



Australian Climate Change Regulatory Authority Bill 2009

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Australian Climate Change Regulatory Authority Bill 2009

Date introduced: 14 May 2009

House: House of Representatives

Portfolio: Climate Change and Water

Commencement: Sections 1 and 2 and anything not covered elsewhere, on day of Royal Assent. Sections 3 to 54 on same date of commencement as section 3 of the *Carbon Pollution Reduction Scheme Act 2009*.

Links: The *relevant links* to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

As its name implies, the Australian Climate Change Regulatory Authority Bill 2009 (the Bill) creates the statutory Australian Climate Change Regulatory Authority ('the Authority').

The Authority will oversight the implementation of the proposed Carbon Pollution Reduction Scheme (CPRS), including operating the registry, issuing Australian emissions units, assessing entitlements, issuing obligation transfer numbers and carrying out other enforcement and administrative functions. It will also administer the CPRS reporting regime (established under the *National Greenhouse and Energy Reporting Act 2007* and the expanded Renewable Energy Target (RET) scheme, thus becoming responsible for the current functions of the Greenhouse and Energy Data Officer and the Office of the Renewable Energy Regulator under the *Renewable Energy (Electricity) Act 2000*.

Background

The Australian Climate Change Regulatory Authority Bill 2009 ('the Bill') is part of a suite of bills that provide for the establishment and administration of the government's proposed Carbon Pollution Reduction Scheme (CPRS). Extensive discussion of the CPRS is contained in the relevant [Bills Digest](#).¹

1. L Nielsen and others, *Carbon Pollution Reduction Scheme Bill 2009*, Bills Digest no. 165, 2008–09, Canberra 2009, viewed June 22 2009, <http://www.aph.gov.au/Library/pubs/bd/2008-09/09bd165.pdf>.

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Committee consideration

The Bill was referred to the Senate Economics Legislation Committee for inquiry which reported on 15 June 2009. Details of the inquiry are at http://www.aph.gov.au/senate/Committee/economics_ctte/cprs_2_09/index.htm. However, neither the provisions of the Bill, nor the proposed Authority itself, received any significant attention in the Committee's report, as the focus was on the CPRS at large.

Financial implications

The Explanatory Memorandum states that the financial impact of the CPRS is dealt with in the Explanatory Memorandum for the CPRS Bill.²

Main provisions

Part 1—Preliminary

Definitions

Clause 4 provides definitions of key terms used in the Bill. Some of the significant terms are:

climate change law means any of the following:

- this Act
- the *Carbon Pollution Reduction Scheme Act 2009*
- regulations under the *Carbon Pollution Reduction Scheme Act 2009*
- a determination under subsection 103(1) of the *Carbon Pollution Reduction Scheme Act 2009*
- the *National Greenhouse and Energy Reporting Act 2007*
- regulations under the *National Greenhouse and Energy Reporting Act 2007*
 - the Renewable Energy (Electricity) Act 2000
 - regulations under the Renewable Energy (Electricity) Act 2000
 - the Renewable Energy (Electricity) (Charge) Act 2000.

international climate change body means:

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2. Explanatory Memorandum, Australian Climate Change Regulatory Authority Bill 2009, p. 3. See also L Nielsen and others, *Carbon Pollution Reduction Scheme Bill 2009*.

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- a body established under the Climate Change Convention or the Kyoto Protocol, or
- a body established by a body mentioned above.

protected information means information that:

- was obtained after the commencement of this section by a person in the person's capacity as an official of the Authority, and
- relates to the affairs of a person other than the official of the Authority.

The geographic application of the Act

The Act extends to:

- every external territory (**clause 7**)
- a matter relating to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf (**clause 8**), and
- the Joint Petroleum Development area (**clause 8A**), but does not apply to foreign ships to the extent that it would be inconsistent with the rights of foreign ships as laid out in the United Nations Convention on the Law of the Sea (**clause 9**).

Part 2—Australian Climate Change Regulatory Authority

Division 1 – The establishment, function, powers and liabilities of the Authority

Clause 11 provides that the functions of the Authority are:

- those that are conferred by this Act, or a climate change law, or by any other law of the Commonwealth, and
- anything incidental to or conducive to the performance of these duties.

The current Bill deals mainly with the establishment and administrative aspects of the Authority. The majority of its operational functions are conferred by other current or proposed climate change laws, notably the Carbon Pollution Reduction Scheme Bill.

Powers of the Authority

Clause 12 provides that:

- the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions,
- the powers of the Authority include, but are not limited to, the power to enter into contracts.

Curiously there is no **clause 13** in the Bill.

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Clause 14 provides that the Authority's liabilities are the Commonwealth's liabilities.

Clause 15 provides that the Authority has the privileges and immunities of the Crown in right of the Commonwealth.

Division 2 – Constitution and membership of the Authority

Clause 16 provides that the Authority is a body corporate which must have a seal and may acquire, hold and dispose of personal property and may sue and be sued in its corporate name.

Clause 17 provides that the Authority consists of a Chair and at least two, but no more than four other members.

Clause 18 provides that the Minister is to appoint members by written instrument. A person is not eligible for appointment as a member unless the Minister is satisfied that the person has:

- substantial experience or knowledge, and
- significant standing in at least one of the following fields:
 - economics
 - industry
 - energy production and supply
 - energy measurement and reporting
 - greenhouse gas emissions measurement and reporting
 - greenhouse gas abatement measures
 - financial markets
 - trading of environmental instruments.

The Chair of the Authority holds the office on a full-time basis, whereas a member of the Authority may hold office on a full or part-time basis.

Presumably the written instrument by which members are appointed are not legislative instruments, and hence not subject to explicit Parliamentary scrutiny and disallowance.

Clause 19 provides that a member of the Authority holds office for the period specified in the instrument of appointment, but that period must not exceed five years.

Clause 20 enables the Minister to appoint an acting chair or member of the Authority where there is a vacancy, or during a period of absence of the chair/member of the

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Authority. A person is not eligible to act in either capacity unless they are eligible for appointment as a member of the Authority.

Division 3 – Terms and conditions for the members of the Authority

Clause 21 deals with the remuneration and allowances of members of the Authority. Members of the Authority are to be paid such remuneration as is determined by the Remuneration Tribunal, or if no determination is in operation, a member is to be paid such remuneration as is prescribed by the regulations. Allowances are prescribed by regulations.

Clause 22 provides that a member of the Authority must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has, or acquires, and that do, or may, conflict with the proper performance of the member's functions.

Clause 23 provides that a member of the Authority who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Authority must disclose the nature of the interest to a meeting of the Authority. Notice must be provided in a timely manner and recorded in the minutes.

Unless the Authority otherwise determines, the member of the Authority must not be present at any deliberation on the matter by the Authority and cannot participate in any decision of the Authority with regard to the matter.

Clause 24 forbids a full-time member of the Authority from engaging in paid outside employment without Ministerial approval. Any part-time member of the Authority must not engage in paid employment that conflicts or may conflict with the proper performance of their duties.

Clause 27 enables the Minister to terminate the appointment of a member of the Authority for misbehaviour or physical or mental incapacity.

- The Minister may also terminate the appointment of a member of the Authority if the member:
 - becomes bankrupt, or
 - applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or
 - compounds with his or her creditors, or
 - makes an assignment of his or her remuneration for the benefit of his or her creditors, or
- breaches the requirements of clause 24, or
- fails to comply, without reasonable excuse, the requirements of clauses 22 or 23, or

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- the member is absent (except on leave of absence) for three consecutive meetings of the Authority.

Division 4 – Decision-making by the Authority

The Authority may convene a meeting at any time and is to hold meetings as necessary for the performance of its functions (**clause 29**). The Chair is to preside over the meeting if they are present, otherwise the members of the Authority must appoint one of themselves to preside (**clause 30**). Meetings must be minuted (**clause 34**).

Two members of the Authority constitute a quorum (**clause 31**) and questions are decided by a majority of votes, but the person presiding has a casting vote where there is an equality of votes (**clause 32**).

Division 5 – Delegation

The Authority may, in writing, delegate any of its functions and power to a member of the Authority, or to a SES (or acting SES) employee of the Authority. The delegate is obliged to exercise those powers or functions in compliance with any directions of the Authority. However, the delegation does not apply to the power to vary or revoke a legislative instrument, or a power under **section 186** of the CPRS Act (**clause 35**).

Division 6 Staff of the Authority etc

Clause 36 provides that the staff of the Authority are to be engaged under the *Public Service Act 1999*.

Clause 37 provides a list of persons who may provide assistance to the Authority in connection with the performance of any of its functions.

Clause 38 provides that the Authority may engage suitably qualified consultants who are to be employed on terms and conditions that the Authority determines in writing.

Division 7 Planning and reporting obligations

Clause 39 mandates that the Authority is under an obligation to develop a corporate plan at least once every three years which covers a three year period, defines the key objectives of the Authority and outlines the strategies to be pursued by the Authority in achieving those stated objectives. The first corporate plan must be prepared within 12 months after the commencement of this section of the Act.

The Chair of the Authority must keep the Minister abreast of changes to the plan and matters that may significantly affect the achievement of the plan's objectives.

Clause 40 provides that the Authority must, as soon as practicable at the end of each financial year, prepare and give to the Minister for presentation to the Parliament, a report

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on its operations during that year. Basic mandatory requirements for the contents of the annual report are also outlined.

Division 8 Other Matters

Clause 41 enables the Minister, by legislative instrument, to give directions to the Authority in relation to performance of its functions and exercise of powers, which the Authority must comply. These directions must be of a general nature only.

Part 3—Secrecy

Given the potential breadth, depth and sensitivity of commercial information that is expected to be collected by such a scheme, effective protection of such information and penalties for unauthorised use and disclosure are essential.

Clause 43 makes in an offence for a person who is or has been an official of the Authority to make unauthorised use or disclosure of ‘protected information’ obtained in their capacity as an official, unless one of the one of the exceptions applies. The maximum penalty is 2 years imprisonment or 120 penalty unit points (\$13,200), or both.

In broad terms, the exceptions (circumstances in which protected information can be disclosed or used) are:

- disclosure or use for the purposes of the Act or a climate change law (**clause 44**)
- disclosure to the Minister (**clause 45**)
- disclosure to the Secretary of the Department of Climate Change (or person authorized by the Secretary) for defined purposes (**clause 46**)
- disclosure to a Royal Commission (**clause 47**)
- disclosure to certain agencies, bodies and persons, where the Chair of the Authority is satisfied it will ‘enable or assist’ any of the listed agencies, bodies and persons to perform or exercise their relevant functions or powers (**clause 48**)
- disclosure to certain financial bodies (**clause 49**)
- disclosure with consent (**clause 50**)
- disclosure of publicly available information (**clause 51**)
- disclosure where summaries or statistics derived from the information are released and this is not likely to enable identification of a person (**clause 52**)

The Bill also provides for secondary disclosure offences in certain cases, so that once information has been disclosed pursuant to one of the exceptions above, a breach of the conditions under which it was provided by the Authority may constitute an offence. The maximum penalty is 2 years imprisonment or 120 penalty unit points (\$13,200), or both.

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Delegation

Clause 53 enables the Chair of the Authority to delegate their powers or functions under **Part 3** of the Act to any member of the Authority. A person to whom such a delegation is made is obliged to exercise those powers or functions in compliance with any directions given by the Chair.

Part 4—Miscellaneous

Regulations

Clause 54 provides that the Governor-General may make regulations prescribing matters:

- required or permitted by the Act to be prescribed, or
- necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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