



Environmental
Defenders Office

**Submission to the inquiry on the Treasury Laws
Amendment (2022 Measures No. 4) Bill 2022**

31 January 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Introduction

To meet Australia’s legislated emissions reduction targets, and ultimately the Paris Agreement goal of limiting global temperature rise to 1.5 degrees Celsius, production and investment in fossil fuels and fossil fuel infrastructure must be rapidly phased out.¹ Moreover, with no effective or credible pathways currently available to offset or mitigate new or expanded fossil fuels, in order to stay under the 1.5 degree limit there can be no new coal, oil or gas and no expansion of existing fossil fuel infrastructure. EDO’s submission is drafted in this context.

The EDO [Roadmap for Climate Reform](#) sets out a suite of comprehensive reforms to shape Australia’s response to climate change over the current Parliamentary term. Of particular relevance to this inquiry are recommendations that the Australian Government accelerate the energy transition by:

Recommendation 23. Extending the roles of the Clean Energy Finance Corporation (**CEFC**) and the Australian Renewable Energy Agency (**ARENA**) to support development of renewable energy (which does not include fossil fuels in any form).

Recommendation 28. Redirect fossil fuel subsidies – discontinue financial support (public funding), subsidies, investments and incentives that encourage fossil fuel or other activities that are contrary to genuine emissions reduction efforts (to be clear, this includes discontinuing financial support for proposals such as carbon capture and storage (**CCS**), which is a distraction from, and delays, real climate action). Subsidies should be redirected to emissions reduction, environment protection, economic transition and community development.

Recommendation 39. Setting a clear legislative definition of “low emissions technology” to explicitly exclude technology relying on fossil fuels, and exclude unproven technology that supports the continued use of fossil fuels (for example, fossil-fuel based hydrogen or carbon-capture and storage).

By investing in and encouraging development of renewable technology, the CEFC plays an important role in the essential transition away from fossil fuels. EDO supports the increase of funds for the CEFC contained in Treasury Laws Amendment (2022 Measures No. 4) Bill 2022 . EDO makes **three recommendations** designed to improve the transparency of the operation of the CEFC and ensure that the statutory body, while retaining its independence, is not funding technologies which will exacerbate the climate crisis.

Recommendation 1: The Bill be amended to introduce a clear definition of ‘low-emission technology’ into the CEFC Act, which excludes coal, oil, gas or hydrogen created from fossil fuels.

¹ IEA, Net Zero by 2050: a Roadmap for the Global Energy Sector (2021).

Recommendation 2: The Bill be amended to ensure future Investment Mandates be subject to parliamentary disallowance.

Recommendation 3: The Bill be amended to provide for at least one Board member to have expertise or experience in renewable energy technology.

The Bill

The Treasury Laws Amendment (2022 Measures No. 4) Bill 2022 (**the Bill**) contains nine schedules which implement several different and unrelated Government policies. This submission focuses on Schedule 8, which amends the *Clean Energy Finance Corporations Act 2012* (**CEFC Act**).

The CEFC, as established by the CEFC Act, is an independent statutory authority with an objective to facilitate increased flows of finance into the clean energy sector and to facilitate the achievement of Australia's greenhouse gas emissions reduction targets.² The CEFC Act (in conjunction with other legislation such as the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**)) sets out the governance and regulatory frameworks applicable to the agency.

The Bill amends the CEFC Act to allocate an additional \$11.5 billion to the CEFC Special Account. This funding is composed of the Government's \$11 billion Rewiring the Nation policy as announced in the 2022/23 Budget, as well as directing \$0.5 billion to the Powering Australia Technology Fund which was part of the 2020/21 MYEFO as announced by the former Government. The Powering Australia Technology Fund will provide funding for investments to support the growth or expansion of clean energy technology projects, businesses and entities, including via venture capital and growth capital.

Changes in the Bill also provide for new funding to be credited to the CEFC through additional appropriations of the Parliament, removing the need to amend the CEFC Act for future funding increases from Government.

The Explanatory Memorandum notes that these, and any additional credits, added to the CEFC Special Account may only be invested or spent consistently with the CEFC Act. As stipulated in the Act, the investment mandate of the CEFC is directed towards 'clean energy technology', which includes energy efficiency technologies, low-emission technologies and renewable energy technologies.³ There is no definition of low-emission technologies in the legislation, however the CEFC Board provides guidance in its investment guidelines on what constitutes low-emission technology.⁴ The Act does specify the CEFC cannot invest in prohibited technology such as carbon capture and storage, and nuclear.⁵

The Bill also clarifies the CEFC's governance arrangements in specifying its nominated Minister.

² *Clean Energy Finance Corporations Act 2012* (CEFC Act) s 3.

³ CEFC Act s 60(4) - (8).

⁴ CEFC, *Complying Investment Guidelines* (March 2021)

⁵ CEFC Act s 62.

Recommendations

To avoid the most severe impacts of climate change, limiting warming to 1.5 degrees is critical, which means there can be no new investment in fossil fuels or fossil fuel infrastructure.⁶ However, the definition of low-emission technology in the CEFC Board investment guidelines does not specifically exclude fossil fuels (like gas), where such investments would achieve an emissions intensity of lower than 50 per cent of the national electricity market average. The guidelines as determined by the CEFC Board are not a legislative instrument and therefore not subject to parliamentary scrutiny. Given concerns about the CEFC Board appointment process,⁷ and attempts by previous Governments to encourage CEFC investment in fossil fuel technologies including gas through changes to the Act and Investment Mandate,⁸ it is essential the definition of low-emission technology is clarified and legislated.

The CEFC plays an important role in catalyzing investment and development of renewable energy technologies, and it should be clear that its objectives, including to facilitate the achievement of Australia's greenhouse gas emissions reduction targets, cannot be reached through investment in polluting technologies. As such **EDO recommends the Bill be amended to include a clear definition of low-emission technology, to ensure that any new or existing funds credited to the CEFC, as provided by the Bill, cannot be used, in whole or in part, to contribute to fossil fuel projects or fossil fuel-based technology.** This could also be achieved by adding fossil fuels to the list of prohibited technologies list in the CEFC Act.

Recommendation 1: The Bill be amended to introduce a clear definition of 'low-emission technology' into the CEFC Act, which excludes coal, oil, gas or hydrogen created from fossil fuels.

The Bill additionally removes the requirement for the CEFC Act to be amended each time the fund is credited, instead allowing for funding to be allocated through the usual appropriations process. This measure allows for greater flexibility and is in line with other statutory authorities (e.g. the Clean Energy Regulator). However, this amendment will arguably reduce the parliamentary oversight of the funding allocations, as a separate scrutiny process will not be required for funding allocations under regular appropriations, as compared to the passing of a single separate bill. This, in addition to the non-disallowable nature of the Investment Mandates as determined by the Minister⁹ and the non-legal status of the CEFC Board investment guidelines¹⁰, means much of the CEFC funding and investment policy will not be subject to thorough parliamentary scrutiny.

⁶ IEA, Net Zero by 2050: a Roadmap for the Global Energy Sector (2021), IPCC, Special Report: Global Warming of 1.5C, Summary for Policymakers (2018)

⁷ The Guardian, Government defends flurry of appointments to key roles of former Coalition staffers and MPs (April 2022) <https://www.theguardian.com/australia-news/2022/apr/09/government-defends-flurry-of-appointments-to-key-roles-of-former-coalition-staffers-and-mps>

⁸ *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020*, Minister's second reading speech.

⁹ *Legislation (Exemptions and Other Matters) Regulation 2015* s 9.

¹⁰ CEFC Act s 60(8).

EDO recommends the Bill be amended to make the Investment Mandate disallowable by Parliament. The Regional Investment Corporation has a similar provision for Ministerial directions, which adds additional oversight to Government direction without compromising the independence of the body.¹¹ It would also add another level of scrutiny in circumstances where future Governments may seek to direct CEFC investment toward polluting technology, as was contemplated by the *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020*.

Recommendation 2: The Bill be amended to ensure future Investment Mandates be subject to parliamentary disallowance.

The funds provided for in the Bill implement the ‘Powering Australia - Rewiring the Nation’ measure from the October 2022-23 Budget and the ‘Low Emissions Technology Commercialisation Fund’ measure from the 2021-22 MYEFO. The Rewiring the Nation Budget measure is intended to ‘to expand and modernise Australia’s electricity grids’ with an overall intention of reaching 82% renewable generation within the National Energy Market, as part of the Powering Australia suite of policies.¹² In light of the CEFC’s overall goal to increase finance flows to the clean energy sector, these policy goals would be best served by ensuring the body has sufficient expertise on its Board.

Currently, the CEFC Act provides that Board members must have substantial experience or expertise, and professional credibility and significant standing, in at least one of several listed fields.¹³ These areas of expertise do not include renewable or clean energy technology. As part of a robust Board member selection processes, clear statutory criteria and selections processes protect against politicisation of boards and ensure community trust in the decisions made by the organisation. As such the injection of new funds should be complimented by a requirement that the CEFC have clear expertise in delivery of the policy outcomes set by its legislation, and policy context.

Recommendation 3: The Bill be amended to provide for at least one Board member to have expertise or experience in renewable energy technology.

Conclusion

EDO supports the measures relating to the Clean Energy Finance Corporation in the Treasury Laws Amendment (2022 Measures No. 4) Bill 2022, subject to the above recommendations.

Please do not hesitate to contact our office for further information.

¹¹ *Regional Investment Corporation Act 2018* s 4.

¹² Budget October 2022-23, Budget Paper No. 2

¹³ CEFC Act s 16.