the Authority must not be present at any deliberation on the matter by the Authority and cannot participate in any decision of the Authority with regard to the matter.

Clause 28 forbids a full-time Member or associate Member of the Authority from engaging in paid outside employment without Ministerial approval. Any part-time Member or associate Member of the Authority must not engage in paid employment that conflicts or may conflict with the proper performance of their duties.

Clause 31 enables the Minister to terminate the appointment of a Member (other than the Chief Scientist) or associate Member of the Authority, for misbehaviour or physical or mental incapacity.

- the Minister may also terminate the appointment of a Member or associate Member of the Authority if the Member:
  - becomes bankrupt, or
  - applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or
  - compounds with his or her creditors, or
  - makes an assignment of his or her remuneration for the benefit of his or her creditors, or
- breaches the requirements of clause 28 (outside employment), or
- fails to comply, without reasonable excuse, the requirements of clauses 26 or 27 (disclosure of interests), or
- the Member is absent (except on leave of absence) for three consecutive meetings of the Authority.

Division 4 – Decision-making by the Authority

The Authority may convene a meeting at any time and is to hold meetings as necessary for the performance of its functions (clause 33). The Chair is to preside over the meeting if they are present, otherwise the Members of the Authority must appoint one of themselves to preside (clause 34).

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Meetings must be minuted (clause 39). Five Members of the Authority constitute a quorum (clause 35) and questions are decided by a majority of votes, but the person presiding has a casting vote where there is an equality of votes (clause 37).

**Delegation of powers**

The Authority may, in writing, delegate any of its functions and power to a Member or associate Member of the Authority, or to a SES (or acting SES) employee of the Authority (amongst others). The delegate is obliged to exercise those powers or functions in compliance with any directions of the Authority (clause 40).

**Chief Executive Officer of the Authority**

Clause 41 creates the requirement that there be a CEO of the Authority. Clause 42 sets out the CEO’s role, basically the day-to-day administration of the Authority and anything necessary or convenient to be done in connection with the performance of his duties. The CEO must not engage in outside employment (without approval) and is obliged to disclose all interests that conflict or may conflict with the proper performance of the CEO’s role (clause 45 and clause 48). Clause 50 enables the Minister to terminate the appointment of the CEO basically for the same reasons as the termination of an Authority Member or associate Member.

**Staff of the Authority**

Clause 52 provides that the staff of the Authority are to be engaged under the Public Service Act 1999. Clause 53 provides a list of persons who may provide assistance to the Authority in connection with the performance of any of its functions. Clause 54 provides that the Authority may engage suitably qualified consultants who are to be employed on terms and conditions that the Authority determines in writing.

**Planning and reporting obligations**

Clause 55 mandates that the Authority is under an obligation to develop a corporate plan at least once every three years which covers a three year period, defines the key objectives of the Authority and outlines the strategies to be pursued by the Authority in achieving those stated objectives. The first corporate plan must be prepared within 12 months after the commencement of this section of the Act. The Chair of the Authority must keep the Minister abreast of changes to the plan and matters that may significantly affect the achievement of the plan’s objectives.

Clause 56 provides that the Authority must, as soon as practicable at the end of each financial year, prepare and give to the Minister for presentation to the Parliament, an annual report on its operations during that year. Basic mandatory requirements for the contents of the annual report are also outlined.
Other Matters

Clause 57 enables the Minister, by legislative instrument, to give directions to the Authority in relation to performance of its functions and exercise of powers, which the Authority must comply. These directions must be of a general nature only. The legislative instrument is not disallowable by Parliament (see note 2).

Clause 59 provides that special reviews are to be conducted by the Authority at the request of the Climate Change Minister or both Houses of Parliament. In conducting any review, the Authority must make provision for public consultation (clause 59). The Authority must prepare a report of a review which must be given to the Climate Change Minister and publish that report on the Authority’s website (clause 60). Any recommendations provided in that report must be accompanied by reasons and based on a cost-benefit analysis (subclause 60(4) and subclause 60(6)). The Government must provide a response to the report as soon as practicable and within six months of receiving the report, table copies of the statement in both Houses of Parliament.

Clause 61 establishes the Land Sector Carbon and Biodiversity Board. Under clause 62 the Board has functions to advise as follows:

- any or all of the relevant Ministers about:
  - performance indicators for the implementation of and
  - the priorities for research in relation to, prescribed measures that:
  - increase the land sector’s resilience to climate change
  - improve long-term farm productivity
  - assist landholders and regional communities to benefit from the reduction of greenhouse gas emissions from the land sector, or
  - assist landholders and regional communities to benefit from the sequestration of carbon in soil, in living biomass, or in dead organic matter

- to advise the Environment Minister about performance indicators for and the implementation of, and guidelines for the funding of Biodiversity Fund program measures that protect, manage or restore biodiverse ecosystems or establish, protect, manage, improve or restore levels of carbon sequestered in living biomass, or in dead organic matter.

The maximum term of Board membership appointment is five years (Clause 66). An Acting Chair or Acting Board Member may be appointed by the Environment Minister and the Minister for Agriculture (clause 67).

Eligibility requirements for Board membership require that a person has substantial experience or knowledge, and significant standing in one of the following fields:

- agricultural science
- economics (including environmental economics)
- conservation ecology

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• greenhouse gas emissions measurement and reporting
• greenhouse gas abatement measures
• public administration
• business management or
• the management or care of indigenous held land.

Before appointing a Board Member, the Environment and Agriculture Minister must consult the Climate Change Minister (subclause 65(3)).

A Member of the Board must disclose any interest, pecuniary or otherwise to the Board and also to the Environment Minister and the Minister for Agriculture (clause 69 and clause 70). Outside employment that conflicts or may conflict with the proper performance of a Board Member’s duties is prohibited (clause 71). Clause 75 sets out the circumstances in which the Environment Minister and the Minister for Agriculture may terminate the appointment of a Board Member.

Clause 78 enables the Environment Minister, with the agreement of the Agriculture Minister, to establish committees to advise or assist the Board in performance of its functions.

Clause 83 provides that the Governor-General may make regulations prescribing matters:
• required or permitted by the Act to be prescribed or
• necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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