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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN RENEWABLE ENERGY AGENCY (CONSEQUENTIAL
AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM, MP)

AUSTRALIAN RENEWABLE ENERGY AGENCY (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2011

GENERAL OUTLINE

The purpose of this Bill is to deal with the transitional and consequential matters required for the Australian Renewable Energy Agency (ARENA) to take over responsibility for funding and administration of existing renewable energy and related technology innovation projects that are administered by the Department of Resources, Energy and Tourism (RET) and the Australian Solar Institute Limited (ASI Limited).

The Bill determines the arrangements and timings for:

- the transfer of responsibility for existing renewable energy technology projects from RET (which includes those projects under the oversight of the Australian Centre for Renewable Energy Board (ACRE Board)) to ARENA; and
- the transfer of projects, assets, liabilities and staff from the ASI Limited to either ARENA or the Commonwealth.

This Bill provides for steps preparatory to the deregistration of ASI Limited and incorporation of its activities into ARENA functions, and for the abolition of the ACRE Board.

The Bill also provides a mechanism for the appointment of ARENA's Chief Executive Officer (CEO) before the commencement of the Australian Renewable Energy Agency Bill 2011 (ARENA Bill), to facilitate timely establishment of the ARENA CEO.

The Bill sets out consequential amendments arising from the establishment of ARENA including:

- the repeal of the *Australian Centre for Renewable Energy Act 2010*; and
- amendment of the *Clean Energy Regulator Act 2011* (once enacted) to allow the Clean Energy Regulator to disclose protected information to ARENA under conditions determined by the Clean Energy Regulator, where this information will be of assistance to ARENA in the exercise of its powers or the performance of its functions.

The Bill has been developed in conjunction with the ARENA Bill.

FINANCIAL IMPACT STATEMENT

Neutral impact on the Australian Government budget.

ABBREVIATIONS

ACRE Act	<i>Australian Centre for Renewable Energy Act 2010</i>
ACRE Board	Australian Centre for Renewable Energy Board, established by the ACRE Act
ARENA	Australian Renewable Energy Agency
ARENA Bill	Australian Renewable Energy Agency Bill 2011
ASI Limited	Australian Solar Institute Limited (ACN 138 300 688)
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
LI Act	<i>Legislative Instruments Act 2003</i>
RET	Department of Resources, Energy and Tourism

NOTES ON CLAUSES

Clause 1: Short title

Clause 1 would provide that the Bill, when enacted, may be cited as the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011*.

Clause 2: Commencement

Sub-clause 2(1) would provide that each provision of the Bill specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

Item 1 of the table would provide that clauses 1 to 3 of the Bill (which would provide for the short title and commencement of the provisions of the Bill, and outline the effect of the Schedules to the Bill), and anything in the Bill not covered elsewhere in the table, commence on the day the Bill receives the Royal Assent.

Item 2 of the table would provide that Part 1 of Schedule 1 to the Bill (which would repeal the ACRE Act) commences at the same time as the ARENA Bill. The ARENA Bill is expressed to commence on 1 July 2012.

Item 3 of the table would provide that Part 2 of Schedule 1 to the Bill commences on the later of the commencement of the Clean Energy Regulator Act 2011 and the commencement of the ARENA Bill.

Item 4 of the table would provide that Schedule 2 to the Bill commences on the later of the day on which the Bill receives the Royal Assent and the day on which the ARENA Bill receives the Royal Assent.

Sub-clause 2(2) would provide that, when enacted, any information in column 3 of the table does not form part of the Act. Information may be inserted in column 3, or information in that column may be edited, in any published version of the Act.

Clause 3: Schedule(s)

Clause 3 is intended to outline the effect of the Schedules to the Bill. Each Schedule would amend or repeal the Act(s) specified in that Schedule as provided by the items of the Schedule. Any other item in a Schedule has effect according to its terms.

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

Item 1: The whole of the Act

This item would repeal the ACRE Act, which would have the effect of abolishing the ACRE Board.

Part 2—Consequential amendments

Clean Energy Regulator Act 2011

Item 2: After paragraph 49(1)(u)

This item would add ARENA to the list of bodies with which the Clean Energy Regulator may share protected information, in accordance with Part 3 of the *Clean Energy Regulator Act 2011*.

Schedule 2—Transitional provisions

Part 1—Preliminary

Item 1: Definitions

This item defines key terms used in the Schedule 2 to the Bill. Some of the more significant definitions are discussed below.

The term ‘financial assistance’ is defined to mean grants or any other kind of financial assistance. This is broader than the definition of ‘financial assistance’ in the ARENA Bill, because Schedule 2 of the Australian Renewable Energy Agency (Consequential Amendments And Transitional Provisions) Bill 2011 would provide for ARENA to take over the administration of existing funding agreements of the Commonwealth and ASI Limited, which may provide for financial assistance other than grants.

The term ‘first transition time’ is defined to mean the commencement of the ARENA Bill. The ARENA Bill is expressed to commence on 1 July 2012, and this is the date when ARENA would be established.

The term ‘second transition time’ is defined to mean the start of 1 January 2013 or, if the Minister, by legislative instrument, determines an earlier day, the start of the earlier day. This is the time at which the assets and liabilities of ASI Limited would be transferred to the Commonwealth and ARENA (as relevant).

Part 2—Transfer of assets and liabilities

Division 1—Transfer from the Commonwealth to ARENA

Item 2: The *transferred Commonwealth funding agreements*

This item identifies existing agreements of the Commonwealth, the administration of which would be taken over by ARENA. The agreements in question provide for financial assistance, and are generally identified by reference to the Commonwealth program from which the relevant funding is drawn. There is also provision for the Minister, by legislative instrument, to specify additional programs in relation to which agreements would be transferred to ARENA, or additional agreements that would be

transferred to ARENA. This will enable agreements entered into between the time of introduction of the legislation and the first transition time to be transferred to ARENA. Such agreements may relate, for example, to the Australian Biofuels Research Institute initiative.

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

This item would provide that, at the first transition time, the assets and liabilities of the Commonwealth under the transferred Commonwealth funding agreements (that is, the agreements identified in item 2) cease to be assets and liabilities of the Commonwealth and become assets and liabilities of ARENA.

A key purpose of this provision is to transfer to ARENA the obligations of the Commonwealth to provide financial assistance under the agreements in question. Thus, from the first transition time, it would be ARENA that is responsible for providing the assistance, rather than the Commonwealth. The funding required to meet this responsibility would be provided to ARENA under Part 5 of the ARENA Bill.

Sub-item 3(2) would provide, for the avoidance of doubt, that ARENA's money can be used to provide the financial assistance under the transferred Commonwealth funding agreements.

It is possible that minor changes would need to be made to the transferred Commonwealth funding agreements, such as to update the parties' contact details. These changes would be made administratively after the first transition time.

Item 4: ARENA's functions include administering transferred Commonwealth funding agreements

This item would make clear that ARENA's functions under the ARENA Bill include administering the transferred Commonwealth funding agreements.

Item 5: Dealing with undecided applications

This item would provide that, from the first transition time, the Commonwealth is not required to take any further action in relation to any undecided applications for financial assistance under a Commonwealth program the funding for which is transferred to ARENA. The item would also make clear that ARENA may, but is not required to, treat such applications as if they had been made to ARENA.

Item 6: MOU with Geoscience Australia

This item would make special provision for an existing funding agreement between RET and Geoscience Australia. This agreement is in the form of a memorandum of understanding (MOU), which is not legally binding as it is made between different parts of the Commonwealth. The MOU relates to a project which is funded by RET and run by Geoscience Australia. The project involves the establishment of solar resource monitoring ground stations and the collation of solar mapping and site

selection data. Funding for the project is drawn from the Solar Flagships Program, which is one of the Commonwealth programs the funding for which would be transferred to ARENA.

The purpose of this item would be to convert the MOU into a legally binding agreement between ARENA and Geoscience Australia, thus making ARENA responsible for providing financial assistance for the project, in place of the Commonwealth.

Subitem (8) would give the Minister the power to modify the MOU, by determination in writing, at any time before 1 August 2012. This power has been included to ensure that it is possible to make amendments to the MOU to ensure that it operates effectively as a contract between ARENA and Geoscience Australia.

Sub-item (9) would make clear that a determination under sub-item (8) is not a legislative instrument. This provision is included to assist readers. Such a determination would not be a legislative instrument as it is not legislative in character and therefore not within the meaning of section 5 of the LI Act.

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

Item 7: *The transferred ASI Limited funding agreements*

This item identifies existing agreements of ASI Limited the administration of which would be taken over by ARENA. The agreements in question provide for financial assistance under a program or initiative administered by ASI Limited.

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

This item would provide that, at the second transition time, the assets and liabilities of ASI Limited under the transferred ASI Limited funding agreements (that is, the agreements identified in item 7) cease to be assets and liabilities of ASI Limited and become assets and liabilities of ARENA.

A key purpose of this provision is to transfer to ARENA the obligations of ASI Limited to provide financial assistance under the agreements in question. Thus, from the second transition time, it would be ARENA that is responsible for providing the assistance, rather than ASI Limited. The funding required to meet this responsibility would be provided to ARENA under Part 5 of the ARENA Bill.

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

This item would make clear that ARENA's functions include administering the transferred ASI Limited funding agreements.

Item 10: Other ASI Limited assets and liabilities: transfer to Commonwealth

This item would provide that, at the second transition time, assets and liabilities of ASI Limited, other than those under the transferred ASI Limited funding agreements, cease to be assets and liabilities of ASI Limited and become assets and liabilities of the Commonwealth.

The purpose of this provision is to deal with assets and liabilities of ASI Limited that are not transferred to ARENA by item 8 by transferring them to the Commonwealth. The transfer of all assets and liabilities away from ASI Limited under this item and item 8 would be one of the steps preparatory to deregistering the company in accordance with s 601AA of the *Corporations Act 2001*.

The Bill does not expressly terminate the head funding agreement between the Commonwealth and ASI Limited. The effect of this Bill is that any rights ASI Limited has under the agreement against the Commonwealth will be terminated.

Item 11: Dealing with undecided applications

This item would provide that, from the second transition time, ASI Limited is not required to take any further action in relation to any undecided applications for financial assistance. The item would also make clear that ARENA may, but is not required to, treat such applications as if they had been made to ARENA.

Division 3—General provisions

Item 12: Certificates relating to vesting of land

This item would provide a process for registration of the vesting of land, for use in the event that any land (including any interest in land) vests in the Commonwealth under Part 2 of Schedule 2 of the Bill.

Sub-item 12(3) would make clear that a certificate under sub-item 12(1) is not a legislative instrument. This provision is included to assist readers. Such a certificate would not be a legislative instrument as it is not legislative in character and therefore not within the meaning of section 5 of the LI Act.

Item 13: Certificates for vesting of assets other than land

This item would provide a process for registration of the vesting of an asset other than land, in the event that any such asset (the vesting of which is suitable for registration) vests in the Commonwealth under Part 2 of Schedule 2 to the Bill.

Sub-item 13(3) would make clear that a certificate under sub-item 13(1) is not a legislative instrument. This provision is included to assist readers. Such a certificate would not be a legislative instrument as it is not legislative in character and therefore not within the meaning of section 5 of the LI Act.

Item 14: Exemption from stamp duty and other State or Territory taxes

This item is needed to ensure that State and Territory taxes such as stamp duty do not apply to the transfers of assets and liabilities that Schedule 2 to the Bill would effect.

Sub-item 14(1) would provide that no stamp duty or other tax is payable under the law of a State or Territory in respect of an exempt matter or anything connected with an exempt matter. The term ‘exempt matter’ is defined in sub-item 14(2) to mean the vesting of an asset or liability under item 3, 8 or 10, or the operation of Schedule 2 (including regulations made for the purpose of the Schedule) in any other respect.

Under sub-item 14(3), the Minister would have the power to certify in writing that a specified matter is an exempt matter, or that a specified thing was connected with a specified exempt matter.

Sub-item 14(4) would make clear that a certificate under sub-item 14(3) is not a legislative instrument. This provision is included to assist readers. Such a certificate would not be a legislative instrument as it is not legislative in character and therefore not within the meaning of section 5 of the LI Act.

Item 15: Certificates taken to be authentic

This item would provide that a document that appears to be a certificate made under item 12, 13 or 14 is taken to be such a certificate and is taken to have been properly given, unless the contrary is established.

Part 3—Office holders and staff

Division 1—ACRE Board

Item 16: No transfer of appointment of ACRE Board members

This item would provide that nothing in Schedule 2 to the Bill will cause the appointment of a member of the ACRE Board to have effect as if it were an appointment of the person in relation to ARENA.

Board members of ARENA will be new appointments made in accordance with the ARENA Bill. This item would make clear, for example, that item 20 does not have the effect of requiring a reference in an instrument relating to the appointment of a member of the ACRE Board to be read as a reference that relates to ARENA.

Division 2—Office holders and staff of ASI Limited

Item 17: Termination of officer holders of ASI Limited

Sub-item 17(1) would allow the Minister, before the second transition time, to terminate the appointment of any director of ASI Limited and terminate any agreement or other instrument relating to that appointment. The Minister would also be able to make provision in relation to the termination of an appointment, or in relation to the termination of an agreement or other instrument relating to that appointment.

Sub-item 17(3) makes clear that an instrument made under sub-item 17(1) is not a legislative instrument. This provision is included to assist readers. An instrument of

termination of appointment made under this item would not be a legislative instrument as it is not legislative in character and therefore not within the meaning of s 5 of the LI Act.

Sub-item 17(2) provides that an instrument made under sub-item 17(1) takes effect immediately before the second transition time.

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

This item would provide that nothing in Schedule 2 to the Bill will cause the appointment, engagement or employment of an ASI Limited officer to have effect as if it were an appointment, engagement or employment of the person in relation to ARENA or the Commonwealth. ‘ASI Limited officer’ is defined in sub-item 18(2) to mean a director or employee of ASI Limited.

This item would make clear, for example, that item 23 does not have the effect of requiring a reference in an instrument relating to the appointment of a director of ASI Limited, or an instrument relating to the engagement or employment of an employee or ASI Limited, to be read as a reference that relates to ARENA.

The note to sub-item 18(1) would indicate that employees of ASI Limited may become engaged as Australian Public Service (APS) employees in RET by a determination of the Public Service Commissioner under section 72 of the *Public Service Act 1999*. Section 72 of the *Public Service Act 1999* provides for the Public Service Commissioner to, among other things, engage persons, including non-APS employees, as APS employees in a specified Agency. In this case, the specified Agency would be RET.

Item 62 of the ARENA Bill would provide for the Secretary of RET to make staff available to ARENA. It is intended that ASI Limited employees who are engaged in RET in these circumstances would be among the staff made available to ARENA under that item.

Sub-item 18(4) would provide that, to avoid doubt, if a person ceases to be an employee of ASI Limited and becomes an APS employee because of a determination by the Public Service Commissioner 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.

It is intended that the employment of these people would be continuous, regardless of the fact that they move from being an employee of ASI Limited to being an APS employee in RET. As the employees’ employment would be continuous, payments such as redundancy payments would not be appropriate. The continuity of the employees’ employment would be achieved by sub-item 19(3).

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

This item would apply to people employed by ASI Limited immediately before the second transition time who become APS employees in RET by virtue of a determination made by the Public Service Commissioner under section 72 of the *Public Service Act 1999*.

Sub-item 19(2) would provide for an ASI employee to carry over an entitlement to benefits that the employee accrued while employed by ASI Limited. For example, rather than having accrued annual leave paid out under s 90(2) of the *Fair Work Act 2009* when their employment with ASI Limited ends, this sub-item would mean that staff could retain those entitlements when they move to the APS and use them when required.

While this sub-item would operate to carry an ASI employee's accrued entitlements over to their APS employment, the employee's terms and conditions of employment with ASI Limited would not, by virtue of this sub-item, carry over to their APS employment. When ASI Limited staff become APS employees they will, for example, be covered by any applicable industrial instrument providing terms and conditions for employees in their classification in RET.

Sub-item 19(3) would have the effect that an employee's service as an APS employee should be considered continuous with the service the employee accrued with ASI Limited. An employee's period of 'service' will be relevant to, for example, their eligibility for entitlements under the *Fair Work Act 2009* or under an enterprise agreement made under that Act.

Where a determination was made by the Public Service Commissioner under section 72 of the *Public Service Act 1999*, ASI Limited staff would become APS employees in RET, and would be covered by the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act). Sub-item 19(4) would provide that each employee's period of service with ASI Limited is to be considered service as an APS employee. The effect of this would be that the employee's service with ASI Limited would be taken to be 'Government Service' for the purposes of eligibility for long service leave entitlements under the LSL Act.

When ASI Limited staff become APS employees they will also become covered by the *Maternity Leave (Commonwealth Employees) Act 1973* (ML Act). Sub-item 19(5) would provide that each employee's period of service with ASI Limited is to be considered service as an APS employee. The effect of this would be that the employee would be taken to have been a person to and in relation to whom the ML Act applies while they were an employee of ASI Limited. This is relevant for the purposes of eligibility for paid maternity leave under the ML Act.

Part 4—Instruments, legal proceedings and records

Division 1—The Commonwealth and the ACRE Board

Item 20: References in instruments to the Commonwealth or the ACRE Board

This item would provide that, after the first transition time, references in certain instruments to the Commonwealth or the ACRE Board have effect as if they were references to ARENA, and references to the ACRE Board in certain other instruments have effect as if they were references to the Commonwealth.

This item complements the repeal of the ACRE Act by item 1 of Schedule 1 to the Bill, and the transfer to ARENA of assets and liabilities under the transferred Commonwealth funding agreements, by item 3 of Schedule 2 to the Bill.

Among other things, this item would ensure that, after the first transition time, references to the Commonwealth in the transferred Commonwealth funding agreements have effect as if they were references to ARENA.

Item 21: Legal proceedings of the Commonwealth or the ACRE Board

This item would provide that, after the first transition time, ARENA or the Commonwealth is taken to be substituted as a party to any pending legal proceedings to which the Commonwealth or the ACRE Board was a party.

Like item 20, this item complements the repeal of the ACRE Act by item 1 of Schedule 1 to the Bill, and the transfer to ARENA of assets and liabilities under the transferred Commonwealth funding agreements, by item 3 of Schedule 2 to the Bill.

The legal proceedings to which ARENA would be taken to be substituted as a party include any proceedings to which the Commonwealth was a party immediately before the first transition time, which relate to the transferred Commonwealth funding agreements.

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

This item deals with the transfer of certain records or documents into the custody of ARENA or the Commonwealth, after the first transition time.

Among other things, this item would provide for the transfer of custody of the transferred Commonwealth funding agreements to ARENA, along with any other records or documents that relate to assets or liabilities that become assets or liabilities of ARENA as a result of the operation of item 3.

Sub-item (4) deals with the application of s 20 of the CAC Act to accounting records which are transferred into the custody of ARENA under this item. Section 20 of the CAC Act imposes certain record-keeping requirements on Commonwealth authorities generally, including a requirement to retain their accounting records for at least 7 years.

Division 2—ASI Limited

Item 23: References in instruments to ASI Limited

This item would provide that, after the second transition time, references in certain instruments to ASI Limited have effect as if they were references to ARENA or the Commonwealth.

This item complements the transfer to ARENA and the Commonwealth (as relevant) of the assets and liabilities of ASI Limited, by items 8 and 10.

Among other things, this item would ensure that, after the second transition time, references to ASI Limited in the transferred ASI Limited funding agreements have effect as if they were references to ARENA.

Item 24: Legal proceedings of ASI Limited

This item would provide that, after the second transition time, ARENA or the Commonwealth is taken to be substituted as a party to any pending legal proceedings to which ASI Limited was a party.

Like item 23, this item complements the transfer to ARENA and the Commonwealth (as relevant) of the assets and liabilities of ASI Limited, by items 8 and 10.

The legal proceedings to which ARENA would be taken to be substituted as a party include any proceedings to which ASI Limited was a party immediately before the second transition time, which relate to the transferred ASI Limited funding agreements.

Item 25: Transfer of custody of records or documents of ASI Limited

This item deals with the transfer of certain records or documents into the custody of ARENA or the Commonwealth, after the second transition time.

Among other things, this item would provide for the transfer of custody of the transferred ASI Limited funding agreements to ARENA, along with any other records or documents that relate to assets or liabilities that become assets or liabilities of ARENA as a result of the operation of item 8.

Sub-item (4) deals with the application of s 20 of the CAC Act to accounting records which are transferred into the custody of ARENA under this item. Section 20 of the CAC Act imposes certain record-keeping requirements on Commonwealth authorities generally, including a requirement to retain their accounting records for at least 7 years.

Part 5—Annual reports, returns etc.

Item 26: Final annual report on ACRE Board

This item would require the ARENA Board to prepare and give to the Minister the final annual report of the ACRE Board, following the abolition of the ACRE Board on 1 July 2012. The Secretary of RET would be required to provide reasonable assistance to the ARENA Board for this purpose.

Item 27: Reports, returns etc. of ASI Limited

This item would require the ARENA Board to prepare and lodge any report, return or other document that is required to be prepared and lodged immediately before the second transition time, or after the second transition time, by ASI Limited or by a director, officer or staff member or former director, officer or staff member of ASI Limited. The Secretary of RET would be required to provide reasonable assistance to the ARENA Board for this purpose.

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

This item relates to the content of ARENA's annual reports. In addition to the matters set out in clause 70 of the ARENA Bill and in Schedule 1 to the CAC Act, each annual report would have to include details about the financial assistance provided by ARENA under the transferred Commonwealth funding agreements and the transferred ASI Limited funding agreements.

Part 6—Appointment of first CEO of ARENA

Item 29: Appointment of first CEO of ARENA

Clause 52 of the ARENA Bill would provide that the CEO of ARENA is to be appointed by the Minister on the recommendation of the ARENA Board. However, the ARENA Board would not be capable of making such a recommendation until their appointments take effect on commencement of the ARENA Bill (1 July 2012). ARENA would be established on the same day.

This would mean that there is a gap between the establishment of ARENA and the appointment of its CEO. Item 29 is intended to close this gap by enabling the Minister to appoint the first CEO of ARENA early, so that the appointment can take effect on the day when ARENA is established.

Sub-item 29(1) would provide that this item applies if the Minister appoints persons to be members of the ARENA Board pursuant to section 4 of the *Acts Interpretation Act 1901* and a majority of those persons and the Secretary make a recommendation to the Minister that a particular person (the recommended candidate) be appointed as the CEO of ARENA.

Section 4 of the *Acts Interpretation Act 1901* provides for appointments or instruments under an Act to be made in advance of the Act coming into force so that they can take effect as soon as the Act comes into force. Therefore, the Minister would be able to appoint persons as members of the ARENA Board before the ARENA Bill comes into force. It will be these appointees who will make a recommendation to the Minister about the appointment of the CEO.

Sub-item 29(2) would provide for the Minister to appoint the recommended candidate as the CEO of ARENA before the ARENA Bill commences. This appointment could

be made as if the recommendation had been made by the ARENA Board, even though the appointments to the Board would not yet have taken effect.

Sub-item 29(3) would permit the Minister to make a determination of the terms and conditions in relation to the appointment of the CEO as if clause 60 of the ARENA Bill had commenced. That clause would provide for the Minister to determine the terms and conditions on which CEO is to hold office, where they are not otherwise covered by the ARENA Bill.

Sub-item 29(4) would provide for the first CEO's appointment to take effect at the time the ARENA Bill commences.

Part 7—Other transitional matters

Item 30: Director's obligations—ASI Limited's books

This item deals with the application of s 601AD(5) of the *Corporations Act 2001* in relation to ASI Limited's books (within the meaning that Act), after the second transition time. Section 601AD(5) provides that the directors of a company immediately before its deregistration must keep the company's books for 3 years after the deregistration.

This item would relieve ASI Limited's directors of the obligation imposed by s 601AD(5), and instead impose the obligation on ARENA, to the extent that ASI Limited's books are transferred into ARENA's custody under item 25, and on the Commonwealth, to the extent that ASI Limited's books are transferred into the Commonwealth's custody under item 25.

Item 31: Compensation for acquisition of property

This item is intended to ensure that any acquisition of property that may result from the operation of Schedule 2 to the Bill would be in accordance with s 51(xxxi) of the Constitution, which requires that the acquisition of property under a law of the Commonwealth be on just terms.

It is considered that the operation of other provisions in Schedule 2 to the Bill is most unlikely to result in the acquisition of property otherwise than on just terms. This item has been included as a precautionary measure only, to deal with the unlikely possibility that it may do so, and thereby ensure the validity of the provisions concerned. If the operation of other provisions in Schedule 2 would result in an acquisition of property otherwise than on just terms, this item would require the Commonwealth to pay a reasonable amount of compensation to the person whose property was acquired.

Item 32: Delegation by Minister

This item would provide for the Minister to delegate in writing his or her functions or powers under Schedule 2 to the Secretary of RET, or a Senior Executive Service employee or acting Senior Executive Service employee in RET.

However, the Minister will not be able to delegate his or her functions or powers under:

- sub-item 1(2) (the power to determine a day as the ‘second transition time’);
- sub-item 2(2) (powers to specify additional programs in relation to which agreements would be transferred to ARENA, and to specify additional agreements that would be transferred to ARENA);
- sub-item 17(1) (powers relating to terminating the appointment of, or any agreement or other instrument relating to the appointment of, any director of ASI Limited); and
- sub-items 29(2) and (3) (powers relating to the appointment of the first CEO of ARENA).

Sub-item 32(3) would provide that a delegate under this item must, in exercising the delegated powers or functions, comply with any directions of the Minister.

Item 33: Delegation by ARENA and ARENA Board

This item would have the effect that any function or power of ARENA or the Board under Schedule 2 may be delegated to a member of the Board or the CEO in the same way as ARENA or the Board may delegate powers or functions to those persons under the ARENA Bill (see clauses 71 and 72 of the ARENA Bill).

For example, the delegate must comply with any directions of ARENA or the Board (as applicable) when exercising any power or performing any function under a delegation (see sub-clauses 71(2) and 72(2)).

This item would also have the effect that any function or power that is delegated by ARENA or the Board to the CEO under this item may then be subdelegated by the CEO to the CFO, or to a substantive or acting SES employee, or a substantive or acting Executive Level 2 employee (or equivalent) in RET (see sub-clause 73(1) of the ARENA Bill).

The subdelegate would be required to comply with any directions of the CEO when exercising any power or performing any function under a subdelegation (see sub-clause 73(2) of the ARENA Bill).

The rules about delegations set out in sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* would also apply to subdelegations made under this item (see sub-clause 73(3) of the ARENA Bill).

Item 34: Regulations

This item would give the Governor-General the power to make regulations prescribing matters required or permitted by Schedule 2 to the Bill to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Schedule.

Sub-item (2) would make clear that the regulation making power provided by this item extends to matters of a transitional nature (including the prescription of any

saving or application provisions) relating to the amendments or repeals made by the Bill or to the enactment of the Bill or the ARENA Bill.

Sub-item (3) would provide that regulations made under this item may modify the provisions of Schedule 2. This sub-item has been included due to the complexity of the transitional matters associated with the establishment of ARENA. Its purpose is to provide a means of varying the operation of the Schedule in order to avoid any results that were not intended.