



Australian Government
Clean Energy Regulator

CLEAN
ENERGY
REGULATOR

16 March 2015

Ms Lyn Beverley
Committee Secretary
Standing Committee on Finance and Public Administration
The Senate
Parliament House
PO Box 6100
Canberra ACT 2600

By email – fpa.sen@aph.gov.au

Dear Ms Beverley

Submission to the Inquiry into the Public Governance and Resources Legislation Amendment Bill (No. 1) 2015

Thank you for your letter dated 5 March 2015 inviting the Clean Energy Regulator to make a submission to the Committee in relation to the Public Governance and Resources Legislation Amendment Bill (No. 1) 2015 (the Bill).

The Bill proposes to amend, through Schedules 3, 4 and 5, the *Clean Energy Regulator Act 2011* (the enabling Act), which establishes the Clean Energy Regulator and enables its administration of clean energy legislation. The Bill also proposes to amend clean energy legislation the Clean Energy Regulator administers.

The Clean Energy Regulator was consulted on the proposed amendments and fully supports them.

The proposed amendments to the enabling Act provide that the Clean Energy Regulator ceases to be a body corporate and is a non-corporate Commonwealth entity with the Chair as the accountable authority for the purposes of the finance law, which includes the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act). The Bill also proposes various consequential amendments to the enabling Act to align it with the requirements for non-corporate Commonwealth entities under the PGPA Act, including corporate planning, annual reporting and disclosure of interests. In our view, the Bill merely proposes legislative arrangements for the Clean Energy Regulator that were intended to be in place before 1 July 2014.

By way of background, the Clean Energy Regulator was identified as one of several 'hybrid' Commonwealth entities under the *Financial Management and Accountability Act 1997*. The Clean Energy Regulator was both a body corporate legally separate from the Commonwealth, and subject to the financial management rules

that applied to Commonwealth entities without legal separation. In other words, the Clean Energy Regulator possessed characteristics of both a body corporate and a non-body corporate.

In the development of the PGPA Act, the Clean Energy Regulator, along with other hybrid entities, was invited to express a preference to transition to being either a non-corporate or corporate Commonwealth entity. The Clean Energy Regulator preferred to transition to a non-corporate Commonwealth entity because this provided the better match to the Clean Energy Regulator's existing governance and resourcing model. Departmental and administered funds are appropriated in the Budget to the Clean Energy Regulator as an agency in the Environment portfolio. The Bill would not alter these arrangements.

The Clean Energy Regulator does not require corporate status to fulfil its functions and exercise its powers as an independent regulator. The Clean Energy Regulator's independence is secured by the enabling Act, particularly section 41 which provides that the Minister for the Environment may only give directions of a general nature.

As the intended legislative arrangements were not made before 1 July 2014, the Clean Energy Regulator defaulted to being a corporate Commonwealth entity under the PGPA Act. Temporary arrangements to reflect the Clean Energy Regulator's preference and provide for its intended non-corporate status were put in place by the *Public Governance, Performance and Accountability Legislation Amendment Rule 2014* (the Rule). The temporary arrangements in the Rule lapse on 30 June 2015. The Bill would make those arrangements permanent. If the amendments proposed by the Bill are not made, the Clean Energy Regulator will need to make significant changes to its governance practices.

We thank the Committee for the invitation to comment. If the Committee requires any further information, please do not hesitate to contact me.

Yours sincerely

Geoff Purvis-Smith
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Clean Energy Regulator

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