The Senate

Environment and Communications Legislation Committee

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

November 2020

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Chapter 1
Introduction

1.1 On 3 September 2020, the Senate referred the provisions of the Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020 (the bill) to the Environment and Communications Legislation Committee (the committee) for inquiry and report by 4 November 2020.[1]

Conduct of the inquiry

1.2 The committee advertised the inquiry on its website inviting submissions by 23 September 2020. The committee invited several stakeholders to make submissions.

1.3 The committee received 45 submissions. These submissions are listed in Appendix 1 of this report, and are available in full on the committee's website.

1.4 The committee also received approximately 700 form letters and more than 4500 short statements relating to the inquiry. A representative sample of the form letters and short statements has been published on the committee's website.

1.5 The committee held a public hearing in Canberra (in-person and via videoconference) on 13 October 2020. A complete list of witnesses who gave evidence at the hearing is in Appendix 2.

Structure of this report

1.6 This report consists of two chapters:

- Chapter one provides an overview of the bill, brief background to the context of the bill and administrative details of the inquiry.
- Chapter two discusses issues raised by submitters and witnesses about the proposed amendments. Finally, it sets out the committee's view and recommendation on the bill.

Purpose and overview of the bill

1.7 The purpose of the bill is to establish the Grid Reliability Fund Special Account and appropriate funds to it of $1 billion (the Grid Reliability Fund). The Grid Reliability Fund would allow the Clean Energy Finance Corporation (the CEFC) to invest in new energy generation, storage, transmission and distribution infrastructure and grid stabilising technologies, including eligible

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1 *Journals of the Senate*, No. 66, 3 September 2020, p. 2302.

projects shortlisted under the Underwriting New Generation Investments Program (UNGI program).[2]

1.8 The bill will not change the CEFC's ability to make individual investment decisions independent of government for both the established $10 billion CEFC Special Account and the proposed separate $1 billion Grid Reliability Fund Special Account.[3] The independence of the CEFC is discussed further in Chapter 2.

1.9 The Explanatory Memorandum states that the bill will amend the *Clean Energy Finance Corporation Act 2012* (the CEFC Act) to establish the Grid Reliability Fund. Key amendments include:

1. Establishing a $1 billion Grid Reliability Fund Special Account to be administered by the CEFC, and allow regulations to expand on the $1 billion appropriations in the future.[4]
2. Inserting a new category of Grid Reliability Fund investments, to be funded from the Special Account.[5]
   – Grid Reliability Fund investments will need to: support technologies including energy storage, electricity generation, transmission or distribution, or grid stabilisation, and meet the criteria (if any) of the Investment Mandate.[6]
3. Expanding the definition of an 'investment' to allow for additional types of investments as prescribed by regulations for the Grid Reliability Fund.[7]
   – Through regulations, another class of activities could be included, which would be considered as investments under the CEFC Act.[8] For example, the CEFC would be able to utilise financial instruments not currently at its disposal to 'fill a financial or risk gap' to enable an important grid reliability project, such as investment in transmission infrastructure, to proceed.[9] Although this change would allow the CEFC to support some projects that may not make an individual investment return, the Grid

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2 Explanatory Memorandum, p. 1.

3 Explanatory Memorandum, p. 2.

4 Explanatory Memorandum, p. 1.

5 Explanatory Memorandum, pp. 1 and 10.

6 Proposed section 58A, Clean Energy Corporation Amendment (Grid Reliability Fund) Bill 2020.

7 Explanatory Memorandum, p. 1.

8 Explanatory Memorandum, p. 5.

9 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 36.

Reliability Fund portfolio as a whole would be required to provide a positive return to the Government.[10]

4. Redefining the meaning of 'low-emission technology' to enable the CEFC to invest in technologies to achieve low-emission energy systems.[11]

   – Low-emission technologies under the CEFC Act would be those that relate to: energy storage, electricity generation, transmission or distribution, electricity grid stabilisation, and support low-emission energy systems. The Explanatory Memorandum outlines some of the technologies that could be invested in under the new definition:

   > 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.[12]

   – The CEFC board could also decide other low-emission technologies according to guidelines that are consistent with the Investment Mandate.[13]

5. Extending the CEFC functions to include assisting Commonwealth agencies in developing and implementing policies or programs that support grid reliability.[14]

6. Excluding the Grid Reliability Fund from the requirement to invest at least 50 per cent of its funds in renewable energy projects.[15]

   – The Grid Reliability Fund will be technology-neutral, allowing investment in technologies that support or improve grid reliability whether renewable or not.[16]

7. Making minor consequential amendments.[17]

1.10 According to the Explanatory Memorandum, the bill's policy rationale is that investment in new energy generation, storage, transmission and infrastructure through the Grid Reliability Fund will provide for greater affordability,

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10 Explanatory Memorandum, p. 5.

11 Explanatory Memorandum, p. 1 and proposed subsection 60(4), Clean Energy Corporation Amendment (Grid Reliability Fund) Bill 2020.

12 Explanatory Memorandum, p. 11.

13 Explanatory Memorandum, pp. 10–11.

14 Explanatory Memorandum, pp. 1 and 5.

15 Explanatory Memorandum, p. 1.

16 Explanatory Memorandum, p. 10.

17 Explanatory Memorandum, p. 1.

reliability, stability and security of Australia's electricity system. The CEFC would act as the administrator of the Grid Reliability Fund, providing market participants with a trusted counterparty for investments. It would also encourage private sector investment in energy technologies eligible under the bill.[18]

1.11 In his second reading speech, the Hon Angus Taylor MP, Minister for Energy and Emissions Reduction, clarified the bill's scope and intention:

> While there is no shortage of investment in clean energy, the government has identified a lack of investment in the dispatchable generation needed to balance increasing intermittent generation.
>
> The additional funding will enable investment in:
>
> - Energy storage projects, such as pumped hydro and batteries;
> - Electricity generation, transmission and distribution; and
> - Grid stabilising technologies.
>
> Gas projects, which the CEFC can already invest in, including new gas-fired generation, will be included in the fund when a project supports the achievement of low-emissions energy systems. Battery technologies are intended to be eligible, regardless of how they source electricity. Low-emission technologies under the CEFC Act would not extend to coal-fired generation. The fund will also support eligible projects shortlisted under the Underwriting New Generation Investments program, in line with the CEFC's investment mandate.[19]

Background to the bill

1.12 The bill seeks to align the CEFC Act with the government's initiative to invest in affordable, reliable and dispatchable energy to reduce carbon emissions while helping to boost the post-COVID-19 pandemic economic recovery.[20] This section provides background information related to the proposed amendments, including an overview of the CEFC, the government's announcement of the Grid Reliability Fund, the establishment of the UNGI program and the development of the Technology Investment Roadmap (the roadmap).

Clean Energy Finance Corporation

1.13 The CEFC was established in July 2012 under the CEFC Act and is a corporate Commonwealth entity. Its objective under the CEFC Act is to 'facilitate increased flows of finance into the clean energy sector.[21] The CEFC does this by

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[18] Explanatory Memorandum, pp. 1–2.

[19] Second Reading Speech, *House of Representatives Hansard*, 27 August 2020, p. 14.

[20] The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction, '$1 billion boost for power reliability', *Media Release*, 30 October 2019.

[21] *Clean Energy Finance Corporation Act 2012*, s. 3 and s. 8.

investing, directly and indirectly, in clean energy technologies, business and projects, and through leveraging its own investment to attract private sector investment.[22]

1.14 Since the CEFC's establishment, it has invested $8 billion in clean energy, driving more than $27 billion in additional investment commitments.[23] The CEFC welcomed the announcement of the $1 billion Grid Reliability Fund, in addition to its existing $10 billion capital allocation.[24]

1.15 The CEFC focus areas for investment align with the objective outlined in the CEFC Act and the Investment Mandate.[25] Under the CEFC Act, the Minister responsible for the purposes of the Act may issue one or more directions to the CEFC Board, these directions are known as the CEFC's 'Investment Mandate'.[26]

1.16 The Investment Mandate allows the government to articulate its broad expectations for the CEFC's investment function, including the expected portfolio benchmark return and portfolio risk,[27] and what investments should be prioritised.[28]

1.17 The government cannot however, direct the CEFC board to make a specific investment or an investment that is inconsistent with the CEFC Act. The CEFC makes individual investment decisions independently of the government. However, the CEFC board must take all reasonable steps to ensure that the CEFC and its subsidiaries comply with the Investment Mandate.[29]

1.18 The CEFC's Investment Mandate Direction 2020 states that for all CEFC investments, aside from those made under the Clean Energy Innovation Fund and the Advancing Hydrogen Fund, the CEFC board is to target an average return of the five-year bond rate, plus 3–4 per cent per annum over the medium to long term as the benchmark return of the Corporation's core portfolio.[30]

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22 Clean Energy Finance Corporation, *Corporate Plan 2020-21*, p. 4.

23 Clean Energy Finance Corporation, *CEFC 2019-20 Investment Update: Ground-breaking transactions to cut emissions*, August 2020, [p. 3].

24 Clean Energy Finance Corporation, 'CEFC welcomes announcement of $1 billion Grid Reliability Fund', *Media Release*, 30 October 2019.

25 Clean Energy Finance Corporation, *Corporate Plan 2020-21*, p. 4.

26 *Clean Energy Finance Corporation Act 2012*, ss. 64(1).

27 Explanatory Statement, Clean Energy Finance Corporation Investment Mandate Direction 2020, p. 1.

28 Explanatory Memorandum, p. 10.

29 *Clean Energy Finance Corporation Act 2012*, s. 65 and s. 67.

30 Clean Energy Finance Corporation Investment Mandate Direction 2020, s. 7.

1.19 In 2019-20, $942 million of capital returned to the CEFC alone. Total repayments since the CEFC's inception reached $1.66 billion by 30 June 2020.[31]

1.20 During his second reading, Minister Taylor indicated once the Parliament passes the bill, the government will issue a new Investment Mandate which will include the operational parameters of the Grid Reliability Fund.[32] The CEFC has been issued eight investment mandates since its inception.

Underwriting New Generation Investments Program

1.21 On 23 October 2018, the government introduced the UNGI program in response to Recommendation 4 of the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Pricing Inquiry. The ACCC recommended the government establish a program that supports new generation projects, based on detailed criteria, to encourage new entrants into the market to promote competition and access to low-cost new generation.[33]

1.22 The UNGI program is designed to attract investment in firm or firmed generation capacity (backup power to overcome interruption to supply) to increase competition and reduce electricity prices.[34] The program is 'technology neutral', with all technologies allowed under Australian law eligible under the program.

1.23 At the beginning of 2019, the government received 66 proposals which were assessed against the program's objectives and eligibility criteria. Twelve projects were shortlisted, including:

- five gas projects
- six renewable pumped hydro projects; and
- one coal power upgrade project.

1.24 In December 2019, the government announced that it would enter into underwriting and contractual negotiations for two of the shortlisted projects, including the APA Group's proposed 220MW gas generator in Dandenong, Victoria, and Quinbrook's proposed 132MW gas generator in Gatton, Queensland.[35] The government plans to refer the remaining shortlisted UNGI

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[31] Clean Energy Finance Corporation, *CEFC 2019-20 Investment Update: Ground-breaking transactions to cut emissions*, August 2020, [p. 5].

[32] Second Reading Speech, *House of Representatives Hansard*, 27 August 2020, p. 14.

[33] Australian Competition and Consumer Commission, *Retail Electricity Pricing Inquiry – Final Report*, June 2018, p. 100.

[34] The Hon Scott Morrison MP, Prime Minister of Australia, the Hon Angus Taylor MP, Minister for Energy, and the Hon Josh Frydenberg MP, Treasurer, 'A fair deal on energy', *Joint Media Release*, 23 October 2018.

[35] The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction, 'Initial support terms for two new generation projects agreed', *Media Release*, 23 December 2019.

projects to the Grid Reliability Fund for support, with the exemption of coal-fired electricity generation technology projects.[36]

Grid Reliability Fund

1.25 On 30 October 2019, the government announced the $1 billion Grid Reliability Fund, along with plans to amend the CEFC Act to allow the CEFC to administer the Grid Reliability Fund and support suitable projects under the legislative mandate.[37]

1.26 The Prime Minister's announcement stated that the Grid Reliability Fund will support investments in new energy generation, storage and transmission infrastructure, as well as eligible projects shortlisted under the UNGI program. The Explanatory Memorandum states the projects supported by the CEFC and UNGI program will improve access for new and smaller participants in the market to address their difficulty in securing finance as identified by the ACCC.[38]

1.27 The Grid Reliability Fund is an initiative under the government's *Energy Policy Blueprint —A Fair Deal on Energy*, and also supports the objectives of the government's roadmap.

Technology Investment Roadmap and the King Review

1.28 On 19 May 2020, the government announced the release of the *Report of the expert panel examining additional sources of low cost abatement* (the King Review). The review considered opportunities for unlocking low-cost carbon abatement across the economy and made 26 recommendations based on three themes:

- improving the Emissions Reduction Fund;
- incentivising voluntary action on a broader scale; and
- unlocking the technologies needed to decarbonise the economy.[39]

1.29 A recommendation made in the King Review included expanding the CEFC's area of responsibility to be technology-neutral to support key technologies and to be involved in the delivery of goal-orientated co-investment program to hasten the uptake of transformative, high abatement potential technologies that are not cost-competitive. The key technologies suggested included

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[36] Explanatory Memorandum, p. 10.

[37] Explanatory Memorandum, p. 10.

[38] Explanatory Memorandum, p. 2.

[39] Grant King, Susie Smith, David Parker & Andrew Macintosh, *Report of the expert panel examining additional sources of low cost abatement (the King Review)*, Department of Industry, Science, Energy and Resources, May 2020, p. 6.

hydrogen fuels for heavy vehicles and carbon capture utilisation and storage.[40] Carbon capture and storage involves the capture of carbon dioxide from the air, industrial facilities or manufacturing processes, followed by long-term storage whereas carbon capture and utilisation involves the capture of carbon dioxide to reuse in other manufacturing processes such as making fuels and plastics.[41] The government agreed-in-principle to the recommendation, stating the CEFC should provide support to a wide range of low emission technologies and that the roadmap will guide its investments.[42]

1.30 On 21 May 2020, the government released the roadmap discussion paper seeking stakeholder input. The roadmap aims to bring a 'strategic and system-wide view to future investments in low emission technologies'. It will guide the government's priorities and investments over the short, medium and long term, as well as inform Australia's Long Term Emissions Reduction Strategy and annual Low Emissions Technology Statements.[43]

1.31 On 22 September 2020, the government released the first Low Emissions Technology Statement (the statement). It outlines five priority low emissions technologies pared to economic stretch goals to reduce their costs. The five priority technologies include clean hydrogen, energy storage, low carbon materials (i.e. steel and aluminium), carbon capture and storage, and soil carbon.[44]

1.32 The statement also includes a Technology Investment Framework designed to 'improve coordination of delivery agencies…towards national technology priorities and expected Government investment of $18 billion in low emissions technologies over the decade to 2030.'[45] According to the statement, the CEFC is expected to have a crucial role in implementing the Technology Investment Framework, alongside the Australian Renewable Energy Agency and the Clean Energy Regulator. The statement indicates that the CEFC will be

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40 Grant King, Susie Smith, David Parker & Andrew Macintosh, *Report of the expert panel examining additional sources of low cost abatement (the King Review)*, Department of Industry, Science, Energy and Resources, May 2020, pp. 54, 85 and 91.

41 Grant King, Susie Smith, David Parker & Andrew Macintosh, *Report of the expert panel examining additional sources of low cost abatement (the King Review)*, Department of Industry, Science, Energy and Resources, May 2020, p. 54.

42 Australian Government, *Australia Government response to the Final Report of the Expert Panel examining additional sources of low-cost abatement (the King Review)*, Department of industry, Science, Energy and Resources, May 2020, p. 9.

43 The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction, 'Harnessing new technology to grow jobs and the economy and lower emissions', *Media Release*, 21 May 2020.

44 Department of Industry, Science, Energy and Resources, *Technology Investment Roadmap: First Low Emissions Technology Statement – 2020*, September 2020, pp. 6, 11 and 17.

45 Department of Industry, Science, Energy and Resources, *Technology Investment Roadmap: First Low Emissions Technology Statement – 2020*, September 2020, p. 6.

required to align its investment activities with the priority technologies and stretch goals outlined in annual Low Emissions Technology Statements, and report on how they are supporting them.[46]

1.33 The CEFC will also have a role in supporting emerging and enabling technologies identified in the statement as, for example, charging and refuelling infrastructure, generation enablers, next-generation solar PV and livestock feed technologies.[47]

Reports of other committees

1.34 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee).[48] The Scrutiny Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.35 The Scrutiny Committee considered the bill and raised concerns regarding proposed section 58A of the CEFC Act, which introduces a new category of investments that can be funded under the Grid Reliability Fund Special Account. Under the proposed section, any investment must meet the criteria set out in the Investment Mandate relating to its role in supporting the security or reliability of the energy system.[49] The Explanatory Memorandum states 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.[50]

1.36 The Scrutiny Committee pointed out that while the Investment Mandate is a legislative instrument, it is not subject to disallowance. The Investment Mandate has been a non-disallowable instrument since the CEFC Act was introduced in 2012 and the bill would maintain this legislative arrangement. The Scrutiny Committee formed the view that:

> …significant matters, such as the criteria for which investments can be funded from the Grid Reliability Fund, should be included in primary legislation unless a sound justification for the use of delegated legislation is provided. The committee is particularly concerned that details of the

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[46] Department of Industry, Science, Energy and Resources, *Technology Investment Roadmap: First Low Emissions Technology Statement – 2020*, September 2020, pp. 36 and 39.

[47] Department of Industry, Science, Energy and Resources, *Technology Investment Roadmap: First Low Emissions Technology Statement – 2020*, September 2020, p. 25.

[48] Senate Standing Order 25(2A).

[49] Standing Committee for Scrutiny of Bills, *Scrutiny Digest 11 of 2020*, 2 September 2020, p. 5.

[50] Explanatory Memorandum, p. 10.

> investment criteria for the Fund are being left to non-disallowable delegated legislation and will therefore not be subject to effective parliamentary oversight. The committee notes that no justification for the use of a non-disallowable legislative instrument is provided in the explanatory memorandum.[51]

1.37 As a result, the Scrutiny Committee requested that Minister Taylor provide more detailed advice regarding:

- why it is considered appropriate to leave criteria for which investments can be funded from the Grid Reliability Fund to non-disallowable delegated legislation; and
- whether the bill could be amended to:
  - set out the criteria that an investment must meet relating to 'its role in supporting the security or reliability of the energy system' on the face of the primary legislation, rather than leaving these criteria to be set out in non-disallowable delegated legislation; or
  - at least provide that directions by the minister setting out these criteria (i.e. the Investment Mandate) are subject to the usual disallowance process.[52]

1.38 In response to the Scrutiny Committee's request, Minister Taylor advised the committee:

> The non-disallowable Investment Mandate has been a feature of the *Clean Energy Finance Corporation Act 2012* (the Act) since it was introduced by the former Labor government. As set out in section 63 of the Act, a direction may set out the policies to be pursued by the Corporation in relation to technologies, projects and businesses that are eligible for investment and the allocation of investments between the various classes of clean energy technologies. The use of the Investment Mandate for the proposed [Grid Reliability Fund] replicates the existing role of the Investment Mandate in relation to the CEFC's original $10 billion allocation. The legislative concept of a 'grid reliability fund investment' is also bounded by the definition of 'clean energy technologies' and the Investment Mandate cannot be used to expand that statutory limitation.[53]

1.39 Minister Taylor further stated 'it is long standing practice that Ministerial directions to Government bodies are not disallowable' and provided several examples of similar non-disallowable legislation, such as the *Future Drought Fund Act 2019* and the *Northern Australia Infrastructure Facility Act 2016*.[54]

1.40 Finally, Minister Taylor explained why the government considers it necessary and appropriate for investment criteria for the proposed Grid Reliability Fund be included in to the Investment Mandate:

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[51] Standing Committee for Scrutiny of Bills, *Scrutiny Digest 11 of 2020*, 2 September 2020, p. 5.

[52] Standing Committee for Scrutiny of Bills, *Scrutiny Digest 11 of 2020*, 2 September 2020, pp. 5–6.

[53] Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020,* 7 October 2020, p. 21.

[54] Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020,* 7 October 2020, p. 21.

> It is important that the [Grid Reliability Fund] is targeted to current and emerging challenges to grid reliability and security. These challenges necessarily evolve over time with the emergence of new technologies, changes in energy demand, network investments and locational considerations (for example, the challenges and needs differ across Australia, such that the characteristics of Western Australia's South West Interconnected System differ from those in the South Australian region of the National Electricity Market). The use of the Investment Mandate ensures that these issues can be considered and updated as required, without returning to Parliament to amend the Act. It allows for a targeted approach to be taken to maximise the public benefits of deploying the [Grid Reliability Fund]. Importantly, the Investment Mandate cannot override the operational independence of the CEFC as set out in the Act. An Investment Mandate direction cannot direct the CEFC to make, or not make, a particular investment. The ability for the executive government to direct statutory agencies is an important element of the principle of responsible government in Australia. The Investment Mandate is an essential tool for the Government to give important direction to the CEFC in the performance of its legislative functions.[55]

1.41 The Scrutiny Committee welcomed and noted Minister Taylor's advice regarding the use of the Investment Mandate for the proposed Grid Reliability Fund. However, the committee pointed out that 'not all ministerial directions to government bodies are exempt from the usual parliamentary disallowance process',[56] and reiterated its concerns about the investment criteria for the proposed Grid Reliability Fund being determined in non-disallowable delegated legislation:

> While the committee welcomes this advice, from a scrutiny perspective, it remains concerned that criteria for which investments can be funded from the Grid Reliability Fund (that is, criteria relating to an investment's role in supporting the security or reliability of the energy system in Australia) is being left to be determined in non-disallowable delegated legislation. The committee considers that this prevents crucial details regarding how public money will be spent or invested from being subject to effective parliamentary oversight. In addition, while noting the minister's advice that flexibility is required to meet current and emerging challenges, the committee has generally not considered that a desire for administrative flexibility is, of itself, is a sufficient justification for leaving significant matters to delegated legislation, particularly delegated legislation that is not subject to disallowance.[57]

1.42 In conclusion, the Scrutiny Committee resolved:

> The committee draws its scrutiny concerns to the attention of senators, and leaves to the Senate as a whole the appropriateness of leaving criteria for

55 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020,* 7 October 2020, pp. 21–22.

56 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020,* 7 October 2020, p. 22.

57 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020,* 7 October 2020, p. 22.

> which investments can be funded from the Grid Reliability Fund to be determined in non-disallowable delegated legislation.[58]

Compatibility with human rights

1.43 The Explanatory Memorandum states the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*[59]

1.44 It notes the bill engages positively with the right to an adequate standard of living in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* as:

> Grid Reliability Fund investments will improve affordability for energy users, including residential households, businesses and industries, and deliver new reliable generation into the market in ensuring a secure and stable energy supply to Australians.[60]

1.45 The committee notes that the Parliamentary Joint Committee on Human Rights, having considered the bill in the usual manner, decided not to comment on it 'on the basis that the [bill does] not engage, or only marginally engage[s], human rights; promote human rights; and/or permissibly limit human rights'.[61]

Notes on references

1.46 In this report, references to *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and official transcripts.

Acknowledgements

1.47 The committee thanks all organisations and individuals that participated in this inquiry by making submissions or giving evidence at the public hearing.

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[58] Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020,* 7 October 2020, p. 23.

[59] Explanatory Memorandum, p. 3.

[60] Explanatory Memorandum, p. 3.

[61] Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report—Report 11 of 2020*, 24 September 2020, p. 81.

Chapter 2
Issues raised

Overview

2.1 This chapter discusses the main issues raised in submissions and also during the public hearing, regarding the Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020 (the bill). Due to the relatively short inquiry timeframe, the report focuses on the main provisions of the bill raised in submissions and evidence.

2.2 Firstly, it addresses the key provisions of the bill raised by submitters and witnesses, and particularly addresses several misconceptions regarding the operation of the bill. These misconceptions were addressed during the public hearing by Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation from the Department of Industry, Science, Energy and Resources (DISER).

2.3 The key provisions discussed include:

- the Clean Energy Finance Corporation (CEFC) ability to make independent investment decisions;
- the expansion of the definition of 'investment' to allow investment activities that may not make a return on individual investments within the broader positively-performing Grid Reliability Fund portfolio;
- the introduction of Grid Reliability Fund investments, with criteria for investments to be set out in the Investment Mandate;
- the alteration of the definition of 'low-emission technology', together with the inclusion of the term 'low-emission energy system';
- the Grid Reliability Fund's potential support for the Underwriting New Generation Investments (UNGI) Program; and
- the exclusion of the Grid Reliability Fund from investing at least 50 per cent of its funds in renewable energy technologies.

2.4 Secondly, it considers the need for government frameworks that support investment and the need for greater electricity market certainty, and finally, it provides the views and recommendation of the Environment and Communications Legislation Committee (the committee).

Overall positions on the bill

2.5 Submitters expressed strong views both for and against the passage of the bill.

2.6 Mostly, arguments against the bill focused on its purported incompatibility with the Paris Agreement, concerns about investment in potentially non-commercially viable projects, and concerns the bill would undermine the independence of the CEFC. Some argued that the bill is unnecessary, stating the CEFC can currently invest in technologies that improve the security and reliability of the grid. Many individuals objected to the possible use of tax-payers' money to invest in technologies that support the burning of fossil fuels; and raised broader concerns about climate change.

2.7 Most arguments in support of the bill focused on the difficulties of integrating higher levels of renewables into the electricity grid. These submitters argued that the bill would allow flexible generation technologies to support intermittent renewable energy. Other positive aspects of the bill were the use of technologies including pumped hydro and batteries to support grid reliability; and the ability to invest in transmission and distribution infrastructure.

Success of the Clean Energy Finance Corporation

2.8 The majority of witnesses and submitters noted the tremendous success of the CEFC since its inception and were generally supportive of the CEFC receiving an additional $1 billion for investment. Evidence received by the committee highlighted the CEFC's ability to facilitate increased flows of investment into the clean energy sector and deliver a return on investments for tax-payers.[1]

2.9 For example, the Climate Council of Australia (Climate Council) praised the CEFC as a 'world-beating institution'. It highlighting the CEFC's investments in '200 large scale clean energy projects and more than 18,000 smaller scale projects' and pointed out that the CEFC largely exceeds its expectations for high financial returns.[2] Similarly, the Australian Industry Group (Ai Group) stated the CEFC has been a 'successful innovation in Australian climate and energy policy' and has 'leveraged public finance and private partnerships to crowd capital in to areas of great importance to Australia's future, while operating with strong governance and a net financial return'.[3]

2.10 DISER also attested to the success of the CEFC stating it is 'well-placed' to deliver the $1 billion Grid Reliability Fund, 'having already made commitments of $8 billion to projects in the clean energy sector worth $28 billion since its inception'.[4]

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1 For example, see: Australian Conservation Foundation, 350.org, Greenpeace Australia, Solar Citizens, Uniting Church in Australia, Synod of Victoria and Tasmania, and WWF Australia (ACF et al), *Submission 5*, pp. 2 and 6; Mr Alec Roberts, *Submission 1*, p. 1; Mr Oliver Yates, *Submission 7*, p. [1]; Climate Council of Australia, *Submission 27*, p. 3; Australian Parents for Climate Action, *Submission 18*, p. 2; and The Australian Industry Group, *Submission 19*, p. 1.

2 Climate Council of Australia, *Submission 27*, pp. 4–5.

3 The Australian Industry Group, *Submission 19*, p. 1.

4 Department of Industry, Science, Energy and Resources, *Submission 22*, p. 3.

2.11 Much of the evidence put forward noted the important connection between the CEFC's success and its independent decision-making and governance.[5] For example, Mr Tennant Reed from the Ai Group told the committee that 'the independence and the governance of the CEFC have been very important features of its actions to date. They contribute to the good reputation that it has'.[6]

Perceived threat to the Clean Energy Finance Corporation's independence

2.12 Various submitters suggested that the independence of the CEFC would be undermined if the bill were to become legislation. Concerns about the CEFC's independence were noted in association with:

- amendments to the definition of 'investment' to allow for additional types of investments prescribed by regulations;
- the introduction of a new category – 'Grid reliability fund investments', which will be required to meet the criteria of the Investment Mandate; and
- amendments to facilitate the CEFC implementing the UNGI program.

2.13 Submitters' interpretation of the bill's influence on the ability of the CEFC to remain independent varied.[7] The Australian Conservation Foundation (ACF) argued that the bill gives the government and the Minister of the day additional powers to direct the CEFC's investments.[8] Ms Suzanne Harter, a Climate Change and Energy Campaigner for the ACF, reaffirmed the ACF's concerns outlined in its co-authored submission:

> Our second area of concern is the need to protect CEFC's independence and its ability to apply commercial rigour to its investments. This requires rejecting the bill's proposed changes that would provide additional powers for the designated minister to direct CEFC's investments—and this includes loss-making investments—and rejecting the bill's changes that

[5] For example, see: Mr Andrew Stock, Climate Councillor, Climate Council of Australia, *Committee Hansard*, 13 October 2020, p. 6; Mr Richie Merzian, Climate and Energy Program Director, The Australia Institute, *Committee Hansard*, 13 October 2020, p. 6; Mr Tennant Reed, Manager, Climate, Energy and Environment Policy, The Australian Industry Group, *Committee Hansard*, 13 October 2020, p. 19.

[6] Mr Tennant Reed, Manager, Climate, Energy and Environment Policy, The Australian Industry Group, *Committee Hansard*, 13 October 2020, p. 19.

[7] For example, see: ACF et al, *Submission 5*, p. 6; Mr Oliver Yates, *Submission 7*, p. [5]; Australian Parents for Climate Action, *Submission 18*, p. 2; Australian Council of Social Service, *Submission 21*, p. 2; The Australia Institute, *Submission 23*, pp. 5–6; Dr James Prest, *Submission 25*, p. 1 and Name Withheld, *Submission 4*, p. [2].

[8] ACF et al, *Submission 5*, p. 5.

> would enable transfer to CEFC of the government's Underwriting New Generation Investments scheme.[9]

2.14 Mr Kane Thornton, Chief Executive Officer of the Clean Energy Council, emphasised the importance of the CEFC remaining independent and free from government interference, stating:

> …ensuring that the executive and board continue to have that independence is critically important. Frankly, Senator, particularly in the context where we have seen a lot of political chopping and changing of policy, a lot of confusion that comes with that, I think one of the strengths of the institutions in Australia that support the transition of the energy sector has been, if you like, their immunity from some of the very complex and difficult politics.[10]

2.15 Other submitters argued the CEFC's independence would be preserved under the bill. For example, Mr Reed from the Ai Group stated that 'the CEFC would have greater scope to choose individual investments that might not in fact have a return, but the minister would remain unable to direct it to make particular investments'.[11] Similarly, Mr Erwin Jackson, Director of Policy at the Investor Group on Climate Change (IGCC), expressed that the bill didn't appear to undermine the CEFC's independence in decision-making, stating:

> We had a good, hard look at this before we put our submission in and we are not hugely concerned about the independence of the CEFC, because, at the end of the day, the CEFC board has to satisfy itself that it is meeting the objectives of the Act. So from that point of view, we had a look at it, explored it, and the changes being proposed, to us, don't seem to have undermined the independence of the CEFC.[12]

2.16 At the public hearing, to refute claims the CEFC independence was at risk, Ms Evans from DISER said that the bill does not interfere in CEFC independence:

> …the bill does not remove any independence. The minister cannot direct the CEFC with respect to individual projects. Under the Act, as it stands now, the minister is able to give broad guidance to the CEFC about the areas in which he would like to see investment and this is unchanged by the bill. CEFC making a loss has created some concern, but again the

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9 Ms Suzanne Harter, Climate Change and Clean Energy Campaigner, Australian Conservation Foundation, *Committee Hansard*, 13 October 2020, pp. 1–2.

10 Mr Kane Thornton, Chief Executive Officer, Clean Energy Council, *Committee Hansard*, 13 October 2020, p. 25.

11 Mr Tennant Reed, Manager, Climate, Energy and Environment Policy, The Australian Industry Group, *Committee Hansard*, 13 October 2020, p. 19.

12 Mr Erwin Jackson, Director of Policy, Investor Group on Climate Change, *Committee Hansard*, p. 31.

explanatory memorandum to the bill is very clear that the GRF overall is expected to make a positive return to the government.[13]

2.17 When asked whether the amendments would impact independent decision-making by the CEFC board, Mr Ian Learmonth, Chief Executive Officer of the CEFC, advised the committee:

> Absolutely not. The board operates independently of government. It's not directed to do deals or not to do deals by the government or the minister of the day, and this legislation doesn't propose to change that.[14]

Committee comment

2.18 The committee acknowledges the concerns raised about the possible impact of the bill on the CEFC's independence. However, the committee is satisfied that the CEFC would remain accountable for individual investment decisions independent of government.

2.19 In the committee's view the bill would not impact on the capacity of the CEFC or the CEFC's board to make independent decisions about investments.

Expansion to the definition of 'investment'

2.20 The bill would expand the definition of 'investment' to allow, through regulations, additional type of activities that would qualify as Grid Reliability Fund investments. This could include individual activities that may not make an investment return within the context of an overall positive portfolio return.[15]

2.21 Evidence presented to the committee argued that this definitional change would permit the CEFC to fund unprofitable activities at the Minister's discretion, which would be an inappropriate use of government funds and counter-intuitive to the CEFC's purpose.[16] Concerns were also raised over whether the regulations that would expand the definition of investment for Grid Reliability Fund would be subject to the Parliamentary disallowance process.[17]

2.22 For example, in its submission to the inquiry, the Climate Council argued:

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13 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 36.

14 Mr Ian Learmonth, Chief Executive Officer, Clean Energy Finance Corporation, *Committee Hansard*, 13 October 2020, p. 44.

15 Explanatory Memorandum, p. 5.

16 For example, see: ACF et al, *Submission 5*, p. 6; Dr James Prest, *Submission 25*, p. 2; The Australia Institute, *Submission 23*, p. 7; and Mr Alec Roberts, *Submission 1*, pp. 1–2.

17 For example, see: Mr Oliver Yates, Director, Smart Energy Council, *Committee Hansard*, 13 October 2020, p. 24.

> There is no reasonable justification for allowing the CEFC to 'invest' in projects where no return on investment is anticipated. Through its references to potential 'revenue floor arrangements the explanatory memorandum is clear that the Government intends to direct the CEFC issue funds without any expectation of return on projects that would otherwise be uncommercial. The CEFC is not an appropriate vehicle for providing financial support to loss-making endeavours.[18]

2.23 Furthermore, at the public hearing, Mr Andrew Stock, a Climate Councillor from the Climate Council, stated:

> Once you start moving a government enterprise away from making an investment return and operating as a commercial enterprise to one that operates as not necessarily being expected to achieve a return, then you are changing the very nature of the role of the CEFC. The CEFC not only will need to become expert in just providing debt and limited equity and occasional concessional finance but will need to become expert in technology risk, grant-making—which is [the Australian Renewable Energy Agency's] current expertise—and writing, arguably, commercial but non-financial transactions, such as underwriting term agreements for gas power plants.[19]

2.24 Conversely, the Ai Group noted that it was appropriate for the CEFC to be able to make individual Grid Reliability Fund investments that do not make a return, stating:

> The menu of tools to facilitate projects may include options like contracts for difference or guarantees of minimum revenue levels, which can ease projects by cutting their risks. Such tools can be designed to offer upside benefits to the CEFC (such as a symmetrical price guarantee, where the CEFC pays out a counterparty below a strike price or is paid out itself if final prices are above the agreed level), but the ability to offer one-sided support may be useful in supporting more innovative, and risky, projects. The continuing requirement to achieve portfolio returns serves as a firm constraint on the overall scope of risk and non-return arrangements that CEFC could contemplate.[20]

2.25 Mr Oliver Yates, Director of the Smart Energy Council, raised concerns regarding the ability of the minister of the day to direct the CEFC on what investments to make and removing the requirement for Parliamentary oversight:

> Though seemingly innocuous, those changes to the definition of investments insert a provision that allows the minister, not parliament, to change the way the CEFC invests its money by regulation. Senators, it removes your power. This simple change allows the minister to effectively

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18 Climate Council of Australia, *Submission 27*, p. 3.

19 Mr Andrew Stock, Councillor, Climate Council of Australia, *Committee Hansard*, 13 October 2020, pp. 3–4.

20 Ai Group, *Submission 19*, p. 4.

> play around with a billion dollars in this fund outside your oversight, including making loss-making investments.[21]

2.26 In response to concerns raised regarding the ability to support individual investments that do not make a return, Ms Evans clarified the purpose of the proposed expanded definition, stating:

> …the bill extends the current definition of 'investment' under section 4 to include financial arrangements that would allow the CEFC to fill a financial or risk gap that they can't do at the moment that would enable an important grid reliability project to proceed, even if that particular action or that particular project may come at a loss… [T]his expanded definition of 'investment' and the associated regulation-making powers enable the CEFC to offer a wider range of financial products than is currently the case… [T]his amendment is about the financial instruments available to the CEFC—not what the CEFC invests in but how it can invest in them.[22]

2.27 Additionally, in its submission to the inquiry, DISER advised that the CEFC will determine whether to use the types of investments made available through regulation:

> It will remain at the CEFC's discretion whether to use the types of investments prescribed by the regulations, with the proposed change simply increasing the number of support tools at the CEFC's disposal. Any costs associated with the use of such support mechanisms would be offset by the returns made across the GRF portfolio which is expected to make a return as a whole.[23]

2.28 Ms Evans also explained that the Grid Reliability Fund will still be expected to deliver an overall positive return for the Grid Reliability Fund portfolio:

> …the Grid Reliability Fund must overall return a profit to the government. While the expansion of the definition of 'investment' allows more flexibility for the CEFC so that there may be some probability of a loss on some projects under the GRF, at a portfolio level the CEFC must still show a positive return on the Grid Reliability Fund. This is a similar type of obligation that the CEFC holds for the $10 billion fund where the overall rate of return is specified at a portfolio level, not at an individual project level.[24]

2.29 Ms Evans went on to explain that the regulations will be subject to the usual disallowance process:

> The use of regulations that is also in the bill to prescribe the additional form of investment is subject to the normal disallowance procedures of

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21 Mr Oliver Yates, Director, Smart Energy Council, *Committee Hansard*, 13 October 2020, p. 23.

22 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 35.

23 Department of Industry, Science, Energy and Resources, *Submission 22*, p. 5.

24 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 36.

> each house of parliament under the *Legislation Act 2003*. There's been some misconception that there's no further control over the ability from parliament over the regulations that the minister might make under the amendments to the Act.[25]

Committee comment

2.30 The committee acknowledges the concerns of some submitters that the bill will allow the CEFC to make individual Grid Reliability Fund investments that may not make a return. The committee notes however, that some of these investments may in fact be revenue-neutral due to the CEFC utilising underwriting arrangements that are not called upon. Importantly, the Grid Reliability Fund portfolio overall must provide a return to the taxpayer, as stipulated in the Explanatory Memorandum.

2.31 The committee recognises that the amendment to the definition of 'investment' would provide the CEFC with greater flexibility when making decisions on individual investments. This would allow more opportunities for investment, especially for grid reliability projects such as transmission infrastructure or the establishment of Renewable Energy Zones,[26] which will encourage more renewables into the electricity network.

2.32 Furthermore, the committee notes that this approach to Grid Reliability Fund investments is not an unusual arrangement. This is because under the current Investment Mandate the 'Portfolio Benchmark Return target is expected to be earned across the portfolio of investments over the medium to long term, and individual investments can be made with expected individual returns above or below the Portfolio Benchmark Return'.[27]

2.33 The committee also notes concerns that the expanded definition of investment will provide the opportunity for the minister of the day to direct the CEFC to invest in certain activities without effective parliamentary oversight. However, the committee does not accept this contention. The committee is satisfied that any regulations introduced to prescribe additional financial arrangements for the CEFC regarding Grid Reliability Fund investments will be subject to the usual disallowance process as confirmed by departmental officials.

'Grid reliability fund investments' and the Investment Mandate criteria

2.34 Some submitters raised concerns regarding the insertion of the new category of 'Grid Reliability Fund investments' and the requirement for these investments to meet the criteria set out in the Investment Mandate. Their evidence

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25 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 36.

26 Department of Industry, Science, Energy and Resources, *Submission 22*, p. 5.

27 Clean Energy Finance Corporation Investment Mandate Direction 2020, *Explanatory Statement*, p. 4.

suggested that this new category and its reliance on the criteria within the Investment Mandate provide the minister of the day the opportunity to direct the CEFC into specific types of investments.

2.35 For example, TAI stated:

> The Minister has announced that, once this Bill is passed, the Government will prescribe a new Investment Mandate. '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'. This is poor process and of concern to government accountability.[28]

2.36 Similar evidence also noted the concerns raised by the Senate Standing Committee for the Scrutiny of Bills regarding criteria for which investments can be funded under the Grid Reliability Fund to be set out in the Investment Mandate.[29]

2.37 At the public hearing, Ms Evans specified that the Investment Mandate has always been a non-disallowable instrument (in contrast to the regulations noted above) and the bill continues this arrangement.[30] Ms Evans stated that 'the minister cannot direct the CEFC with respect to individual projects' but that the minister 'is able to give broad guidance on the CEFC about the areas in which he would like to see investment'.[31]

2.38 When asked at the hearing if the bill allows the minister to direct 'a certain percentage of the funds to go towards gas', Ms Evans advised:

> Using the investment mandate, the minister can already give general guidance on how he would like the CEFC to invest its funding, so I suppose there is some prospect that it could, in the investment mandate, have some sense of a proportion of funding that it would like to put towards gas, but, even if that were there, the CEFC would still have to take each project on its merits and decide whether or not it was a worthwhile investment and whether or not it genuinely contributed towards a low emissions energy system. The minister cannot force the CEFC to invest specifically in any gas project.[32]

2.39 The CEFC's operational independence is discussed further under the section 'Underwriting New Generation Investments program'.

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28 The Australia Institute, *Submission 23*, p. 6.

29 For example, see: ACF et al, *Submission 5*, p. 5; Dr James Prest, *Submission 25*, p. 2; and Name Withheld, *Submission 31*, p. [1].

30 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 35.

31 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 36.

32 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 43.

Committee comment

2.40 The committee is satisfied the CEFC's independence will be maintained under this bill. The committee notes that the Investment Mandate has always been a non-disallowable instrument and the bill continues this arrangement.

2.41 The committee also notes that a key component to the CEFC's positive investment performance has been its ability to make independent investment decisions. The committee is confident the CEFC will maintain its independence upon passage of the bill.

Amendment to the definition of 'low-emissions technology'

2.42 The bill amends the definition of 'low-emissions technology' by including a list of technologies that the CEFC can invest in to support the achievement of a 'low-emissions energy system' in Australia.[33] The bill's amendment of low-emissions technology was a key focal point for submitters and witnesses.

2.43 Evidence received by the committee argued that the altering of the definition of 'low-emissions technology' to include the undefined term 'low-emissions energy systems' is vague and problematic.[34] Evidence suggested the new definition could potentially apply to the wider CEFC portfolio, and that it has been included to allow the CEFC to invest in gas-fired power generation projects, which it would be unable to invest in under the current CEFC Act.

2.44 For example, at the public hearing, Ms Harter spoke to ACF's concerns regarding the definitional change, stating that the new definition is 'unnecessary' and that the current definition should remain, which allows the CEFC to specify 'low-emissions technology' through investment guidelines.[35] Ms Harter went on to say:

> We feel it's critical to uphold CEFC's core objectives by not using CEFC funding for gas or fossil fuel projects which are not clean energy and would be very inconsistent with CEFC's role in helping to reduce Australia's climate emissions.[36]

2.45 Mr Stock from the Climate Council, stressed that the definition would impact the CEFC portfolio more widely, advising:

> Importantly, that definitional change runs through the whole Act, so it applies not only to the Grid Reliability Fund investments but to the whole CEFC portfolio—over $10 billion. That's of considerable concern, and the

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33 Explanatory Memorandum, p. 1.

34 For example, see: The Australia Institute, *Submission 23*, p. 7; Dr James Prest, *Submission 25*, p. 2; and Ai Group, *Submission 19*, pp. 4–5.

35 Ms Suzanne Harter, Climate Change and Clean Energy Campaigner, Australian Conservation Foundation, *Committee Hansard*, 13 October 2020, p. 1.

36 Ms Suzanne Harter, Climate Change and Clean Energy Campaigner, Australian Conservation Foundation, *Committee Hansard*, 13 October 2020, p. 1.

> reason why is that, in the explanatory memorandum, it states that this definition change will enable certain types of gas fired electricity projects to now fall under this definition if they support a low-emissions system in the market. It's not clear at all what a 'low-emissions [energy] system' is. It's not defined anywhere, and this definitional change applies to the whole portfolio.[37]

2.46 The TAI raised similar concerns, stating by not defining 'low-emission energy systems', the bill resulted in 'an open-ended definition of "low-emission technology" that will enable the CEFC to fund gas-fired electricity generation, as made explicit by the Explanatory Memorandum and the Minister's second reading speech'.[38]

2.47 The Ai Group noted that not defining a low-emissions energy system in the bill, as well as not tasking the CEFC to define it, seemed 'excessively ambiguous' and stated:

> The idea of the CEFC being able to support technologies, even those with some emissions, that support development of a low emissions grid is reasonable. A technology-neutral approach is sensible. However being neutral on technology requires a commensurate clarity about the outcome sought. CEFC needs to articulate, or be given, clear guidance on low emissions energy systems, and have access to analytical support to establish whether proposals really do contribute to achieving them.[39]

2.48 Likewise, the IGCC highlighted the need for clarity around a low-emission energy system for transparency. It recommended the CEFC publish its criteria for a low-emission electricity system and for this definition to be consistent with the objectives of the Paris Agreement.[40]

2.49 The Ai Group suggested three ways of clarifying what low-emission energy systems are:

- the Commonwealth government adopt a long-term objective of net-zero emission by 2050 for the Australian economy to help guide the CEFC;
- the bill be amended to explicitly task the CEFC with devising guidelines to define low-emissions energy systems as it does under the current CEFC Act; and
- through the Explanatory Memorandum and Investment Mandate, encourage the CEFC to develop its guidelines in consultation with key stakeholders, particularly energy market governance bodies.[41]

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[37] Mr Andrew Stock, Councillor, Climate Council of Australia, *Committee Hansard*, 13 October 2020, p. 3.

[38] The Australia Institute, *Submission 23*, p. 7.

[39] Ai Group, *Submission 19*, p. 6.

[40] Investor Group on Climate Change, *Submission 28*, pp. 2 and 5.

[41] Mr Tennant Reed, Manager, Climate, Energy and Environment Policy, The Australian Industry Group, *Committee Hansard*, 13 October 2020, p. 15; and Ai Group, *Submission 19*, p. 6.

2.50 In response to questioning about why the term 'low-emission energy systems' has not been defined in the bill, Ms Evans advised that it has not been defined to allow the CEFC board 'to take its own view on whether or not those technologies would contribute towards what they consider to be a low-emission energy system'.[42]

2.51 Additionally, DISER provided context on how low-emission energy systems will be achieved and that this will be further outlined in the Investment Mandate:

> Low-emission energy systems are achieved through creating an interconnected network of energy assets, such as generation, transmission and distribution infrastructure, that operate collectively to supply low emission energy to consumers and includes a region of an interconnected network with security and reliability needs substantially independent of the network as a whole. This will be stipulated and explained in a CEFC Grid Reliability Fund Investment Mandate. What constitutes a low-emission energy system will evolve as other efficiencies and technologies are deployed.[43]

2.52 In its submission to the inquiry, DISER noted that the inclusion of the definition for grid reliability fund investments and the changes to the definition of low-emissions technology 'removes ambiguity as to whether the CEFC is able to invest in certain types of projects including gas electricity generation where this is contributing to a low-emissions energy system'.[44]

2.53 DISER further advised that the low-emission technologies the CEFC will be able to provide support to 'enabling technologies, such as batteries, transmission upgrades and grid stabilisation technologies where it is the system benefits of these technologies that are relevant and not the operational emissions-intensity of the technology'. Relevant limits on the technologies will be 'imposed through the need for a connection with the achievement of low-emission energy systems in Australia'.[45]

2.54 Finally, DISER advised that the purpose of the changes would enable the CEFC to invest in a technology-neutral manner and 'across a wide range of businesses and projects, while retaining responsibility for investment decisions'.[46]

2.55 Mr Learmonth from the CEFC explained during the recent Budget Estimates hearings that the absences of a definition of 'low-emissions energy systems' did

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42 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 46.

43 Department of Industry, Science, Energy and Resources, *Submission 22*, pp. 4–5.

44 Department of Industry, Science, Energy and Resources, *Submission 22*, p. 5.

45 Department of Industry, Science, Energy and Resources, *Submission 22*, p. 5.

46 Department of Industry, Science, Energy and Resources, *Submission 22*, p. 5.

not pose an operational challenge from the CEFC Board's perspective.[47] Mr Learmonth elaborated on the approach the Board would likely take in these circumstances:

> If there isn't a definition [of low-emissions energy systems], the board would come to its own conclusions about what those words mean. I imagine we would provide guidance to the marketplace in regard to that.[48]

Committee comment

2.56 The committee appreciates the concerns raised regarding the amendment to the definition of 'low-emission technologies'. The committee notes, however, that this change has occurred to remove any doubt that the CEFC can invest in energy storage, electricity generation, transmission or distribution or grid stabilisation, as long as these technologies contribute to low-emission energy systems.

2.57 The committee also notes that the Explanatory Memorandum states that the amendment to 'low-emissions technologies' under the CEFC Act 'would not extend to coal-fired electricity generation technologies'.[49]

2.58 The achievement of low-emission energy systems in Australia is expected to evolve based on the introduction of technologies and other efficiencies. Importantly, this amendment does not remove the CEFC's board ability to consider whether Grid Reliability Fund investments contribute to a low-emissions energy system. Over time the committee expects the CEFC will develop guidance to industry on the parameters of low-emission energy systems.

Underwriting New Generation Investments program

2.59 Under the bill, the $1 billion Grid Reliability Fund may provide financial support to eligible projects shortlisted under the UNGI program and that are within the CEFC's Investment Mandate.

2.60 Concerns were raised about the bill, in particular the purpose of the UNGI program. In its submission to the inquiry, DISER advised that the bill would expand the functions of the CEFC to allow it to assist Commonwealth agencies in the development or implementation of polices or programs that support grid reliability, including to allow 'the Government to draw upon the CEFC's

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47 Mr Ian Learmonth, Chief Executive Officer, Clean Energy Finance Corporation, Senate Environment and Communications Legislation Committee, *Budget Estimates Proof Hansard*, 20 October 2020, p. 113.

48 Mr Ian Learmonth, Chief Executive Officer, Clean Energy Finance Corporation, Senate Environment and Communications Legislation Committee, *Budget Estimates Proof Hansard*, 20 October 2020, p. 113.

49 Explanatory Memorandum, p. 11.

expertise when structuring finance or setting terms and conditions in relation to any shortlisted UNGI projects not taken on by the CEFC.[50]

2.61 The TAI countered that the UNGI program is 'controversial' and stated it 'has no legislative basis, no formal guidelines or criteria for project selection, and is following no clear process'.[51] According to legal advice commissioned by the TAI in early 2019, the UNGI program would require, among other things, amending the CEFC Act, which the TAI believes this bill now confirms.[52]

2.62 The TAI argued that the main reason for the bill was to ensure the 12 shortlisted UNGI projects received financial support and stated, if adopted, the bill 'will allow the CEFC to shift from an explicitly profitmaking investor of renewable energy projects for the Australian people, to a potentially loss-making underwriter of fossil fuel projects'.[53]

2.63 At the public hearing, Mr Richie Merzian from the TAI elaborated on this point. He stated 'of particular concern is that of the five gas projects that have been shortlisted from the 12 the government has already taken the efforts to progress negotiations on two of them'.[54] Mr Merzian further suggested the bill's amendments and Explanatory Memorandum showed 'a very clear direction' for the CEFC to consider underwriting the five gas projects.[55]

2.64 In support of the argument that the bill's amendments are primarily to support funding of the UNGI program, Mr Stock from the Climate Council advised that, although it is possible for the CEFC to invest in gas projects, the current definition for 'low-emissions technologies' would exclude open-cycle gas projects, which the five UNGI gas projects are.[56]

2.65 When asked if the purpose of the bill is to secure support for the shortlisted UNGI gas projects, due to no alternative funding option, Ms Evans stated to her knowledge that was not the case.[57] Furthermore, Mr David Blowers, Acting General Manager of the Electricity Branch at DISER, advised that 'under

50 Department of Industry, Science, Energy and Resources, *Submission 22*, p. 6.

51 The Australia Institute, *Submission 23*, p. 4.

52 The Australia Institute, *Submission 23*, pp. 4–5.

53 The Australia Institute, *Submission 23*, p. 4.

54 Mr Richie Merzian, Climate and Energy Program Director, The Australia Institute, *Committee Hansard*, p. 5.

55 Mr Richie Merzian, Climate and Energy Program Director, The Australia Institute, *Committee Hansard*, 13 October 2020, p. 5.

56 Mr Andrew Stock, Councillor, Climate Council of Australia, *Committee Hansard*, 13 October 2020, pp. 5 and 7.

57 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 39.

existing legislation, the government will be able to maintain authority to deliver UNGI projects if or when, or even before, they go to the CEFC'.[58]

2.66 Similarly, at the public hearing, Mr Simon Every, Head of Government and Stakeholder Relations at the CEFC, clarified that it would be the CEFC who would undertake its own due diligence and decide whether to support an UNGI project:

> …the particular project would go through the normal processes of an eligibility screening to determine that it could be financed by the CEFC under the terms of the amended act. Then they would go through a commercial assessment as to the viability of the proposal. And then they would go through assessments of the particular attributes of the investment proposal, such as the extent to which it provided a grid-firming aspect, the public policy benefits, the type of investment return the CEFC could be expected to make.[59]

Committee comment

2.67 The committee notes the concerns raised regarding the UNGI program, however, the committee understands that the overall purpose of the bill is to encourage investment to support grid reliability and security.

2.68 The committee acknowledges that the CEFC will have the opportunity to consider the shortlisted UNGI projects and notes the CEFC will assess each project on its merits. The CEFC will make its own decision as to whether it is a worthy investment and contributes to a low-emissions energy system.

2.69 The committee is satisfied the CEFC will retain its independence around investing in individual projects.

Exemption from investing at least half of funds in renewables

2.70 Since 1 July 2018, the CEFC has been required to invest at least half of the CEFC's investment portfolio in renewable energy technologies. According to the bill, the Grid Reliability Fund will be excluded from this requirement. This will ensure the Grid Reliability Fund is 'technology-neutral' and the CEFC can focus on the best investments to improve grid reliability.[60]

2.71 Some evidence questioned why diverting funding away from renewables was necessary through the lifting of this restriction and questioned whether it would impact CEFC investment portfolio more broadly.

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58 Mr David Blowers, A/g General Manager, Electricity Branch, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 39.

59 Mr Simon Every, Head of Government and Stakeholder Relations, Clean Energy Finance Corporation, *Committee Hansard*, 13 October 2020, p. 41.

60 Explanatory Memorandum, p. 10.

2.72 For example, the Australian Council of Social Service recommended the CEFC retain its existing requirement to invest at least half its funds in renewable energy and to extend this requirement to the Grid Reliability Fund.[61] Dr James Prest noted that one of the most concerning aspects of the bill was the watering down of the 'at least 50 per cent requirement' by excluding the Grid Reliability Fund.[62]

2.73 During the public hearing, Ms Evans advised that the bill does not remove or alter this requirement for the CEFC's original $10 billion investment portfolio. The CEFC original investment portfolio will still be required to invest at least 50 per cent of its funds in renewable energy technologies. Ms Evans advised:

> There has been some concern in the submissions about a perception that there's a removal of the requirement for 50 per cent of the CEFC investments to be in renewables. The bill does not remove this requirement for the existing CEFC funding. What it does is allow for the new $1 billion in funding to be unconstrained by the type of technology that it needs, so long as it's contributing to a low-emissions energy system.[63]

2.74 Ms Evans explained that the bill exempts the Grid Reliability Fund from the requirement to invest at least half of its funds in renewables, to provide the CEFC with investment flexibility to support grid reliability. Referring to a key finding of the Statutory Review of the Clean Energy Finance Corporation (the statutory review) from 2018, Ms Evan advised:

> It pointed to a couple of restrictions that the CEFC had in the way that it's able to use its funding. It particularly pointed to the constraint that the 50 per cent renewables imposes on the way that it uses its $10 billion fund. It also pointed to the ability to only use debt and equity as the forms of finance, and that statutory review indicated that there'd be some benefit in creating some more flexibility around both of those points. So the shaping of the bill and the proposal has come from saying, 'To avoid that 50 per cent requirement for the $10 billion, it needs a separate pool of funding that can be used in an unrestricted way'.[64]

2.75 In its submission to the inquiry, the CEFC pointed out the administrative and compliance challenges it faces regarding the minimum 50 per cent rule:

> The reality of managing the…must ensure, that at any time…'at least half the funds invested' formulation found in the current sub-section 58(3) is that the CEFC must target a renewable energy threshold of 55% in order to be certain it stays above 50% at all times. This is because the CEFC's portfolio of investments is fluid. Many individual investments exit the

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61 Australian Council of Social Service, *Submission 21*, p. 2.

62 Dr James Prest, *Submission 25*, p. 1.

63 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, p. 36.

64 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, pp. 37–38.

> CEFC's portfolio after the project is constructed, derisked and earning stable proven revenues.
>
> The CEFC has no way of knowing in advance whether the projects that will refinance at any given point will be renewable energy technologies or other technologies. In addition to targeting a 55% threshold to meet the requirements of sub-section 58(3), the CEFC must occasionally slow or cease investing in non-renewables, or sell current non-renewable investments down, just in order to maintain the threshold. In this way, the subsection 58(3) requirement may impact the CEFC's ability to invest in energy efficient and low emission technologies that would otherwise be eligible for CEFC investment.[65]

2.76 Ms Evans explained why the minimum 50 per cent requirement would be a significant limiting factor if applied to the Grid Reliability Fund:

> Some of these [Grid Reliability Fund investments might be quite substantial. Say you made an investment in … a transmission line … if that had to be matched by the same amount of investment in renewable energy to meet the 50 per cent, you might not have enough projects coming forward on the renewable energy side to be able to do the one [transmission project]…for the purposes of grid reliability and stability.[66]

Committee comment

2.77 The committee is satisfied that the bill does not withdraw the requirement for the CEFC's original $10 billion investment portfolio to invest at least 50 per cent of its funds in renewable energy technologies.

2.78 The committee acknowledges that there is a benefit to not requiring the $1 billion Grid Reliability Fund to invest at least half of its funds in renewables. The removal of the restriction on the Grid Reliability Fund will ensure the CEFC is able to invest in a broad range of technologies, such as generation, energy storage and transmission projects, to improve grid reliability and better enable the grid to support growing renewable capacity.

Other matters

Government frameworks to support investment

2.79 Evidence presented to the committee emphasised the need for the bill to ensure it is 'crowding-in' private investment and for strategic policy and regulations from government to support investor confidence.

2.80 In its submission to the inquiry, the Australian Pipelines and Gas Association stated:

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65 Clean Energy Finance Corporation, *Submission 26*, p. 4.

66 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, pp. 43–44.

> A high level of industry investment is critical to cost effectively increase the reliability of the electricity grid – and successfully achieve the goals of the GRF. At the same time, it is vital that government recognises the role it plays in ensuring a stable policy environment that encourages rather than presents a barrier to investment. Maintaining a technology neutral approach to achieving clean energy policy goals – as the proposed Bill seeks to do – is one way to achieve this.[67]

2.81 At the public hearing, this view was supported by Energy Networks Australia Chief Executive Officer Mr Andrew Dillon:

> One of the challenges we have…with new infrastructure is that it is critical that the energy regulation and policy framework we have around this supports investment confidence so we can access low-cost finance. Reducing regulatory risk helps networks continue to be considered low-risk investments, and that means they can access low-cost debt and equity and these low-financing costs are passed on to customers.[68]

2.82 Likewise, Mr Jackson from the IGCC argued the need for a safe investor environment to unlock capital for a broad range of low emissions technologies on a scale required to support the energy system:

> We can have very important policies like the CEFC…[and] ARENA, but without a long-term policy direction, investors are going to continue to struggle to find projects at scale, and to invest in country and large-scale renewable energy and other emission reduction projects. We are already seeing, based on the surveys and the engagements we are having with our members, that policy risk and regulatory risk are very big concerns for them and they are actively seeking opportunities in other markets in response.[69]

Greater electricity market certainty

2.83 Submitters and witnesses supported the need to improve Australia's grid reliability and security, as well as using the CEFC to leverage private sector investment to address grid reliability issues and investment in renewables.

2.84 The Clean Energy Regulator stated:

> The ability of Australia's electricity grid to transmit renewable electricity from production to areas of demand is currently the major limiting factor to further growth.[70]

2.85 Mr Dillon stated that the need for investment in transmission infrastructure to support the grid and renewables is critical:

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67 Australian Pipeline and Gas Association, *Submission 14*, p. 4.

68 Mr Andrew Dillon, Chief Executive Officer, Energy Networks Australia, *Committee Hansard*, 13 October 2020, p. 15.

69 Mr Erwin Jackson, Director, Policy, Investor Group on Climate Change, *Committee Hansard*, 13 October 2020, p. 30.

70 Clean Energy Regulator, *Submission 43*, p. 2.

> …transmission infrastructure and better interconnection between states are essential to support renewable power generation, keep our electricity supplies reliable and link markets to keep customer costs down. The reality is renewable generation is often built in remote locations and new transmission is essential to enable the clean energy produced to get to market and be delivered to customers.[71]

2.86 Mr Stock cautioned the government over too much intervention with the CEFC and warned it would detrimentally impact the electricity market:

> If the government continues to act in a way that intervenes in the market, one thing you can guarantee is that the rest of the market—the private sector—will sit on their hands and wait and see what happens. That's probably the worst outcome that Australians would expect out of this, because it will guarantee underinvestment when investment is required. It will virtually ensure high prices for electricity, because we will get underinvestment ahead of closures, and that will almost certainly bring future price shocks.[72]

2.87 Mr Jackson from the IGCC cautioned that private investment in gas to support the grid may be risky as global investors are moving away from fossil fuel energy:

> …institutional investors view gas much like any other fossil fuel: it's still high emissions. It still carries the same risk that any other fossil fuel has over a long period of time—over 40-50 years—in terms of the assets and whether they will become stranded. So what we are actually seeing globally is investors increasingly scrutinising gas investment in the same way they had recently been scrutinising coal assessments. Their appetite would be more towards renewables, because the risks are probably lower in the long term for those investments.[73]

2.88 Mr Thornton from the Clean Energy Council expressed a similar view:

> We see a whole wave of projects coming down the pipeline, supported by private sector investors in renewable energy and energy storage. Any efforts by government in that context to underpin new coal- or gas-fired power stations really only does one thing—that is, confuse investors and force them to look at taking their capital, their expertise and ultimately their investments to other countries at a point in time when Australia needs to be accelerating commitments to new generation in this country… It [market uncertainty] would have a negative impact on investment, and the obvious flow-on from that is that less new investment will mean higher

71 Mr Andrew Dillon, Chief Executive Officer, Energy Networks Australia, *Committee Hansard*, 13 October 2020, p. 15.

72 Mr Andrew Stock, Councillor, Climate Council of Australia, *Committee Hansard*, 13 October 2020, p. 8.

73 Mr Erwin Jackson, Director, Policy, Investor Group on Climate Change, *Committee Hansard*, 13 October 2020, p. 30.

> power prices and less reliability in the context of the inevitable phase out of our coal generation in years to come.[74]

2.89 However, the APGA expressed the view that gas will have a strong role to play in supporting intermittent renewables, stating:

> The flexibility of gas-fired power generation (especially fast-start gas-peakers) makes it an ideal complement to intermittent renewable sources of energy like wind and solar. It keeps the electricity grid stable both during short term fluctuations in output (measured in seconds and minutes) and longer-duration periods where the wind doesn't blow and/or the sun doesn't shine. It is this role – supporting intermittent renewables in the electricity mix and thereby enabling higher renewable use overall – that represents the future of gas in the electricity system.[75]

Committee conclusion

2.90 The committee recognises that Australia's electricity system is facing challenges coping with the high penetration of renewables, and urgent investment is needed to improve grid reliability and security.

2.91 The committee notes that the Grid Reliability Fund would allow the CEFC to focus on investment in new generation, storage, distribution and transmission infrastructure which is critical to support a firm, reliable and secure energy grid. It would also create further opportunities for the greater penetration of renewables to support Australia's transition to a lower emissions electricity market.

2.92 The committee notes the concerns raised about the potential for the CEFC to invest in gas-fired generation, where its position in the market supports the achievement of low-emission energy systems. However, the committee also notes that the existing CEFC Act and guidelines allows the CEFC to invest in non-renewable fossil fuels such as gas-fired generators where they can achieve an emissions intensity of less than 50 per cent of the current National Electricity Market average.

2.93 The committee also notes that the bill is focused on the CEFC investing in grid reliability technologies, which are far broader than gas-fired generation, and include energy storage such as pumped hydro and batteries, transmission and distribution infrastructure and grid stablishing technologies.

2.94 The committee is conscious of the need to ensure Australia can provide energy that is reliable, affordable and secure, and support the transition to lower-emission technologies. The committee also notes that the Grid Reliability Fund supports the objectives of the Technology Investment Roadmap, which is part of the Government's long-term emissions reduction

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[74] Mr Kane Thornton, Chief Executive Officer, Clean Energy Council, *Committee Hansard*, 13 October 2020, p. 22.

[75] Australian Pipelines and Gas Association, *Submission 14*, p. 2.

strategy. The committee believes that the bill strikes an appropriate balance in supporting vital grid stability technologies while at the same time encouraging the continued large-scale deployment of renewable energy technologies.

Recommendation 1

2.95 The committee recommends the bill be passed.

Senator the Hon David Fawcett
Chair

Labor Senators' dissenting report

1.1 Australia's energy system continues to experience a profound modernisation due to the impacts of new technology, carbon constraints, and the progressive retirement of an ageing and increasingly unreliable legacy fleet of coal power plants. According to all the experts, including public energy market agencies as well as private industry, the future of Australia's electricity system lies with renewable technologies, energy storage, and network and grid modernisation, including distributed generation and storage and demand management. This modern energy future can best be delivered with clear policy direction provided by the Commonwealth, including with respect to the goals seeking to be attained such as net-zero emissions by 2050.

1.2 The Government's inability to deliver a clear and consistent national energy policy continues to undermine investor confidence and certainty. Labor accepts the legitimate role for greater government support for transmission and energy security and reliability assets. In the first instance, this support should be provided through a modern set of energy market rules that support ancillary services such as frequency control, voltage control and energy storage. In addition, support for these projects through the Clean Energy Finance Corporation (CEFC) can be justified. Indeed, Labor took a $5 billion Energy Security and Modernisation Fund, to be administered by the CEFC to the last election for exactly this purpose,[1] and has recently announced Rewiring the Nation, a $20 billion public corporation that will itself invest in transmission projects.[2]

1.3 While Labor supports those parts of the bill that are purely focused on increasing energy security and reliability through network and storage investment, two features of the current bill are sufficiently problematic to warrant amendment in Labor's view. Put most broadly, as well as encouraging more transmission and security investment, this bill dilutes both the CEFC's focus on emissions reduction and its financial independence. These two characteristics—a clear commercial investment focus with a clear commitment to financial independence, and a focus on genuine emissions reduction—are the defining characteristics of the CEFC and as both are severely undermined by this bill, Labor Senators cannot support the bill in its current form.

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1 The Hon Bill Shorten MP, Leader of the Australian Labor Party, 'Labor's plan for more renewable energy and cheaper power', *Media Release*, 22 November 2018.

2 The Hon Anthony Albanese MP, Leader of the Australian Labor Party, and the Hon Mark Butler MP, Shadow Minister for Climate Change and Energy, 'Rewiring the Nation: More jobs, lower power prices', *Media Release*, 8 October 2020.

Financial independence

1.4 The majority committee report notes at some length significant stakeholder concerns about the impact of the bill on CEFC financial independence and integrity.

1.5 In particular, proposed section 4 of the bill, which defines 'investment' for the purposes of the Grid Reliability Fund, allows the Energy and Emissions Reduction Minister to define an investment through legislative instrument, including defining an investment as not being required to deliver a financial return to the CEFC. As the Explanatory Memorandum states:

> 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.[3]

1.6 This issue was raised as a serious concern by almost all stakeholders in written submissions and in personal evidence.[4] It was acknowledged in the majority committee report, only to be dismissed as a genuine concern under the cover of Departmental evidence that the overarching requirement to make a benchmark return will safeguard the CEFC's independence and integrity.

1.7 The former CEO of the CEFC has a starkly different view. In his written submission, Mr Oliver Yates stated:

> Senators, your fundamental concern with this Bill is that it will threaten the CEFC's successful business model by undermining its commerciality, independence, culture, staffing and highly specialised skills. If you allow this Bill to pass, you are threatening the custody of the $10 billion of taxpayers' funds that the CEFC has under its control.[5]

1.8 Labor does not accept the Department's argument that an overarching requirement for the CEFC to generate a positive benchmark return adequately safeguards the financial integrity and independence of the CEFC with respect to this new power for the Minister to define a CEFC investment that does "not make an investment return". While the formal independence to make investment decisions will be retained within the CEFC, removing a strict financial lens from investment decisions, especially when coupled with the watering down of the emissions lens to be applied to investments (as discussed below), and when coupled a with a firm direction from the Minister to consider specific investment that need not generate any return for the CEFC, to

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3 Explanatory Memorandum, p. 5.

4 For example, see: Mr Oliver Yates, *Submission 7*, p. [5]; Australian Parents for Climate Action, *Submission 18*, p. 2; Australian Council of Social Service, *Submission 21*, p. 2; The Australia Institute, *Submission 23*, pp. 5–6.

5 Mr Oliver Yates, *Submission 7*, p. 4.

Labor Senators represents an unacceptable attack on the financial independence and overarching purpose of the CEFC.

Recommendation 1

1.9 That the bill be amended to remove the new power of the Energy and Emissions Reduction Minister to define new investments through regulation.

Watering down the emissions focus of the CEFC to allow for gas power generation investments.

1.10 The bill replaces the definition of "low emissions technology" with a broader an undefined requirement for investments to be an investment that supports a "low-emissions energy system".

1.11 While this change makes a degree of sense when considering investments in assets that do not directly generate carbon emissions—such as energy storage, reliability/security assets, for example, synchronous condensers, and transmission and system management infrastructure—Labor Senators reject the argument that a strict emissions lens should be removed to allow for investments in gas power generation.

1.12 Gas power generation is not a new technology, faces no technological barriers to deployment, and as it is at least half as polluting as coal power, it cannot be considered low emissions. Indeed, under current CEFC low emissions guidelines, gas power generation fails to meet the definition of low emissions generation, and that failure does not take into account upstream emissions from gas production and transport.

1.13 The Government has been clear that the expansion of generation investments allowed by the CEFC is largely motivated by a policy decision to allow the CEFC to support Underwriting New Generation Investment (UNGI) gas power projects. The UNGI program has famously suffered from a lack of transparency since its inception.[6]

1.14 As a broader point of principle, no adequate reason has been presented by the Government to explain why the definition of low emissions technology investment as it applies to electricity generation should be changed, whether

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[6] As well as submissions and testimony to the inquiry, see: Laura Schuijers, 'The government's UNGI scheme: what it is and why Zali Steggall wants it investigated', *The Conversation*, https://theconversation.com/the-governments-ungi-scheme-what-it-is-and-why-zali-steggall-wants-it-investigated-137252); Michael Mazengard, 'Angus Taylor's stalled UNGI program placed on audit hit list', *Renew Economy*, https://reneweconomy.com.au/angus-taylors-stalled-ungi-program-placed-on-audit-hit-list-60233/; and The Australia Institute, *Undermining New Investment–Problematic UNGI Program without Legal Foundation*, Media Release, 27 April 2020, www.tai.org.au/content/undermining-new-investment-problematic-ungi-program-without-legal-foundation (accessed 4 November 2020).

with respect to the original CEFC or the $1 billion new Grid Reliability Fund, as this bill contemplates.

1.15 Labor established the CEFC as a renewable-focused corporation, with enough flexibility and independence to play its legislated role as the energy system evolves and adopts new technologies and faces new challenges. The Object of the CEFC Act is to "establish the Clean Energy Finance Corporation in order to facilitate increased flows of finance into the clean energy sector." Under no commonly accepted definition has gas power generation been accepted as part of the "clean energy sector".

1.16 The definition of low emissions technology as it applies to electricity generation can currently be changed by the CEFC Board at any time should the Board believe such a change is warranted, including to allow the CEFC to support eligibility for a greater set of technologies. This has not occurred since the current relevant guidelines were developed in 2012, as the Board has seen no reason to change it.

1.17 The proposal to remove the current definition of low emissions technology as it applies to electricity generation undermines the clean energy focus of the CEFC, and in so doing represents a fundamental and significant threat to the integrity, reputation and purpose of the CEFC, and is therefore not acceptable to Labor Senators.

Recommendation 2

1.18 Amend the bill to retain the current definition of low emissions technology for electricity generation assets in both the broader CEFC and the Grid Reliability Fund.

Senator Nita Green
Member

Senator Catryna Bilyk
Member

Australian Greens' dissenting report

1.1 The Clean Energy Finance Corporation (CEFC), alongside the Australian Renewable Energy Agency (ARENA) are the only current federal policy levers that exist to drive down emissions and prepare the foundations for the jobs-rich transition that will come from modernising and cleaning up our domestic and export economies.

1.2 Unsurprisingly, they are the only institutions left largely intact[1] from the Gillard-Greens power-sharing Parliament, following the climate destruction inflicted by the Liberal-National Government over the last seven years.

1.3 Supporting this bill as currently drafted will weaken the independence of the CEFC with the Energy and Emissions Reduction Minister able to insert himself in the middle of investment decisions. Furthermore, the creation of a legislated definition of 'low-emissions technology' will allow the Minister to overrule the current CEFC Board's control over what it considers to be eligible investments in non-renewable technologies.

1.4 By any measure, the CEFC has been an incredibly successful Green Bank. Owned by the Australian people, it has invested $8.2 billion of public money to generate a total $27.8 billion of economic activity to support jobs, new infrastructure and de-risk technologies that appear on the horizon.[2]

1.5 It has also made significant profits from its carefully chosen investments, with total retained surpluses of $1.7 billion that the CEFC has been able to recycle into future clean energy technologies.[3] Such a structure allows the CEFC to permanently bring forward the next-generation of technologies and commercialised abatement opportunities into the mainstream world of Australian finance.

1.6 In a time when banks are overwhelmingly focused on a mix of both safe and speculative investments in real estate and a finance industry predominately focused on financing itself, the CEFC is so rare, because it is a bank driving productive investments in those Australian businesses that are focused on modernising and improving the shape of our economy.

1.7 There is no justified reason to interfere with the undisputed success and transparency of the CEFC, by allowing the Minister to insert himself into the decision-making process, interfere with what types of investments should be

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[1] With the exception of half a billion dollars in funding cut from ARENA's budget by the Liberal-National Government, with the support of Labor in the Senate following the 2016 election.

[2] Clean Energy Finance Corporation, *2019-20 Annual Report*, p. 13.

[3] Clean Energy Finance Corporation, *2019-20 Annual Report*, p. 15.

made and open up the CEFC to invest in loss-making gas projects, instead of profitable clean energy investments.

1.8 The Australian Greens support additional funding available for the CEFC to invest in removing the grid constraints and driving down the prevalence of marginal loss factors that are inhibiting investment in renewable generation (alongside the intentional policy chaos and market intervention by the Liberal-National Government). However, it should not occur in exchange for a loss of CEFC independence and to open up the Corporation to poor loss-making gas projects as the bill currently allows for.

1.9 The government has made it clear that it wants the CEFC to deliver its Underwriting New Generation Investment (UNGI) program. Given that the shortlisted projects are eligible, and will be seeking grants rather than loans or equity positions, these are likely to be loss-making investments for the CEFC. They are not projects that the CEFC would invest in if it retained its independence.

1.10 The entire process of the UNGI program as well as the selection of the shortlist has been completely hidden from public view, meaning that the Parliament has no idea how much the government plans to spend on each project.

1.11 However it is anticipated that the great bulk of the $1 billion allocated for the Grid Reliability Fund will have to be spent on funding the government's program, rather than on the projects the CEFC Executive and Board determine are the best projects to invest in.

1.12 To enable the UNGI program to be funded through the Grid Reliability Fund, the removal of the statutory safeguards around loss-making investments and the removal of the 50 per cent investment requirement in renewable technologies are included in the bill. These are not improvements on the CEFC's current functions and transparency.

Recommendation 1

1.13 The government should introduce separate legislation to authorise spending on its UNGI shortlist rather than force the CEFC to finance the loss-making shortlist from its limited $1 billion in new funding.

1.14 Currently the Board determines what is eligible for 'low-emissions technology' funding and it is a relatively tight test, requiring gas infrastructure to achieve an emissions intensity of lower than 50 per cent of the national electricity market average.[4] Proposed subsection 60(4) would allow investment in 'low-emissions energy systems', opening up an easier funding pathway for gas-fired projects than what the Board's current guidelines allow.

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4 Clean Energy Finance Corporation, *CEFC complying investments guidelines*, p. 1.

1.15 This amendment, in combination with the Minister's ability to set investment mandates that directs investments in certain sectors, means that the government could effectively force the CEFC to invest a portion (for example 45 per cent) of the CEFC's total money into gas projects.

1.16 As this exchange in the Committee hearing from Deputy Secretary of the Department, Jo Evans made clear:

> Senator HANSON-YOUNG: So does this bill give an avenue for the minister to direct a certain percentage of the [CEFC's] funds to go towards gas?
>
> Ms Evans: Using the investment mandate, the minister can already give general guidance on how he would like the CEFC to invest its funding, so I suppose there is some prospect that it could, in the investment mandate, have some sense of a proportion of funding that it would like to put towards gas…[5]

1.17 Fossil gas is a dangerous greenhouse pollutant, and where leakage rates of production exceed 3 per cent, it is a dirtier fuel source than coal.[6] The Australian Energy Market Operator has made clear in its Integrated System Plan (ISP) that our energy system does not require any new gas generation and that renewables and storage technologies will deliver a 100 per cent renewable grid at a cheaper price than gas.

1.18 As energy publication RenewEconomy noted 'under no [ISP] scenario does the amount of gas burned for electricity in Australia's main grid increase over the coming decade. It is more likely to fall significantly.'[7]

1.19 Had the Liberal and National parties not accepted at least $3.9 million in donations from the gas industry since 2012, they would not be forcing our public institutions to encourage more gas extraction. The expensive and dangerous path of increasing gas generation in Australia's energy system should not occur, not least of all with the CEFC as an unwilling conduit.

Recommendation 2

1.20 Proposed subsection 60(4), which would overrule the CEFC's Board's definition of 'low-emissions technologies' should be removed from the bill to ensure the integrity and independence of the CEFC's investment decisions.

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5 Ms Jo Evans, Deputy Secretary, Climate Change and Energy Innovation, Department of Industry, Science, Energy and Resources, *Committee Hansard*, 13 October 2020, pp. 42–43.

6 Bruce Robertson, 'IEEFA Australia: Gas is not a transition fuel, Prime Minister', *Institute for Energy Economics and Financial Analysis*, 30 January 2020, https://ieefa.org/ieefa-australia-gas-is-not-a-transition-fuel-prime-minister/ (accessed 3 November 2020).

7 Giles Parkinson, 'AEMO says batteries will be cheaper and cleaner than new gas plants', RenewEconomy, 30 July 2020, https://reneweconomy.com.au/aemo-says-batteries-will-be-cheaper-and-cleaner-than-new-gas-plants-65524/ (accessed 3 November 2020).

Recommendation 3

1.21 The proposed amendment to section 4, which would give the Minister regulation making power to allow loss-making investments and effectively direct the CEFC to fund the UNGI program should be removed from the bill, keeping the current definition of 'investment' in place.

Recommendation 4

1.22 Due to the Minister's presumed ability to determine sector specific funding requirements through setting the Investment Mandates, the CEFC should be updated to align with the *Regional Investment Corporation Act 2018* so that Investment Mandates issued by Ministers are instruments disallowable by the Senate or the House of Representatives.

1.23 Under the Act, the CEFC is able to provide funds to ARENA out of its retained surplus. The bill would prevent the CEFC from re-investing profits earned from Grid Reliability Fund investments into ARENA. There is no policy rationale provided by the government to restrict the autonomy and independence of the CEFC. This provision should be removed from the bill.

Recommendation 5

1.24 Given the current funding bottleneck of ARENA with no new funds available and the absence of any overarching rationale, the proposed limitations of CEFC profits being able to be paid to ARENA under the proposed amendment to subsection 50(2) should be removed from the bill.

1.25 Fossil gas is a dirty source of energy that will exacerbate and hasten the climate emergency. There is no place for dirty energy within the portfolio holdings of a clean energy institution.

Recommendation 6

1.26 To avoid doubt, the inclusion of 'fossil gas' and 'coal' should be inserted alongside carbon capture and storage, nuclear power and nuclear technologies as prohibited investments under section 62 of the Act.

Senator Sarah Hanson-Young
Deputy Chair

Appendix 1
Submissions and additional information

1 Mr Alec Roberts
2 *Name Withheld*
3 Mr Jason Thomas
4 *Name Withheld*
5 The Australian Conservation Foundation, 350.org, Greenpeace Australia, Solar Citizens, Uniting Church in Australia, Synod of Victoria and Tasmania and WWF Australia
6 Elizabeth Thurbon, Sung-Young Kim, John Mathews and Hao Tan
7 Mr Oliver Yates
8 Dr Felix Rauch Valenti
9 Mr David Arthur
10 Sutherland Shire Environment Centre
11 Ms Deanna Howland
12 Mr David Roden
13 Rev Ken Devereux
14 Australian Pipelines and Gas Association
15 Dr Maria Miranda
16 Mr Cameron Matters
17 Mr John Terrell
18 Australian Parents for Climate Action
19 Ai Group
20 Australian Petroleum Production & Exploration Association
21 Australian Council on Social Service
22 Department of Industry, Science, Energy and Resources
23 The Australia Institute
24 Northern Territory Government, Department of Industry, Tourism and Trade
25 Dr James Prest
26 Clean Energy Finance Corporation
27 Climate Council of Australia
28 Investor Group on Climate Change
29 Mr Michael O'Brien
30 Mr Oscar Delaney
31 *Name Withheld*
32 *Name Withheld*
33 *Name Withheld*
34 Locals Into Victoria's Environment
35 *Name Withheld*
36 Ms Coral Bleach
37 *Name Withheld*

38 *Name Withheld*
39 Dr John Burman
40 Ms Judith Pile
41 Mrs Kathryn Teagle
42 Ms Gillian King
43 Clean Energy Regulator
44 *Name Withheld*
45 Ms Sarah Bilney

Answers to Questions on Notice

1 The Australia Institute - Answers to questions taken on notice, public hearing, Canberra 13 October 2020 (received 21 October 2020)
2 Department of Industry, Science, Energy and Resources - Answers to questions taken on notice, public hearing 13 October 2020 (received 23 October 2020)
3 Department of Industry, Science, Energy and Resources - Answers to questions on notice from Senator Hanson-Young, 14 October 2020 (received 23 October 2020)

Correspondence

1 Women's Climate Council, correspondence received 23 September 2020

Form Letters

1 Form letters (with variations) received from 700 individuals: examples
2 Short statement emails received from 4518 individuals: examples

Appendix 2
Public hearing and witnesses

Tuesday, 13 October 2020
Parliament House
Canberra

The Australian Conservation Foundation
- Ms Suzanne Harter, Climate Change and Clean Energy Campaigner (via videoconference)

The Australia Institute
- Mr Richie Merzian, Climate & Energy Program Director
- Ms Audrey Quicke, Researcher

Climate Council of Australia
- Mr Andrew Stock, Councillor (via videoconference)

Australian Pipelines and Gas Association
- Mr Steve Davies, Chief Executive Officer (via videoconference)

Ai Group
- Mr Tennant Reed, Climate, Energy and Environmental Policy (via videoconference)

Energy Networks Australia
- Mr Andrew Dillon, Chief Executive Officer (via videoconference)
- Dr Jill Cainey, General Manager Networks (via videoconference)

Clean Energy Council
- Mr Kane Thornton, Chief Executive Officer (via videoconference)

Smart Energy Council
- Mr Oliver Yates, Director (via videoconference)

Investor Group on Climate Change
- Mr Erwin Jackson, Director, Policy (via videoconference)
- Ms Amy Quinton, Policy Analyst (via videoconference)

Australasian Centre for Corporate Responsibility (no submission)
- Mr Daniel Gocher, Director of Climate and Environment (via videoconference)

Department of Industry, Science, Energy and Resources

- Ms Jo Evans, Deputy Secretary, Climate Change & Energy Innovation
- Ms Rachel Parry, Head of Division, Energy Division
- Mr Paul Murphy, General Manager, Clean Technology Branch, International Climate and Technology Division
- Mr David Blowers, Acting General Manager, Electricity Branch
- Mr Chris Simkus, Manager, Clean Energy Technology Finance
- Mr Peter Nicholas, Counsel, Australian Government Solicitor

Clean Energy Finance Corporation

- Mr Ian Learmonth, Chief Executive Officer (via videoconference)
- Mr Simon Every, Head of Government and Stakeholder Relations (via videoconference)