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HOUSE OF REPRESENTATIVES

CLEAN ENERGY FINANCE CORPORATION AMENDMENT (GRID RELIABILITY
FUND) BILL 2020

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Energy and Emissions Reduction,
the Hon Angus Taylor MP)

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GLOSSARY

Abbreviation	Definition
CEFC	Clean Energy Finance Corporation
CEFC Account	Clean Energy Finance Corporation Special Account
CEFC Act	<i>Clean Energy Finance Corporation Act 2012</i>
GRF	Grid Reliability Fund
GRF Account	Grid Reliability Fund Special Account
UNGI	Underwriting New Generation Investments

CLEAN ENERGY FINANCE CORPORATION AMENDMENT (GRID RELIABILITY FUND) BILL 2020

OUTLINE

The Australian Government is committed to encouraging investment to support the reliability of the electricity grid and improve affordability for energy users.

On 30 October 2019, the Government announced the introduction of a new \$1 billion Grid Reliability Fund (GRF). This Fund, to be administered by the Clean Energy Finance Corporation (the CEFC), would support investments in new energy generation, storage and transmission infrastructure, including eligible projects shortlisted under the Underwriting New Generation Investments (UNGI) program.

The GRF will unlock private sector investment for clean energy projects that will secure the grid and put downward pressure on prices. Reliable and affordable electricity supply that keeps the lights on is essential for Australian households and business. The GRF will draw on the energy and financial markets expertise of the CEFC to make further investments in reliable clean energy technologies.

The Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020 (the Bill) amends the *Clean Energy Finance Corporation Act 2012* (the CEFC Act) in order to implement the GRF. Specifically, it:

1. establishes a \$1 billion GRF through a new Special Account to be administered by the CEFC, and permits for regulations to expand this appropriation in future;
2. establishes a new category of GRF investments, which are to be funded from this GRF Special Account;
3. clarifies the definition of low-emissions technologies to ensure the CEFC is able to invest in the technologies described in the GRF announcement that support the achievement of a low-emissions energy system in Australia;
4. amends the definition of an “investment” to allow for additional types of investments to be prescribed by regulations for the purposes of the GRF;
5. expands the functions of the CEFC to include assisting Commonwealth agencies in the development or implementation of policies or programs that support grid reliability;
6. quarantines all GRF investments from the general requirement for the CEFC to invest at least 50 per cent of its funds in renewable energy projects; and
7. makes further minor consequential amendments to support the above.

POLICY RATIONALE

The Bill establishes the GRF Special Account and appropriates it with \$1 billion. The GRF will enable the CEFC to invest in additional energy generation, storage, transmission and distribution infrastructure and grid stabilising technologies. This will provide for greater affordability, reliability, stability and security of the electricity system. Providing the CEFC with an additional \$1 billion will benefit energy market participants by providing a trusted counterparty for grid reliability investments, allowing the Government to crowd-in private sector involvement and leverage its finance.

The GRF will also support the Government's commitment to the UNGI program to support eligible and viable projects that are within the CEFC's Investment Mandate. The Bill will not change the CEFC's ability to make individual investment decisions independent of Government.

Projects supported by the CEFC and the UNGI program will also address the concentration of energy generation asset ownership by improving access to new and smaller participants in the market. The Australian Competition and Consumer Commission found these small players often struggle to secure necessary finance due to large customers being unwilling to enter long-term offtake agreements. Additional support of these businesses will potentially put downward pressure on wholesale electricity prices by increasing competition among generators.

FINANCIAL IMPACT STATEMENT

The Bill increases the CEFC's available appropriation by \$1 billion through the GRF Special Account and also grants the Government the ability to further expand this appropriation through the making of regulations. It therefore has a financial impact, both actual and prospective, in relation to the CEFC. However, the impact on the budget is positive because the investments made through the GRF will create a return for the Commonwealth over the long-term.

CONSULTATION

The Government announced the GRF on 30 October 2019 and has been working closely with stakeholders on the implementation of all its energy policies, including the UNGI program. In preparing the Bill, the following Government agencies were consulted: the Department of Finance, the Department of the Prime Minister and Cabinet, and the CEFC.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020

The Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020 (the 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 of the Bill

The purpose of the Bill is to implement a new \$1 billion Grid Reliability Fund, and to allow the Clean Energy Finance Corporation to administer it by making investments in new energy generation, storage and transmission infrastructure, including eligible projects shortlisted under the Underwriting New Generation Investments program.

Human rights implications

This Bill engages the following right:

- The right to an adequate standard of living in Article 11 of the *International Covenant on Economic, Social and Cultural Rights*.

The Bill engages positively with this right as investments under the Grid Reliability Fund will improve affordability for energy users, including residential households, businesses and industries, as well as deliver new reliable generation into the market in ensuring a secure and stable energy supply to Australians.

Conclusion

The Bill is compatible with human rights because it promotes the right of everyone to an adequate standard of living.

**Minister for Energy and Emissions Reduction,
the Hon Angus Taylor MP**

NOTES ON CLAUSES

Clause 1 – Short title

1. Clause 1 provides that the short title of the Act is the *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Act 2020*.

Clause 2 – Commencement

2. Clause 2 provides that the Act commences on the day after the Bill receives Royal Assent.

Clause 3 – Schedules

3. Clause 3 is a formal enabling provision specifying that each Act specified in a Schedule to the Bill is amended as indicated by the Schedule.

Schedule 1 – Amendments

Clean Energy Finance Corporation Act 2012

Item 1 – Section 4 (definition of *Account*)

4. Item 1 repeals the definition of “Account” which will be captured under the new definition of “CEFC Account” throughout the Act, with the meaning established by section 45. This avoids confusion or overlap with the new Grid Reliability Fund Special Account (GRF Account), which is further explained at item 23.

Item 2 – Section 4

5. Item 2 adds definitions to section 4 of the CEFC Act.
6. The “CEFC Account” is the name of the special account established by section 45 and previously referred to as the “Account”.
7. Item 2 inserts a definition for “GRF Account”, the meaning is the Grid Reliability Fund Special Account established by section 51A (inserted by item 23). It is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act).
8. The “grid reliability fund investment” is a signpost definition. The meaning is established by new section 58A (inserted by item 32).
9. The “grid reliability fund money” is a signpost definition. The meaning is established by new subsection 53(1A) (inserted by item 27).
10. The “grid reliability funds” is a signpost definition. The meaning is established by new subsection 58(3A) (inserted by item 31). This is relevant to the application of the 50 per cent renewables requirement in subsection 58(3) of the CEFC Act (as modified by new subsection 58(3A)).

Item 3 – Section 4 (definition of *investment*)

11. In the CEFC Act, the concept of “investment” is central to the investment function of the CEFC, which is set out in Part 6 of the Act. Section 4 of the CEFC Act previously defined “investment” as meaning “any mode of application of money or financial assets for the purpose of gaining a return (whether by way of income, capital gain or any other form of return)... includ[ing] giving a

guarantee”. Item 3 repeals this definition of “investment” and remakes the definition with a new paragraph (c) to provide flexibility to extend the meaning of the term.

12. The new category of investment is to specifically address the implementation of the GRF. The meaning of “investment” now includes doing a thing prescribed by the regulations made under section 82 of the CEFC Act for a purpose related to making a GRF investment. This enables the Governor-General the ability to define, through regulations, an additional class of activities that would qualify as investments under the CEFC Act, including activities that may not make an investment return.
13. This relies on further definition in the regulations simply to provide the Board with certainty in relation to whether investments would fit within this definition. Regulations may be made to clarify that an activity specified in the regulations is an investment related to making a grid reliability fund investment for the purposes of this Act. An example could be a particular type of revenue floor arrangement which underpins a GRF investment, but would not generate a return as required by paragraph (a) of the definition.
14. The need for such regulations will be determined as the GRF is implemented and the intention is for such regulations to narrowly define the types of investments which are included. Overall, it is important that the GRF as a whole provides a return to the Government.
15. The CEFC plays a key role to facilitate increased flows of finance for clean energy technologies and projects through its investments. Section 63 expects that the CEFC and its subsidiaries may only directly invest through a broad range of financial assets, and also prohibits the CEFC from investing directly in non-financial assets.
16. Thus, the use of this new regulation-making power described above may require some interaction with the regulation-making power in paragraph 63(2)(b), which is used to clarify an asset to be a financial asset for the purposes of the CEFC Act. For instance, when it is intended to prescribe a type of investment that does not generate a return. This is because such GRF investments may not lead to the acquisition of an asset that is treated as a financial asset as defined in paragraph 63(2)(a). Nonetheless, it is acknowledged that the regulation-making power in paragraph 63(2)(b) has some limits, primarily in that transactions specified under it must be assets in the first place.

Item 4 – Section 4 (definition of *uncommitted balance*)

17. As described above in item 1, the Bill replaces the previous single “Account” with two new special accounts: the “CEFC Account” and the “GRF Account”. Item 4 amends the previous definition of “uncommitted balance” so that the concept is relevant to the two separate special accounts, the CEFC Account and GRF Account.
18. It clarifies that an uncommitted balance is now calculated separately for each new special account, with guarantees that are GRF investments being deducted from the GRF Account and guarantees that are not GRF investments being deducted from the CEFC Account.

Item 5 – After paragraph 9(1)(b)

19. Item 5 adds a new function to the CEFC’s functions in section 9 of the CEFC Act. The CEFC now has the additional function of, “at the request of a responsible Minister, to assist Commonwealth agencies in the development or implementation of policies or programs relating to supporting the reliability of energy grids.”

20. To provide for greater affordability, reliability, stability and security of the electricity system, this function allows the CEFC to assist the Government with a range of other initiatives to improve and support grid reliability. It is not intended that either of the special accounts would fund projects under such programs, but the CEFC's expertise could be utilised where appropriate to assist in the design or administration of such policies or programs and in achieving program objectives.
21. Note that the term "responsible Minister", as defined in section 4 of the CEFC Act, has been modified by other instruments.¹
22. It is intended that "Commonwealth agencies" in the text of item 5 is taken to include Government Departments.

Item 6 – Subdivision A of Division 1 of Part 5 (heading)

23. Section 45 of the CEFC Act previously established a single special account for the purposes of the PGPA Act. The CEFC was able to access that special account to perform its investment function and cover other relevant costs through requests under sections 48 and 50 of the CEFC Act.
24. As described above in item 1, the Bill replaces this previous single "Account" with two new special accounts: the "CEFC Account" and the "GRF Account". The amendments in items 6 to 22 relate to the introduction of the CEFC Account.
25. Item 6 replaces the heading "Establishment of Account" with the "Establishment of CEFC Account". The purpose of this insertion is to improve readability and provide clarity for the treatment of the separate accounts. The same reason applies to the other amendments to Division 1 of Part 5.

Item 7 – Section 45 (heading)

26. Item 7 repeals the heading at section 45 and replaces it with "Establishment of CEFC Account".

Item 8 – Subsection 45(2)

27. Item 8 makes textual amendment to subsection 45(2), by inserting "CEFC" before "Account", to give effect to the replacement of the Account as described in item 6 above.

Item 9 – Subdivision B of Division 1 of Part 5 (heading)

28. Item 9 repeals the heading and replaces it with "Subdivision B—Credits to CEFC Account".

Item 10 – Section 46 (heading)

29. Item 10 repeals the heading and replaces it with "Credits to CEFC Account".

Item 11 – Section 46

30. Item 11 makes textual amendment to section 46, by inserting "CEFC" before "Account".

Item 12 – At the end of paragraph 46(f)

31. Paragraph 46(f) ensures that surplus money returned to the Government and then credited back to the CEFC Account does not relate to GRF investments.

¹ Notably table item 4 of Part 5 of Schedule 1 to the *Acts Interpretation (Substituted References—Section 19BA) Order 2004*, as modified by table item 1 of subsection 2.3(2) of the *Acts Interpretation Substituted Reference Order 2017*.

32. Under section 54 of the CEFC Act, the responsible Ministers may direct the CEFC to pay certain “surplus money” back to the Commonwealth. These payments are then credited back to the CEFC Account or the GRF Account, depending on whether the underlying surplus money in question relates to the CEFC’s general portfolio or its GRF portfolio.²
33. Item 12 inserts “other than amounts that are to be treated as grid reliability fund money” at the end of paragraph 46(f). This makes it clear that surplus amounts credited back to the CEFC Account must only relate to the CEFC’s general portfolio.
34. Consistent with the above, surplus money credited back to the GRF Account must only relate to the GRF portfolio (new section 51B).

Item 13 – At the end of section 46

35. For clarity, a note is inserted at the end of section 46 to direct readers to refer to paragraph 54(3)(b) for amounts that are to be treated as grid reliability fund money. Paragraph 54(3)(b) is inserted by item 29 (please see the discussion at that item).

Item 14 – Subdivision C of Division 1 of Part 5 (heading)

36. Item 14 repeals the heading and replaces it with “Subdivision C—Debits from CEFC Account”.

Item 15 – Section 47 (heading)

37. Item 15 repeals the heading and replaces it with “Purposes of CEFC Account”.

Item 16 – Section 47

38. Item 16 makes a textual amendment to section 47, by inserting “CEFC” before “Account”.

Item 17 – Paragraph 48(1)(a)

39. Section 48 allows the CEFC to request payments from the Commonwealth to be made from the CEFC Account for its liability and expenses and to maintain an operating balance. Item 17 makes an amendment to paragraph 48(1)(a) to exclude any liabilities or expenses related to GRF investments when requesting a specific payment by the Commonwealth. This supports the intention that these liabilities and expenses will instead be funded from the GRF Account under new section 51D.

Item 18 – Subsection 48(3)

40. Item 18 makes textual amendment to subsection 48(3), by inserting “CEFC” before “Account”.

Item 19 – Subsection 49(2) (note)

41. Item 19 makes textual amendment to the note to section 49(2), by inserting “CEFC” before Account.

Item 20 – At the end of subsection 50(2)

42. Section 50 allows for the CEFC to make payments to the Australian Renewable Energy Agency (ARENA) from its earnings upon making a request to the Commonwealth, with this money debited from the CEFC Account. Item 20 makes an amendment to subsection 50(2) to exclude any earnings

² See item 29.

related to grid reliability fund investments when the CEFC makes a written request for a specific payment by the Commonwealth to ARENA. The effect of this is that the CEFC may only make payments to ARENA from the earnings on its general portfolio.

Item 21 – Subsection 50(3)

43. Item 21 makes textual amendment to subsection 50(3), by inserting “CEFC” before “Account”.

Item 22 – Subsection 51(2) (note)

44. Item 22 makes textual amendment to the note to subsection 51(2), by inserting “CEFC” before “Account”.

Item 23 – After section 51

45. Item 23 inserts new Division 1A which deals with the operation of the Grid Reliability Fund Special Account (the GRF Account). It adds a new heading “Division 1A—Grid Reliability Fund Special Account” after section 51.

46. New section 51A provides for the establishment of the GRF Account, which is a special account for the purposes of the PGPA Act. The section is structured the same as section 45 for the CEFC Account.

47. New section 51B provides for how the GRF Account is appropriated. The section is modelled on section 46 for the CEFC Account. The GRF Account is to be credited with \$1 billion. The GRF Account must also be credited with the CEFC’s surplus money that is returned under section 54 and relates to GRF investments.³ The GRF Account can also be credited by additional amounts through regulations. The addition of money to this Account will not be a reallocation from the other CEFC Account under the CEFC Act.

48. New section 51C establishes the purpose of the GRF Account, similar to section 47 for the CEFC Account. The section provides that the Commonwealth may make payments to the Corporation where the payments are authorised by the nominated Minister under subsection 51E(1).

49. New section 51D sets out the procedures for when a request for a GRF payment is made by the CEFC. The section largely replicates the existing provision in section 48. Under the new provision the CEFC may, in writing, request a specific payment by the Commonwealth to meet liabilities or expenses that are due or expected to become due in relation to GRF investments.

50. New section 51E sets out the steps that must be taken by the nominated Minister and the Commonwealth once a request for payment is made under section 51D. It is modelled on section 49 for the CEFC Account. Once the CEFC has requested a payment under section 51D, the nominated Minister must, in writing, authorise the payment, subject to any agreement between the nominated Minister and the Corporation under section 52. Note that subsection 51E(3) is included to assist readers, as an authorisation by the nominated Minister is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

51. Item 23 concludes by adding a new heading “Division 1B—Agreement about requests for payments” before section 52. This is for ease of reading purposes only and has no substantive effect beyond this.

Item 24 – Section 52

³ See item 29.

52. Item 24 makes a minor textual amendment to support the operation of new section 51D. It ensures that the relevant agreement under section 52 governing requests for payments includes the GRF Account as well as the CEFC Account.

Item 25 – At the end of paragraph 52(b)

53. Item 25 makes a minor textual amendment to support the operation of new section 51D. It ensures that the relevant agreement under section 52 governing requests for payments includes the GRF Account as well as the CEFC Account.

Item 26 – After paragraph 53(1)(a)

54. Item 26 expands the scope of the “Corporation’s money” under section 53 to permit the CEFC to hold and use money related to the GRF. It provides that the money authorised to be paid to the CEFC under subsection 51E(2) is deemed to be the Corporation’s money.
55. In addition, money received by the CEFC in relation to GRF investments is also deemed to be the Corporation’s money. This would cover, for example, earnings from GRF investments as well as funds recouped from terminated GRF investments.

Item 27 – After subsection 53(1)

56. Item 27 inserts subsection (1A) simply to give definition of the moneys explained above in item 26 to be “grid reliability fund money”. This allows for the imposition of specific limitations on the use of such money in item 28 below.

Item 28 – After subsection 53(2)

57. New subsection 53(2A) places specific limitations on the use of grid reliability fund money. Such funds must only be applied by the CEFC in performing its investment function in relation to grid reliability fund investments, paying or discharging the costs, expenses and other obligations associated with the performance of its GRF functions, and returning surplus money to the Commonwealth.
58. For clarity, the definition of “costs, expenses and other obligations” above is intended to be wide. For example, it would extend to the payment of remuneration and allowances related to the CEFC’s GRF function, where these were unable to be paid under existing paragraph 53(2)(c).

Item 29 – Subsection 54(3)

59. The CEFC is expected to invest with a view of return in its commercial operation. Section 54 provides for the CEFC 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, or if it exceeds the amount prescribed in the regulations.
60. Item 29 modifies subsection 54(3) to require the CEFC to specify what portion (if any) of any surplus money returned is to be treated as grid reliability fund money. This allows that money to be credited to the correct special account under paragraph 46(1)(f) or 51B(b).

Item 30– Subsection 54(3) (note)

61. Item 30 modifies the note under subsection 54(3) to make clear that, following the return of a surplus by the CEFC to the Commonwealth, credits are made to the CEFC Account under paragraph 46(1)(f) or the GRF Account under paragraph 51B(b) respectively.

Item 31 – After subsection 58(3)

62. Currently, subsection 58(3) of the CEFC Act contains a requirement that at least half of the CEFC's investment portfolio must be invested in renewable energy technologies from 1 July 2018.
63. New subsection 58(3A) modifies the requirement for the CEFC to invest at least 50 per cent of its funds in renewable energy projects. Its effect is that all grid reliability funds for the purposes of the GRF portfolio (regardless of whether investments lie in renewable or non-renewable energy) will be excluded from meeting this requirement and in the calculation of the figure. In this provision "grid reliability funds" simply refers to the funds sourced from the GRF Account applied to GRF investments for the purposes of its investment function (as defined in section 58A). This ensures that the GRF can be technology neutral and enables the CEFC to focus on the best investments to improve grid reliability without being constrained by a renewables requirement. However, this requirement continues to apply to the CEFC's general portfolio.

Item 32 – After section 58

64. Item 32 inserts new section 58A into the CEFC Act to define the GRF investments which can be funded from the GRF Account.
65. In addition to being made for the purposes of the CEFC's investment function, GRF investments must be made to support energy storage, electricity generation, transmission or distribution or electricity grid stabilisation, and must comply with any relevant directions in the Investment Mandate issued by the responsible Ministers under subsection 64(1) of the CEFC Act. It is intended that the Investment Mandate will provide detailed criteria for what will constitute supporting the reliability or security of the electricity grid and what investments should be prioritised.
66. It is not intended that investments that could be funded from the CEFC Account under the Investment Mandate would need to be classified as GRF investments and funded from the GRF Account if they also fell into that category. In other words, it is intended that where a particular investment could be capable of being funded under either of the general or the GRF portfolios, the Board can choose which portfolio to place it into.

Item 33 – Subsection 60(4)

67. Item 33 expands the scope of "low-emission technology" to ensure the CEFC is able to invest in the GRF technologies described elsewhere in the Bill: specifically, those relating to energy storage, electricity generation, transmission or distribution or electricity grid stabilisation, and that support the achievement of low-emission energy systems in Australia. Any technology that meets this criteria will be considered a low-emission technology by default, and therefore within the CEFC's technology remit.
68. For example, certain types of gas-fired electricity generation will now fall under this new definition, if their position in the market supports the achievement of a low-emissions system. Similarly, battery technologies are intended to be eligible, regardless of how they source electricity. Nonetheless, low-emission technologies under the CEFC Act would not extend to coal-fired electricity generation technologies.

69. For clarity it should be noted that it is not intended for the phrase “low-emission energy system” to be restricted by the definition of “low-emission technology” in subsection 60(4).
70. Note that, under paragraph 60(4)(b), the Board may still determine whether any other technologies are low-emission technologies using guidelines made by the Board under subsection 60(5). Subsection 60(8) of the CEFC Act makes clear that guidelines made under subsection 60(5) are not a legislative instrument.

Item 34 – Subsection 66(2) (note)

71. Item 34 makes a minor textual amendment to reflect the replacement in 2015 of the *Legislative Instruments Act 2003* with the *Legislation Act 2003*.

Item 35 – Subsection 69(3)

72. Section 69 of the CEFC Act limits the CEFC’s use of guarantees as part of its investment activity. Subsection 69(3) previously dealt with guarantees being void, but did so only considering the CEFC Account and not the new GRF Account.
73. Item 35 repeals and replaces the subsection to support the operation of the new GRF Account. Now, guarantees that are GRF investments are void if they secure an amount that is more than the uncommitted balance of the GRF Account, while guarantees that are not GRF investments are void if they secure an amount that is more than the uncommitted balance of the CEFC Account.

Item 36 – Paragraph 74(1)(c)

74. Paragraph 74(1)(c) of the CEFC Act previously required the CEFC to provide an explanation in its annual report if it failed to ensure, in accordance with subsection 58(3), that at least half of the funds in its investment portfolio were invested in renewable energy technologies. The effect of item 36 is to exclude grid reliability funds from this calculation as these are not relevant to the obligation in subsection 58(3), as modified by subsection 58(3A). Hence, the reporting requirement in paragraph 74(1)(c) now matches the legislative obligation in subsection 58(3).

Item 37 – After paragraph 74(1)(c)

75. The effect of item 37 is to ensure that the CEFC is to report the end of year total value of its GRF investments in its annual report. This assists with the transparency of the GRF.

Item 38 – Paragraph 74(1)(j)

76. Item 38 modifies the CEFC’s annual reporting requirements in relation to the details of credits and debits to the CEFC’s special accounts, by providing for the fact that there are now two special accounts (the CEFC Account and the GRF Account).

Item 39 – Subsection 77(1)

77. Subsection 77(1) previously permitted the nominated Minister to delegate, to the Secretary of their Department, their functions under subsections 49(1) and 51(1), namely the assessment and approval of payment requests by the CEFC.
78. Item 39 amends subsection 77(1) to reflect the addition of GRF investments, which has created a new avenue for payment requests under new subsection 51E(1). It also permits the nominated Minister to delegate this new assessment and approval function to the Secretary of their Department.

