



Climate Change Authority Act 2011

No. 143, 2011

**An Act to establish the Climate Change Authority,
and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Climate Change Authority Act 2011

No. 143, 2011

An Act to establish the Climate Change Authority, and for other purposes

[Assented to 29 November 2011]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Climate Change Authority Act 2011*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 November 2011
2. Section 3	1 July 2012. However, if section 3 of the <i>Clean Energy Act 2011</i> does not commence before 1 July 2012, the provision(s) do not commence at all.	1 July 2012
3. Sections 4 to 9	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the day the <i>Clean Energy Act 2011</i> receives the Royal Assent. However, if the provision(s) do not commence within the period of 6 months beginning on the later of: (a) the day this Act receives the Royal Assent; and (b) the day the <i>Clean Energy Act 2011</i> receives the Royal Assent; they commence on the day after the end of that period.	9 December 2011 (see F2011L02582)
4. Parts 2 and 3	1 July 2012. However, if section 3 of the <i>Clean Energy Act 2011</i> does not commence before 1 July 2012, the provision(s) do not commence at all.	1 July 2012

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Parts 4 and 5	At the same time as the provision(s) covered by table item 3.	9 December 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act establishes the Climate Change Authority.
- The Authority is to conduct reviews under:
 - (a) the *Clean Energy Act 2011*; and
 - (b) the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and
 - (c) the *National Greenhouse and Energy Reporting Act 2007*; and
 - (d) the *Renewable Energy (Electricity) Act 2000*; and
 - (e) this Act.
- This Act establishes the Land Sector Carbon and Biodiversity Board.
- The Board is to advise the Environment Minister, the Climate Change Minister and the Agriculture Minister about climate change measures that relate to the land sector.

4 Definitions

In this Act:

Agriculture Minister means the Minister administering Part 2 of the *Natural Resources Management (Financial Assistance) Act 1992*.

associate Authority member means an associate member of the Authority.

Authority means the Climate Change Authority.

Authority member means a member of the Authority, but does not include an associate Authority member.

Biodiversity Fund program measure means a measure that has been, is being, or may be, funded by the program known as the Biodiversity Fund program.

Board means the Land Sector Carbon and Biodiversity Board.

Board member means a member of the Board, and includes the Chair of the Board.

CEO means the Chief Executive Officer of the Authority.

Climate Change Department means the Department administered by the Climate Change Minister.

Climate Change Minister means the Minister administering the *Clean Energy Act 2011*.

Environment Department means the Department administered by the Environment Minister.

Environment Minister means the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*.

greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

staff of the Authority means the staff described in section 52.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

7 Extension to external Territories

This Act extends to every external Territory.

8 Extension to exclusive economic zone and continental shelf

This Act extends to a matter relating to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf.

9 Extension to Joint Petroleum Development Area

This Act extends to the Joint Petroleum Development Area.

Part 2 Climate Change Authority

Division 1 Authority's establishment, functions, powers and liabilities

Section 10

Part 2—Climate Change Authority

Division 1—Authority's establishment, functions, powers and liabilities

10 Climate Change Authority

The Climate Change Authority is established by this section.

Note: In this Act, *Authority* means the Climate Change Authority—see section 4.

11 Functions of the Authority

The Authority has the following functions:

- (a) to conduct reviews under:
 - (i) Part 22 of the *Clean Energy Act 2011*; and
 - (ii) section 306 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and
 - (iii) sections 76A and 76B of the *National Greenhouse and Energy Reporting Act 2007*; and
 - (iv) section 162 of the *Renewable Energy (Electricity) Act 2000*; and
 - (v) Part 3 of this Act;
- (b) if requested to do so by the Climate Change Minister, to assist the Climate Change Minister in preparing the Commonwealth Government's response to recommendations set out in a report of such a review;
- (c) to conduct research about matters relating to climate change;
- (d) to conduct research for purposes in connection with the performance of any of the Authority's functions;
- (e) such other functions as are conferred on the Authority by this Act;
- (f) such functions as are conferred on the Authority by any other law of the Commonwealth;

- (g) to do anything incidental to or conducive to the performance of any of the above functions.

12 Authority must have regard to certain principles

In performing its functions, the Authority must have regard to the following principles:

- (a) the principle that any measures to respond to climate change should:
- (i) be economically efficient; and
 - (ii) be environmentally effective; and
 - (iii) be equitable; and
 - (iv) be in the public interest; and
 - (v) take account of the impact on households, business, workers and communities; and
 - (vi) support the development of an effective global response to climate change; and
 - (vii) be consistent with Australia's foreign policy and trade objectives;
- (b) such other principles (if any) as the Authority considers relevant.

13 Powers of the Authority

- (1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the Authority include, but are not limited to, the power to enter into contracts.
- Note: The CEO may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.
- (3) Any contract entered into by the Authority is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by the Authority is held for and on behalf of the Commonwealth.

Part 2 Climate Change Authority

Division 1 Authority's establishment, functions, powers and liabilities

Section 14

- (5) Any money received by the Authority is received for and on behalf of the Commonwealth.
- (6) The Authority cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.
Note: The Commonwealth may hold real or personal property or money on trust.
- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

14 Authority's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the Authority are taken to be liabilities of the Commonwealth.
- (2) In this section:
financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

15 Authority has privileges and immunities of the Crown

The Authority has the privileges and immunities of the Crown in right of the Commonwealth.

Division 2—Constitution and membership of the Authority etc.

Subdivision A—Constitution of the Authority

16 Constitution of the Authority

- (1) The Authority:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property;
and
 - (d) may sue and be sued in its corporate name.
- (2) The seal of the Authority is to be kept in such custody as the Authority directs and must not be used except as authorised by the Authority.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Authority appearing on a document; and
 - (b) presume that the document was duly sealed.

Subdivision B—Authority members

17 Membership of the Authority

The Authority consists of the following members:

- (a) a Chair;
- (b) the Chief Scientist;
- (c) 7 other members.

18 Appointment of Authority members

- (1) Each Authority member (other than the Chief Scientist) is to be appointed by the Climate Change Minister by written instrument.

Part 2 Climate Change Authority

Division 2 Constitution and membership of the Authority etc.

Section 19

Note: The Authority member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as an Authority member (other than the Chief Scientist) unless the Climate Change Minister is satisfied that the person has:
- (a) substantial experience or knowledge; and
 - (b) significant standing;
- in at least one of the following fields:
- (c) climate science;
 - (d) economics (including environmental economics);
 - (e) industry;
 - (f) social policy;
 - (g) technology development and adoption;
 - (h) employment policy;
 - (i) energy production and supply;
 - (j) greenhouse gas emissions measurement and reporting;
 - (k) greenhouse gas abatement measures;
 - (l) financial markets and investment;
 - (m) trading of environmental instruments;
 - (n) land resource management;
 - (o) environmental management;
 - (p) public administration.
- (3) An Authority member (other than the Chief Scientist) may hold office on either a full-time or a part-time basis.
- (4) The Chief Scientist holds office on a part-time basis.
- (5) This Act does not prevent the same person from holding office as the Chair and as the CEO.
- (6) A person must not hold office as an Authority member (other than the Chair) and as the CEO.

19 Period of appointment for Authority members

An Authority member (other than the Chief Scientist) holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

20 Acting Authority members

Acting Chair of the Authority

- (1) The Climate Change Minister may appoint a person (other than the Chief Scientist) to act as the Chair of the Authority:
 - (a) during a vacancy in the office of the Chair of the Authority (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair of the Authority:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting Authority member (other than the Chair of the Authority)

- (2) The Climate Change Minister may appoint a person (other than the Chief Scientist) to act as an Authority member (other than the Chair of the Authority):
 - (a) during a vacancy in the office of an Authority member (other than the Chair of the Authority), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when an Authority member (other than the Chair of the Authority):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Eligibility

- (3) A person is not eligible for appointment to act as:
 - (a) the Chair of the Authority; or
 - (b) an Authority member (other than the Chair of the Authority);unless the person is eligible for appointment as an Authority member.

Note 1: See subsection 18(2).

Part 2 Climate Change Authority

Division 2 Constitution and membership of the Authority etc.

Section 21

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

21 Deputy of the Chief Scientist

Appointment

- (1) The Chief Scientist may appoint an SES employee to be his or her deputy for the purposes of attendance at one or more specified meetings of the Authority.

Note: The expression *SES employee* is defined in the *Acts Interpretation Act 1901*.

Termination of appointment

- (2) The Chief Scientist may terminate the appointment of a person as his or her deputy.

Resignation

- (3) A deputy of the Chief Scientist may resign his or her appointment by giving the Chief Scientist a written resignation.
- (4) The resignation takes effect on the day it is received by the Chief Scientist or, if a later day is specified in the resignation, on that later day.

Attendance at meeting of the Authority

- (5) If:
- (a) a person is the deputy of the Chief Scientist for the purposes of attendance at a particular meeting of the Authority; and
 - (b) the Chief Scientist is absent from the meeting;
- the person is entitled to attend the meeting and, when so attending, is taken to be an Authority member.
- (6) A deputy of the Chief Scientist is not entitled to any remuneration or allowances for attending a meeting of the Authority (other than remuneration or allowances payable to the deputy in his or her capacity as an SES employee).

Subdivision C—Associate Authority members

22 Appointment of associate Authority members

- (1) The Climate Change Minister may appoint as many associate members of the Authority as the Climate Change Minister thinks fit.
- (2) Subsection (1) has effect subject to subsection (7).
- (3) Each associate Authority member is to be appointed by the Climate Change Minister by written instrument.

Note: The associate Authority member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (4) A person is not eligible for appointment as an associate Authority member unless the Climate Change Minister is satisfied that the person has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;in at least one of the following fields:
 - (c) climate science;
 - (d) economics (including environmental economics);
 - (e) industry;
 - (f) social policy;
 - (g) technology development and adoption;
 - (h) employment policy;
 - (i) energy production and supply;
 - (j) greenhouse gas emissions measurement and reporting;
 - (k) greenhouse gas abatement measures;
 - (l) financial markets and investment;
 - (m) trading of environmental instruments;
 - (n) land resource management;
 - (o) environmental management;
 - (p) public administration.
- (5) An associate Authority member may be appointed as a full-time associate Authority member or as a part-time associate Authority member.

Part 2 Climate Change Authority

Division 2 Constitution and membership of the Authority etc.

Section 23

- (6) An associate Authority member's instrument of appointment must contain a statement to the effect that the associate Authority member's appointment relates to a specified review.
- (7) The Climate Change Minister must ensure that not more than one associate Authority member is appointed for a particular review.

23 Period of appointment for associate Authority members

- (1) An associate Authority member holds office for the period:
 - (a) beginning at the time specified in his or her instrument of appointment; and
 - (b) ending:
 - (i) at the end of the day of the completion of the report of the review specified in his or her instrument of appointment; or
 - (ii) if the instrument of appointment specifies that the associate Authority member is to remain in office for a specified period beginning at the end of the day of the completion of the report of the review—at the end of that period.
- (2) For the purposes of subsection (1), a review is completed when the report of the review is given to the Climate Change Minister who is responsible for causing the report to be tabled in each House of the Parliament.
- (3) A period specified under subparagraph (1)(b)(ii) must not be longer than 180 days.

24 Acting appointments—associate Authority members

- (1) The Climate Change Minister may appoint a person to act as an associate Authority member during any period, or during all periods, when an associate Authority member:
 - (a) is acting as an Authority member; or
 - (b) is absent from duty or from Australia; or
 - (c) is, for any reason, unable to perform the duties of the office.

Eligibility

- (2) A person is not eligible for appointment to act as an associate Authority member unless the person is eligible for appointment as an associate Authority member.

Note 1: See subsection 22(4)

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Division 3—Terms and conditions for Authority members and associate Authority members

25 Remuneration

- (1) An Authority member (other than the Chief Scientist) or associate Authority member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, an Authority member or associate Authority member is to be paid the remuneration that is prescribed by the regulations.
- (2) An Authority member (other than the Chief Scientist) or associate Authority member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

26 Disclosure of interests to the Climate Change Minister

An Authority member or associate Authority member must give written notice to the Climate Change Minister of all interests, pecuniary or otherwise, that the Authority member or associate Authority member has or acquires and that conflict or could conflict with the proper performance of the Authority member's functions or the associate Authority member's functions, as the case may be.

27 Disclosure of interests to the Authority

- (1) An Authority member or associate Authority member 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.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the Authority member or associate Authority member.

- (3) The disclosure must be recorded in the minutes of the meeting of the Authority.
- (4) Unless the Authority otherwise determines, the Authority member or associate Authority member:
 - (a) must not be present during any deliberation by the Authority on the matter; and
 - (b) must not take part in any decision of the Authority with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Authority member or associate Authority member:
 - (a) must not be present during any deliberation of the Authority for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Authority.

28 Outside employment

- (1) A full-time Authority member or full-time associate Authority member must not engage in paid employment outside the duties of his or her office without the Climate Change Minister's approval.
- (2) A part-time Authority member or part-time associate Authority member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

29 Leave of absence

- (1) A full-time Authority member or full-time associate Authority member has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Climate Change Minister may grant leave of absence, other than recreation leave, to a full-time Authority member or full-time associate Authority member on the terms and conditions as to remuneration or otherwise that the Climate Change Minister determines.

Part 2 Climate Change Authority

Division 3 Terms and conditions for Authority members and associate Authority members

Section 30

- (3) The Chair of the Authority may grant leave of absence to a part-time Authority member (other than the Chief Scientist) or part-time associate Authority member on the terms and conditions that the Chair determines.

30 Resignation

- (1) An Authority member (other than the Chief Scientist) or associate Authority member may resign his or her appointment by giving the Climate Change Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Climate Change Minister or, if a later day is specified in the resignation, on that later day.

31 Termination of appointment

- (1) The Climate Change Minister may terminate the appointment of an Authority member (other than the Chief Scientist) or associate Authority member for misbehaviour or physical or mental incapacity.
- (2) The Climate Change Minister may terminate the appointment of an Authority member (other than the Chief Scientist) or associate Authority member if:
- (a) the Authority member or associate Authority member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) if the Authority member or associate Authority member is a full-time Authority member or full-time associate Authority member—the Authority member or associate Authority member engages, except with the Climate Change Minister's approval, in paid employment outside the duties of his or her office (see section 28); or

Section 32

- (c) if the Authority member or associate Authority member is a part-time Authority member or part-time associate Authority member—the Authority member or associate Authority member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 28); or
 - (d) the Authority member or associate Authority member fails, without reasonable excuse, to comply with section 26 or 27; or
 - (e) the Authority member or associate Authority member is absent, except on leave of absence, from 3 consecutive meetings of the Authority.
- (3) The only meetings that are to be taken into account for the purpose of the application of paragraph (2)(e) to an associate Authority member, are meetings that the associate Authority member was entitled to attend (see section 36).

32 Other terms and conditions

An Authority member (other than the Chief Scientist) or associate Authority member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Climate Change Minister.

Division 4—Decision-making by the Authority

33 Holding of meetings

- (1) The Authority is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair of the Authority may convene a meeting at any time.

34 Presiding at meetings

- (1) The Chair of the Authority presides at all meetings at which he or she is present.
- (2) If the Chair of the Authority is not present at a meeting, the Authority members present must appoint one of themselves to preside.

35 Quorum

At a meeting of the Authority, 5 Authority members constitute a quorum.

36 Participation etc. by associate Authority members at meetings

- (1) An associate Authority member is entitled to attend, and participate in discussions at, a meeting of the Authority while the meeting is considering a matter connected with:
 - (a) a review specified in the associate Authority member's instrument of appointment; or
 - (b) assisting the Climate Change Minister to prepare the Commonwealth Government's response to recommendations set out in a report of a review specified in the associate Authority member's instrument of appointment.
- (2) Subsection (1) has effect subject to section 27.

37 Voting at meetings etc.

- (1) At a meeting of the Authority, a question is decided by a majority of the votes of the following people present and voting:
 - (a) the Authority members;
 - (b) if the question relates to a matter connected with:
 - (i) a review specified in the instrument of appointment of an associate Authority member; or
 - (ii) assisting the Climate Change Minister to prepare the Commonwealth Government's response to recommendations set out in a report of a review specified in the instrument of appointment of an associate Authority member;
that associate Authority member.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

38 Conduct of meetings

The Authority may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

39 Minutes

The Authority must keep minutes of its meetings.

Division 5—Delegation

40 Delegation by the Authority

- (1) The Authority may, by writing, delegate any or all of its functions and powers to:
 - (a) the CEO; or
 - (b) an Authority member or associate Authority member; or
 - (c) a person who is:
 - (i) a member of the staff of the Authority; and
 - (ii) an SES employee or acting SES employee; or
 - (d) a person who is:
 - (i) a member of the staff of the Authority; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position; or
 - (e) a person who is:
 - (i) an SES employee, or acting SES employee, in the Climate Change Department; and
 - (ii) a person assisting the Authority under section 53; or
 - (f) a person who:
 - (i) is an APS employee in the Climate Change Department; and
 - (ii) is a person assisting the Authority under section 53; and
 - (iii) holds or performs the duties of an Executive Level 2 position or an equivalent position.
- Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.
- (2) A delegate must comply with any written directions of the Authority.
- (3) The Authority must not delegate a function or power to an associate Authority member unless the function or power relates to a matter connected with:

Section 40

- (a) the review specified in the associate Authority member's instrument of appointment; or
- (b) assisting the Climate Change Minister to prepare the Commonwealth Government's response to recommendations set out in a report of the review specified in the associate Authority member's instrument of appointment.

Division 6—Chief Executive Officer of the Authority

41 Establishment

There is to be a Chief Executive Officer of the Authority.

Note: In this Act, *CEO* means the Chief Executive Officer of the Authority—see section 4.

42 Role

- (1) The CEO is responsible for the day-to-day administration of the Authority.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The CEO is to act in accordance with the policies determined, and any directions given, by the Authority.

43 Appointment

- (1) The CEO is to be appointed by the Climate Change Minister.
- (2) The appointment is to be made by written instrument.
- (3) Before appointing a person as the CEO, the Climate Change Minister must consult the Authority.
- (4) The CEO holds office on a full-time basis.
- (5) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

44 Acting appointments

- (1) The Climate Change Minister may appoint a person to act as the CEO:

- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) An appointment under subsection (1) is to be made by written instrument.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

45 Outside employment

The CEO must not engage in paid employment outside the duties of his or her office without the approval of the Climate Change Minister.

46 Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

47 Leave

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Climate Change Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Climate Change Minister determines.

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48 Disclosure of interests

The CEO must give written notice to the Climate Change Minister and the Authority of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's duties.

49 Resignation

- (1) The CEO may resign his or her appointment by giving the Climate Change Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Climate Change Minister or, if a later day is specified in the resignation, on that later day.
- (3) If the CEO resigns, the Climate Change Minister must notify the Authority of the resignation.

50 Termination of appointment

- (1) The Climate Change Minister may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.
- (2) The Climate Change Minister must terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the CEO fails, without reasonable excuse, to comply with section 48; or
 - (d) the CEO engages, except with the approval of the Climate Change Minister, in paid employment outside the duties of his or her office (see section 45).

- (3) Before terminating the appointment of the CEO, the Climate Change Minister must consult the Authority.

51 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Climate Change Minister.

Division 7—Staff of the Authority etc.

52 Staff

- (1) The staff of the Authority are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the staff of the Authority together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

53 Persons assisting the Authority

The Authority may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

whose services are made available to the Authority in connection with the performance of any of its functions.

54 Consultants

- (1) The Authority may engage persons having suitable qualifications and experience as consultants to the Authority.
- (2) The consultants are to be engaged on the terms and conditions that the Authority determines in writing.

Division 8—Planning and reporting obligations

55 Corporate plan

- (1) The Authority must prepare a corporate plan at least once each 3-year period and give it to the Climate Change Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
 - (a) the objectives of the Authority;
 - (b) the strategies and policies that are to be followed by the Authority in order to achieve those objectives;
 - (c) such other matters (if any) as the Climate Change Minister requires.
- (4) The Chair of the Authority must keep the Climate Change Minister informed about:
 - (a) changes to the plan; and
 - (b) matters that might significantly affect the achievement of the objectives set out in the plan.
- (5) The Climate Change Minister may give the Chair of the Authority written guidelines that are to be used by the Chair in deciding whether a matter is covered by paragraph (3)(c) or (4)(b).
- (6) A guideline given under subsection (5) is not a legislative instrument.
- (7) The Authority must ensure that the first corporate plan is prepared within 12 months after the commencement of this section.

56 Annual report

- (1) The Authority must, as soon as practicable after the end of each financial year, prepare and give to the Climate Change Minister, for presentation to the Parliament, a report on its operations during that year.

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Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) A report under subsection (1) for a financial year must set out:
 - (a) a description of the objectives of the Authority; and
 - (b) an assessment of the extent to which the Authority's operations during that year have achieved those objectives.
- (3) An assessment under paragraph (2)(b) must be made against performance indicators set out in the report.
- (4) If this section does not commence at the start of a financial year, the period:
 - (a) beginning at the commencement of this section; and
 - (b) ending at the end of 30 June after that commencement;is taken, for the purposes of this section, to be a financial year.

Division 9—Other matters

57 Climate Change Minister may give directions to the Authority

- (1) The Climate Change Minister may, by legislative instrument, give directions to the Authority in relation to the performance of its functions and the exercise of its powers.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) Without limiting subsection (2), a direction under subsection (1) must not relate to:
- (a) the conduct of a particular review; or
 - (b) the content of a report of a particular review.
- (4) A direction under subsection (1) must not be inconsistent with the objects of:
- (a) the *Clean Energy Act 2011*; or
 - (b) the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
 - (c) the *National Greenhouse and Energy Reporting Act 2007*; or
 - (d) the *Renewable Energy (Electricity) Act 2000*.
- (5) The Authority must comply with a direction under subsection (1).

58 CEO not subject to direction by the Authority on certain matters

To avoid doubt, the CEO is not subject to direction by the Authority in relation to the CEO's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
- (b) the *Public Service Act 1999*;

in relation to the Authority.

Part 3—Special reviews

59 Special reviews to be conducted by the Authority at the request of the Climate Change Minister or the Parliament

Scope

- (1) This section applies if:
 - (a) either:
 - (i) the Climate Change Minister, by written instrument given to the Chair of the Authority, requests the Authority to conduct a review under this section of such matters relating to climate change as are specified in the instrument; or
 - (ii) both Houses of the Parliament, by resolution, request the Authority to conduct a review under this section of such matters relating to climate change as are specified in the resolution; and
 - (b) the matters specified in the instrument or resolution, as the case may be, are covered by:
 - (i) any of the legislative powers of the Parliament; or
 - (ii) the executive power of the Commonwealth.

Review

- (2) The Authority is to conduct a review of those matters.

Consultation

- (3) In conducting a review, the Authority must make provision for public consultation.

Instrument

- (4) An instrument given under subparagraph (1)(a)(i) is not a legislative instrument.

60 Report of special review

- (1) The Authority must:
 - (a) prepare a report of a review under section 59; and
 - (b) give the report to the Climate Change Minister; and
 - (c) as soon as practicable after giving the report to the Climate Change Minister, publish the report on the Authority's website.
- (2) The Climate Change Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

Recommendations

- (3) The report may set out recommendations to the Commonwealth Government.
- (4) In formulating a recommendation that the Commonwealth Government should take particular action, the Authority must analyse the costs and benefits of that action.
- (5) Subsection (4) does not prevent the Authority from taking other matters into account in formulating a recommendation.
- (6) If a report sets out one or more recommendations to the Commonwealth Government, the report must set out the Authority's reasons for those recommendations.

Government response to recommendations

- (7) If a report sets out one or more recommendations to the Commonwealth Government:
 - (a) as soon as practicable after receiving the report, the Climate Change Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
 - (b) within 6 months after receiving the report, the Climate Change Minister must cause copies of the statement to be tabled in each House of the Parliament.

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- (8) The Commonwealth Government's response to the recommendations may have regard to the views of the following:
 - (a) the Authority;
 - (b) such other persons as the Climate Change Minister considers relevant.

Part 4—Land Sector Carbon and Biodiversity Board

Division 1—Board's establishment and functions

61 Land Sector Carbon and Biodiversity Board

The Land Sector Carbon and Biodiversity Board is established.

62 Functions of the Board

- (1) The Board has the following functions:
 - (a) to advise any or all of the relevant Ministers about:
 - (i) performance indicators for; and
 - (ii) the implementation of; and
 - (iii) the priorities for research in relation to; prescribed measures that:
 - (iv) increase the land sector's resilience to climate change; or
 - (v) improve long-term farm productivity; or
 - (vi) assist landholders and regional communities to benefit from the reduction of greenhouse gas emissions from the land sector; or
 - (vii) assist landholders and regional communities to benefit from the sequestration of carbon in soil, in living biomass, or in dead organic matter;
 - (b) to advise the Environment Minister about:
 - (i) performance indicators for; and
 - (ii) the implementation of; and
 - (iii) guidelines for the funding of; Biodiversity Fund program measures that:
 - (iv) protect, manage or restore biodiverse ecosystems; or
 - (v) establish, protect, manage, improve or restore levels of carbon sequestered in living biomass, or in dead organic

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- matter, so far as that living biomass or dead organic matter, as the case may be, is in a biodiverse ecosystem;
- (c) to advise any or all of the relevant Ministers about any other matters that:
- (i) are specified in a legislative instrument made by the Environment Minister; and
 - (ii) relate to measures, or proposed measures, that assist the land sector to deal with climate change;
- (d) to do anything incidental to or conducive to the performance of the above functions.
- (2) For the purposes of this section, each of the following is a *relevant Minister*:
- (a) the Environment Minister;
 - (b) the Climate Change Minister;
 - (c) the Agriculture Minister.

63 Constitutional limits

The Board may perform its functions only:

- (a) for purposes related to external affairs, including:
 - (i) for purposes related to giving effect to an international agreement to which Australia is a party; and
 - (ii) for purposes related to addressing matters of international concern; or
- (b) for purposes related to the executive power of the Commonwealth; or
- (c) for purposes related to statistics; or
- (d) for purposes related to a Territory; or
- (e) with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (f) for purposes related to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or

- (g) for purposes related to a corporation to which paragraph 51(xx) of the Constitution applies; or
- (h) by way of the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; for a purpose of the Commonwealth; or
- (i) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
- (j) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Division 2—Membership of the Board

64 Membership of the Board

The Board consists of the following members:

- (a) a Chair;
- (b) 4 other members.

65 Appointment of Board members

- (1) Each Board member is to be appointed by the Environment Minister and the Agriculture Minister by written instrument.

Note: A Board member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as a Board member unless the Environment Minister and the Agriculture Minister are satisfied that the person has:

- (a) substantial experience or knowledge; and
- (b) significant standing;

in at least one of the following fields:

- (c) agricultural science;
- (d) economics (including environmental economics);
- (e) conservation ecology;
- (f) greenhouse gas emissions measurement and reporting;
- (g) greenhouse gas abatement measures;
- (h) public administration;
- (i) business management;
- (j) the management or care of indigenous-held land (within the meaning of the *Aboriginal and Torres Strait Islander Act 2005*).

- (3) Before appointing a person as a Board member, the Environment Minister and the Agriculture Minister must consult the Climate Change Minister.

- (4) A Board member holds office on a part-time basis.

66 Period of appointment for Board members

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

67 Acting Board members

Acting Chair of Board

- (1) The Environment Minister and the Agriculture Minister may appoint a Board member to act as the Chair of the Board:
 - (a) during a vacancy in the office of the Board Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair of the Board:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting Board member (other than the Chair)

- (2) The Environment Minister and the Agriculture Minister may appoint a person to act as a Board member (other than the Chair of the Board):
 - (a) during a vacancy in the office of a Board member (other than the Chair of the Board), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Board member (other than the Chair of the Board):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Eligibility

- (3) A person is not eligible for appointment to act as:
 - (a) the Chair of the Board; or

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(b) a Board member (other than the Chair of the Board);
unless the person is eligible for appointment as a Board member.

Note 1: See subsection 65(2).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

68 Procedures

- (1) The regulations may prescribe the procedures to be followed at or in relation to meetings of the Board, including matters relating to the following:
 - (a) the convening of meetings of the Board;
 - (b) the number of Board members who are to constitute a quorum;
 - (c) the selection of a Board member to preside at meetings of the Board in the absence of the Chair of the Board;
 - (d) the manner in which questions arising at a meeting of the Board are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the Board if:
 - (a) without meeting, a majority of Board members indicate agreement with the resolution in accordance with the method determined by the Board under subsection (3); and
 - (b) all Board members were informed of the proposed resolution, or reasonable efforts had been made to inform all Board members of the proposed resolution.
- (3) Subsection (2) applies only if the Board:
 - (a) determines that it applies; and
 - (b) determines the method by which Board members are to indicate agreement with resolutions.

69 Disclosure of interests to the Environment Minister and the Agriculture Minister

A Board member must give written notice to the Environment Minister and the Agriculture Minister of all interests, pecuniary or otherwise, that the Board member has or acquires and that conflict

or could conflict with the proper performance of the Board member's functions.

70 Disclosure of interests to Board

- (1) A Board member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board must disclose the nature of the interest to a meeting of the Board.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Board member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Board.
- (4) Unless the Board otherwise determines, the Board member:
 - (a) must not be present during any deliberation by the Board on the matter; and
 - (b) must not take part in any decision of the Board with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Board member:
 - (a) must not be present during any deliberation of the Board for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Board.

71 Outside employment

A Board member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

72 Remuneration and allowances

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that

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remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is prescribed by the regulations.

- (2) A Board member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

73 Leave of absence

- (1) The Environment Minister may grant leave of absence to the Chair of the Board on the terms and conditions that the Environment Minister determines.
- (2) The Chair of the Board may grant leave of absence to a Board member on the terms and conditions that the Chair determines.

74 Resignation

- (1) A Board member may resign his or her appointment by giving the Environment Minister or the Agriculture Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Environment Minister or the Agriculture Minister (as the case may be) or, if a later day is specified in the resignation, on that later day.

75 Termination of appointment

- (1) The Environment Minister and the Agriculture Minister may terminate the appointment of a Board member for misbehaviour or physical or mental incapacity.
- (2) The Environment Minister and the Agriculture Minister may terminate the appointment of a Board member if:
 - (a) the Board member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

- (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of remuneration for the benefit of his or her creditors; or
 - (b) the Board member is absent, except on leave of absence, for 3 consecutive meetings of the Board; or
 - (c) the Board member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 71); or
 - (d) the Board member fails, without reasonable excuse, to comply with section 69 or 70.
- (3) The Environment Minister and the Agriculture Minister may terminate the appointment of a Board member if the Environment Minister and the Agriculture Minister are of the opinion that the performance of the Board member has been unsatisfactory.
- (4) Before terminating the appointment of a Board member, the Environment Minister and the Agriculture Minister must consult the Climate Change Minister.

76 Other terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Environment Minister.

Division 3—Assistance to Board

77 Assistance to Board

- (1) Any or all of the following bodies:
 - (a) the Environment Department;
 - (b) any other Department, agency or authority of the Commonwealth;may assist the Board in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the provision of advice;
 - (c) the making available of resources and facilities (including secretariat services and clerical assistance).

Division 4—Committees

78 Committees

- (1) The Environment Minister may, with the agreement of the Agriculture Minister, establish committees to advise or assist the Board in the performance of its functions.
- (2) A committee may be constituted:
 - (a) wholly by Board members; or
 - (b) wholly by persons who are not Board members; or
 - (c) partly by Board members and partly by other persons.
- (3) Each member of a committee established under this section is to be appointed by the Environment Minister and the Agriculture Minister by written instrument.
- (4) The Environment Minister may, with the agreement of the Agriculture Minister, determine in writing, in relation to a committee established under this section:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.

79 Remuneration and allowances

Scope

- (1) This section applies if a committee is established under section 78.

Remuneration and allowances

- (2) A committee member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

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- (3) A committee member is to be paid the allowances that are prescribed by the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

80 Assistance to committees

- (1) Any or all of the following bodies:
 - (a) the Environment Department;
 - (b) any other Department, agency or authority of the Commonwealth;may assist a committee established under section 78 in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the provision of advice;
 - (c) the making available of resources and facilities (including secretariat services and clerical assistance).

Division 5—Annual report

81 Annual report

- (1) The Board must, as soon as practicable after the end of each financial year, prepare and give to the Environment Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) If, in accordance with paragraph 62(1)(d), the Board makes an assessment during a financial year of:
- (a) the performance of a measure prescribed for the purposes of paragraph 62(1)(a) against performance indicators; or
 - (b) the implementation of a measure prescribed for the purposes of paragraph 62(1)(a); or
 - (c) the performance of a Biodiversity Fund program measure referred to in paragraph 62(1)(b) against performance indicators; or
 - (d) the implementation of a Biodiversity Fund program measure referred to in paragraph 62(1)(b);

the Board's report for the financial year must include:

- (e) a summary of that assessment; and
- (f) a statement describing the contribution (if any) of the performance and implementation of the measure in advancing:
 - (i) the protection, management or restoration of land biodiversity; and
 - (ii) the reduction of greenhouse gas emissions from the land sector.

Part 5—Miscellaneous

82 Liability for damages

None of the following:

- (a) the Authority;
 - (b) a delegate of the Authority;
 - (c) an Authority member;
 - (d) an associate Authority member;
 - (e) the CEO;
 - (f) a member of the staff of the Authority;
 - (g) a person whose services are made available to the Authority under section 53;
 - (h) a person engaged as a consultant under section 54;
 - (i) a Board member;
 - (j) a member of a committee established under section 78;
- is liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done in the performance or purported performance of any function, or in the exercise or purported exercise of any power, conferred by:
- (k) this Act; or
 - (l) Part 22 of the *Clean Energy Act 2011*; or
 - (m) section 306 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
 - (n) section 76A or 76B of the *National Greenhouse and Energy Reporting Act 2007*; or
 - (o) section 162 of the *Renewable Energy (Electricity) Act 2000*.

82A Transitional—validity of things done under appointments under section 67

Anything done before the commencement of Schedule 1 to the *Acts Interpretation Amendment Act 2011* by or in relation to a person

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purporting to act under an appointment under section 67 of this Act is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

83 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 13 September 2011
Senate on 12 October 2011]*