

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for the Environment and Energy

*Australian Renewable Energy Agency Act 2011*

*Australian Renewable Energy Agency (General Funding Strategy) Determination  
2017*

Section 19 of the *Australian Renewable Energy Agency Act 2011* (the “Act”) provides that the Board of the Australian Renewable Energy Agency (“ARENA”) must, for each financial year, develop a General Funding Strategy (“GFS”) to govern the provision of financial assistance by ARENA under the Act. A GFS must relate to the financial year for which the strategy is developed and the next two financial years, and must state ARENA’s principal objectives and priorities for the provision of financial assistance during this time period. Each GFS must be developed during the financial year previous to that in which it commences.

Section 20 provides that, as soon as practicable after developing a GFS for a financial year, the Board must present a copy to the Minister for approval. Following this, the GFS becomes a non-disallowable legislative instrument made on the date of Ministerial approval.

The *Australian Renewable Energy Agency (General Funding Strategy) Determination 2017* (the “Determination”) enacts ARENA’s GFS for the 2017/18 – 2019/20 financial years as a legislative instrument, as per the above.

ARENA consulted widely while preparing the GFS for the 2017/18 – 2019/20 financial years. Consultation centred primarily on ARENA’s new investment priorities. The consultation process included a range of interviews and a series of workshops with industry and researchers in 2016. In addition, an embargoed version of the draft 2017 ARENA Investment Plan (a document closely related to the GFS, as outlined below) was distributed for input in March 2017. This consultation included a roundtable and written input from multiple Australian Government departments and agencies as well as energy industry leaders and broader industry groups and organisations.

Details of the Determination are outlined in Attachment A.

A statement of the Determination’s compatibility with human rights is set out in Attachment B.

There are no statutory pre-conditions that need to be satisfied before the power to make the Determination may be exercised.

## **ATTACHMENT A**

### **Details of the *Australian Renewable Energy Agency (General Funding Strategy) Determination 2017***

#### **Section 1 – Name of Determination**

Section 1 provides that the title of the Determination is the *Australian Renewable Energy Agency (General Funding Strategy) Determination 2017*.

#### **Section 2 – Commencement**

Section 2 provides that the Determination commences the day after it is registered on the Federal Register of Legislation. It should be noted, however, that under sub-section 21(1) of the Act the provisions of the Determination do not actually come into force until 1 July 2017.

#### **Section 3 – Authority**

Section 3 provides that the Determination is made under the *Australian Renewable Energy Agency Act 2011*.

#### **Section 4 – Definitions**

Section 4 provides that the term “Act” in the instrument refers to the *Australian Renewable Energy Agency Act 2011*.

#### **Section 5 – Repeals**

Section 5 provides that the Determination, on the day that it comes into force, repeals the previous GFS (the *Australian Renewable Energy Agency Determination No. 1 of 2015* (the “2015 Determination”)). The power to do this derives from sub-section 33(3) of the *Acts Interpretation Act 1901*.<sup>1</sup>

It should be noted that, owing to a then-prevailing Government policy to remove future funding for ARENA, the GFS developed by the Board for the 2016/17 – 2018/19 financial years was not approved or enacted by the Minister. This necessitated the inclusion of section 5 of the Determination.<sup>2</sup>

#### **Section 6 – Approval of General Funding Strategy**

Section 6 provides that, by signing the Determination, the Minister thereby approves and makes the GFS for the 2017/18 – 2019/20 financial years (at Schedule 1 of the Determination) as a non-disallowable legislative instrument as at the date of signature. The power to do this derives from sub-section 20(2) of the Act.

---

<sup>1</sup> Under sub-section 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

<sup>2</sup> That is, as sub-section 21(2) of the Act no longer applied.

It should be noted that sub-section 19(2) of the Act requires a GFS to be developed during the financial year previous to that in which it commences. As noted above, a GFS for the 2016/17 – 2018/19 financial years was developed by the Board but was not approved or enacted by the Minister. The GFS for the 2017/18 – 2019/20 financial years (at Schedule 1 of the Determination) was developed by the Board in the 2016/17 financial year, as required by sub-section 19(2) of the Act.

The GFS for the 2017/18 – 2019/20 financial years should be read in conjunction with the 2017 ARENA Investment Plan. While the Investment Plan does not form part of the Determination (and is therefore not formally part of the 2017/18 – 2019/20 GFS), it does outline non-binding principles the Board will consider when assessing funding applications.

## **ATTACHMENT B**

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### ***Australian Renewable Energy Agency (General Funding Strategy) Determination 2017***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The *Australian Renewable Energy Agency (General Funding Strategy) Determination 2017* enacts the Australian Renewable Energy Agency's General Funding Strategy for the 2017/18 – 2019/20 financial years as a legislative instrument.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable human rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Josh Frydenberg MP**  
**Minister for the Environment and Energy**