Amendments to be Moved on Behalf of the Government
GENERAL OUTLINE

These amendments to the Clean Energy (Consequential Amendments) Bill 2011 address issue raised by the Senate Scrutiny of Bills Committee following the introduction of the Bill into the Parliament and improve the current drafting. They relate to:

- timelines for nomination of an entity with operational control of a facility under the National Greenhouse and Energy Reporting Act 2007 (NGER Act) for the purpose of determining progressive surrender obligations in the fixed charge years;

- measurement of emissions from legacy waste and exempt landfill waste under the measurement determination made by the Minister under section 10(3) of the NGER Act;

- application of a ‘fit and proper person’ test in relation to registration under the Renewable Energy (Electricity) Act 2000; and

- transmission of Kyoto units under the Australian National Registry of Emissions Units Act 2011.

FINANCIAL IMPACT STATEMENT

These amendments will have no financial impact additional to that outlined in the Explanatory Memorandum to the Clean Energy Bill 2011.

REGULATION IMPACT STATEMENT

These amendments have no major impacts beyond those outlined in the Regulation Impact Statement of the Clean Energy Bill 2011. No additional Regulation Impact Statement is required.
ITEMS 1, 3-10 OPERATIONAL CONTROL

The intent of these items, which insert new sections 11AA and 11AB into the NGER Act, is to allow for persons to nominate operational control for the purposes of satisfying a progressive surrender obligation during the fixed charge periods. These provisions apply to liable entities with an interim emissions number where:

- no particular person has the greatest authority to introduce and implement operating and/or environmental policies in relation to a facility (new section 11AA); or
- a trust with multiple trustees has operational control (new section 11AB).

In these cases, persons must nominate before the end of 30 April in a fixed charge year. The reason for this date is to enable the nominated person to register by 1 May under section 15AA. The requirement to nominate for the first nine months of the financial year under new sections 11AA or 11AB does not preclude the need to make a further nomination under sections 11A or 11B of the NGER Act. This is because a nomination may still be required for the remainder of the financial year, regardless of whether a nomination was made under section 11AA or 11AB.

ITEM 2 LANDFILL EMISSIONS

Item 2 amends section 10 of the NGER Act, to clarify that the measurement determination made under that provision may be used to determine legacy emissions and exempt landfill emissions for the purposes of clauses 32 and 32A of the Clean Energy Bill 2011.

This amendment, together with related amendments to the Clean Energy Bill 2011, will ensure that the measurement of all emissions from landfill facilities—including ‘covered emissions’, ‘legacy emissions’ and ‘exempt landfill emissions’—will be conducted in accordance with a single, consistent set of methods under the NGER Act.

(For further information on the new class of ‘exempt landfill emissions’, refer to the Supplementary Explanatory Memorandum for the Clean Energy Bill 2011.)

ITEMS 11-12 RENEWABLE ENERGY CERTIFICATES

The proposed amendments to sections 11 and 30A (items 1, 5 and 6 of Schedule 3 to the Clean Energy (Consequential Amendments) Bill 2011) provide additional powers for the Clean Energy Regulator to refuse an application for registration under the Renewable Energy (Electricity) Act, or to suspend a registration, on grounds to be specified in regulations.

Items 11 and 12 provide that the exercise of these powers must be on the ground that the Regulator is satisfied that the applicant, or registered person, does not meet a ‘fit and proper person’ test. As indicated in the Explanatory Memorandum at [7.24], it is anticipated that such grounds could, for example, include lack of accreditation under a specified industry scheme or contravention of other legislation such as the Corporations Act 2001 or the Competition and Consumer Act 2010.
ITEM 13 TRANSMISSION OF REGISTERED KYOTO UNITS BY OPERATION OF LAW ETC

Section 47 of the Australian National Registry of Emissions Units Act provides for transmission of registered Kyoto units by force of law. Item 13 amends the provision so that a transmission is of no force until the units are registered in the Australian National Registry of Emissions Units.

The amendment ensures that the treatment of Kyoto units is, in this regard, the same as that of carbon units (clause 106(2) of the Clean Energy Bill 2011), prescribed international units (item 47 of Schedule 4 of the Clean Energy (Consequential Amendments) Bill 2011) and Australian carbon credit units (item 22A of Schedule 5 of the Clean Energy (Consequential Amendments) Bill 2011).

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