

# Submission

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

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## Introduction

The Australia Institute welcomes the opportunity to make a submission to the Senate Standing Committee on Environment and Communications on the *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020* ('The CEFC Bill').

The Clean Energy Finance Corporation (CEFC) is a government owned investment institution with an exclusive clean energy mandate. Established in 2012, with an original funding pool of \$10 billion, the CEFC's primary role is to 'facilitate' increased flows of finance into clean energy projects.

The CEFC has made a valuable contribution to Australia's energy sector and to achieving Australia's emissions reduction commitments. It has a strong history of leveraging clean finance and providing a high rate of return on investments. Every dollar of CEFC finance committed in FY2019 was matched by more than \$3 from the private sector.<sup>1</sup> Between 2013 and 2018, CEFC cumulative investment commitments totalled over \$6.6 billion, leveraging total project value of \$19 billion.<sup>2</sup>

Despite a half decade of consistent growth between 2014 and 2018, investment in renewable energy is now declining. Australian renewables investment dropped 21% between the 2018 and 2019 financial years.<sup>3</sup> The Renewable Energy Target (RET), the primary national mechanism supporting renewable energy uptake, has been met and the Federal Government has confirmed it will not be replaced.<sup>4</sup> Additionally, uncertainty around Australia's national climate policy direction continues to constrain investment.<sup>5</sup> This has been compounded by the newly announced Technology Roadmap, in lieu of a comprehensive energy strategy and long term emissions reduction target.

Significant further investment in renewable energy is required to decarbonise electricity, transport and industry – Australia's highest emitting sectors.

The CEFC Bill would give the CEFC an extra \$1 billion in public funding for a 'Grid Reliability Fund'. Whilst the additional \$1 billion in CEFC funding is welcome, the proposed

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<sup>1</sup> CEFC (2019) *CEFC looks to stronger cleaner grid after positive year of investing to reduce emissions*, <https://www.cefc.com.au/media/media-release/cefc-looks-to-stronger-cleaner-grid-after-positive-year-of-investing-to-reduce-emissions/>

<sup>2</sup> Brown, Campbell & Cass (2018) *Saved by the bench*, <https://www.tai.org.au/content/saved-bench>

<sup>3</sup> McConnell (2019) *Australia has met its renewable energy target. But don't pop the champagne*, <https://theconversation.com/australia-has-met-its-renewable-energy-target-but-dont-pop-the-champagne-122939>

<sup>4</sup> SMH (2018) *Angus Taylor confirms government 'won't be replacing' renewable energy target*, <https://www.smh.com.au/politics/federal/angus-taylor-confirms-government-won-t-be-replacing-renewable-energy-target-20180918-p504j1.html>

<sup>5</sup> RBA (2020) *Renewable Energy Investment in Australia Bulletin – March 2020*, <https://www.rba.gov.au/publications/bulletin/2020/mar/renewable-energy-investment-in-australia.html#r9>

amendments remodel the CEFC to allow it to operate counter to its original purpose. The amendments provide the Federal Energy Minister with unnecessary powers, allow the CEFC to make investments that may not make a financial return, and set the CEFC up to invest in fossil fuel projects, including gas-fired power stations and the upgrade of a coal-fired power station.

To maintain the integrity and success of the CEFC, the Bill should not be passed in its current form.

## Background

If adopted, the Bill will allow the CEFC to shift from an explicitly profit-making investor of renewable energy projects for the Australian people, to a potentially loss-making underwriter of fossil fuel projects.

In 2018, the Federal Government announced the Underwriting New Generation Investment (UNGI) program, to provide public financial support to new dispatchable electricity generation, with the stated goal of increasing competition in the electricity market. A shortlist of 12 projects was later announced— six hydro power projects, five gas and one coal project.

The UNGI program is controversial and is currently included in the Australian National Audit Office work program. Requests to the Auditor General by MP Zali Steggall and the Australia Institute<sup>67</sup> raised several serious concerns that the UNGI program:

- has no legislative basis,
- has no formal guidelines or criteria for project selection,
- and is following no clear process.

In October 2019, the Grid Reliability Fund (GRF) was announced to fund UNGI projects, administered by the CEFC.

Legal advice commissioned in early 2019 by the Australia Institute suggested that the UNGI program lacked the legislative basis to proceed. It found that Federal Energy Minister Angus Taylor did not have constitutional authority over electricity nor the authority to fund projects under the UNGI Program, as originally proposed.<sup>8</sup> The CEFC Bill confirms the legal advice that delivery of the controversial UNGI program would require, inter alia, amending

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<sup>6</sup> ANAO (2020) *Underwriting New Generation Investment (UNGI) Program*, <https://www.anao.gov.au/work/request/underwriting-new-generation-investment-ungi-program>

<sup>7</sup> The Australia Institute (2020) *Undermining New Investment – Problematic UNGI Program without Legal Foundation*, <https://www.tai.org.au/content/undermining-new-investment-problematic-ungi-program-without-legal-foundation>

<sup>8</sup> The Australia Institute (2020) *Legal Advice: Energy Generation Program Unconstitutional*, <https://www.tai.org.au/content/legal-advice-energy-generation-program-unconstitutional>

the CEFC Act. It is especially disappointing to see the CEFC used to prop up fossil fuels when other public funds that support fossil fuel projects already exist, such as the Northern Australia Infrastructure Facility (NAIF).<sup>9</sup>

The CEFC Bill will amend the CEFC Act and appropriate the \$1 billion GRF, administered by the CEFC. These amendments aim to change the legislative requirements of the CEFC to allow it to invest in fossil fuels and/or loss-making projects.

Continued renewables growth requires investment in transmissions and distribution infrastructure, energy storage and grid stabilising technologies. However, the proposed changes to the CEFC Act go beyond this, potentially co-opting the CEFC as a loss-making underwriter of fossil fuel projects.

Issues with the CEFC Bill are detailed below.

## Grid Reliability Fund

The Bill establishes two separate funds – the existing investment allocation (CEFC general portfolio) and a fund to manage the Grid Reliability Fund investments (The GRF portfolio).

The GRF is exempt from the CEFC requirement that at least 50% of funds must be for renewable projects. The Bill's Explanatory Memorandum states that this is to ensure that the GRF can be 'technology neutral'. This goes against the very purpose of the CEFC – to increase investment in clean energy projects.

The Bill also allows the rest of the fund to be spent on grid reliability, enabling the balance of the CEFC's funds (CEFC general portfolio) to be spent in this manner, not just the newly allocated \$1 billion. The definition of 'grid reliability investment', provided under section 58A, does not stipulate that 'grid reliability fund investments' must be funded exclusively from the GRF.

Additionally, the CEFC Bill ensures any future profits from the GRF cannot be passed on to the Australian Renewable Energy Agency (ARENA), which is counter to the previous legislative arrangement between CEFC and ARENA.<sup>10</sup> There is also no valid justification provided for why the GRF must be ring-fenced from supporting ARENA.

## Increased Ministerial power/investment mandate

The CEFC is intended to operate and make its investment decisions independently of government. The CEFC's Annual Report states that:

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<sup>9</sup> Australian Government (2020) *Northern Australia Infrastructure Facility* <https://naif.gov.au/>

<sup>10</sup> CEFC (Grid Reliability Fund Bill) 50 (2)

‘The CEFC Act is structured in such a way as to maximise the CEFC’s operational independence, particularly with respect to investment decision making.’<sup>11</sup>

The CEFC’s success, both in decarbonising the economy and in sourcing private and public sector finance, can be attributed in part to its independence from government and its ability to make autonomous financing decisions. It is important to ensure that this clean energy investment institution operates with integrity and remains a truly independent entity.

The Bill gives the Government greater ability to interfere with the statutory body beyond the current direction of the CEFC’s activities through Investment Mandates, as issued by the Energy Minister Angus Taylor.

The Bill adds a new subsection under the Corporation’s functions, to allow the Minister to request the CEFC to ‘assist Commonwealth agencies in the development or implementation of policies or programs relating to supporting the reliability of energy grids.’ This appears to be set up to facilitate the UNGI program, bleeding the roles of Government and independent financing institution.

Under the CEFC Act, the Minister may issue an Investment Mandate to give direction to the CEFC about the performance of its functions. The Minister has announced that, once this Bill is passed, the Government will prescribe a new Investment Mandate.<sup>12</sup> ‘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.’<sup>13</sup> This is poor process and of concern to government accountability.

The CEFC investment mandate is a non-disallowable instrument. The Senate Scrutiny Committee has highlighted the problematic nature of allowing the investment mandate to dictate which investments can be funded from the GRF portfolio. Of concern, the Committee concludes that the ‘details of the investment criteria for the Fund are being left to non-disallowable delegated legislation and will therefore not be subject to effective parliamentary oversight’.<sup>14</sup>

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<sup>11</sup> CEFC (2019) *Annual Report 2019*,

[https://annualreport2019.cefc.com.au/media/1428/cefc\\_annual\\_report\\_2018-19.pdf](https://annualreport2019.cefc.com.au/media/1428/cefc_annual_report_2018-19.pdf)

<sup>12</sup> Minister Taylor (2020) Second Reading Speech- Clean Energy Corporation Amendment (Grid Reliability Fund) Bill, 14 [14].

<sup>13</sup> Parliament of the Commonwealth of Australia (2020) *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020, Explanatory memorandum*, 10 [65].

<sup>14</sup> The Senate Standing Committee for the Scrutiny of Bills (2020) *Scrutiny Digest 11 of 2020*,

[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6581](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6581)

## Expanded definition of investment - loss-making projects

The Bill redefines 'investment' to allow the CEFC to invest in potentially loss-making projects. Currently, the CEFC Act defines 'investment' as:

'Any mode of application of money or financial assets for the purpose of gaining a return (whether by way of income, capital gain or any other form of return); or giving a guarantee'.

The amendments would include acts for the purpose related to making a GRF investment. According to the Explanatory Memorandum, this is to allow investments 'that do not generate a return'.

There is some logic behind this (for example, the amendment may allow investment in transmission lines – that alone may not make a return on investment). However, by providing the Minister with the power to direct which loss-making profits can be made, the Bill also opens up the possibility of the CEFC becoming a loss-making underwriter of fossil fuel projects.

## 'Low emissions energy systems'

The Bill expands the definition of 'low emissions technology', leaving wide scope for interpretation. Under the new definition, low-emissions technology is any technology for energy storage, electricity generation, transmission or distribution, and electricity grid stabilisation that 'supports the achievement of low emissions energy systems in Australia'.<sup>15</sup> It is concerning that the new definition introduces the term 'low emissions energy system', which is not defined in the Bill or the Act.

The result is an open-ended definition of 'low-emissions 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.<sup>16</sup>

The Ministers intention to use CEFC funds to invest in gas-powered generation is economically risky and contrary to efforts to curb Australia's greenhouse gas emissions. Investing in new gas generation threatens Australia's ability to meet its commitments under

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<sup>15</sup> CEFC (Grid Reliability Fund Bill), (4)(a)

<sup>16</sup> Parliament of the Commonwealth of Australia (2020) *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020, Explanatory memorandum*, 10 [68]

Taylor (2020) *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020, Second reading speech*,

[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6581](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6581)

the Paris Agreement,<sup>17</sup> and is inconsistent with the Australian Energy Market Operator's 'Step Change' scenario – which forecasts a limited role for gas over the next 20 years.<sup>18</sup>

Of further concern, the Bill does not preclude the CEFC from investing in a coal-fired power station upgrade. The only indication that coal-fire power generation will not be supported is in the Explanatory Memorandum, which states that 'low emissions technologies under the CEFC Act will not extend to coal fired generation'.<sup>19</sup> However, this does not preclude the CEFC funding *upgrades* to *existing* coal-fired power stations, and is merely a statement of intention, not black letter law.

Apart from the Explanatory Memorandum's throwaway line, there is every indication that the CEFC will be used to fund an upgrade to Vales Point coal-fired power station. The legal advice commissioned by the Australia Institute suggests that Federal Government has no other way of funding the UNGI program, and specifically the coal-fired power plant upgrade.<sup>20</sup>

In January 2020, the Federal Government entered into a Memorandum of Understanding (MOU) with the NSW Government – a \$2 billion deal to increase supplies of natural gas, including a commitment from the Federal Government to prioritise the UNGI program and 'ensure all NSW projects shortlisted under phase one are assessed in a timely manner'.<sup>21</sup> Further, the Federal Government promised to 'support three NSW projects through the UNGI program'. There are only three NSW projects shortlisted to date, one of which is the coal-fired power plan upgrade.<sup>22</sup>

The GRF media release states that 'the Government will only refer UNGI projects that reflect the CEFC's legislative mandate for consideration under the Fund'.<sup>23</sup> Given the Bill proposes expanding the legislative mandate, there is little stopping the CEFC from proceeding with the UNGI shortlisted coal-fired power plant.

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<sup>17</sup> Swann (2020) *Weapons of Gas Destruction*,

<https://www.tai.org.au/sites/default/files/Weapons%20of%20Gas%20Destruction%20%5BWEB%5D.pdf>

<sup>18</sup> Ibid.

<sup>19</sup> Parliament of the Commonwealth of Australia (2020) *Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020, Explanatory memorandum*, 10 [68]

<sup>20</sup> The Australia Institute (2020) *Undermining New Investment – Problematic UNGI Program without Legal Foundation*, <https://www.tai.org.au/content/undermining-new-investment-problematic-ungi-program-without-legal-foundation>

<sup>21</sup> The Commonwealth of Australia and the State of New South Wales (2020) *Memorandum of understanding – NSW Energy Package*, <https://energy.nsw.gov.au/media/2001/download>

<sup>22</sup> Ibid.

<sup>23</sup> Prime Minister of Australia (2019) *\$1 Billion boost for power reliability*, <https://www.pm.gov.au/media/1-billion-boost-power-reliability>



## More amendments to come?

This Bill falls short of the recommendations, put forward by the King Review, into low cost abatement opportunities released in May 2020.<sup>24</sup> The King Review recommended changing the CEFC (and ARENA) to an ‘expanded, technology-neutral remit’, which was agreed-in-principle by the Federal Government and reiterated in the First Low Emissions Technology Statement.<sup>25</sup> To do this would require more than updating Investment Mandates and therefore the question must be posed by the Committee as to whether the Government will bring forward further amendments to the CEFC in the next year.

The current suite of amendments open the CEFC to higher-polluting, lower-return investments. The CEFC should be rewarded with additional funding, but not at the expense of its exclusive mandate to invest in Australia’s clean energy future. The Australia Institute recommends the proposed changes to the definitions of ‘investments’ and ‘low emissions technology’ in the Bill should not be adopted.

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<sup>24</sup> King Review (2020) *Examining additional sources of low cost abatement: expert panel report*  
<https://www.industry.gov.au/data-and-publications/examining-additional-sources-of-low-cost-abatement-expert-panel-report>

<sup>25</sup> Department of Industry (2020) *First Low Emissions Technology Statement 2020*  
<https://www.industry.gov.au/sites/default/files/September%202020/document/first-low-emissions-technology-statement-2020.pdf>