



Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011

No. 152, 2011

**An Act to deal with consequential and transitional
matters in connection with the *Australian
Renewable Energy Agency Act 2011*, and for related
purposes**

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

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Renewable Energy Agency Act 2011*, and for related
purposes**

[Assented to 4 December 2011]

The Parliament of Australia enacts:

Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions)

Act 2011 No. 152, 2011 1

1 Short title

This Act may be cited as the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011*.

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 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2011
2. Schedule 1, Part 1	At the same time as the <i>Australian Renewable Energy Agency Act 2011</i> commences.	1 July 2012
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of section 3 of the <i>Clean Energy Regulator Act 2011</i> ; and (b) immediately after the commencement of the <i>Australian Renewable Energy Agency Act 2011</i> . However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	
4. Schedule 2	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the <i>Australian Renewable Energy Agency Act 2011</i> receives the Royal Assent.	4 December 2011

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1 Repeal and consequential amendments

Part 1 Repeal of the Australian Centre for Renewable Energy Act 2010

**Schedule 1—Repeal and consequential
amendments**

**Part 1—Repeal of the Australian Centre for
Renewable Energy Act 2010**

Australian Centre for Renewable Energy Act 2010

1 The whole of the Act

Repeal the Act.

⁴ *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011* No. 152, 2011

Part 2—Consequential amendments

Clean Energy Regulator Act 2011

2 After paragraph 49(1)(u)

Insert:

(ua) the Australian Renewable Energy Agency;

Schedule 2—Transitional provisions

Part 1—Preliminary

1 Definitions

(1) In this Schedule:

ACRE Act means the *Australian Centre for Renewable Energy Act 2010*.

ACRE Board means the Australian Centre for Renewable Energy Board established by the ACRE Act.

agreement includes a contract or deed.

application, in relation to financial assistance, includes an expression of interest or proposal.

ARENA has the same meaning as in the ARENA Act.

ARENA Act means the *Australian Renewable Energy Agency Act 2011*.

ARENA Board means the Board of ARENA.

ARENA's money has the same meaning as in the ARENA Act.

ASI Limited means Australian Solar Institute Limited (ACN 138 300 688).

ASI Limited officers: see item 18.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

exempt matter: see item 14.

financial assistance means a grant, or any other kind of financial assistance.

first transition time means the commencement of the ARENA Act.

instrument:

- (a) includes:
 - (i) an agreement or undertaking; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or regulations; but
- (b) does not include:
 - (i) an Act; or
 - (ii) instruments made under this Act.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

second transition time means:

- (a) the start of 1 January 2013 (unless paragraph (b) applies); or
- (b) if the Minister determines an earlier day under subitem (2)—the start of that earlier day.

Secretary means the Secretary of the Department.

transferred ASI Limited funding agreements: see item 7.

transferred Commonwealth funding agreements: see item 2.

- (2) The Minister may, by legislative instrument, determine a day for the purpose of paragraph (b) of the definition of **second transition time** in subitem (1).

Part 2—Transfer of assets and liabilities

Division 1—Transfer from the Commonwealth to ARENA

2 The *transferred Commonwealth funding agreements*

- (1) The *transferred Commonwealth funding agreements* are:
- (a) any agreements to which the Commonwealth was a party, before the first transition time, that provide for financial assistance under or from any of the following:
 - (i) the Solar Flagships Program;
 - (ii) the Renewable Energy Demonstration Program;
 - (iii) the Renewable Energy Venture Capital Fund;
 - (iv) the Emerging Renewables Program;
 - (v) the Geothermal Drilling Program;
 - (vi) the Second Generation Biofuels Research and Development Program;
 - (vii) any other programs or initiatives specified by the Minister under subitem (2); and
 - (b) any agreements to which the Commonwealth was a party, before the first transition time, that provide for financial assistance, for solar energy projects, from the Low Emissions Technology Demonstration Fund; and
 - (c) any other agreements to which the Commonwealth was a party, before the first transition time, that provide for financial assistance for solar energy projects known as ACRE solar projects; and
 - (d) any other agreements to which the Commonwealth was a party, before the first transition time, that are specified by the Minister under subitem (2).
- (2) The Minister may, by legislative instrument:
- (a) specify programs or initiatives for the purpose of subparagraph (1)(a)(vii); or
 - (b) specify agreements for the purpose of paragraph (1)(d).

3 Assets and liabilities under transferred Commonwealth funding agreements: transfer to ARENA

- (1) At the first transition time, the assets and liabilities of the Commonwealth, under the transferred Commonwealth funding agreements, cease to be assets and liabilities of the Commonwealth and become assets and liabilities of ARENA, without any conveyance, transfer or assignment. ARENA becomes the successor in law in relation to those assets and liabilities.

Note: For other provisions about the transferred Commonwealth funding agreements, see Division 1 of Part 4.

- (2) To avoid doubt, ARENA's money may be applied in discharging liabilities to which subitem (1) applies.

4 ARENA's functions include administering transferred Commonwealth funding agreements

From the first transition time, ARENA's functions under the ARENA Act are taken to include administering the transferred Commonwealth funding agreements.

5 Dealing with undecided applications

- (1) This item applies if:
- (a) an application was made before the first transition time for financial assistance under or from a program or initiative referred to in paragraph 2(1)(a); and
 - (b) by the first transition time, the application has not either:
 - (i) resulted in a transferred Commonwealth funding agreement being entered into; or
 - (ii) been refused.
- (2) After the first transition time:
- (a) the Commonwealth is not required to take any action in relation to the application; and
 - (b) ARENA may, but is not required to, treat the application as if it were an application for financial assistance under the ARENA Act.

6 MOU with Geoscience Australia

Application

- (1) This item applies to the Memorandum of Understanding (the *MOU*) for the Provision of Spatial Information for Solar Resource Mapping
-

Schedule 2 Transitional provisions

Part 2 Transfer of assets and liabilities

Relating to High Solar Prospectivity Regions and Expansion of the Solar Observation Network, entered into on 18 November 2010 between:

- (a) the Commonwealth of Australia as represented by the Department of Resources, Energy and Tourism; and
- (b) the Commonwealth of Australia as represented by Geoscience Australia.

Effect of MOU

- (2) Subject to this item, the MOU:
 - (a) is taken to be a transferred Commonwealth funding agreement; and
 - (b) has effect, after the first transition time, as if it were a contract, for the provision of financial assistance in accordance with the terms of the MOU, entered into between:
 - (i) ARENA, as the provider of the assistance; and
 - (ii) the Commonwealth, as represented by Geoscience Australia, as the receiver of the assistance.

Provisions of this Schedule that don't apply to the transferred MOU

- (3) The following provisions of this Schedule do not apply in relation to the MOU as it has effect because of subitem (2) (the **transferred MOU**):
 - (a) item 3;
 - (b) the provisions of Division 1 of Part 4.

Application of ARENA's money

- (4) To avoid doubt, ARENA's money may be applied in discharging liabilities under the transferred MOU.

References in transferred MOU

- (5) References in the transferred MOU to the Department of Resources, Energy and Tourism (or RET) have effect as if they were references to ARENA.

Transfer of custody of records or documents

- (6) Any of the following that are in the custody of the Commonwealth (otherwise than as represented by Geoscience Australia) are, after the first transition time, to be transferred into the custody of ARENA:
- (a) the MOU;
 - (b) documents or records relating to the administration of the MOU.
- (7) Section 20 of the *Commonwealth Authorities and Companies Act 1997* applies in relation to accounting records transferred to ARENA under subitem (6) as if the records were records of ARENA.

Power to modify MOU

- (8) At any time before 1 August 2012, the Minister may, for the purpose of ensuring the effective operation of the transferred MOU as a contract between ARENA and the Commonwealth, determine that the transferred MOU has effect subject to specified modifications. A determination must be in writing and has effect in accordance with its terms.
- (9) A determination under subitem (8) is not a legislative instrument.

Parties may vary or terminate transferred MOU

- (10) This item does not, by implication, prevent ARENA and the Commonwealth from varying the transferred MOU (including as modified under subitem (8)) or terminating it.

Division 2—Transfer from ASI Limited to ARENA and the Commonwealth

7 The transferred ASI Limited funding agreements

The *transferred ASI Limited funding agreements* are any agreements to which ASI Limited was a party, before the second transition time, that provide for financial assistance under a program or initiative administered by ASI Limited.

8 Assets and liabilities under transferred ASI Limited funding agreements: transfer to ARENA

- (1) At the second transition time, the assets and liabilities of ASI Limited, under the transferred ASI Limited funding agreements, cease to be assets and liabilities of ASI Limited and become assets and liabilities of ARENA, without any conveyance, transfer or assignment. ARENA becomes the successor in law in relation to those assets and liabilities.

Note: For other provisions about the transferred ASI Limited funding agreements, see Division 2 of Part 4.

- (2) To avoid doubt, ARENA's money may be applied in discharging liabilities to which subitem (1) applies.

9 ARENA's functions include administering transferred ASI Limited funding agreements

From the second transition time, ARENA's functions under the ARENA Act are taken to include administering the transferred ASI Limited funding agreements.

10 Other ASI Limited assets and liabilities: transfer to Commonwealth

At the second transition time, the assets and liabilities of ASI Limited, other than those to which subitem 8(1) applies, cease to be assets and liabilities of ASI Limited and become assets and liabilities of the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to those assets and liabilities.

11 Dealing with undecided applications

- (1) This item applies if:
- (a) an application was made before the second transition time for financial assistance under or from a program or initiative referred to in item 7; and
 - (b) by the second transition time, the application has not either:
 - (i) resulted in a transferred ASI Limited funding agreement being entered into; or
 - (ii) been refused.
- (2) After the second transition time:
- (a) neither ASI Limited nor the Commonwealth is required to take any action in relation to the application; and

- (b) ARENA may, but is not required to, treat the application as if it were an application for financial assistance under the ARENA Act.

Division 3—General provisions

12 Certificates relating to vesting of land

- (1) This item applies if:
 - (a) any land vests in the Commonwealth under this Part; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Part.
- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A certificate made under subitem (1) is not a legislative instrument.

13 Certificates for vesting of assets other than land

- (1) This item applies if:
 - (a) an asset other than land vests in the Commonwealth or ARENA under this Part; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth or ARENA under this Part.
- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and

(b) make such entries in the register in relation to assets of that kind as are necessary, having regard to the effect of this Part.

(3) A certificate made under subitem (1) is not a legislative instrument.

14 Exemption from stamp duty and other State or Territory taxes

(1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.

(2) An *exempt matter* is:

- (a) the vesting of an asset or liability under this Part; or
- (b) the operation of this Schedule (including regulations made for the purpose of this Schedule) in any other respect.

(3) The Minister may certify in writing:

- (a) that a specified matter is an exempt matter; or
- (b) that a specified thing was connected with a specified exempt matter.

(4) A certificate made under subitem (3) is not a legislative instrument.

15 Certificates taken to be authentic

A document that appears to be a certificate made or issued under item 12, 13 or 14:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

Part 3—Office holders and staff

Division 1—ACRE Board

16 No transfer of appointment of ACRE Board members

Nothing in this Schedule produces the result that the appointment of a member of the ACRE Board has effect as if it were an appointment of the person in relation to ARENA.

Division 2—Office holders and staff of ASI Limited

17 Termination of officer holders of ASI Limited

- (1) Before the second transition time, the Minister may, in writing:
 - (a) terminate the appointment of any director of ASI Limited;
and
 - (b) terminate any agreement or other instrument relating to that appointment; and
 - (c) make provision in relation to a termination under paragraph (a) or (b).
- (2) An instrument made under subitem (1) has effect accordingly, and takes effect immediately before the second transition time.
- (3) An instrument made under subitem (1) is not a legislative instrument.

18 No transfer of appointment, engagement or employment of ASI Limited office holders or staff

- (1) Nothing in this Schedule produces the result that the appointment, engagement or employment of an ASI Limited officer has effect as if it were an appointment, engagement or employment of the person in relation to ARENA or the Commonwealth.

Note: Determinations under section 72 of the *Public Service Act 1999* may provide for employees of ASI Limited to become engaged as APS employees in a specified Agency.

- (2) The following are *ASI Limited officers*:
 - (a) directors of ASI Limited;
 - (b) employees of ASI Limited.

- (3) To avoid doubt, if a person ceases to be an employee of ASI Limited (and becomes an APS employee) because of a determination under section 72 of the *Public Service Act 1999*, the person is not entitled to receive any payment or other benefit merely because he or she ceased to be an employee of ASI Limited.

19 Accrued entitlements etc. of ASI Limited employees who become APS employees

Persons to whom this item applies

- (1) This item applies to a person if:
- (a) immediately before the second transition time, the person was an employee of ASI Limited; and
 - (b) because of a determination under section 72 of the *Public Service Act 1999*, the person becomes an APS employee at the second transition time.

Preservation of accrued entitlements

- (2) The person is taken to have accrued an entitlement to benefits, in connection with becoming an APS employee, that is equivalent to the entitlement that the person had as an employee of ASI Limited immediately before the second transition time.

Continuity of service

- (3) The service of the person as an APS employee is taken, for all purposes, to be continuous with his or her service as an employee of ASI Limited.

Long service leave

- (4) For the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976*, the person's service before the second transition time as an employee of ASI Limited is to be treated, at and after that time, as if it had been service by the person as an APS employee.

Maternity leave

- (5) For the purposes of the *Maternity Leave (Commonwealth Employees) Act 1973*, the person's service before the second transition time as an employee of ASI Limited is to be treated, at and after that time, as if it had been service by the person as an APS employee.

Part 4—Instruments, legal proceedings and records

Division 1—The Commonwealth and the ACRE Board

20 References in instruments to the Commonwealth or the ACRE Board

- (1) This item applies to an instrument that:
 - (a) is in force immediately before the first transition time; and
 - (b) contains a reference to the Commonwealth or the ACRE Board.
- (2) If the instrument:
 - (a) is a transferred Commonwealth funding agreement; or
 - (b) otherwise relates to an asset or liability that, as a result of the operation of item 3, becomes an asset or liability of ARENA;then the reference to the Commonwealth or the ACRE Board has effect, at and after the first transition time, as if it were a reference to ARENA.
- (3) If the instrument contains a reference to the ACRE Board and subitem (2) does not apply, then the reference to the ACRE Board has effect, at and after the first transition time, as if it were a reference to the Commonwealth.
- (4) This item does not, by implication, prevent the instrument from being varied or terminated after the first transition time.

21 Legal proceedings of the Commonwealth or the ACRE Board

- (1) This item applies to any proceedings:
 - (a) that were pending in any court or tribunal immediately before the first transition time; and
 - (b) to which the Commonwealth or the ACRE Board was a party.
- (2) If the proceedings relate to:
 - (a) a transferred Commonwealth funding agreement; or

Schedule 2 Transitional provisions

Part 4 Instruments, legal proceedings and records

- (b) an asset or liability that, as a result of the operation of item 3, becomes an asset or liability of ARENA;

then ARENA is, at and after the first transition time, taken to be substituted for the Commonwealth or the ACRE Board as a party to the proceedings.

- (3) If the ACRE Board is a party to the proceedings and subitem (2) does not apply, then the Commonwealth is, at and after the first transition time, taken to be substituted for the ACRE Board as a party to the proceedings.

22 Transfer of custody of records or documents of the Commonwealth or the ACRE Board

- (1) This item applies to a record or document that, immediately before the first transition time, was in the custody of the Commonwealth or the ACRE Board.
- (2) If the record or document:
- (a) is a transferred Commonwealth funding agreement; or
 - (b) otherwise relates to an asset or liability that, as a result of the operation of item 3, becomes an asset or liability of ARENA;
- then, after the first transition time, the record or document is to be transferred into the custody of ARENA.
- (3) If the record or document was in the custody of the ACRE Board and subitem (2) does not apply, then, after the first transition time, the record or document is to be transferred into the custody of the Commonwealth.
- (4) Section 20 of the *Commonwealth Authorities and Companies Act 1997* applies in relation to accounting records transferred to ARENA under this item as if the records were records of ARENA.

Division 2—ASI Limited

23 References in instruments to ASI Limited

- (1) This item applies to an instrument that:
- (a) is in force immediately before the second transition time; and
 - (b) contains a reference to ASI Limited.
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- (2) If the instrument:
 - (a) is a transferred ASI Limited funding agreement; or
 - (b) otherwise relates to an asset or liability that, as a result of the operation of item 8, becomes an asset or liability of ARENA;then the reference to ASI Limited has effect, at and after the second transition time, as if it were a reference to ARENA.
- (3) If subitem (2) does not apply to the instrument, then the reference to ASI Limited has effect, at and after the second transition time, as if it were a reference to the Commonwealth.
- (4) This item does not, by implication, prevent the instrument from being varied or terminated after the second transition time.

24 Legal proceedings of ASI Limited

- (1) This item applies to any proceedings:
 - (a) that were pending in any court or tribunal immediately before the second transition time; and
 - (b) to which ASI Limited was a party.
- (2) If the proceedings relate to:
 - (a) a transferred ASI Limited funding agreement; or
 - (b) an asset or liability that, as a result of the operation of item 8, becomes an asset or liability of ARENA;then ARENA is, at and after the second transition time, taken to be substituted for ASI Limited as a party to the proceedings.
- (3) If subitem (2) does not apply to the proceedings, then the Commonwealth is, at and after the second transition time, taken to be substituted for ASI Limited as a party to the proceedings.

25 Transfer of custody of records or documents of ASI Limited

- (1) This item applies to a record or document that, immediately before the second transition time, was in the custody of ASI Limited.
- (2) If the record or document:
 - (a) is a transferred ASI Limited funding agreement; or
 - (b) otherwise relates to an asset or liability that, as a result of the operation of item 8, becomes an asset of ARENA;

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Part 4 Instruments, legal proceedings and records

then, after the second transition time, the record or document is to be transferred into the custody of ARENA.

- (3) If subitem (2) does not apply to the record or document, then, after the second transition time, the record or document is to be transferred into the custody of the Commonwealth.
- (4) Section 20 of the *Commonwealth Authorities and Companies Act 1997* applies in relation to accounting records transferred to ARENA under this item as if the records were records of ARENA.

Part 5—Annual reports, returns etc.

26 Final annual report on ACRE Board

- (1) As soon as practicable after the first transition time, the ARENA Board must prepare, and give to the Minister, a report on the operations of the ACRE Board during the financial year that ended on 30 June 2012.
- (2) The report must include details of any written directions given to the ACRE Board by the Minister under subsection 6(1) of the ACRE Act during the year.
- (3) The report is taken to be a periodic report for the purpose of section 34C of the *Acts Interpretation Act 1901*.
- (4) The Secretary must provide reasonable assistance to the ARENA Board for the purpose of preparing the report. This may, for example, include allowing the ARENA Board appropriate access to records, documents or information relating to the activities of the ACRE Board.

27 Reports, returns etc. of ASI Limited

- (1) This item applies to a report, return or other document if, at a time (the *relevant time*) that is immediately before the second transition time, or that is, or is after, the second transition time:
 - (a) ASI Limited is required, by or under a law of the Commonwealth, to prepare or lodge the report, return or document; or
 - (b) any of the following persons is required, by or under a law of the Commonwealth, to prepare or lodge the report, return or document in relation to ASI Limited:
 - (i) a director or former director of ASI Limited;
 - (ii) any other officer or member of the staff, or former officer or member of the staff, of ASI Limited.
- (2) The ARENA Board, is instead required, at the relevant time, to prepare or lodge the report, return or document.
- (3) The Secretary must provide reasonable assistance to the ARENA Board for the purpose of preparing the report, return or document. This may, for example, include allowing the ARENA Board appropriate access to

records, documents or information relating to the activities of ASI Limited.

28 ARENA's annual report to include particulars of assistance provided under transferred funding agreements

In addition to the particulars required by section 70 of the ARENA Act, an annual report referred to in that section must also include, for each person to whom financial assistance has been provided under a transferred Commonwealth funding agreement, or a transferred ASI Limited funding agreement, during the financial year covered by the report:

- (a) the name of the person; and
- (b) the nature and amount of the financial assistance provided; and
- (c) the renewable energy technology or technologies to which the assistance relates (if the assistance relates to one or more particular renewable energy technologies).

Part 6—Appointment of first CEO of ARENA

29 Appointment of first CEO of ARENA

- (1) This item applies if, before the first transition time:
 - (a) the Minister appoints persons to be members of the ARENA Board pursuant to section 4 of the *Acts Interpretation Act 1901*; and
 - (b) a majority of the following persons make a recommendation to the Minister that a particular person (the ***recommended candidate***) be appointed as the Chief Executive Officer of ARENA:
 - (i) the persons appointed as mentioned in paragraph (a);
 - (ii) the Secretary.
- (2) The Minister may, before the first transition time, appoint the recommended candidate as the Chief Executive Officer of ARENA, as if:
 - (a) section 52 of the ARENA Act had commenced; and
 - (b) the recommendation were a recommendation by the ARENA Board.
- (3) The Minister may also, before the first transition time, make a determination of terms and conditions in relation to the appointment as if section 60 of the ARENA Act had commenced.
- (4) The appointment, and any such determination of terms and conditions, take effect at the first transition time.

Part 7—Other transitional matters

30 Director's obligations—ASI Limited's books

Subsection 601AD(5) of the *Corporations Act 2001* has effect in relation to ASI Limited's books (within the meaning of that Act), after the second transition time, as if the reference in that subsection to the directors of the company immediately before deregistration were:

- (a) a reference to ARENA, to the extent that the books are records or documents that are transferred into ARENA's custody under item 25; and
- (b) a reference to the Commonwealth, to the extent that the books are records or documents that are transferred into the Commonwealth's custody under that item.

31 Compensation for acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

32 Delegation by Minister

- (1) Subject to subitem (2), the Minister may, in writing, delegate all or any of his or her powers and functions under this Schedule to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
-

- (2) The Minister cannot delegate his or her powers and functions under any of the following provisions of this Schedule:
 - (a) subitem 1(2);
 - (b) subitem 2(2);
 - (c) subitem 17(1);
 - (d) subitems 29(2) and (3).
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

33 Delegation by ARENA and ARENA Board

- (1) Any functions or powers that ARENA has because of this Schedule may be delegated, or subdelegated, under the ARENA Act as if they were powers or functions of ARENA under that Act.
- (2) Any functions or powers that the ARENA Board has because of this Schedule may be delegated, or subdelegated, under the ARENA Act as if they were powers or functions of the ARENA Board under that Act.

34 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) The regulations may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act or the *Australian Renewable Energy Agency Act 2011*.
- (3) The regulations may provide that provisions of this Schedule are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.
- (4) Subitems (2) and (3) do not limit subitem (1).

*[Minister's second reading speech made in—
House of Representatives on 12 October 2011
Senate on 2 November 2011]*

(215/11)

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