Clean Energy Finance Corporation (Abolition) Bill 2013

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Law and Bills Digest Section

Contents

Purpose of the Bill ................................................................. 2
Structure of the Bill ............................................................... 2
Background ............................................................................. 2
Clean Energy Finance Corporation Achievements ................. 2
Committee consideration ...................................................... 3
Senate Environment and Communications Committee .......... 3
Financial impact of the abolition of the CEFC ....................... 4
Crowding out the market and demand for the CEFC ............ 4
Senate Standing Committee for the Scrutiny of Bills .............. 5
Parliamentary Joint Committee on Human Rights ................. 5
Statement of Compatibility with Human Rights ................. 5
Policy position of non-government parties/independents ....... 5
Australian Labor Party .......................................................... 5
Australian Greens ................................................................. 5
Democratic Labor Party ......................................................... 5
Position of major interest groups ....................................... 6
Financial implications .......................................................... 7
Key issues and provisions ...................................................... 7
Part 1 .................................................................................... 7
Part 2 .................................................................................... 7
Part 3 .................................................................................... 8
Part 4 .................................................................................... 8
Appendix ................................................................................ 9

Date introduced: 13 November 2013
House: House of Representatives
Portfolio: Treasury
Commencement: Various dates set out in the table in clause 2 of the Bill

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/Parliamentary_Business/Bills_Legislation

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 of the Bill
The purpose of the Clean Energy Finance Corporation (Abolition) Bill 2013 (the Bill) is to repeal the Clean Energy Finance Corporation Act 2012 (CEFC Act)¹ and thereby abolish the Clean Energy Finance Corporation. In addition, the Bill provides for the transfer of the Clean Energy Finance Corporation’s assets and liabilities to the Commonwealth.

Structure of the Bill
The Bill contains four Parts:

- Part 1 repeals the CEFC Act to abolish the Clean Energy Finance Corporation (CEFC)
- Part 2 makes consequential amendments to the Australian Renewable Energy Agency Act 2011² and the Clean Energy Regulator Act 2011³
- Part 3 contains relevant transitional provisions including the establishment of the CEFC Transitional Special Account and
- Part 4 amends the Clean Energy Finance Corporation (Abolition) Act 2013 (when enacted) to repeal those provisions which establish the CEFC Transitional Special Account.

Structure of the broader legislative package
The broader carbon price repeal package comprises 11 Bills. The purpose of these Bills is to repeal the arrangements implemented by the former Government to establish the carbon price mechanism (CPM).

The CPM is a framework that internalises into the cost of production of certain goods and services, the cost to the economy of greenhouse gas emissions resulting from that production. For this framework, architecture for an emissions trading scheme was established. Under this framework, there was a period during which carbon prices would be fixed (2012 to 2015), and a period during which the carbon price would fluctuate with market forces (from 1 July 2015). To support the framework several new government agencies were established. Income tax and transfer payments were also changed. This was to compensate households for the expected higher costs of living.

This Bill is one of the Bills which make up the carbon price repeal package. The 11 separate Bills, which cover five main areas associated with the repeal, are set out in Appendix 1 of this Bills Digest.

Background
The CEFC was established as a Commonwealth authority to which the Commonwealth Authorities and Companies Act 1997 applies.⁴ According to the Explanatory Memorandum for the originating Bill:

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 …

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.⁵

Clean Energy Finance Corporation Achievements
In the period August 2012 to August 2013, the CEFC:

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- funded projects involving over 500MW of clean electricity generation capacity installed or supported
- developed a total portfolio of $536 million and through its co-finance partners has invested in projects over $2.2 billion in value
- delivered abatement at negative cost (that is, benefit) to the taxpayer of $2.40 per tonne of CO2 abated (net of government cost of borrowing) with $2.90 of private sector investment attracted for every $1 the CEFC invests
- invested across a broad range of technologies including wind, solar, energy efficiency and low emissions technologies
- invested in projects that are demonstrating the benefits of proven technologies in the Australian market
- conducted active discussions with 37 proponents for $4.5 billion in projects and performed initial assessment of a further 142 projects together representing 179 projects and $14.9 billion of opportunity
- had 39 investments in the portfolio to 20 August 2013
- had investments which will deliver an estimated 3.88 million tonnes of CO2-e abated annually
- had investments which will assist in building Australia’s clean energy supply chain capability
- funded projects in regional and rural Australia, supporting 21st century jobs in local communities
- benefitted many industries by providing financing, including agribusiness, property, manufacturing, utilities and local government
- through matched private sector funds of $2.90 for each $1 of CEFC investment, has been able to catalyse over $1.55 billion in non-CEFC private capital investment in projects and programs to deploy renewables and to improve energy efficiency and
- originated 11 investments which exceed the five-year Australian Government bond rate. The CEFC investments to 20 August 2013 carry an average yield of 7.33 per cent. The five-year bond rate across the portfolio was 3.11 per cent.6

Despite this, it has been reported that:

Assistant Treasurer, Arthur Sinodinos said he was unconvinced the CEFC’s function could not be replicated by the private sector while Environment Minister Greg Hunt disputed the worthiness of its investments.7

Committee consideration

Senate Environment and Communications Committee

The package of carbon tax repeal Bills was referred to the Senate Environment and Communications Committee (the Committee) for inquiry and report by 2 December 2013.8 The majority report of the Committee recommends that all of the Bills in the package be passed. In support of this Bill, the Committee stated that it ‘agrees with the bill’s intention to abolish the CEFC … The use of $10 billion in taxpayer money to fund what essentially amounts to a private bank is not justified’.9

The views of the Senators who made dissenting comments are canvassed below.

The CEFC made a detailed submission to the Committee in which it addressed, amongst other things, two issues – the impact of the abolition of the CEFC and whether the CEFC ‘crowds out’ the market.

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8. Details of the terms of reference, submissions to the Senate Environment and Communications Committee and the final report are on the inquiry homepage, accessed 9 December 2013.
Financial impact of the abolition of the CEFC

First, the CEFC questions the projected savings to the Commonwealth arising from its abolition. These are set out at page 3 of the Explanatory Memorandum.  

The CEFC asserts that there will actually be a cost to shutting down the CEFC:

There are two important stories behind the numbers – (1) the concessionality charge and (2) the interest revenue the CEFC generates vs. cost of funds.

On the concessionality charge, the savings as presented in the Explanatory Memorandum to the CEFC Abolition Bill do not tell the full story. The Fiscal Balance only reflects a saving in the forward estimates period if the CEFC undertakes no further investments due to the way in which the ~$300 million pa non-cash charge allowed for concessionality impacts on the Fiscal Balance.

It is important to note that this non-cash charge would reverse over future periods and therefore if the out-years were displayed you would see the more accurate reflection of the policy is actually a cost to the Fiscal Balance (note: much of the unwind of the costs is outside the forward estimates period). This is illustrated ... below

**CEFC abolition—concessionality impact**

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<tbody>
<tr>
<td>Fiscal Balance</td>
<td>$177.4m</td>
<td>$276.9m</td>
<td>$191.4m</td>
<td>$60.3m</td>
<td>$706.1m</td>
</tr>
<tr>
<td>Add back net concessionality (non-cash) charge</td>
<td>$167.3m</td>
<td>$285.0m</td>
<td>$256.2m</td>
<td>$208.5m</td>
<td>$917.0m</td>
</tr>
<tr>
<td>Fiscal balance before concessionality</td>
<td>$10.1m</td>
<td>- $8.1m</td>
<td>- $64.8m</td>
<td>- $148.2m</td>
<td>- $210.9m</td>
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</table>

Once at scale, the annual unwind of the concessionality charge is expected to approximate the annual new concessionality charge and therefore has no net impact on either Fiscal Balance or Underlying Cash Balance.

Secondly, on the interest generated vs. cost to government question, the accounting for entities like the CEFC are complex, so we have tried to illustrate below in both tabular and chart format the earnings that would be foregone and the reduction in Fiscal Balance and Underlying Cash Balance that the Commonwealth budget would suffer on an annual basis once the CEFC reached even a $5bn Portfolio (out of the $10 billion allowed in the CEFC Act).

The figures cited in the Explanatory Memorandum to the Abolition Bill only include financial impact over the forward estimates period from abolition of the CEFC. 

Crowding out the market and demand for the CEFC

Second, the CEFC addresses claims that its presence in the market results in the ‘crowding out’ of other commercial entities, stating that:

This is not borne out by the facts, and again, the Government has issued an explicit direction to avoid these impacts via the Investment Mandate.

The CEFC has achieved private sector leverage of $2.90 for every $1 the CEFC has invested. As such, we are demonstrably crowding in – not crowding out - market finance.

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The resounding positive response to date from the market, demonstrates the role of the CEFC. There is also further need - the 2012-13 CEFC Annual Report highlights that active discussions were underway with circa 37 project proponents, who were seeking CEFC finance of over $2 billion (total project costs of over $4.5 billion). Further, as at 20 August 2013, the CEFC had received proposals from over 170 project proponents seeking CEFC finance of over $5 billion (with total project costs of over $14.9 billion). It is clear that demand for the CEFC from the market remains extremely high.11

**Senate Standing Committee for the Scrutiny of Bills**

The report by the Senate Standing Committee for the Scrutiny of Bills states that the Committee has no comment to make on this Bill.13

**Parliamentary Joint Committee on Human Rights**

At the time of writing this Bills Digest, the Parliamentary Joint Committee on Human Rights had not published any comments in relation to the Bill.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.14 The Government considers that the Bill is compatible.

**Policy position of non-government parties/independents**

**Australian Labor Party**

The Australian Labor Party (ALP) strongly disagrees with the proposal to abolish the CEFC. According to Senator Polley:

> The corporation itself is critical in Australia’s effort to reduce our reliance on carbon emissions. By facilitating comprehensively commercial loans for renewable clean energy technology investments, it acts as a vital catalyst for investment and growth. When it comes to encouraging new forms of energy technology and repositioning the Australian economy, it is a real game changer.15

Senator Bilyk considers the move ‘to destroy the Clean Energy Finance Corporation is pointless and counterproductive’.16

**Australian Greens**

The Australian Greens (the Greens) argue against the passage of the Bill on the grounds that

> ... the Clean Energy Finance Corporation has already achieved nearly four million tonnes of carbon emissions abatement—more than half of our annual target ... It is making money for the taxpayer of approximately $2.40 for every tonne of carbon abated. Who knew that you could actually make a financial return to the taxpayer at the same time as eliminating greenhouse gas emissions and creating jobs in the sunrise industries of the 21st century?17

**Democratic Labor Party**

Senator Madigan also disagrees with the proposal to abolish the CEFC on the grounds that it:

> ... is not providing grants to fund projects. It is not giving away taxpayers’ money. It is a pro-industry development bank that is helping drive private and public investment in lower emission and cleaner energy technologies. It

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12. Ibid., p. 29.
14. The Statement of Compatibility with Human Rights can be found at pages 16–17 of the Explanatory Memorandum to the Bill.
prefers Australian manufacturers. It is helping our farmers and our manufacturers to reduce their costs and to use energy-efficient equipment. It requires borrowers to be responsible, to deliver on their project commitments and to repay their borrowings. It leverages private capital to invest in area they might otherwise ignore, like energy generation using methane emissions from farms and industrial processes.

The Clean Energy Finance Corporation is dragging Australian financial institutions into investing in the 21st century.\(^\text{18}\)

**Position of major interest groups**

The Department of Environment did not include this Bill amongst those it consulted on. However, of the 195 submitters on the package of carbon price repeal Bills, nine referred to the CEFC.\(^\text{19}\)

Law Society of NSW, Young Lawyers, Environment and Planning Law Committee stated, as part of the initial consultation:

The CEFC is an organisation with a long-term strategy that makes investments using financial expertise for the purpose of funding clean energy projects that would otherwise be too risky. The CEFC’s investment function under s 58 is to invest, directly and indirectly, in clean energy technologies being low emissions, renewable and energy efficient technologies. The Committee submits that CEFC investments create job opportunities and have the potential to produce “green dividends”. It is an organisation that would “pay for itself” in future and its removal would cost significantly more than its continuation.

The Committee notes that despite reports of comments describing the CEFC as a “green hedge fund”, s 70 of the CEFC Act limits the CEFC’s ability to acquire derivatives. The Committee also draws attention to s 72 which requires the publication on the CEFC’s website, its quarterly reports regarding investments.

We note that a similar entity has been operating in the United Kingdom since 2012.

The Committee submits that repeal of the CEFC Act would result in less opportunities for the development or commercialisation of clean energy technologies. Consequently, it would affect the competitiveness of Australian businesses in the clean energy sector, and impact on Australia’s commitment to reduce emissions under the Kyoto Protocol. The Committee submits that activities of the CEFC would support a direct action approach to reduce emissions and would complement the activities of the proposed Emissions Reduction Fund. Moreover, the dismantling of the CEFC does not strengthen an argument for the [direct action plan] DAP as an effective means of reducing carbon emissions. The Committee is of the view that the CEFC should remain and that it could support the effectiveness of a DAP.\(^\text{20}\)

Epuron, the owner and operator of four solar photovoltaic power stations in the Northern Territory noted that the CEFC ‘has consistently exceeded its statutory benchmark lending rate’ and suggested that:

... the CEFC be retained and, in line with its current practice, tasked with providing non-concessional market based loans to enable renewable energy developments and accelerate market maturity. This will provide the investment confidence the industry needs, the investment experience the banking sector seeks and assist the government to achieve or better its election stated emissions reductions goals.\(^\text{21}\)

In support of the CEFC, Responsible Investment Association Australasia stated:

A testament to this model is that global trend by many countries to put in place such public finance institutions to help catalyse investment flows into low carbon assets, including the UK Green Investment Bank, Germany’s kfw, China’s Development Bank, the US Department of Environment’s Loan Program Office, the New York Green Bank,


\(^{19}\) Department of the Environment, *Repealing the carbon tax—public comments*, Department of the Environment website, accessed 10 December 2013.


California Clean Energy Fund, European Investment Bank and many of the multilateral development banks such as the Asian Development Bank.\(^{22}\)

### Financial implications

According to the Explanatory Memorandum, abolishing the CEFC has the following fiscal balance and underlying cash balance implications over the forward estimates ($millions):

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<tbody>
<tr>
<td>Underlying Cash Balance</td>
<td>$9.6m</td>
<td>$5.2m</td>
<td>$27.2m</td>
<td>$59.4m</td>
<td>$83.1m</td>
</tr>
<tr>
<td>Fiscal Balance</td>
<td>$177.4m</td>
<td>$276.9m</td>
<td>$191.4m</td>
<td>$60.3m</td>
<td>$706.1m</td>
</tr>
</tbody>
</table>

These estimates do not make any allowance for the costs of shutting down the CEFC, such as employee redundancies and contract termination costs, nor do they make any allowance for the lower public debt interest costs of ceasing further CEFC investment.

#### Underlying cash balance

The overall impact on the underlying cash balance is negative, reflecting that no further CEFC investments will be made and therefore interest inflows will be lower.

#### Fiscal Balance

The net impact on the fiscal balance is positive, despite reduced interest inflows due to the smaller CEFC investment portfolio. This primarily reflects the cessation of new concessional loan issuances (which have large negative upfront fiscal impacts).\(^{23}\)

### Key issues and provisions

#### Part 1

The provisions in Part 1 of the Bill commence on the 28th day after Royal Assent.

**Item 1** of Part 1 of the Bill repeals the *CEFC Act*.

#### Part 2

The provisions in Part 2 of the Bill commence on the 28th day after Royal Assent.

The *Australian Renewable Energy Agency Act* establishes the Australian Renewable Energy Agency (ARENA), amongst other things, to provide financial assistance for research into renewable energy technologies; or the development, demonstration, commercialisation or deployment of renewable energy technologies; or the storage and sharing of information and knowledge about renewable energy technologies and to enter into agreements for that purpose.\(^{24}\)

Under section 73A of the *Australian Renewable Energy Agency Act*, ARENA may disclose information to the Clean Energy Finance Corporation if the disclosure will enable or assist the Clean Energy Finance Corporation to perform or exercise any of its functions or powers. **Item 2** of Part 2 of the Bill repeals section 73A as it will no longer be necessary when the Clean Energy Finance Corporation ceases to exist.

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24. *Australian Renewable Energy Agency Act 2011*, paragraphs 8(a) and (b).
The Clean Energy Regulator Act establishes the Clean Energy Regulator who carries out those functions which are imposed on him or her by any climate change law. Subsection 49(1) of the Clean Energy Regulator Act allows the Clean Energy Regulator to disclose protected information to specified agencies, bodies and persons. Item 3 of Part 2 of the Bill removes the reference to the Clean Energy Finance Corporation in paragraph 49(1)(sa) of the Clean Energy Regulator Act.

**Part 3**

Item 4 of Part 3 of the Bill (relevant definitions) commences on Royal Assent.

The provisions in items 5–20 of Part 3 of the Bill commence on the 28th day after Royal Assent. Items 5–9 of Part 3 provide that the assets (including land) and the liabilities of the Clean Energy Finance Corporation are transferred to the Commonwealth. In addition existing records will be transferred to the Treasury as will ongoing Ombudsman investigations.

Section 45 of the CEFC Act establishes the Clean Energy Finance Corporation Special Account. For this purposes of this Bill that account is called the old special account. Item 16 of Part 3 of the Bill establishes the CEFC Transitional Special Account which is a special account for the purposes of the Financial Management and Accountability Act 1997. Into that account must be credited the equivalent of the following:

- the amount by which the old Special Account is in credit immediately before the commencement time
- the amount by which the Clean Energy Finance Corporation’s bank account or bank accounts is in credit immediately before the commencement time and
- the value, immediately before the commencement time, of any securities in which the Clean Energy Finance Corporation has invested surplus money.

Once that has occurred, item 19 authorises the Finance Minister to debit specified amounts from the CEFC Transitional Special Account. Once the balance is reduced to nil, the CEFC Transitional Special Account must be closed.

Item 21 of Part 3 of the Bill commences on Royal Assent. The item sets out the requirement for the Clean Energy Finance Corporation to publish its final quarterly investment report.

The provisions in items 22–27 of Part 3 of the Bill commence on the 28th day after Royal Assent. Item 22 of Part 3 of the Bill operates so that no member of the Board, employee of the CEFC or consultant engaged by the CEFC is taken to be appointed, engaged or employed by the Commonwealth.

**Part 4**

The provisions in Part 4 of the Bill commence on the day (called the repeal day) after the day on which the amount standing to the credit of the CEFC Transitional Special Account (established under Part 3 of this Bill) is reduced to nil.

Item 28 in Part 4 of the Bill repeals Division 4 of Part 3 of the Clean Energy Finance Corporation (Abolition) Act 2013 (when enacted). This has the effect of closing down the CEFC Transitional Special Account.

The Minister must announce the repeal day by notice in the Gazette.

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26. Item 12 of Part 3 of the Bill.
27. Item 14 of Part 3 of the Bill.
28. Under section 5 of the Financial Management and Accountability Act, a Special Account may be established by the Finance Minister under section 20 of that Act or by another Act.
30. Item 17 of Part 3 of the Bill.
**Appendix:**

<table>
<thead>
<tr>
<th>Bills</th>
<th>Description</th>
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<tbody>
<tr>
<td>• Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 (the ’main repeal Bill’</td>
<td>• Repeals the <em>Clean Energy Act 2011</em>, the main piece of legislation that established the CPM. Also facilitates the collection of liabilities relating to the 2013–14 financial year; introduces new powers for the ACCC and removes assistance to the steel industry by repealing the <em>Steel Transformation Plan Act 2011</em>.</td>
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<tr>
<td>• True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2013</td>
<td>• Apply consequential amendments required by the main repeal Bill to recover the value of over-allocated free emissions permits that provide assistance to energy intensive trade-exposed activities under the CPM.</td>
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<tr>
<td>• True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2013</td>
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<tr>
<td>• Customs Tariff Amendment (Carbon Tax Repeal) Bill 2013</td>
<td>• Repeal provisions that apply an equivalent carbon price to aviation fuel and synthetic greenhouse gases.</td>
</tr>
<tr>
<td>• Excise Tariff Amendment (Carbon Tax Repeal) Bill 2013</td>
<td>• Apply transitional arrangements for the import of bulk synthetic greenhouse gases between 1 April and 30 June 2014.</td>
</tr>
<tr>
<td>• Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2013</td>
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<tr>
<td>• Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2013</td>
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</tr>
<tr>
<td>• Ozone Protection and Synthetic Greenhouse Gas (Import Levy) (Transitional Provisions) Bill 2013</td>
<td></td>
</tr>
<tr>
<td>• Clean Energy (Income Tax Rates and Other Amendments) Bill 2013</td>
<td>• Repeals personal income tax cuts set to commence on 1 July 2015, and repeals the associated amendments to the low-income tax offset.</td>
</tr>
<tr>
<td>• Climate Change Authority (Abolition) Bill 2013</td>
<td>• Abolishes the Climate Change Authority and the Land Sector Carbon &amp; Biodiversity Board.</td>
</tr>
<tr>
<td>• Clean Energy Finance Corporation (Abolition) Bill 2013</td>
<td>• Abolishes the Clean Energy Finance Corporation.</td>
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